

# Texas Department of Housing and Community Affairs



## Board Book - FINAL

Thursday, June 13, 2024

10:00 AM

Greer Building, Williamson Board Room  
125 E. 11th Street  
Austin, TX 78701

### Governing Board

*Leo Vasquez III, Chair*  
*Kenny Marchant, Vice-Chair*  
*Ajay Thomas, Member*  
*Anna Maria Farias, Member*  
*Holland Harper, Member*  
*Cindy Conroy, Member*

**Texas Department of Housing and Community Affairs  
Programmatic Impact Fiscal Year 2024**

**CY 24 9% LIHTC Program**

- Total Applications Rec'd: 105
- Total Market Rate Units Proposed: 445
- Total Low-Income Units Proposed: 7,496
- Total HTCs Requested: \$164,289,010

*Construction Type:*

- Total Proposed New Construction Projects: 77
- Total Proposed Reconstruction Projects: 5
- Total Proposed Rehab Projects: 23

**CY 24 4% LIHTC Program**

**Active or Approved Applications:**

- Total Applications: 42
- Total Units Proposed: 8,970

**Closed Applications:**

- Total Applications: 0
- Number of Low Income Units Proposed: 0

*Construction Type*

- Total Proposed New Construction Projects: 0
- Total Proposed Rehab/Reconstruction Projects: 0

**Owner Financing and Down Payment**

- 30-year, fixed interest rate mortgage loans
- Mortgage credit certificates
- Down payment, closing cost assistance
- Homebuyer education

*Programs:*

- Single Family Homeownership

Expended Funds: \$964,546,025  
Total Households Served: 4,055

**Energy Related Assistance**

- Utility bill payment assistance
- Energy consumption education
- Weatherization for energy efficiency

*Programs:*

- Comprehensive Energy Assistance Program (CEAP)
- Weatherization Assistance Program (WAP)

Expended CEAP Funds: \$79,312,633  
Total Households Served: 54,714

**Homelessness Services**

- Shelter building rehabilitation, conversion, operations
- Essential services e.g., health services, transportation, job training, employment services

*Programs:*

- Emergency Solutions Grant Program (ESG)
- Homeless Housing and Services Program (HHSP)

Expended Funds: \$7,806,565  
Total Individuals Served: 19,040

**Rental Assistance**

- Short, long term rent payment help
- Assistance linked with services, Transitional assistance

*Programs:*

- Tenant-Based Rental Assistance (TBRA)\*
- Section 8 Housing Choice Vouchers
- Section 811

Expended Funds: \$9,934,239  
Total Households Served: 2,868

**Owner Rehabilitation Assistance**

- Home rehabilitation, reconstruction
- Manufactured housing unit replacement
- Accessibility modifications e.g., ramp, grab bar installation

*Programs:*

- Homeowner Reconstruction Assistance Program (HRA)\*
- Amy Young Barrier Removal Program Expended

Funds: \$10,454,108  
Total Households Served: 94

**Supportive Services**

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

*Program:*

- Community Services Block Grant Program (CSBG)

Expended Funds: \$15,152,985  
Total Individuals Served: 144,747

**Single Family Development**

- Single family development, reconstruction, rehabilitation
- NSP, Do-it-yourself, "sweat equity" construction (bootstrap), rehabilitation, Contract for Deed refinance

*Programs:*

- Single Family Development Program (SFD)\*
- Contract for Deed (CFD)

Expended Funds: \$1,187,352  
Total Households Served: 24

**Total Expended Funds: \$1,219,299,348**

**Total Households Served: 232,274**

All FY2024 data as reported in TDHCA's 2024 performance measures.

*Note: Some households may have been served by more than one TDHCA program. For some programs, allocation is used as a proxy for expenditures. Because of timing of funds request, the funds expended for the quarter may be readjusted substantially by year end.*

Reporting Period: 12/1/2023-2/29/2024 (4% LIHTC Program figures as of 3/7/2024)

\* Administered through the federally funded HOME Investment Partnerships Program

\*\*TBRA Funds are reported on an annual basis and are not included in the rental assistance total



**CALL TO ORDER****ROLL CALL****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.

**EXECUTIVE**

1. Presentation, discussion, and possible action on the Board meeting minutes summary for May 9, 2024 Beau Eccles

**ASSET MANAGEMENT**

2. Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Regency Lofts (HTC #20097) Rosalio Banuelos
3. Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Laurel Flats (HTC #20167) Rosalio Banuelos
4. Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Reserve at Decatur (HTC #23046) Rosalio Banuelos
5. Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Carver Ridge (HTC #21177/#22839/#23942) Rosalio Banuelos

**HOUSING RESOURCE CENTER**

6. Presentation, Discussion, and Possible Action on the 2024 State of Texas Consolidated Plan: One-Year Action Plan Elizabeth Yevich

**LEGAL**

7. Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Waters at Sunrise (HOME # 1002231 / HTC # 1002231 / CMTS # 5046) Sascha Stremmer
8. Presentation, discussion, and possible action regarding the adoption of Agreed Final Orders concerning TwentyFive25 (Bond # MF009, CMTS 2529) and Solaire (Bond # MF011, CMTS 2562) Sascha Stremmer

**RULES**

9. Presentation, discussion, and possible action on an order proposing amendments to 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.6, Program Regulations and Requirements, and directing its publication for public comment in the Texas Register Brooke Boston
10. Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411; an order proposing new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411; and directing their publication for public comment in the Texas Register Brooke Boston
11. Presentation, discussion, and possible action on an order adopting the repeal and new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program, and directing its publication in the Texas Register Abigail Versyp

**CONSENT AGENDA REPORT ITEMS**

12. Report on TDHCA One-Time or Temporary Allocations - Pandemic Response and Other Initiatives Brooke Boston
13. Media Analysis and Outreach Report, April 2024 Michael Lyttle
14. Quarterly report relating to staff-issued Determination Notices for 2023 and 2024 Non-competitive 4% Housing Tax Credit applications Teresa Morales

**ACTION ITEMS**

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions

**EXECUTIVE**

15. Executive Director's Report Bobby Wilkinson

**INTERNAL AUDIT**

16. Report on the Meeting of the Internal Audit and Finance Committee Ajay Thomas  
Board Member

**FINANCIAL ADMINISTRATION**

17. Presentation, discussion, and possible action on the SFY 2025 Housing Finance Division Budget Joe Guevara
18. Presentation, discussion, and possible action on the SFY 2025 Operating Budget Joe Guevara

**MULTIFAMILY BOND**

19. Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Gulfway Manor Apartments) Series 2024 Resolution No. 24-020, and a Determination Notice of Housing Tax Credits Teresa Morales

**ASSET MANAGEMENT**

20. Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for Norwood Estates (HTC #19407) Rosalia Banuelos
21. Presentation, discussion, and possible action regarding a waiver and extension of the 10% Test submission deadline in 10 TAC §10.401(a) and 10 TAC §11.2(a) for 3300 Caroline Street (HTC #20114/21711/22802) Rosalia Banuelos

**COMMUNITY AFFAIRS**

22. Presentation, discussion, and possible action on approval of the 2025 Low Income Home Energy Assistance Program State Plan for submission to the U.S. Department of Health and Human Services and approval of the associated 2025 awards Gavin Reid
23. Presentation, discussion, and possible action on the selection of International Center for Appropriate and Sustainable Technology to administer the Bipartisan Infrastructure Law Department of Energy Weatherization Assistance Program in Travis, Hays, Comal, Guadalupe, and Bexar counties Gavin Reid

**COMMUNITY DEVELOPMENT BLOCK GRANT CARES**

24. Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Program to allocate unutilized funds Rudy Bentancourt

**RULES**

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25. Presentation, discussion, and possible action on an order adopting the repeal and proposed new rule of 10 TAC Chapter 90, Migrant Labor Housing Facilities; and directing their publication in the Texas Register Wendy Quackenbush

**MULTIFAMILY FINANCE**

26. Presentation, discussion, and possible action on approval of loans from the Departments 2024-1 National Housing Trust Fund Notice of Funding Availability Connor Jones
27. Presentation, discussion, and possible action on extensions of the development periods for Sierra Vista and Eastern Oaks Connor Jones
28. Report on Third Party Requests for Administrative Deficiency under 10 TAC §11.10 Cody Campbell
29. Presentation, discussion, and possible action regarding a 9% Housing Tax Credit scoring appeal for Anacua Senior Village Cody Campbell
30. Presentation, discussion, and possible action to issue a list of approved Applications for 2024 Housing Tax Credits (HTC) in accordance with Tex. Gov't Code §2306.6724(e) Cody Campbell
31. Presentation, discussion, and possible action related an amendment of the loan terms for Manson Place (22503) Cody Campbell
32. Presentation, discussion, and possible action on a staff-initiated waiver of 10 TAC §11.204(15) related to HOME Match Requirements for certain Tax-Exempt Bond Developments Cody Campbell
33. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Boulevard 61 Cody Campbell
34. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Knoll Street Crossing Cody Campbell
35. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for The Sasha Cody Campbell
36. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for The Upland Cody Campbell

37. Presentation, discussion, and possible action regarding waivers of certain provisions of 10 TAC Chapter 13 in response to the Department's National Housing Trust Fund expenditure deadline

Cody Campbell

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

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.texas.gov](http://www.tdhca.texas.gov) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th 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 X (Twitter).

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Danielle Leath, 512-475-4606, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Danielle Leath, al siguiente número 512-475-4606 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

This will be an open, public meeting conducted under Tex. Gov't Code, chapter 551, without COVID-19 emergency waivers. There will not be a remote online or telephone option for public participation. The meeting, however, will be streamed online for public viewing. Masks will be available for members of the public who wish to attend this public meeting.



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 625

**Agenda Date:** 6/13/2024

**Agenda #:** 1.

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Presentation, discussion, and possible action on the Board meeting minutes summary for May 9, 2024

**RECOMMENDED ACTION**

Approve the Board meeting minutes summary for May 9, 2024

**RESOLVED**, that the Board meeting minutes summary for May 9, 2024, is hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board**  
**Board Meeting Minutes Summary**  
**May 9, 2024**

On Thursday, the ninth day of May 2024, at 10:00 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 the Williamson Board Room of the TxDOT Greer Building, 125 E. 11<sup>th</sup> Street, Austin, Texas.

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

- Leo Vasquez, III, Chair
- Kenny Marchant, Vice Chair
- Cindy Conroy
- Holland Harper
- Ajay Thomas

Mr. Vasquez served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as Secretary.

1) The Board approved the Consent Agenda and Consent Agenda Report items (Items 1-14) as presented.

2) At 10:04 a.m., the Board convened into an executive session and returned at 10:28 a.m. The Board did not adopt any policy, position, resolution, rule, regulation, or take any formal action or vote on any item.

3) Action Item 15 – Executive Director’s Report – was presented by Bobby Wilkinson, TDHCA Executive Director. The Board heard the report and took no further action.

4) Mr. Scott Fletcher, TDHCA Director of Bond Finance, led a discussion with the Board on Action Item 16 – Presentation and Discussion regarding the pending issuance of Texas Department of Housing and Community Affairs Residential Mortgage Revenue Bonds, Series 2024C (Non-AMT) and Series 2024D (Taxable). The Board participated in the discussion and took no further action.

5) Action Item 17 – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Palladium Old FM 471 W) Series 2024 Resolution No. 24-004, an award of Direct Loan Funds, and a Determination Notice of Housing Tax Credits – was presented by Teresa Morales, TDHCA Director of Multifamily Bonds. The Board unanimously adopted staff recommendation to approve the bond resolution, the award of Direct Loan funds, and issuance of the determination notice.

6) Action Item 18 – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Palladium E Lancaster Avenue) Series 2024 Resolution No. 24-019, an award of Direct Loan Funds, and a Determination Notice of Housing Tax Credits – was presented by Ms. Morales. The Board unanimously adopted staff recommendation to approve the bond resolution, the award of Direct Loan funds, and issuance of the determination notice.

7) Action Item 19 – Presentation, discussion, and possible action on the draft 2025 Regional Allocation Formula Methodology, and directing its publication in the *Texas Register* for public comment – was presented by Elizabeth Yevich, TDHCA Director of the Housing Resource Center. The Board unanimously affirmed staff recommendation to approve the methodology and submit it for public comment.

8) Action Item 20 – Presentation, discussion, and possible action on an order adopting the repeal and proposed new rule of 10 TAC Chapter 90, Migrant Labor Housing Facilities; and directing their publication in the *Texas Register* – was pulled from the agenda and not heard.

9) Action Item 21 – Presentation, discussion, and possible action to authorize the issuance of the 2024 Emergency Solutions Grants Program Notice of Funding Availability and publication in the *Texas Register* – was presented by Abigail Versyp, TDHCA Director of Single Family and Homelessness Programs. The Board unanimously adopted staff recommendation to issue the NOFA and publish for public comment.

10) Action Item 22 – Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Manson Place Apartments – was presented by Cody Campbell, TDHCA Director of Multifamily Finance. The Board adopted staff recommendation to grant the requested treatment under an application of the force majeure rule to Manson Place Apartments.

11) Action Item 23 – Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for The Upland – was presented by Mr. Campbell with additional information from Mr. Wilkinson; Mr. Eccles; and Rosalio Banuelos, TDHCA Director of Asset Management. Following public comment (listed below), the Board unanimously approved a measure to table the item until the meeting on June 13, 2024.

- Ellen Moskalik, Cesar Chavez Foundation and a representative of The Upland, provided comments in support of staff recommendation

12) Action Item 24 – Presentation, discussion, and possible action on a waiver of certain requirements of 10 TAC §13.11(c)(14) for multifamily Developments that have been awarded loans of Emergency Rental Assistance (ERA2) funds – was presented by Mr. Campbell with



additional information from Mr. Wilkinson. The Board unanimously approved staff recommendation to grant the waiver request.

13) Action Item 25 – Presentation, discussion, and possible action on a waiver of 10 TAC §11.302(a)(2) of the 2023 Qualified Allocation Plan (QAP) for Cabana Design District (#23100) – was presented by Mr. Campbell with additional information from Mr. Wilkinson. Following public comment (listed below), the Board unanimously adopted staff recommendation to approve the waiver request.

- Zachary Krochtengel, Sycamore Strategies and the developer, provided comments in support of staff recommendation

14) Public Comment on Matters other than Items for which there were posted Agenda Items. Here are those comments:

- Zachary Krochtengel, Sycamore Strategies, provided comments regarding some of the deadlines in the Qualified Allocation Plan

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 12:05 p.m. The next meeting is scheduled for Thursday, June 13, 2024.

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Secretary

Approved:

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Chair



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 633

**Agenda Date:** 6/13/2024

**Agenda #:** 2.

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Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Regency Lofts (HTC #20097)

**RECOMMENDED ACTION**

**WHEREAS**, Regency Lofts (Development) received an award of 9% Housing Tax Credits (HTCs) in 2020 for the new construction of 120 multifamily units, of which 102 are low-income units, in Houston, Harris County;

**WHEREAS**, DWR Regency 20, LP (Development Owner or Owner) requests approval for a change in the unit mix, resulting in an increase in the number of one-bedroom units from 47 to 48 units, and a decrease in the number of two-bedroom units from 61 to 60 units, while maintaining the total number of units at 120;

**WHEREAS**, Board approval is required for a modification of the bedroom mix of units as directed in Tex. Gov't Code §2306.6712(d)(2) and 10 TAC §10.405(a)(4)(B), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested changes to the bedroom mix do not materially alter the Development in a negative manner, would not have adversely affected the selection of the Application, and does not impact the viability of the transaction;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment to the Application for Regency Lofts is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board's determination.

**BACKGROUND**

Regency Lofts received an award of 9% Housing Tax Credits in 2020 for the new construction of 120 multifamily units, of which 102 are low-income units, in Houston, Harris County. The Development is complete, and all buildings were placed in service in 2022. During the review of the cost certification, it was discovered that there was a change to the original bedroom mix represented at Application. The Development was originally proposed with 47 one-bedroom units and 61 two-bedroom units, in addition to 12 three-bedroom units. However, the cost certification revealed that, although the overall number of units and income restrictions did not

change, the Development contains one additional one-bedroom and one less two-bedroom unit. This change to the bedroom mix also results in an overall decrease of 243 square feet, or 0.22%, in the Net Rentable Area (NRA), going from 108,351 to 108,108 square feet.

In a letter dated May 15, 2024, the Owner's representative, Donna W. Rickenbacker, requested approval for the material modification of the bedroom mix. Ms. Rickenbacker states that the design adjustments were made to accommodate expanded detention conditions for flood mitigation required by the City of Houston. The modification did not alter the square footage of the unit types.

The 0.22% decrease to the NRA is considered a Notification Item under 10 TAC §10.405(a)(2)(C), but is mentioned as part of the material amendment to bedroom mix of units that requires approval by the Board under Tex. Gov't Code §2306.6712(d)(2) and 10 TAC §10.405(a)(4)(B). Additionally, it should be pointed out that at Application the Engineer/Architect Certification identified 6,992 square of common area. At cost certification, 6,246 feet of common area were identified by the architect, and when questioned about it, the Owner explained that the 6,992 figure included the maintenance room of 494 square feet according to the architectural drawings, and this was due to the description for common area on the certification form. Therefore, if the square footage for the maintenance room is removed, the reduction in common area is less than the 3% threshold for material amendments.

Staff has determined that the proposed changes would not have affected the Development in a negative manner and would not have impacted the scoring of the Application or the HTC award. Staff has conducted an analysis of the cost certification and has determined that the Development remains feasible with the changes to the bedroom mix. The final recommended HTC amount will be determined upon finalization of the cost certification review.

Staff recommends approval of the requested material amendment to the Application.

# Regency Lofts

3230 Dixie Drive  
Houston, Texas 77021

5/15/2024

Ms. Stephanie Givens  
Asset Manager | Region 6  
Texas Department of Housing and Community Affairs (TDHCA)  
221 E. 11th St.  
Austin, TX 78701

RE: Regency Lofts (TDHCA #20097)

Dear Ms. Givens:

Pursuant to §10.405(a)(4)(B) of the Real Estate Rules, please accept this request for an amendment to the Regency Lofts application to modify the bedroom mix of Units. The final construction set of architectural plans modified the number of one- and two-bedroom unit types by one changing the net rentable square feet (NRSF) changed by 243 sf.

At application, the Applicant projected:

- 47-One-bedroom/one bath units.
  - 61-Two-bedroom/two bath units.
  - 12-Three-bedroom/two bath units.
- 120 Total Units – NRSF – 108,351 sf

Final Architectural Plans:

- 48-One-bedroom/one bath units.
  - 60-Two-bedroom/two bath units.
  - 12-Three-bedroom/two bath units.
- 120 Total Units – NRT – 108,108 sf

The minor change from 47 to 48 – 1/1-bedroom units and 61 to 60 – 2/2-bedroom units resulted from design adjustments to accommodate expanded detention conditions for flood mitigation required by the City of Houston. The modification did not alter the square footage of the Unit types. The change does not materially alter the Development in a negative manner, nor would it have adversely affected the scoring or selection of the Application in the Application Round.

Attached is a check for \$2,500.00 in accordance with the rules.

Please feel free to contact us if you have any questions or need additional documentation.

Sincerely,



Donna W. Rickenbacker  
Duly Authorized Representative

At application

### Project Summary

#### Apartments:

Type	Description	Qty	Area
A1	One Bedroom, 1 Bath	20	700 s.f.
A2	One Bedroom, 1 Bath	24	777 s.f.
A3	One Bedroom, 1 Bath (H.C.)	3	777 s.f.
<b>Total One Bedroom Units</b>		47 Units	
B1	Two Bedroom, 2 Bath	34	943 s.f.
B2	Two Bedroom, 2 Bath	23	1,014 s.f.
B3	Two Bedroom, 2 Bath (H.C.)	4	1,014 s.f.
<b>Total Two Bedroom Units</b>		61 Units	
C1	Three Bedroom, 2 Bath	9	1,161 s.f.
C2	Three Bedroom, 2 Bath	2	1,161 s.f.
C3	Three Bedroom, 2 Bath (H.C.)	1	1,161 s.f.
<b>Total Two Bedroom Units</b>		12 Units	
<b>Apartments Net Rentable Total</b>		120 Units	108,351 s.f.

As-Built

### Project Summary

#### Apartments:

Type	Description	Qty	Area
A1	One Bedroom, 1 Bath	21	700 s.f.
A2	One Bedroom, 1 Bath	24	777 s.f.
A3	One Bedroom, 1 Bath (H.C.)	3	777 s.f.
<b>Total One Bedroom Units</b>		48 Units	
B1	Two Bedroom, 2 Bath	33	943 s.f.
B2	Two Bedroom, 2 Bath	23	1,014 s.f.
B3	Two Bedroom, 2 Bath (H.C.)	4	1,014 s.f.
<b>Total Two Bedroom Units</b>		60 Units	
C1	Three Bedroom, 2 Bath	9	1,161 s.f.
C2	Three Bedroom, 2 Bath	2	1,161 s.f.
C3	Three Bedroom, 2 Bath (H.C.)	1	1,161 s.f.
<b>Total Two Bedroom Units</b>		12 Units	
<b>Apartments Net Rentable Total</b>		120 Units	108,108 s.f.



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 634

**Agenda Date:** 6/13/2024

**Agenda #:** 3.

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Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Laurel Flats (HTC #20167)

**RECOMMENDED ACTION**

**WHEREAS**, Laurel Flats (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2020 for the acquisition and rehabilitation of 88 low-income units in Tyler, Smith County;

**WHEREAS**, OPG Laurel Flats Partners, LLC (the Development Owner or Owner) requests approval for a reduction in the Common Area from 28,114 square feet to 962 square feet, representing a reduction of 27,152 square feet or 96.58% from the Common Area represented in the Architect Certification at Application;

**WHEREAS**, Board approval is required for a reduction of 3% or more in the square footage of the Common Area as directed in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not negatively affect the Development, impact the viability of the transaction, impact the scoring of the Application, or affect the amount of funding awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested amendment for Laurel Flats is approved as presented at this meeting, and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

**BACKGROUND**

Laurel Flats received an award of 9% Housing Tax Credits in 2020 for the acquisition and rehabilitation of 88 low-income units in Tyler, Smith County. The rehabilitation of the Development has been completed, and the Owner has submitted the cost certification documentation. Upon review of the cost certification, staff identified a change in the square footage of the Common Area from what was represented at Application. Subsequently, in a letter dated May 6, 2024, April Engstrom, the Owner representative, requested approval for a reduction in the Common Area.

At Application, the architect certified that the total Common Area was 28,114 square feet on the Engineer/Architect Certification. However, at cost certification, it was revealed the actual square footage of the Common Area is 962 square feet, representing a reduction of 27,152 square feet or 96.58% from the Common Area represented at Application. The Owner explained the 962 square feet includes the leasing and maintenance office (as approved in a Material Amendment on June 16, 2022), and the laundry room. Upon further review, it was discovered that the 28,114 square feet was not accurate because it included the square footage of carports, exterior stairs, mechanical rooms and maintenance/storage not considered common areas under the definition in §11.1(d)(22) of the QAP. After removing the areas not considered to be Common Area, it was determined that the actual Common Area at Application should have been identified as 1,164 square feet. The 962 square feet identified as Common Area at cost certification is the result of the removal of a 202 square-foot laundry room, representing a 17.35% reduction of the actual Common Area. The Owner explained that this laundry room was replaced with a maintenance room because it was determined the second laundry room was not needed. Additionally, the Owner indicated all existing spaces have been kept as the original intended use. This change is a material amendment under Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D) and requires Board approval.

The change to the Common Area square footage does not materially alter the Development in a negative manner, and was not reasonably foreseeable or preventable by the Development Owner at the time of Application. The Owner has indicated that there was no net financial impact on the Development as a result of the proposed changes. Staff has determined that this change does not affect the scoring of the Application or the funding award. The final recommended HTC amount will be determined upon finalization of the cost certification review process.

Staff recommends approval of the amendment request as presented herein.



May 6, 2024  
Re: Laurel Flats (20167) LURA Amendment

Dear Rosalio,

We are requesting an amendment to Laurel Flats' LURA to correct the Common Spaces square footages, in response to TDHCA's Cost Certification comments. The original Tab 43 – Architect Certification, had shown 28,114 sf dedicated to the “Common Spaces”. At this time, it was the architect's understanding that all spaces (not dedicated to an apartment unit), were considered “Common Spaces”. Thus, hallways, corridors, mechanical, maintenance and storage closets were all included in this overall value. All existing spaces have been kept as the original intended use, with the exception of a second Laundry Room, in which the owner determined was not needed, so it was transformed into a Maintenance Room. This was a change of (-)202 SF from the overall “Common Space”. Upon the submittal of the Cost Certification, the Architect realized that most spaces included in the original Tab 43 were not truly common use spaces, but rather support or accessory spaces. The only true common spaces were the Live-in Leasing Office and the Laundry Room. The Live-in Leasing Office is 769 SF, and the Laundry Room is 193 SF, for a total of 962 SF. To reiterate, the only space use that was altered from the original plan, was the change of the second Laundry Room to the Maintenance Room (-)202 SF. There is no financial impact as a result of this change.

Best,

**April Engstrom** | Director of Development

**Overland Property Group**

5345 W. 151st Terrace, Leawood, Kansas 66224

aengstrom@overlandpg.com

C: 785.212.0810



## PUBLIC SPACES FINISH SCHEDULE

FINISH NAME	FINISHES & INSTRUCTIONS		VT	CT	STAIR	L	B	E	S	A
	W	V								
1. CARPET & RUBBER NOSING										
2. VINYL PLANK FLGS										
3. RUBBER TREADS & RISERS										
4. EXISTING TO REMAIN										
5. NONE										
6. EXISTING GYP. BOARD/DMA										
7. EXIST. GYP. BOARD										
8. EXIST. GYP. BOARD										
9. EXIST. GYP. BOARD										
10. EXIST. GYP. BOARD										

REMARKS

### ARCHITECTURAL GENERAL NOTES

- WHERE SHOWN, EXISTING COMPONENTS ARE TO BE REMOVED, PATCHED & REPAIR THE SURFACES TO MATCH EXISTING SURFACES.
- REMOVE EXISTING BUILDING COMPONENTS AS INDICATED UNLESS NOTED OTHERWISE.
- REMOVE EXISTING PARTITIONS AND REPAIR TO MATCH EXISTING PARTITIONS.
- ALL OTHER UTILITIES, PATCHES & FINISHES, UNLESS NOTED OTHERWISE, SHALL BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR.
- REPAIR TO EXISTING STRUCTURE SHALL BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR UNLESS NOTED OTHERWISE.
- CONTRACTOR TO COORDINATE LOCATION OF ALL OR ALL EXISTING EXPOSURE RECEIPTABLES, SWITCHES, & CONTROLS WITH THE GENERAL CONTRACTOR.
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### DEMOLITION GENERAL NOTES

- REMOVE EXISTING PARTITIONS AND REPAIR TO MATCH EXISTING PARTITIONS.
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### NEW CONSTRUCTION GENERAL NOTES

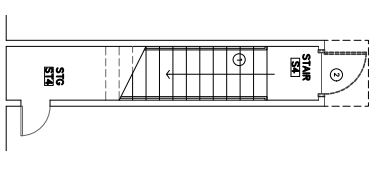
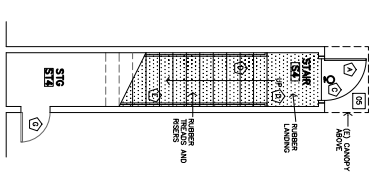
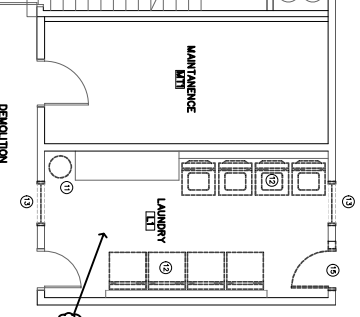
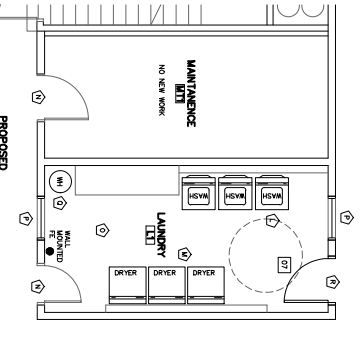
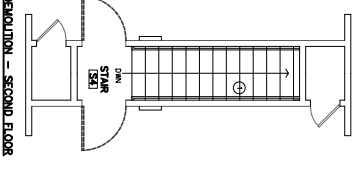
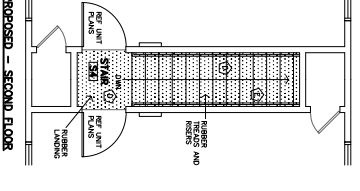
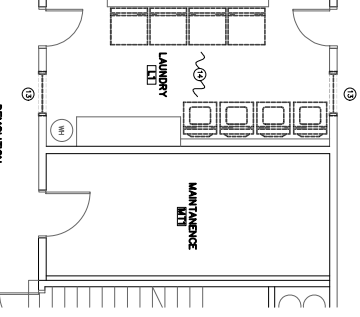
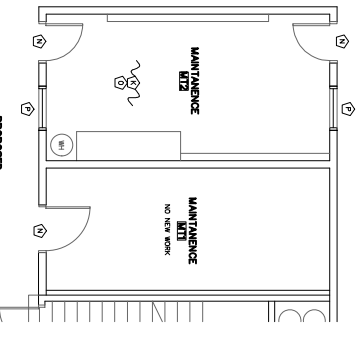
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### LAUNDRY/MAINTENANCE - NOTES

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### ENTRY STAIRS - NOTES

- REMOVE EXISTING PARTITIONS AND REPAIR TO MATCH EXISTING PARTITIONS.
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**B** LAUNDRY & MAINTENANCE - BLDG 14  
1/4"-1"=1'

**C** MAINTENANCE - BLDG 15  
1/4"-1"=1'

**A** STAIR S4  
1/4"-1"=1'

**A2.11**

REVISIONS  
 PER ADD #1  
 11-13-2020

LAUREL FLATS  
 TYLER, TEXAS

ARCHITECTS PLANNERS DESIGNERS  
 750 N. Ninth  
 Suite 300  
 Salina, KS 67402  
 785.827.0386  
 jgr@jgrarchitects.com

1800 Wyndolite St.,  
 Suite 300  
 Kansas City, MO 64108  
 816.452.2222

DATE: 8-26-2020  
 SHEET: 20-2099





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

---

**File #:** 636

**Agenda Date:** 6/13/2024

**Agenda #:** 4.

---

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Reserve at Decatur (HTC #23046)

**RECOMMENDED ACTION**

**WHEREAS**, Reserve at Decatur (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2023 for the construction of 39 units for the elderly population in Decatur, Wise County;

**WHEREAS**, Reserve at Decatur LLC (the Applicant) requests approval for a reduction in the Common Area from 10,271 to 9,102 square feet, representing a reduction of 1,169 square feet or 11.38% from the Common Area represented at Application;

**WHEREAS**, the Applicant also requests approval for a reduction in the Net Rentable Area from 35,868 to 32,850 square feet, representing a reduction of 3,018 square feet or 8.41% from the Net Rentable Area represented at Application;

**WHEREAS**, Board approval is required for a reduction of 3% or more in the square footage of the units or common areas as directed in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405 (a)(4)(D), and the Applicant has complied with the amendment requirements therein; and

**WHEREAS**, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the Application, or affect the amount of funding awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested amendment for Reserve at Decatur is approved as presented at this meeting, and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

**BACKGROUND**

Reserve at Decatur received an award of 9% Housing Tax Credits in 2023 for the new construction of 39 units for the elderly population in Decatur, Wise County. In a letter dated April 23, 2024, Sallie Burchett, the Applicant's representative, requested approval for a reduction in the Common Area and Net Rentable Area.

The Application originally identified the Common Area as 10,271 square feet. However, according to the amendment request, the Common Area and Net Rentable Area was not able to be met by the General Contractor due to the inability to obtain subcontractor bids to meet the previously established estimate for construction. Reducing the Net Rentable Area square footage of the units while still surpassing the minimums and simplifying the design of the units reduces the costs and keeps the Development within budget. The architectural design change is nominal with very similar architectural characteristics from all elevations. The Common Area square footage decrease is 1,169 square feet (11.38%), and the Development will maintain all required common amenity points. Additionally, the Net Rentable Area has decreased from 35,868 square feet to 32,850 square feet, representing a decrease of 3,018 square feet or 8.41% from the Net Rentable Area represented at Application. The square footage of the one-bedroom units will decrease from 775 square feet to 690 square feet, while the square footage of the two-bedroom units will decrease from 984 square feet to 910 square feet.

The change to the Common Area and Net Rentable Area square footage does not materially alter the Development in a negative manner, and was not reasonably foreseeable or preventable by the Applicant at the time of Application. The Applicant has indicated that there was no net financial impact on the Development as a result of the proposed changes. Staff has determined that this change does not affect the scoring of the Application or the funding award, and the Development will continue to meet the accessibility requirements.

Staff recommends approval of the amendment request as presented herein.



April 23, 2024

Ms. Lucy Weber  
Asset Manager (Regions 3)  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Via: lucy.weber@tdhca.state.tx.us

*Re: Reserve at Decatur, TDHCA #23046, Decatur, TX*

Dear Ms. Weber:

Please accept this formal request for a material amendment to the above referenced development to adjust the unit square footage and common area square footage.

## **SECTION 1**

### **Changes Requested**

- 1) Reduce the net rentable area in excess of 3%.
- 2) Reduce the common area in excess of 3%.
- 3) Modify the architectural design associated with the reduction in square footage and simplify the framing and roofing plans.

### **Reason the Change is Necessary**

- After the tax credit award, the General Contractor was not able to obtain subcontractor bids to meet the previously established estimate for construction.

### **Good Cause for the Change**

- Reducing the net rentable area square footage of the units (and still surpassing the minimums) and simplifying the design reduces the costs and keeps the development within budget. The architectural design change is nominal with very similar architectural characteristics from all elevations. The square footage in common area decrease is 149 square feet and will maintain all require common amenity points.

### **Explanation of Foreseeable or Preventable Nature**

- The multifamily market in Texas is struggling due to the larger economic reset, Federal policies, and high inflation. At application the development owner did their best to project adequate construction costs. The continual increase in costs was not foreseeable or preventable.

**SECTION 2**

The requested square foot change is summarized below.

	Application			Amendment			Change
	unit sf	# of units	total sf	unit sf	# of units	total sf	
1B/1B	775	12	9,300	690	12	8,280	-10.97%
2B/1B	984	27	26,568	910	27	24,570	-7.52%
Common Area	10,271	1	10,271	9,102	1	9,102	-11.38%

**Financial Exhibits**

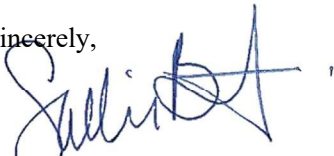
With no changes to the sources and uses, the changes in the amendment request do not result in a financial impact.

**Design Documents**

- Site Plan
- Architectural Plans

We have previously submitted the \$2,500 material amendment fee. Thank you for marshaling the amendment request through the system. Please feel free to contact me if you have any additional questions.

Sincerely,



Sallie Burchett, AICP

April 23, 2024

Ms. Lucy Weber  
Asset Manager (Regions 3)  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Via: [lucy.weber@tdhca.state.tx.us](mailto:lucy.weber@tdhca.state.tx.us)

*Re: Reserve at Decatur, TDHCA #23046, Decatur, TX  
No Financial Impact*

Dear Ms. Weber:

With no changes to the sources and uses, the changes in the amendment request do not result in a financial impact.

Please contact me at (513) 964-1141 or [birna.mcgeady@pivotal-hp.com](mailto:birna.mcgeady@pivotal-hp.com) if you have any questions or concerns.

Sincerely,



Brian McGeady

PROJECT TEAM:

OWNER:

**RESERVE AT DECATUR LLC**

9100 CENTRE POINTE DRIVE, SUITE 210  
WEST CHESTER, OHIO 45069  
(513) 964-1140

DEVELOPER:

**PIVOTAL DEVELOPMENT, LLC**

9100 CENTRE POINTE DRIVE, SUITE 210  
WEST CHESTER, OHIO 45069  
(513) 964-1140

ARCHITECT OF RECORD:

**BDCL ARCHITECTS, PC**

9100 CENTRE POINTE DRIVE, SUITE 210  
WEST CHESTER, OHIO 45069  
(513) 964-1140

DRAWING INDEX:

00	COVER SHEET
01	BUILDING & SITE DATA
01B	BUILDING & SITE DATA
02	SITE PLAN
03	FIRST FLOOR PLAN
04	SECOND FLOOR PLAN
05	THIRD FLOOR PLAN
06	ENLARGED COMMON AREA PLANS
07	ENLARGED COMMON AREA PLANS
08	1 BEDROOM TYPE 1A ACCESSIBLE - UNIT PLAN
09	1 BEDROOM TYPE 1B / 1B S&H - UNIT PLAN
10	2 BEDROOM TYPE 2A ACCESSIBLE - UNIT PLAN
11	2 BEDROOM TYPE 2B / 2B S&H - UNIT PLAN
12	ELEVATIONS
13	ELEVATIONS



**RESERVE AT DECATUR**

decaturn, texas

04.16.24

**cover sheet | 00**

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# BUILDING & UNIT COUNT

	UNIT COUNTS PER EACH BUILDING						TOTAL UNITS
	1 BED / 1 BATH ACC	1 BED / 1 BATH TYPE 1A	1 BED / 1 BATH S&H	2 BED / 1 BATH TYPE 2A	2 BED / 1 BATH TYPE 2B	2 BED / 1 BATH TYPE 2B S&H	
TOTAL UNITS BY TYPE	1	10	1	1	25	1	39

# BUILDING SIZE

FLOOR LEVEL	GROSS S.F.
<u>FIRST FLOOR</u>	
NET RENTABLE AREA	9,570
COMMON AREA	4,137
NOT IN COMMON AREA	515
<u>SECOND FLOOR</u>	
NET RENTABLE AREA	11,640
COMMON AREA	2,483
NOT IN COMMON AREA	99
<u>THIRD FLOOR</u>	
NET RENTABLE AREA	11,640
COMMON AREA	2,482
NOT IN COMMON AREA	100
TOTAL RENTABLE AREA	32,850

## Reserve at Decatur Common Area Calculations

Area/Type	Common area	Not in common area	Notes
<u>First Floor</u>			
Mechanical	393		
Restrooms	112	69	
Maintenance	108	233	
Utility	25	156	
Office	282		
Office Storage	242	57	
Activity Room	156		
Community Room	651		
Vestibule	70		
Enclosed Stairwells / Elevator Lobby	546		
Enclosed Interior Corridors	162		
	1450		
<u>Second Floor</u>			
Trash	108	99	
Mechanical			
Storage	134		
Elev Lobby	162		
Laundry	156		
Enclosed Stairwells / Elevator Lobby	546		
Enclosed Interior Corridors	1377		
<u>Third Floor</u>			
Trash	108		
Mechanical			
Card Room	205	100	
Elev Lobby	130		
Storage	116		
Enclosed Stairwells / Elevator Lobby	546		
Enclosed Interior Corridors	1377		
	9102	714	Not in common area
		9816	Net area (TDHCA common area + other area not included in NFA)

Common Area - Enclosed space outside of Net Rentable Area, whether conditioned or not, that are available for resident use, or that are available to staff only but are to support residents (like offices, workroom, etc.)

Common Area specifically includes: enclosed corridors (fully enclosed), interior courtyards, interior courtyards, mailbox areas, laundry rooms, common areas, community rooms, common restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, storage rooms, utility rooms, etc.

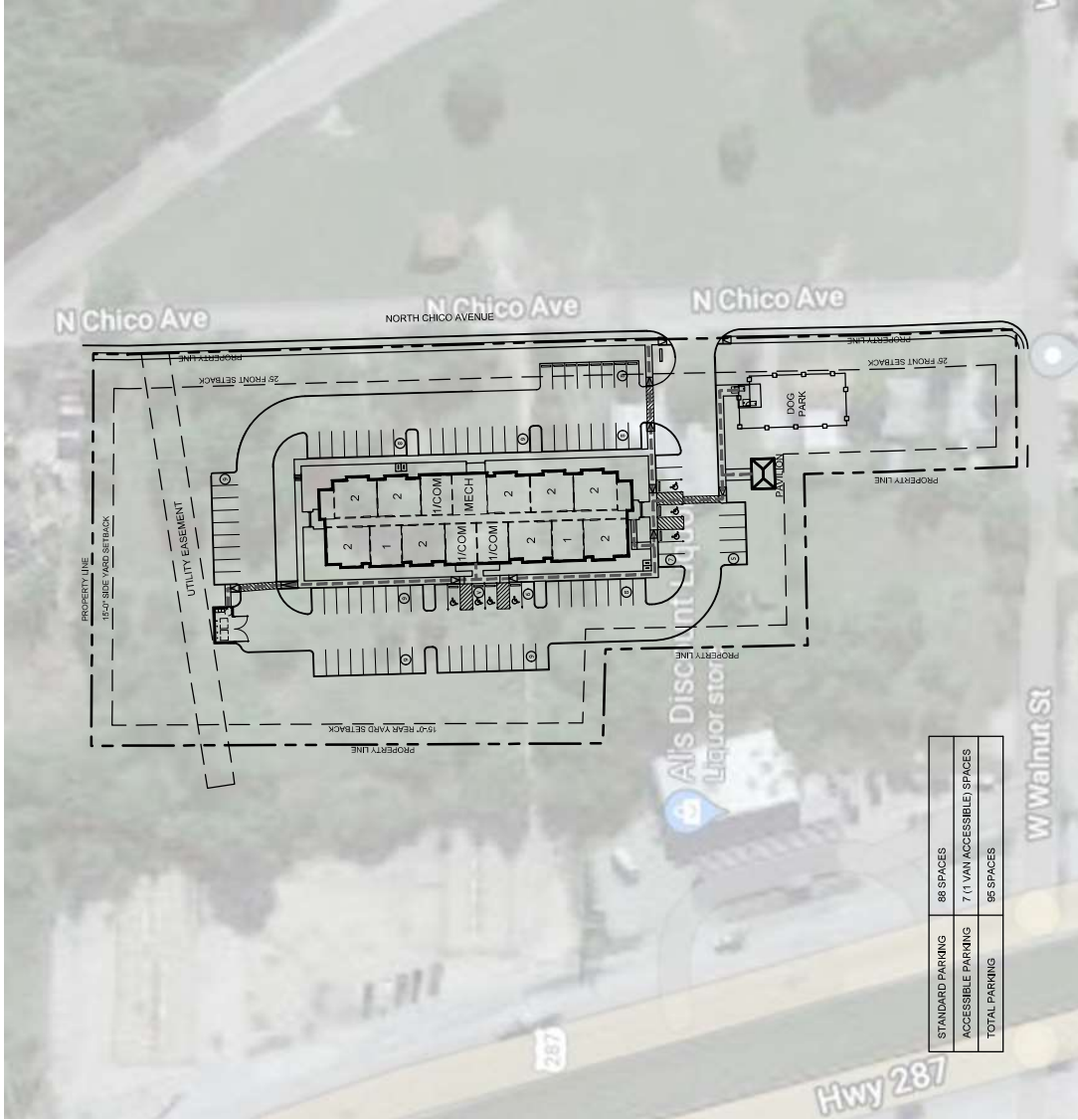
Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

Common Area does NOT include the following: maintenance areas, mechanical closets/areas, corridors if they are not enclosed, storage areas



# RESERVE AT DECATUR

decaturn, texas



STANDARD PARKING	88 SPACES
ACCESSIBLE PARKING	7 (1 VAN ACCESSIBLE) SPACES
TOTAL PARKING	95 SPACES

Unit Label	# of Bed-rooms	# of Baths	Sq. Ft. Per Unit	Total Sq. Ft for Unit Type	Total # of Units	Total # of Residential Buildings
1BR	1	1	690	8,280	12	1
2BR	2	1	910	24,570	27	1
<b>Totals</b>				<b>32,850</b>	<b>39</b>	<b>1</b>

Net Rentable Square Footage from Rent Schedule = 32,850

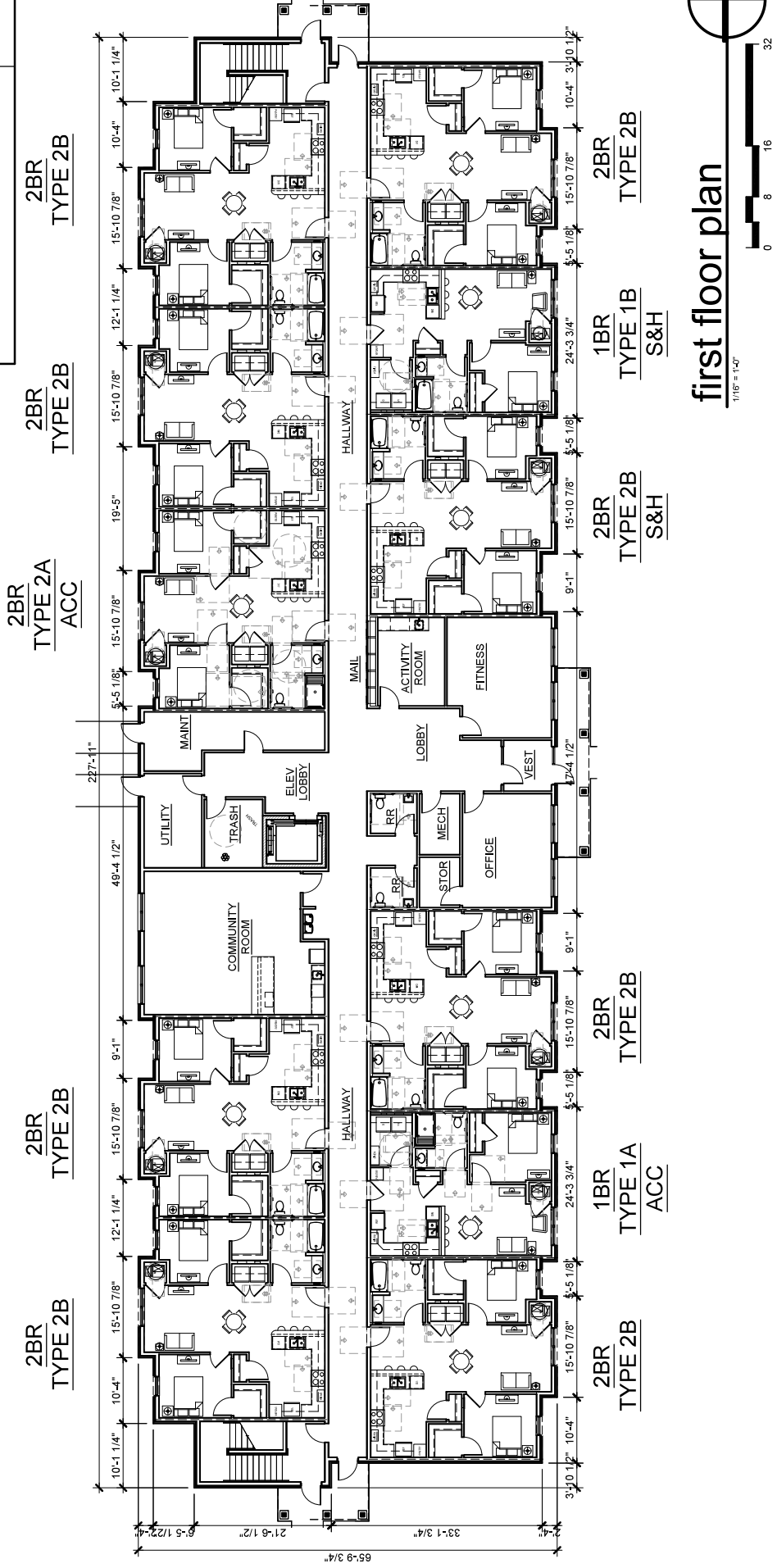
Common Area Square Footage (as specified on Architect Certification) = 9,102

**LOCAL PARKING REQUIREMENTS:**  
 LOCAL PARKING REQUIREMENTS ARE IN ACCORDANCE WITH THE CITY OF DECATUR ZONING ORDINANCE.  
 TOTAL REQUIRED PARKING = 222 SPACES PER UNIT = 88 SPACES  
 TDHCA REQUIRED PARKING = 95 SPACES PER UNIT = 95 SPACES (INCLUDES 7 ACCESSIBLE PARKING SPACES)  
 TOTAL PROVIDED PARKING = 95 SPACES (INCLUDES 7 ACCESSIBLE PARKING SPACES)  
**TDHCA AMENITIES CONTAINED WITHIN BUILDINGS:**  
 1. FURNISHED COMMUNITY ROOM (2 POINTS)  
 TDHCA AMENITY POINTS REQUIRED = 2 (16-41 UNITS)  
 TDHCA AMENITY POINTS PROVIDED = 2  
**SITE NOTES:**  
 SITE ACREAGE IS 3.684 ACRES  
 SITE DOES NOT CONTAIN ANY FLOODPLAINS  
 SITE IS NOT LOCATED WITHIN A WETLAND  
 ALL SITE ROUTES TO BE ACCESSIBLE THROUGHOUT

SITE PLAN LEGEND	
	VAN ACCESSIBLE PARKING SPOT
	COMPLIANT ACCESSIBLE ROUTE

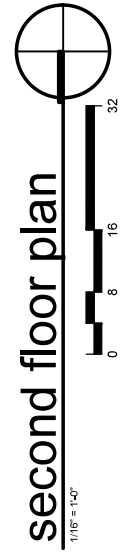
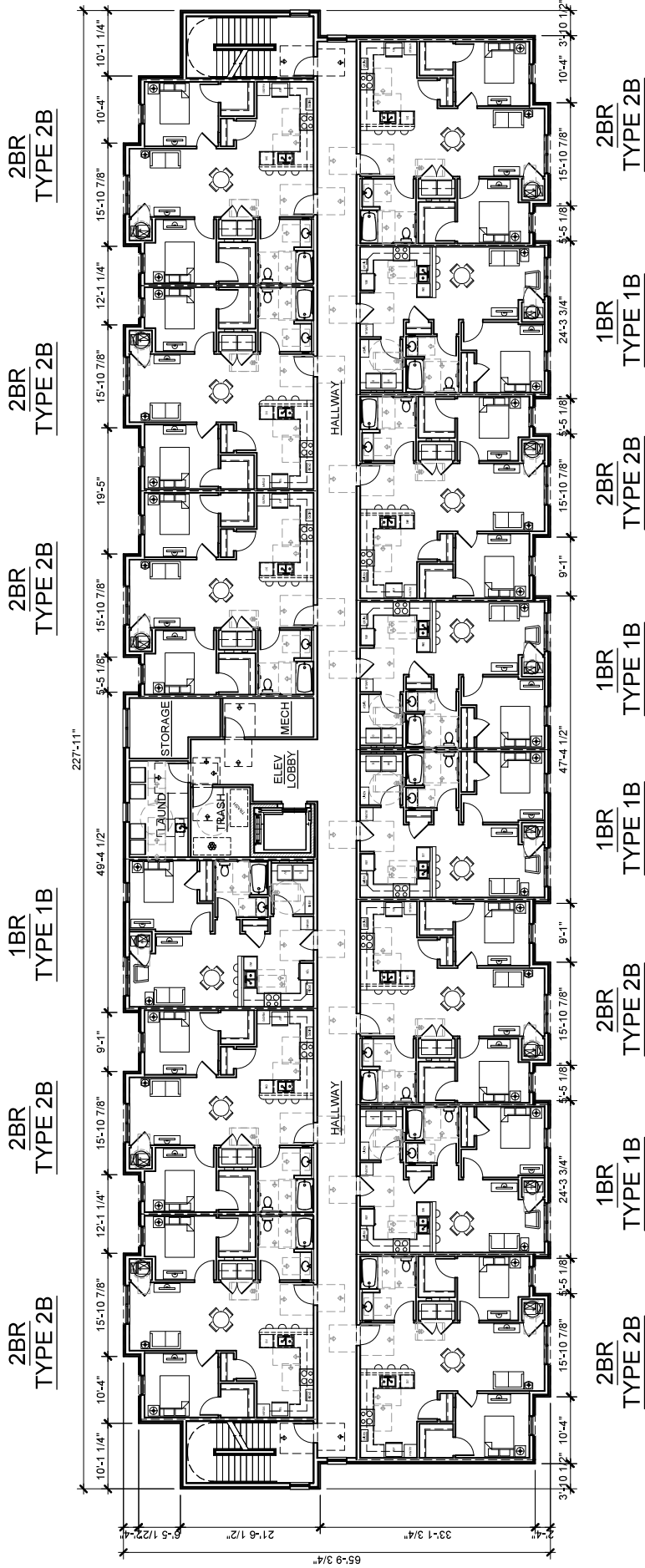


FIRST FLOOR	
NET RENTABLE AREA	9,570
COMMON AREA	4,137
NOT IN COMMON AREA	515



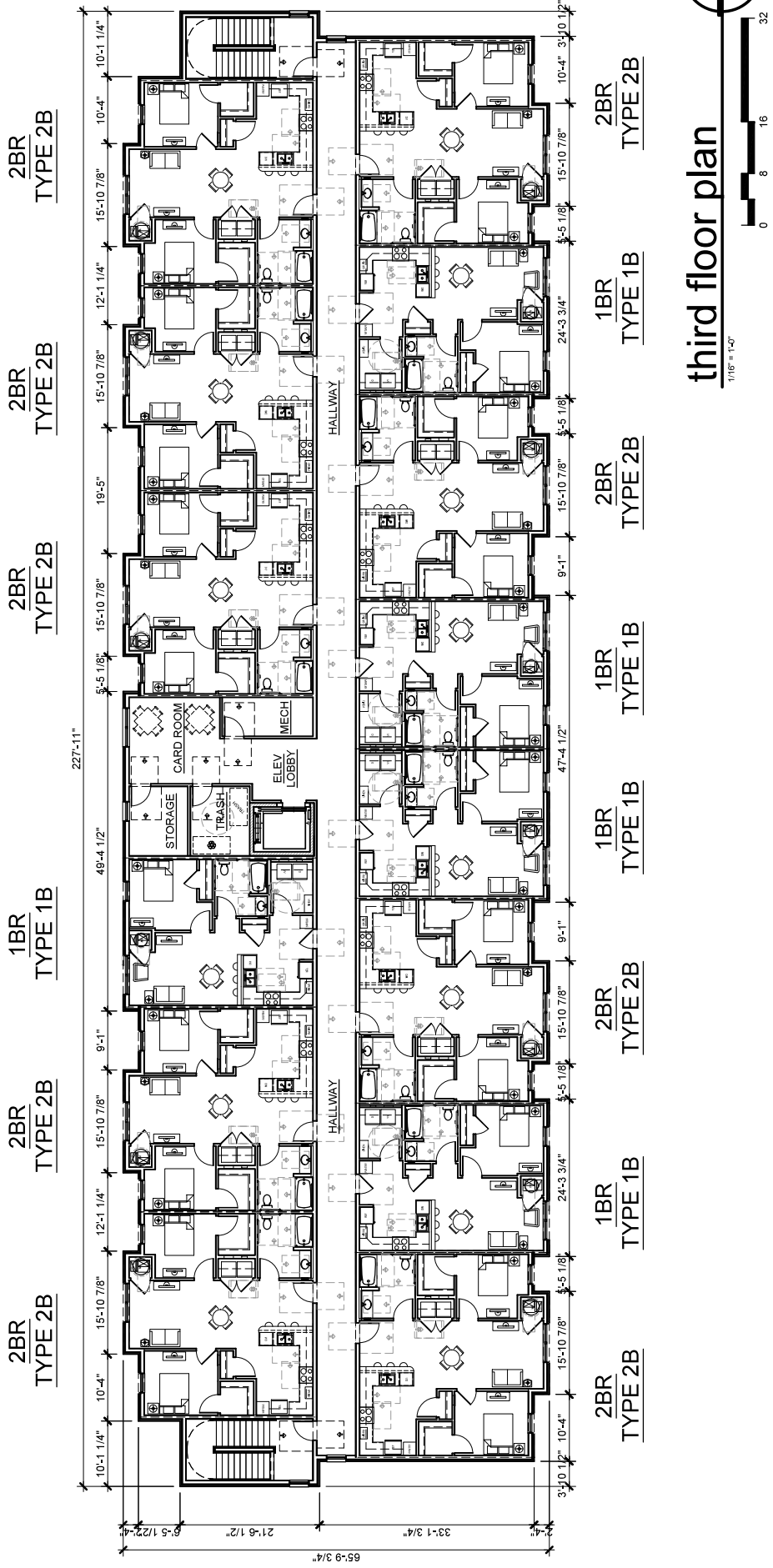
first floor plan  
1/16" = 1'-0"

SECOND FLOOR	
NET RENTABLE AREA	11,640
COMMON AREA	2,483
NOT IN COMMON AREA	99



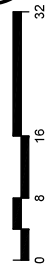
**RESERVE AT DECATUR**  
decaturn, texas

THIRD FLOOR	
NET RENTABLE AREA	11,640
COMMON AREA	2,482
NOT IN COMMON AREA	100

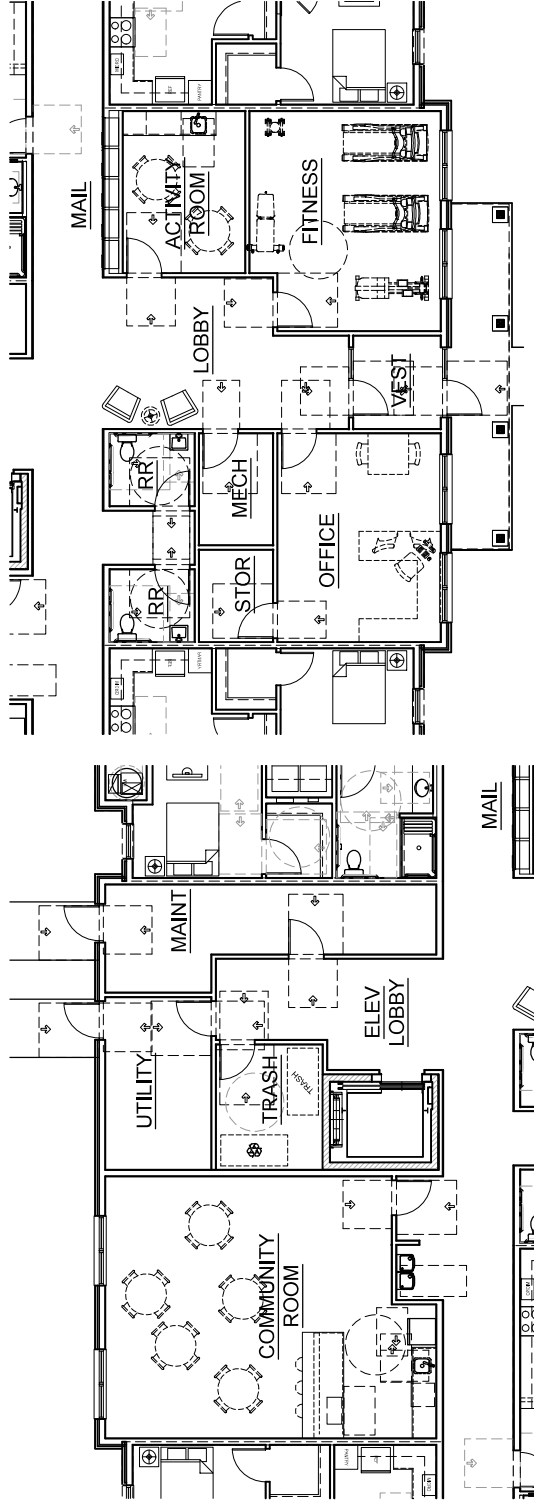


third floor plan

1/16" = 1'-0"



Amenity/Common Area	Common area	Not in common area
Space		
First Floor		
Fitness	333	
Mechanical		89
Restrooms	112	
Maintenance		233
Trash	106	
Utility		156
Mail	25	
Office	282	
Office Storage		57
Lobby	242	
Activity Room	156	
Community Room	651	
Vestibule	70	
Enclosed Stairwells / Elevator	546	
Elevator Lobby	162	
Enclosed Interior Corridors	1453	



# enlarged first floor common area plans

3/32" = 1'0"



## RESERVE AT DECATUR

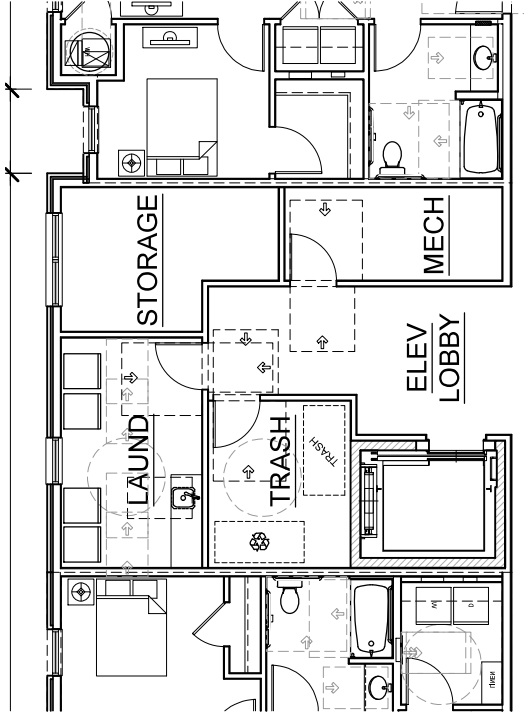
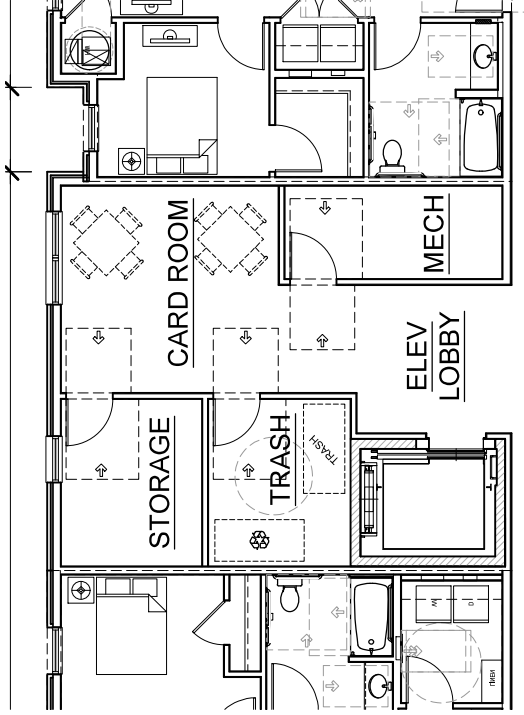
decaturn, texas

04.16.24  
common area | 06

© 2024 Pivotal Housing Partners, LLC

Amenity/Common Area Space	Common area	Not in common area
<b>Third Floor</b>		
Trash	108	
Mechanical		100
Card Room	205	
Elev Lobby	130	
Storage	116	
Enclosed Stairwells / Elevators	546	
Enclosed Interior Corridors	1377	

Amenity/Common Area Space	Common area	Not in common area
<b>Second Floor</b>		
Trash	108	
Mechanical		99
Storage	134	
Elev Lobby	162	
Laundry	156	
Enclosed Stairwells / Elevators	546	
Enclosed Interior Corridors	1377	



enlarged common area plan (second - third floor)

1/8" = 1'0"



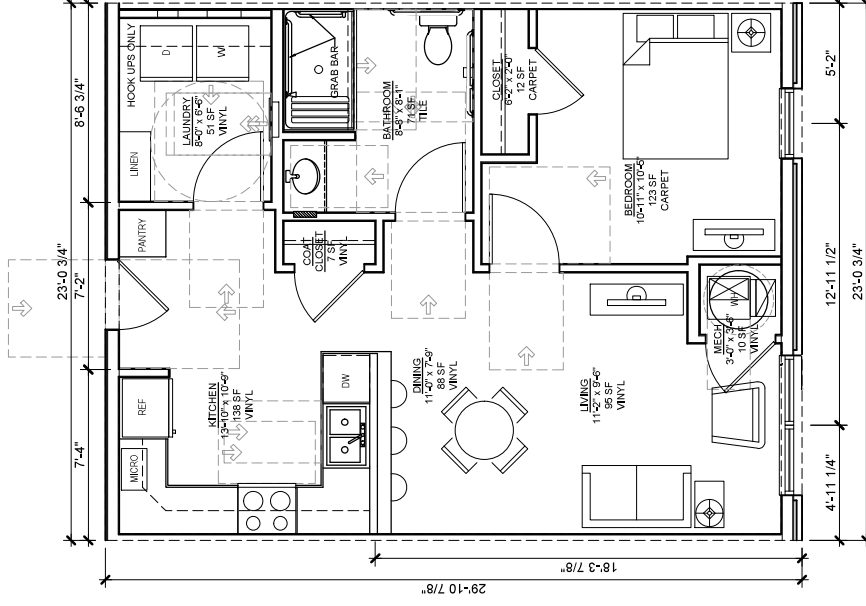


1 BR / 1 BATH TYPE 1A  
ACCESSIBLE UNIT

DWELLING NET SF: 640 sf  
(paint-to-paint)

**TDHCA NET RENTABLE SF:**  
**690 sf**  
(per 11.1(d)(83) definition)

DWELLING MIN SF: 600 sf



unit plan  
3/16"=1'-0"



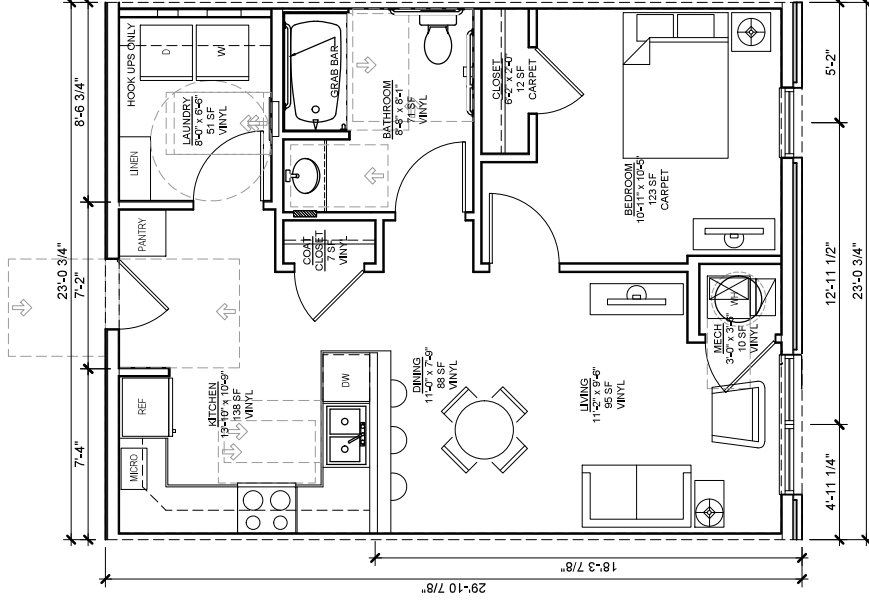
1 BR / 1 BATH TYPE 1B / 1B  
SIGHT & HEARING

DWELLING NET SF: 640 sf  
(paint-to-paint)

**TDHCA NET  
RENTABLE SF: 690 sf  
(per 11.1(d)(83) definition)**

DWELLING MIN SF: 600 sf

NOTE: THE 1 BEDROOM TYPE 1B, SIGHT & HEARING IMPAIRED UNITS ARE SIMILAR TO THE 1 BEDROOM TYPE 1B UNIT SHOWN. ALL SIGHT AND HEARING UNITS INCLUDE THE ELEMENTS PRESCRIBED IN ICC/ANSI A117.1 - 2009 SECTION 1006 "UNITS WITH ACCESSIBLE COMMUNICATION FEATURES"



unit plan  
3/16"=1'-0"

**RESERVE AT DECATUR**

decaturn, texas

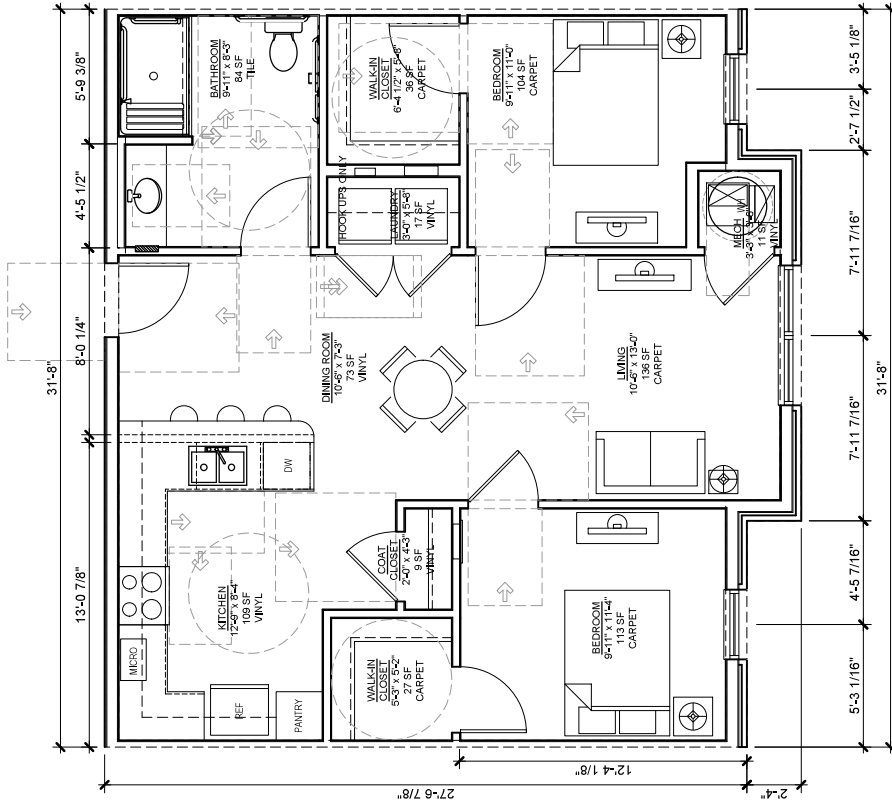


2 BR / 2 BATH TYPE 2A  
ACCESSIBLE UNIT

DWELLING NET SF: 842 sf  
(paint-to-paint)

**TDHCA NET  
RENTABLE SF: 910 sf  
(per 11.1(d)(83) definition)**

DWELLING MIN SF: 800 sf



unit plan  
3/16"=1'-0"

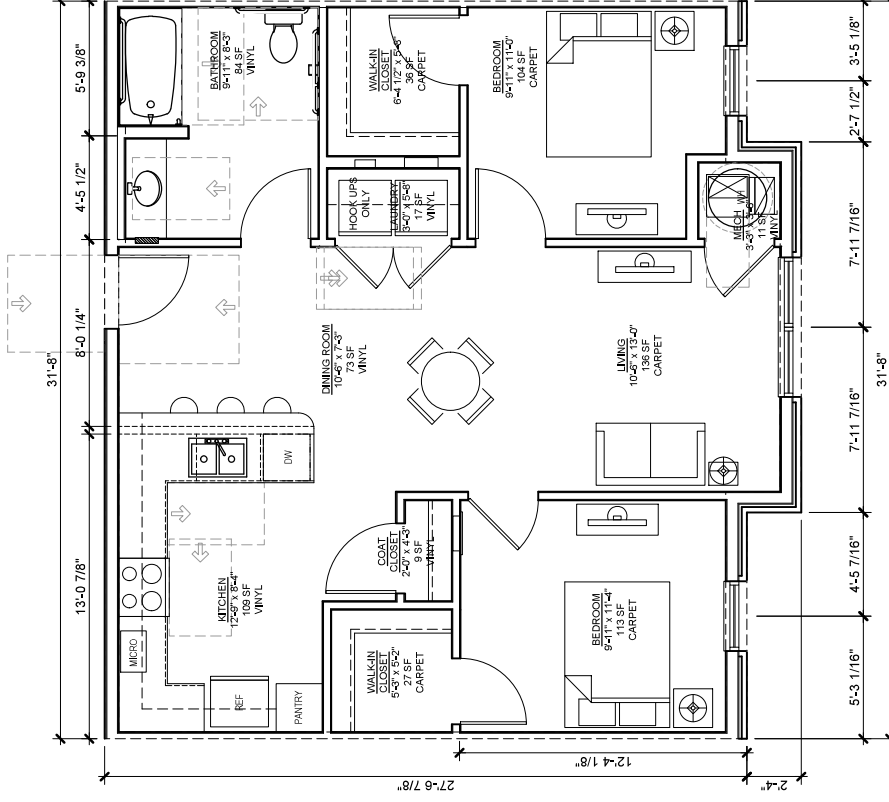
2 BR / 2 BATH TYPE 2B / 2B  
SIGHT & HEARING

DWELLING NET SF: 842 sf  
(paint-to-paint)

**TDHCA NET  
RENTABLE SF: 910 sf  
(per 11.1(d)(83) definition)**

DWELLING MIN SF: 800 sf

NOTE: THE 2 BEDROOM TYPE 2B SIGHT & HEARING IMPAIRED UNITS ARE SIMILAR TO THE 2 BEDROOM TYPE 2B UNIT SHOWN. ALL SIGHT AND HEARING UNITS INCLUDE THE ELEMENTS PRESCRIBED IN ICC/ANSI A117.1- 2009 SECTION 1006 "UNITS WITH ACCESSIBLE COMMUNICATION FEATURES"




unit plan  
3/16"=1'-0"

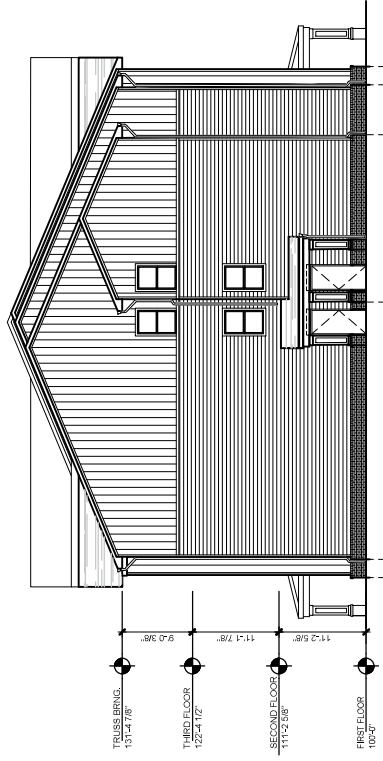
**RESERVE AT DECATUR**

decaturn, texas



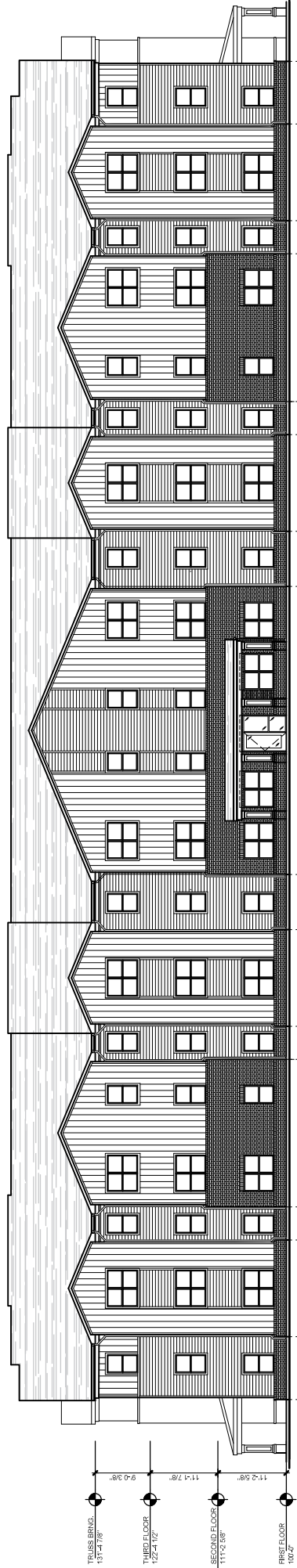
EXTERIOR FINISH LEGEND	
	HATCHING INDICATES FACE BRICK VENEER
	HATCHING INDICATES FIBER CEMENT BOARD & BATTEN SIDING
	HATCHING INDICATES ACCENT FIBER CEMENT LAP SIDING

SOUTH ELEVATION MATERIAL COMPOSITION  
 MASONRY: 5%  
 FIBER CEMENT SIDING: 95%



**south elevation**  
 1/16" = 1'-0"

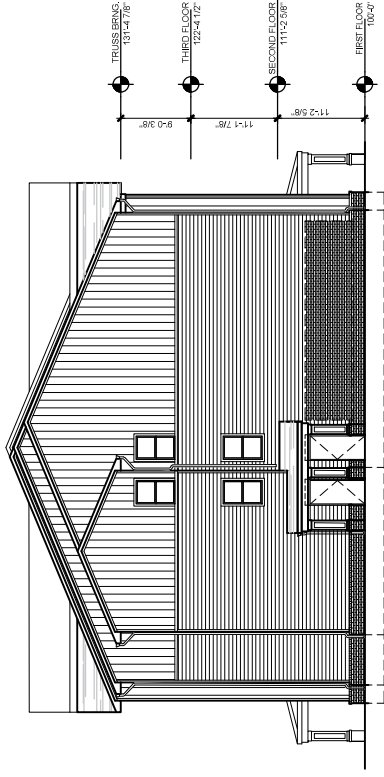
WEST ELEVATION MATERIAL COMPOSITION  
 MASONRY: 21%  
 FIBER CEMENT SIDING: 79%



**west elevation**  
 1/16" = 1'-0"

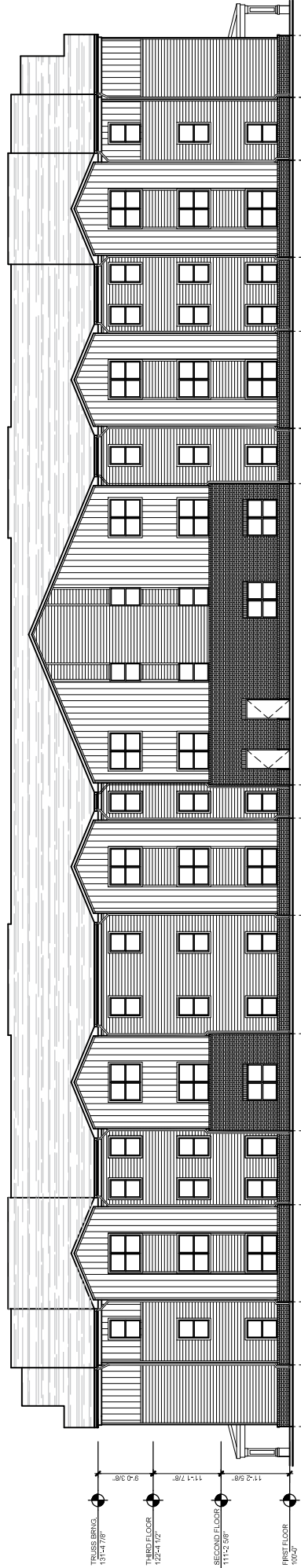
EXTERIOR FINISH LEGEND	
	HATCHING INDICATES FACE BRICK VENEER
	HATCHING INDICATES FIBER CEMENT BOARD & BATTEN SIDING
	HATCHING INDICATES ACCENT FIBER CEMENT LAP SIDING

NORTHELEVATION MATERIAL COMPOSITION  
 MASONRY: 5%  
 FIBER CEMENT SIDING: 95%



north elevation  
 1/16" = 1'-0"

EAST ELEVATION MATERIAL COMPOSITION  
 MASONRY: 16%  
 FIBER CEMENT SIDING: 84%



east elevation  
 1/16" = 1'-0"



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 637

**Agenda Date:** 6/13/2024

**Agenda #:** 5.

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Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Carver Ridge (HTC #21177/#22839/#23942)

**RECOMMENDED ACTION**

**WHEREAS**, Carver Ridge (Development) received an award of 9% Housing Tax Credits (HTCs) in 2021, was approved for a reallocation of credits under Force Majeure in 2022 (HTC #22839), and was awarded Supplemental Credits in 2023 (HTC #23942) to construct 60 multifamily units, 48 of which all are low-income units, in Hutto, Williamson County;

**WHEREAS**, Carver Ridge Apartments, LP (the Development Owner or Owner) is requesting approval for a 6.76% decrease in the residential density, going from 8.547 units per acre to 7.969 units per acre, as a result of an increase in site acreage, from 7.02 acres to 7.529 acres, due to a change in construction of a Right of Way (ROW);

**WHEREAS**, Board approval is required for a modification of the residential density of at least 5% as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not materially alter the Development in a negative manner, affect the HTC recommendation, and would not have adversely affected the selection of the Application;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment to the Application for Carver Ridge is approved as presented to this meeting, and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

**BACKGROUND**

Carver Ridge received an award of 9% Housing Tax Credits in 2021, was approved for a reallocation of credits under Force Majeure in 2022 (HTC #22839), and was awarded supplemental credits in 2023 (HTC #23942) to construct 60 multifamily units, 48 of which are low-income units, in Hutto, Williamson County. In a letter dated April 29, 2024, the Owner

requested approval for a change in the acreage and residential density noted in the original Application. At Application, the developer purchased a total of 16.65 acres and it was expected that 7.74 acres would be developed for this project. After a dedication of 0.735 acres for a right-of-way (ROW) as a city street, the LURA would encumber 7.02 acres. The Owner indicated that after application and upon further review of the proposed street dedication with the City of Hutto (the City), it was decided that granting an access easement over private land would provide a greater benefit for both the City and the Development. This allows for all adjoining parcels to have access to County Road 137 and increases the taxable land basis of the Development for the City in future tax years. The access easement is owned by the Development and is within the total platted site acreage of 7.529 acres. The Owner also indicated the intent was to always provide the ROW to the adjoining parcels and feel the way the Development was constructed was the best way to serve the community of Hutto with a housing project that prioritized the greater interest of the City as a whole.

This change in acreage from 7.02 acres to 7.529 acres will decrease the residential density of the Development by 6.76%, from 8.547 units per acre to 7.969 units per acre. Board approval is required for a modification of the residential density of at least 5% as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F).

Staff has reviewed the original Application against this amendment request and has concluded that the change described above would not have affected the award. The final recommended credit amount will be determined at cost certification.

Staff recommends approval of the amendment request presented herein.

# Carver Ridge Apartments, LP

1329 East Lark Street  
Springfield, MO 65084

April 29, 2024

Texas Department of Housing and Community Affairs  
Attn: Rene Ruiz, Senior Asset Manager  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: Carver Ridge Apartments #23942/21177  
Amendment Request

Mr. Ruiz:

This letter is to notify you of a change that occurred during the construction of Carver Ridge Apartments.

At application, the design team for Carver Ridge Apartments relied on field notes and a sketch of the development that was completed in 2016. This sketch assumed the site would be approximately 7.02 acres. At application, the design team believed that a street would be dedicated to the City and this street would be approximately .735 acres.

After application, upon review of the proposed street dedication with the City, it was decided that granting an access easement over private land would provide a greater benefit for both the City and Carver Ridge Apartments. To construct a city street would have required a 55-foot wide Right of Way (ROW) compared to the private 25-foot-wide ROW that was constructed in lieu of a public ROW. This ROW allows for all adjoining parcels to have access to County Road 137 and increases the taxable land basis of Carver Ridge Apartments for the City in future tax years.

This easement is owned by Carver Ridge Apartments and is approximately .529 acres. A copy of this easement is attached. Since the easement is owned by Carver Ridge Apartments, it is included on the plat. The total plated acreage of the site is now 7.529 acres.

While we understand this does decrease our total residential density by 6.76%, our intent from application was always to provide ROW to adjoining parcel. We feel the way the development was constructed was the best way to provide the community of Hutto, TX with a housing project that prioritized the greater interest of the City as a whole.

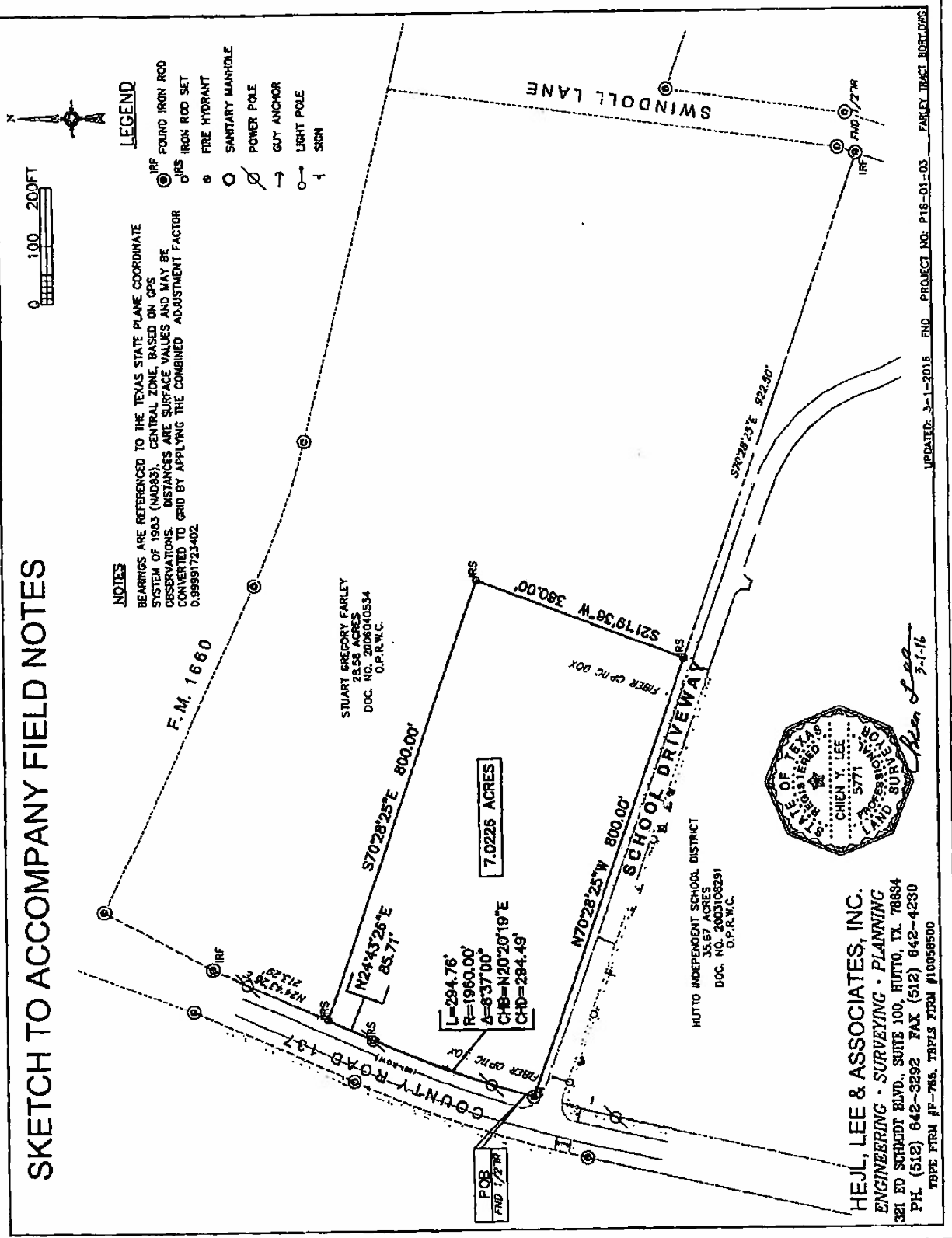
Thank you for your consideration.



Justin Zimmerman  
Member



# SKETCH TO ACCOMPANY FIELD NOTES



**DEVELOPER:**  
ZIMMERMAN PROPERTIES  
DEVELOPMENT, L.L.C.  
5300 E. LARK STREET  
SUITE 400  
DALLAS, TEXAS 76107  
(479) 335-1121 (PHONE)  
(479) 883-1632 (PHONE)

**ENGINEER'S CERTIFICATE:**  
I, Matthew Loos, do hereby certify that this subdivision is in compliance with the codes and ordinances of the City of Hutto, Texas.

**DATE:** 07/02/2021

**DATE:** 07/02/2021

**ENGINEER'S CERTIFICATE:**  
I, Matthew Loos, do hereby certify that this subdivision is in compliance with the codes and ordinances of the City of Hutto, Texas.

**DATE:** 07/02/2021

**LAND USE DATA:**

- Number of Blocks: 1
- Number of Lots: 7,529 acres
- Area: County Road 137, Hutto, TX 78634
- Site address: B-2 (General Commercial), and M1 (Multifamily)
- Zoning: 0 linear feet
- New Roadway: Apartment Community
- Lot Use:

**OWNERS CERTIFICATE:**  
STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO  
KNOW ALL MEN BY THESE PRESENTS  
That, Stuart Gregory Farley, being the co-owner of 7,529 acres of land out of the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas. Same being conveyed by deed of record in Document No. 2006040534, 2003028462, of the Official Public Records of Williamson County, Texas, and do hereby subdivide said 7,529 acres of land shown hereon, and do hereby forever dedicate to the City of Hutto the roads, alleys, rights-of-way, easements and public places shown hereon for such public purposes as City of Hutto may deem appropriate. This subdivision is to be known as CARVER RIDGE APARTMENTS PHASE 1.

TO CERTIFY WHICH, witness by my hand this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**BY:** \_\_\_\_\_  
Printed Name  
Authorized Signature of Owner

STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

Notary Public, State of California

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

**OWNERS CERTIFICATE:**  
STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA  
KNOW ALL MEN BY THESE PRESENTS  
That, Hal Patrick Farley, being the co-owner of 7,529 acres of land out of the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas. Same being conveyed by deed of record in Document No. 2006040534, 2003028462, of the Official Public Records of Williamson County, Texas, and do hereby subdivide said 7,529 acres of land shown hereon, and do hereby forever dedicate to the City of Hutto the roads, alleys, rights-of-way, easements and public places shown hereon for such public purposes as City of Hutto may deem appropriate. This subdivision is to be known as CARVER RIDGE APARTMENTS PHASE 1.

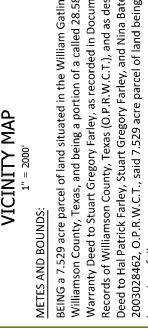
TO CERTIFY WHICH, witness by my hand this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**BY:** \_\_\_\_\_  
Printed Name  
Authorized Signature of Owner

STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA

Notary Public, State of California

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



**METES AND BOUNDRIES:**  
BEING a 7.529 acre parcel of land situated in the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas, and being a portion of it called 28.58 acre tract of land described in General Warranty Deed to Stuart Gregory Farley, as recorded in Document Number 2006040534, Official Public Records of Williamson County, Texas, and do hereby subdivide said 7,529 acres of land shown hereon, and do hereby forever dedicate to the City of Hutto the roads, alleys, rights-of-way, easements and public places shown hereon for such public purposes as City of Hutto may deem appropriate. This subdivision is to be known as CARVER RIDGE APARTMENTS PHASE 1.

**BEGINNING** at a found 1/2-inch iron rod with cap stamped "ALSTAR 5729" for the southwest corner of a called 39.156 acre tract of land described in General Warranty Deed (with Vendor's Lien) to 1600 Real Estate LLC, as recorded in Document Number 2010701916, O.P.R.M.C.T., and continuing across said called 39.156 acre tract to a found 1/2-inch iron rod with cap stamped "ALSTAR 5729" for the southeast corner of said called 39.156 acre tract, and continuing across said called 39.156 acre tract a total distance of 796.36 feet to a set 5/8-inch iron rod with cap stamped "DUNAWAY ASSOC." for corner.

**THENCE** South 21 degrees 19 minutes 36 seconds West, continuing across said called 28.58 acre tract, passing at a distance of 271.51 feet to a set 5/8-inch iron rod with cap stamped "DUNAWAY ASSOC." for corner of the City of Hutto zoning district limits as described in City Ordinance Number 01-16-18-9A, as recorded in Document Number 2016079126, O.P.R.M.C.T., and continuing across said called 28.58 acre tract a total distance of 407.52 feet to a found 1/2-inch iron rod with cap stamped "HELI, LEF" for corner on the common westerly line of said called 28.58 acre tract, and the northerly line of a called 35.67 acre tract and the southwest corner of said called 35.67 acre tract, said point being on the easterly right-of-way line of said County Road 137, and being the beginning of a curve to the right, having a radius of 294.62 feet.

**THENCE** Northrhaistee, along the common easterly right-of-way line of said County Road 137 and the westerly line of said called 28.58 acre tract, and along said curve to the right, through a central angle of 08 degrees 37 minutes, 14 seconds and an arc length of 294.20 feet to a set 5/8-inch iron rod with cap stamped "DUNAWAY ASSOC." for the end of said curve.

**THENCE** North 24 degrees 43 minutes 31 seconds East, continuing along said common line, passing at a distance of 85.58 feet a found 1/2-inch iron rod with cap stamped "HELI, LEF" for corner on said City of Hutto zoning district limits, and continuing a total distance of 113.19 feet to the POINT OF BEGINNING and containing 7,529 acres (or 327,942 square feet) of land, more or less.

**SURVEYOR'S CERTIFICATE:**  
I, Mark Yale, do hereby certify that this plat is true and correct and was prepared from an actual and accurate on-the-ground survey of the land, and that all corner monuments shown thereon were properly placed on the ground under my personal supervision. The field work was completed on June 8th, 2021.

Mark Yale  
Registered Professional Land Surveyor  
Texas Registration No. 5975

7/2/2021  
Date

**NOTE:**  
The basis of bearings for this survey is the Texas State Coordinate System, Central Zone 4203, based upon GPS measurements. Distances and areas hereon are surface values. A combined scale factor of 0.99989216 was used for this project.

**DUNAWAY**

550 Bailey Avenue • Suite 400 • Fort Worth, Texas 76107  
Tel: 817.333.1121

TEXAS REGISTERED SURVEYING FIRM NO. 10098100

Ashley Lumpkin, A/C.P.  
Executive Director of Development Services

Holly Nagy, City Secretary  
CITY DEVELOPMENT SERVICES SIGNATURE

Mike Snyder, Mayor  
Date

Holly Nagy, City Secretary  
Date

**CITY DEVELOPMENT SERVICES SIGNATURE:**  
Nancy Riser, Clerk of the County Court of Williamson County, Texas

**OWNERS CERTIFICATE:**  
STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO  
KNOW ALL MEN BY THESE PRESENTS  
That, Stuart Gregory Farley, being the co-owner of 7,529 acres of land out of the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas. Same being conveyed by deed of record in Document No. 2006040534, 2003028462, of the Official Public Records of Williamson County, Texas, and do hereby subdivide said 7,529 acres of land shown hereon, and do hereby forever dedicate to the City of Hutto the roads, alleys, rights-of-way, easements and public places shown hereon for such public purposes as City of Hutto may deem appropriate. This subdivision is to be known as CARVER RIDGE APARTMENTS PHASE 1.

TO CERTIFY WHICH, witness by my hand this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**BY:** \_\_\_\_\_  
Printed Name  
Authorized Signature of Owner

STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

Notary Public, State of California

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

**OWNERS CERTIFICATE:**  
STATE OF CALIFORNIA  
COUNTY OF MADERA  
KNOW ALL MEN BY THESE PRESENTS  
That, Nita Bates, being the co-owner of 7,529 acres of land out of the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas. Same being conveyed by deed of record in Document No. 2006040534, 2003028462, of the Official Public Records of Williamson County, Texas, and do hereby state that there are no lien holders of the certain tract of land, do hereby subdivide said 7,529 acres of land shown hereon, and do hereby forever dedicate to the City of Hutto the roads, alleys, rights-of-way, easements and public places shown hereon for such public purposes as City of Hutto may deem appropriate. This subdivision is to be known as CARVER RIDGE APARTMENTS PHASE 1.

TO CERTIFY WHICH, witness by my hand this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**BY:** \_\_\_\_\_  
Printed Name  
Authorized Signature of Owner

STATE OF CALIFORNIA  
COUNTY OF MADERA

Notary Public, State of California

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

**OWNERS CERTIFICATE:**  
STATE OF CALIFORNIA  
COUNTY OF MADERA  
KNOW ALL MEN BY THESE PRESENTS  
That, Nita Bates, being the co-owner of 7,529 acres of land out of the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas. Same being conveyed by deed of record in Document No. 2006040534, 2003028462, of the Official Public Records of Williamson County, Texas, and do hereby state that there are no lien holders of the certain tract of land, do hereby subdivide said 7,529 acres of land shown hereon, and do hereby forever dedicate to the City of Hutto the roads, alleys, rights-of-way, easements and public places shown hereon for such public purposes as City of Hutto may deem appropriate. This subdivision is to be known as CARVER RIDGE APARTMENTS PHASE 1.

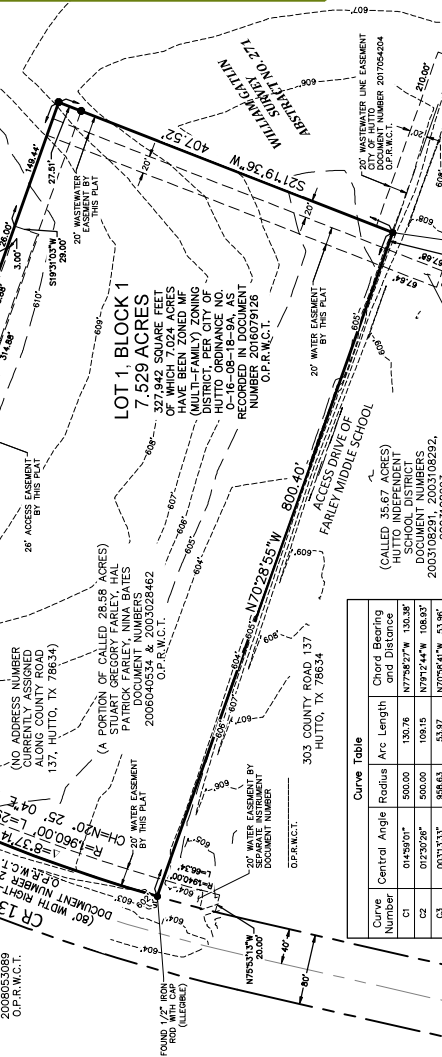
TO CERTIFY WHICH, witness by my hand this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**BY:** \_\_\_\_\_  
Printed Name  
Authorized Signature of Owner

STATE OF CALIFORNIA  
COUNTY OF MADERA

Notary Public, State of California

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



**OWNERS CERTIFICATE:**  
STATE OF CALIFORNIA  
COUNTY OF MADERA  
KNOW ALL MEN BY THESE PRESENTS  
That, Nita Bates, being the co-owner of 7,529 acres of land out of the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas. Same being conveyed by deed of record in Document No. 2006040534, 2003028462, of the Official Public Records of Williamson County, Texas, and do hereby state that there are no lien holders of the certain tract of land, do hereby subdivide said 7,529 acres of land shown hereon, and do hereby forever dedicate to the City of Hutto the roads, alleys, rights-of-way, easements and public places shown hereon for such public purposes as City of Hutto may deem appropriate. This subdivision is to be known as CARVER RIDGE APARTMENTS PHASE 1.

TO CERTIFY WHICH, witness by my hand this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**BY:** \_\_\_\_\_  
Printed Name  
Authorized Signature of Owner

STATE OF CALIFORNIA  
COUNTY OF MADERA

Notary Public, State of California

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

### FINAL PLAT LOT 1, BLOCK 1 CARVER RIDGE APARTMENTS PHASE 1 1 LOT BEING 7,529 ACRES

Situated in the William Gatlin Survey, Abstract No. 271, City of Hutto, Williamson County, Texas

JOB NO. B007152.001 DATE: JULY 2, 2021 PAGE 1 OF 1

**SUBDIVISION DEVELOPMENT NOTES:**

- No building, fencing, landscaping or structures are allowed within any drainage or wastewater easement unless expressly permitted by the City of Hutto.
- Building setback lines shall conform to UDC requirements.
- A 5' P.U.E. is hereby delineated along each side of all rear lot lines.
- A 5' P.U.E. is hereby delineated along and adjacent to all street side property lines.
- No utility easements shall be occupied until connection is made to public sewer and wastewater facilities.
- Street lighting shall be provided by the developer in conformance with the City of Hutto UDC requirements.
- A 5' sidewalk shall be constructed along County Road 137.
- Water and wastewater service for this subdivision will be available through the City of Hutto after the appropriate water and wastewater system improvements are installed to the site. The water and wastewater systems required to service the site and wastewater system improvements required to serve the site.
- Utility providers for this site are Water: City of Hutto; Wastewater: City of Hutto; Electric: Oncor; Natural Gas: Atmos.
- There are no areas within the boundaries of this subdivision in the 100-year floodplain as defined by FEMA F.I.R.M. Map No. 48401C0520F - map revised date of December 20, 2019.
- In order to promote drainage away from a structure, the slab on grade shall be graded away from the structure at a slope of 1/2" per foot for a distance of at least 10 feet.
- All subdivision construction shall conform to the City of Hutto unified development code, construction standards and generally accepted engineering practices.
- All easements on private property shall be maintained by the property owner or his or her assigns.
- The maximum impervious coverage per non-residential lot is 85%

**CITY MAYOR AND CITY SECRETARY SIGNATURES:**

This plat was approved for recorded by the Hutto City Council on the \_\_\_\_ day of \_\_\_\_\_, 2021.

City Clerk: Nancy Riser, Clerk of the County Court of Williamson County, Texas

**NOTE:**  
I, Nancy Riser, Clerk of the County Court of Williamson County, do hereby certify that the foregoing instrument in writing, with its certificate of authentication, 2021 A.D., at \_\_\_\_\_ M. and duly recorded this \_\_\_\_ day of \_\_\_\_\_, 2021 A.D., at \_\_\_\_\_ M., in the Official Public Records of Williamson County in Document Number \_\_\_\_\_.

To certify which, witness by my hand and seal as the Williamson County Clerk at my office in Georgetown, Texas, the date last shown above written.

Nancy Riser, Clerk of the County Court of Williamson County, Texas



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #:** 630

**Agenda Date:** 6/13/2024

**Agenda #:** 6.

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Presentation, Discussion, and Possible Action on the 2024 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 Department has developed the draft 2024 State of Texas Consolidated Plan: One-Year Action Plan (the Plan), which reports on the intended use of funds received by the State of Texas from HUD for Program Year (PY) 2024, beginning on September 1, 2024, and ending on August 31, 2025;

**WHEREAS**, a public comment period was open from Monday, April 22, 2024, through Wednesday, May 22, 2024, and a public hearing was held on Wednesday, May 8, 2024, to garner input on the Plan and no comments were received;

**WHEREAS**, HUD announced the 2024 allocations for the HOME, ESG, NHTF, CDBG and HOPWA formula programs on May 7, 2024, and staff has included these released amounts in the final version presented at this meeting;

**WHEREAS**, the NHTF Rehabilitation Standards have been updated to reflect the requirements of NSPIRE;

**WHEREAS**, per 24 CFR §91.15(a)(1), the Plan is required to be submitted to HUD on July 18, 2024, which is at least 45 days before the start of PY 2024;

**NOW, therefore, it is hereby**

**RESOLVED**, that the 2024 State of Texas Consolidated Plan: One-Year Action Plan, in the form presented to this meeting, is hereby approved and the Executive Director and his designees are each hereby authorized, empowered and directed for and on behalf of the Department to submit the 2024 State of Texas Consolidated Plan: One-Year Action Plan to HUD and, in connection therewith to make such nonsubstantive grammatical and technical changes as they or HUD deem necessary or advisable

#### **BACKGROUND**

The Texas Department of Housing and Community Affairs (TDHCA), Texas Department of Agriculture (TDA), and Texas Department of State Health Services (DSHS) prepared the draft 2024 State of Texas Consolidated Plan: One-Year Action Plan (Plan) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, the Emergency Solutions Grant (ESG) Program, the HOME Investment Partnerships (HOME) Program, and the National Housing Trust Fund (NHTF) Program by TDHCA.

The Texas General Land Office (GLO) is the responsible entity for developing the State Community Development Block Grant Disaster Recovery Program (CDBG-DR) Action Plan and submitting any required amendments to the Consolidated Plan in accordance with HUD guidelines. CDBG-DR planning documents are available at

<https://recovery.texas.gov/action-plans/index.html>.

Examples of activities described in the 2024 One Year Action Plan include, but are not limited to, the Reconstruction of single-family housing through TDHCA’s Homeowner Reconstruction Assistance (HRA) program, Tenant Based Rental Assistance (TBRA), Multifamily Direct Loan (MFDL) program, National Housing Trust Fund (NHTF), Homeless programs and Colonia Self-Help Centers.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2024. The Program Year begins on September 1, 2024, and ends on August 31, 2025. The Plan also illustrates the State’s strategies in addressing the priority needs and specific goals and objectives identified in the 2020-2024 State of Texas Consolidated Plan.

The Plan does not include discussion of TDHCA’s ESG-CV or CDBG-CV funds. ESG-CV and CDBG-CV are separate programs, which were created by the CARES Act related to the Coronavirus pandemic. Information on these temporary programs may be found in amendments to both the 2015-2019 State of Texas 5-year Consolidated Plan and 2019 One-Year Action Plan found here:

<https://www.tdhca.texas.gov/housing-resource-center-annual-or-biennial-plans-and-reports>

A draft of the Plan was available for public comment on the TDHCA Public Comment Center at <https://www.tdhca.texas.gov/tdhca-public-comment-center>. The public comment period was open from Monday, April 22, 2024, through Wednesday, May 22, 2024, and a public hearing was held on Wednesday, May 8, 2024, at 2:00 p.m. Central time. The State received no public comments.

There were no substantial changes to the Plan or programs from the 2023 One-Year Action Plan to the 2024 One-Year Action Plan, except for the updated NHTF Rehabilitation Standards.

Program	Annual Allocation	Total Amount Available in PY 2024*
HOME	\$32,197,601	\$46,598,645
ESG	\$ 9,723,237	\$9,723,237
NHTF	\$ 8,605,523	\$8,864,237

\*Total funding available includes program income and prior program year resources that are still available for PY 2023. More details are in the 2024 OYAP, Section AP-15 pp. 24-28.

This action seeks approval to submit the Plan to HUD upon approval by the Board and prior to any deadline identified by HUD Per 24 CFR §91.15(a)(1). Staff recommends approval of this action.

# 2024 State of Texas Consolidated Plan

## One-Year Action Plan



Prepared by:

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# Executive Summary

## AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

### 1. Introduction

This One-Year Action Plan (OYAP) identifies the contemplated possible use of funds received by the State of Texas from the U.S. Department of Housing and Urban Development (HUD) for Program Year (PY) 2024. This PY 2024 OYAP applies to those actions of the Texas Department of Housing and Community Affairs (TDHCA), the Texas Department of Agriculture (TDA), and the Texas Department of State Health Services (DSHS), relating to the activities of those three state agencies involving the administration of ongoing HUD Community Planning and Development (CPD) programs. Those agencies, being all of the agencies that administer HUD CPD programs for the state of Texas (other than Community Development Block Grant Disaster Recovery funds designated specifically by HUD for disaster recovery efforts), are collectively referred to herein as the “State.” This OYAP is for the HOME Investment Partnerships (HOME) Program, the Emergency Solutions Grant (ESG) Program, the Community Development Block Grant (CDBG) Program, the Housing Opportunities for Persons with AIDS (HOPWA) Program, and the National Housing Trust Fund (NHTF). This OYAP does not include CDBG-CV or ESG-CV, these funding sources are part of the 2019 OYAP. The 2024 PY for HUD program activity begins on September 1, 2024, and ends on August 31, 2025. The performance report on PY 2022 funds was submitted to HUD in November 2023, and approved by HUD in January 2024.

The CPD programs include the Emergency Solutions Grant Program, the HOME Investment Partnerships Program, and the National Housing Trust Fund Program administered by the Texas Department of Housing and Community Affairs; the Community Development Block Grant Program administered by the Texas Department of Agriculture; and the Housing Opportunities for Persons with AIDS Program administered by the Department of State Health Services.

### 2. Summarize the objectives and outcomes identified in the Plan

The 2024 OYAP:

1. Reports on the intended use of funds received by the State from HUD for PY 2024;
2. Explains the State’s method for distributing CDBG, ESG, HOME, HOPWA, and NHTF program funds; and,
3. Provides opportunity for public input on the development of this OYAP.

The State’s progress in achieving the goals put forth in the OYAP will be measured according to HUD guidelines (24 CFR §91.520) and outlined in the Consolidated Annual Performance and Evaluation Report (CAPER), submitted to HUD by November 30 each year.



In accordance with the guidelines from HUD, the State utilizes the CPD Outcome Performance Measurement System through the use of HUD's Integrated Disbursement and Information System (IDIS) to develop the OYAP and CAPER each year. Program activities are categorized into the objectives and outcomes listed throughout the OYAP. The estimated performance figures are based on planned performance during the PY (September 1<sup>st</sup> through August 31<sup>st</sup>) of contracts committed and projected households to be served based on estimated availability of funds. In contrast, the performance measures reported to the Texas Legislative Budget Board for the State Fiscal Year (SFY), which is September 1<sup>st</sup> through August 31<sup>st</sup>, are based on anticipated units and households at time of award.

The objectives, outcomes, and activity budgets in this OYAP are based on official and unofficial notices of allocations.

### **3. Evaluation of past performance**

The information below is for HOME, ESG, NHTF, CDBG, and HOPWA for PY 2023 (September 1, 2023 to August 31, 2024), and excludes any activity during that period from ESG-CV, CDBG-CV, or HOPWA-CV.

#### HOME Evaluation of Past Performance

TDHCA's HOME program expended \$28,482,723 in program funds through five different HOME Program activities in PY 2022, representing completed assistance to 673 households that achieved 78.74% of expected program year goals.

#### ESG Evaluation of Past Performance

During PY 2022, TDHCA's ESG Program expended \$13,438,274.22, including 2022 ESG funding, reallocated and unexpended balances of ESG funds from previous program years, as well as matching funds. With the expended funding, ESG served 527 households with rapid re-housing, 22,391 persons with overnight shelter assistance, and 816 persons with homelessness prevention.

#### NHTF Evaluation of Past Performance

TDHCA's NHTF program has historically met its commitment and expenditure deadlines. TDHCA anticipates meeting future deadlines.

#### CDBG Evaluation of Past Performance

During PY 2023, the Texas CDBG Program committed approximately \$65 million, which includes the PY 2023 allocation, any remaining funds from the 2022 allocation, deobligated funds, and program income.

#### HOPWA Evaluation of Past Performance

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In the HOPWA 2022 program year, Project Sponsors served 524 households with Tenant-Based Rental Assistance (TBRA) out of the 717 OYAP goal (73 percent); 334 households with Short-Term Rent, Mortgage, and Utility (STRMU) out of the 552 OYAP goal (61 percent); 165 households with Facility-Based Housing Assistance (FBHA) out of the 183 OYAP goal (90 percent); 124 households with Permanent Housing Placement (PHP) out of the 105 OYAP goal (118 percent); 967 households with Housing Case Management (HCM) out of the 1,048 OYAP goal (92 percent); and 8 households with Housing Information Services (HIS) out of the 5 OYAP goal (160 percent). In total, Project Sponsors served 1,079 unduplicated households and provided housing assistance services to 1,017 unduplicated households.

#### **4. Summary of Citizen Participation Process and consultation process**

The State is committed to reaching out to and engaging with the public in order to develop programmatic activities that are responsive to the various affordable housing needs of Texans. The State also solicits and receives input from governmental bodies, nonprofits, and community and faith-based groups. More information on the citizen participation, consultation, and public comment are included in the Consultation and Participation sections of the Plan.

The 2020-2024 Consolidated Plan (as adopted) substantial amendments, the OYAP, and the Consolidated Plan Annual Performance and Evaluation Reports (CAPER) are available to the public online at <https://www.tdhca.texas.gov/> and materials are accessible to persons with disabilities, upon request.

The State recognizes that public participation and consultation are ongoing processes. During the development of the 2020-2024 Consolidated Plan, comprehensive outreach was conducted to gather input. This outreach continues through the development of each Annual Action Plan within the 5-year consolidated planning process.

#### **5. Summary of public comments**

Any Public Comment received on the 2024 One-Year Action Plan will be summarized here in the Final document

#### **6. Summary of comments or views not accepted and the reasons for not accepting them**

No public comment was received for the 2024 One-Year Action Plan.

#### **7. Summary**

The consolidated planning process occurs once every five years, so creating a comprehensive 2020-2024 Consolidated Plan was vital for CDBG, HOME, ESG, HOPWA, and NHTF. Because of the Consolidated Plan's authority to govern these programs, research from multiple sources, including other government plans, peer-reviewed journals, news sources, and fact sheets were used. Valuable public input was gathered through roundtable meetings, council/workgroup meetings, public hearings, and online formats. An

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expansive public input process was included in the development of the Consolidated Plan. The 2020-2024 Consolidated Plan is now carried out through Annual Action Plans, which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that the State plans to use each year to address the priority needs and specific goals identified by the Consolidated Plan.

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## PR-05 Lead & Responsible Agencies - 91.300(b)

### 1. Agency/entity responsible for preparing/administering the Consolidated Plan

The following are the agencies/entities responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
CDBG Administrator	TEXAS	Texas Department of Agriculture
HOPWA Administrator	TEXAS	Texas Department of State Health Services
HOME Administrator	TEXAS	Texas Department of Housing and Community Affairs
ESG Administrator	TEXAS	Texas Department of Housing and Community Affairs
NHTF Administrator	TEXAS	Texas Department of Housing and Community Affairs

Table 1 – Responsible Agencies

### Narrative

The Texas Department of Housing and Community Affairs (TDHCA) administers the Emergency Solutions Grants (ESG) Program, the HOME Investment Partnerships (HOME) Program and the National Housing Trust Fund (NHTF) Program; the Texas Department of Agriculture (TDA) administers the Community Development Block Grant (CDBG) Program; and the Texas Department of State Health Services (DSHS) administers the Housing Opportunities for Persons with AIDS (HOPWA) Program. All of these programs, known collectively as Community Planning and Development (CPD) Programs, are covered in the 2020-2024 State of Texas Consolidated Plan (Plan). TDHCA is the entity responsible for overseeing the development of the Plan.

### Key Organizational Events

In 1991, the 72nd Texas Legislature created TDHCA. TDHCA's enabling legislation combined programs from the Texas Housing Agency, the Texas Department of Community Affairs, and the Community Development Block Grant Program from the Texas Department of Commerce. Effective September 1, 2002, in accordance with Senate Bill 322, the Manufactured Housing Division became an independent entity administratively attached to TDHCA.

At that time the CDBG Program was transferred from TDHCA to the newly created Office of Rural Community Affairs, later called the Texas Department of Rural Affairs; the program was then subsequently moved to TDA. As of October 1, 2011, the program is administered by TDA. Through an interagency agreement with TDA, TDHCA administers 2.5% of the CDBG funds, which are statutorily designated for the Colonia Self Help Centers (SHCs) along the Texas-Mexico border.

On March 12, 2016, TDHCA was designated by Governor Abbott as the state agency responsible for the administration of funds provided through the NHTF.

TDHCA, TDA, and DSHS administer their assigned CPD programs and services through a network of organizations across Texas and do not typically fund assistance to individuals directly. Depending on the program, funded organizations include units of local government, councils of governments, nonprofit organizations, for-profit organizations, Administrative Agencies (AAs), Public Housing Authorities (PHAs), and Community Housing Development Organizations (CHDOs).

### **Consolidated Plan Public Contact Information**

#### ESG, HOME, and NHTF Contact Information:

Texas Department of Housing and Community Affairs,  
PO Box 13941, Austin, TX 78711-3941. (800) 525-0657.  
<https://www.tdhca.texas.gov/>

#### CDBG Contact Information:

Texas Department of Agriculture, Office of Rural Affairs,  
PO Box 12847, Austin, TX 78711-2847. (800) 835-5832.  
<http://texasagriculture.gov/Home/ContactUs.aspx>

#### HOPWA Contact Information:

DSHS HIV/STD Section, HIV Care Services Group, HOPWA Program,  
PO Box 149347, Mail Code 1873, Austin, TX 78714-9347. (737) 255-4300.  
<https://www.dshs.texas.gov/hivstd/hopwa/>

## **AP-10 Consultation - 91.110, 91.300(b); 91.315(l)**

### **1. Introduction**

In an effort to gather information from as many diverse audiences as possible, TDHCA uses different forms of technology to communicate efficiently, including online surveys, digital roundtables, social media, and email distribution. Online surveys foster an increased response rate of participants as well as facilitating data analysis. In addition, digital roundtables are used in the development of program rules and distribution methods. The availability of all these methods is communicated primarily via the TDHCA website, opt-in email distribution lists, social media, and through announcements at meetings and conferences.

An online presence allows TDHCA to reach out to encourage participation and consultation. TDHCA has a social media presence, specifically through Twitter, Facebook, and YouTube. Furthermore, TDHCA sends out notices via voluntary email lists, where subscribed individuals and entities can receive email updates on TDHCA information, announcements, and trainings. Use of technology allows fast communication to a large audience and allows TDCHA to reach people across the state of Texas efficiently.

In the consolidated planning process, the State encourages the participation of public and private organizations, including broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies in the process of developing the consolidated plan.

### **Provide a concise summary of the state's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l)).**

The State worked to enhance coordination between public and assisted housing providers, and private and governmental health, mental health and service agencies for the Plan in various ways. For example, TDHCA staff routinely attends inter- and intra-agency meetings to educate and coordinate on the intersection between housing and services, as described in Strategic Plan Section 35, Anticipated Resources, and Action Plan Section 65, Homeless and Other Special Needs. The opportunity to submit input was also on the agenda for several of these meetings and input was sometimes received after the meetings were concluded.

DSHS contracts with Administrative Agencies (AAs) in six Ryan White Part B HIV planning areas to administer the DSHS HOPWA Program. AAs ensure that a comprehensive continuum of care exists throughout their funded areas. To that end, AAs routinely consult with a variety of organizations and stakeholders, including persons living with HIV (PLWH) and local HIV planning councils. Additionally, AAs complete periodic needs assessments to inventory available resources and identify service needs,

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barriers, and gaps within their planning areas. With this information, AAs develop and implement a regional HIV core medical and supportive services plan. When developing this plan, AAs must establish multiple mechanisms for obtaining stakeholder input (e.g., dissemination of written copies of the plans, postings to the Internet, town hall meetings, advisory groups, etc.). Where possible, Project Sponsors coordinate with local Housing Choice Voucher Programs (HCVPs) and other affordable housing programs to support HOPWA program delivery.

TDHCA operates multiple distinct Listservs so that the agency can disseminate information easily on different topics to interested groups. All these groups are sent updates for the topic they selected as well as cross cutting topics like TDHCA news, event information and announcements. Nineteen listserv groups were used to send out requests for consultation on the 2020-2024 Consolidated Plan. TDHCA continues to utilize these listservs to inform the creation of each year's Action Plan.

TDHCA continues to use its fair housing email list to share fair housing-related news, news on TDHCA's successful FHIP grant activities, event information, and announcements with interested persons and organizations.

**Provide a concise summary of the state's activities to enhance coordination with local jurisdictions serving Colonias and organizations working within Colonias communities.**

TDA administers the federal colonia set-aside. In Program Year 2023, TDA continued a significant effort to identify and evaluate current needs for colonia communities in all 67 counties that may have communities within 150 miles of the Texas-Mexico border. These counties have been assigned to one of five planning zones, for which planning grant funds have been awarded and non-profit planning services provider has been secured to conduct the needs assessment. This four-year effort is expected to inform the Colonia Fund program design and improve coordination in providing services to these communities.

The ways in which TDHCA coordinates its work with other colonia-serving entities are through the implementation of the Colonia Self-Help Center (CSHC) Program. The CSHC Program is funded by the U.S. Department of Housing and Urban Development through the Texas Community Development Block Grant (CDBG) Program as a state directed colonia set-aside. The CDBG funds are transferred to TDHCA through a memorandum of understanding with the Texas Department of Agriculture, and together TDHCA and TDA co-manage the administration of the funds, with TDHCA providing the day-to-day oversight of the CSHC Program and subrecipients.

The CSHC Program funds specific Texas-border county governments with four-year contracts. Requests for funding are reviewed and recommended by a Colonia Resident Advisory Group (C-RAC), a group of colonia residents who live in the specific colonias served by the centers.

TDHCA provides guidance and oversight to the county governments with which TDHCA has executed a CSHC Program contract. As needed, TDHCA provides guidance and technical assistance to the housing subgrantees with whom each respective county has contracted to achieve specific deliverables per their individualized CSHC Program contract. Every one to two years, TDHCA organizes and implements a workshop for all eligible counties and their subgrantees to review rules, best practices, and exchange other program updates. As needed, but on an average of one to two times per year, TDHCA convenes a meeting with the C-RAC. This grass-roots-style committee approves contracts, evaluates county recommendations, and provides TDHCA and the counties guidance on programming and activities in the colonias. Lastly, approximately every two years, TDHCA updates its CSHC Program rules, and initiates this process by first soliciting comment from the public at large for recommendations.

In addition, TDA participates in the Texas Water Infrastructure Coordinating Committee, where discussions include the challenges of serving colonias or similar areas, as well as specific communities in need of assistance. Several TWICC partners are actively involved in engaging colonia communities in the program.

**Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.**

The Texas Interagency Council for the Homeless (TICH) was created in 1989 to coordinate the State's homeless resources and services. The TICH consists of representatives from eight state agencies that serve persons experiencing or at risk of homelessness. Membership also includes representatives appointed by the office of the governor, the lieutenant governor, and the speaker of the house. The council is not appropriated funding and has no full-time staff, but receives facilitation and advisory support from TDHCA. TICH's major mandates include:

- evaluating and helping coordinate the delivery of services for the homeless in Texas;
- increasing the flow of information among service providers and appropriate authorities;
- providing technical assistance to TDHCA in assessing the need for housing for people with special needs;
- developing, in coordination with TDHCA and the Health and Human Services Commission (HHSC), a strategic plan to address the needs of the homeless; and
- maintaining a central resource and information center for the homeless.

The Texas Interagency Council for the Homeless has been meeting during PY2021 (2021-2022) with the CoCs to coordinate homeless services. These efforts are reinforced by 24 Code of Federal Regulation (CFR) Part 91 that require ESG recipients to expand consultation with community partners and CoCs in the formation of consolidated planning documents. The consultation must address the allocation of

resources; development of performance standards and evaluation; and development of funding, policy, and procurements for operating state-required Homeless Management Information Systems (HMIS).

**Describe consultation with the Continuum(s) of Care that serves the State in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS**

TDHCA consults with Continuums of Care (CoCs) and their member agencies regarding allocation of ESG funds, development of performance standards and outcomes evaluation, and development of funding policies through the TDHCA rulemaking process and in development of its Consolidated Plan.

During the most recent major rulemaking where significant changes to distribution methods and competitive scoring criteria were addressed, TDHCA presented its draft ESG rules, which include the formula by which funds are allocated to each CoC region, to CoCs and other interested parties prior to presentation of the proposed rule to the TDHCA Board. The allocation formula includes weights for point-in-time counts conducted by the CoC. TDHCA staff conducted three roundtable events using a virtual platform. 178 attendees were present overall. Input received covered the methodology for fund distribution, performance standards, and other requirements, including reporting requirements. Input from these roundtables was incorporated into the administrative rules, which were presented in draft format to the TDHCA Board on March 10, 2022. They were subsequently published in the *Texas Register* for public comment, and comment was received from seven organizations. The rule was adopted prior to the award cycle for the 2022 allocation of ESG funds, and will be utilized for the allocation of 2023 ESG funds.

TDHCA requires subrecipients, through its administrative rules, to utilize HMIS or an HMIS comparable database (for domestic violence or legal service providers only) and to submit HMIS exports as required by HUD.

TDHCA further consults with CoCs through involvement in the TICH, which is described in the prior question.

**2. Agencies, groups, organizations and others who participated in the process and consultations**

**Table 2 – Agencies, groups, organizations who participated**

1	Agency/Group/Organization	TICH
---	---------------------------	------



<p><b>Agency/Group/Organization Type</b></p>	<p>Housing  Services - Housing  Services-Children  Services-Elderly Persons  Services-Persons with Disabilities  Services-Victims of Domestic Violence  Services-Homeless  Services-Health  Services-Education  Services-Employment  Service-Fair Housing  Services - Victims  Health Agency  Child Welfare Agency  Other government - Federal  Other government - State  Other government - County  Other government - Local</p>
<p><b>What section of the Plan was addressed by Consultation?</b></p>	<p>Homeless Needs - Chronically homeless  Homeless Needs - Families with children  Homelessness Needs - Veterans  Homelessness Needs - Unaccompanied youth  Homelessness Strategy  Non-Homeless Special Needs  Anti-poverty Strategy</p>

	<p><b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b></p>	<p>Input on the 2023 OYAP was sought at the April 2023 quarterly meeting of the Texas Interagency Council for the Homeless (TICH) and details of this consultation will be included in the final 2023 OYAP. At each TICH meeting, TDHCA updates the TICH about ESG methods of distribution, goals, and activities. The function of the TICH is to coordinate the state's resources and services to address homelessness. TICH serves as an advisory committee to TDHCA. Representatives from eight state agencies sit on the council along with members appointed by the governor, lieutenant governor, and speaker of the house of representatives.</p>
2	<p><b>Agency/Group/Organization</b></p>	<p>Housing and Health Services Coordination Council</p>
	<p><b>Agency/Group/Organization Type</b></p>	<p>Housing  Services - Housing  Services-Health  Services-Children  Services-Elderly Persons  Services-Persons with Disabilities  Other government - State  Other government - County  Other government - Local</p>
	<p><b>What section of the Plan was addressed by Consultation?</b></p>	<p>Non-Homeless Special Needs  Anti-poverty Strategy  Economic Development  Housing Need Assessment</p>

	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	HHSCC was consulted for the 2023 OYAP at the April 2023 Quarterly meeting for HHSCC. TDHCA regularly informs the HHSCC of agency goals, programs, and activities. The function of the HHSCC is to increase state efforts to offer service-enriched housing through increased coordination of housing and health services. The Council seeks to improve interagency understanding and increase the number of staff in state housing and health services agencies that are conversant in both housing and services. Representatives from five state agencies sit on the council along with eight members appointed by the governor.
3	<b>Agency/Group/Organization</b>	HIV Administrative Agencies
	<b>Agency/Group/Organization Type</b>	Services-Persons with HIV/AIDS
	<b>What section of the Plan was addressed by Consultation?</b>	HOPWA Strategy
	<b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b>	DSHS engages in ongoing consultation with HOPWA stakeholders by collecting qualitative data from HIV AAs and using it for planning and evaluation. AAs work with HIV planning councils in major metropolitan areas and with other organizations and stakeholders outside those areas to develop comprehensive HIV services plans and needs assessments. AAs consult with clients and other stakeholders through interviews, surveys, focus groups, and public hearings. AAs disseminate written copies of services plans, sharing them online, at town hall meetings, and with advisory groups. AA contact information and planning area maps are located at <a href="https://www.dshs.texas.gov/hivstd/services/aa.shtm">https://www.dshs.texas.gov/hivstd/services/aa.shtm</a> .
4	<b>Agency/Group/Organization</b>	HOPWA Project Sponsors
	<b>Agency/Group/Organization Type</b>	Services-Persons with HIV/AIDS

<p><b>What section of the Plan was addressed by Consultation?</b></p>	<p>HOPWA Strategy</p>
<p><b>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</b></p>	<p>DSHS engages in ongoing consultation with HOPWA stakeholders by collecting qualitative data from HOPWA Project Sponsors and using it for planning and evaluation. Project Sponsors provide narrative performance output and outcome data; offer program strategies for improved performance and strategies that contributed to successes; describe efforts to coordinate resources and efforts; assess housing barriers and make recommendations; request technical assistance; and supply other discussion items (i.e., feedback, ideas, other recommendations).</p>

**Identify any Agency Types not consulted and provide rationale for not consulting**

As indicated in the Introduction, during the ongoing consultation and public participation process, Texas seeks input from the widest possible range of agency types.

**Other local/regional/state/federal planning efforts considered when preparing the Plan**

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	Texas Homeless Network	Texas Homeless Network (THN) is a non-profit membership-based organization helping Texas communities prevent and end homelessness. THN provides training and technical assistance around the state of Texas helping service providers and communities better serve the homeless population with the end goal of preventing and ending homelessness. THN also serves as the CoC for the Balance of State.
Pathways Home	TICH	Pathways Home presents findings, which indicate that greater coordination of employment and health service resources with local housing programs would expand the State's capacity to prevent and end episodes of homelessness. In response to the study findings, Pathways Home proposes a framework to help more of the State's most vulnerable citizens to enter and remain in safe housing. A report is generated annually by the TICH that serves as a supplement to Pathways Home.

**Table 3 – Other local / regional / federal planning efforts**

**Narrative**

Since the consolidated planning process is an ongoing effort, the State continues to consult with agencies, groups, and organizations through the program year cycles for CDBG, ESG, HOME, NHTF and HOPWA, and the development of HUD required fair housing documents.

If a material amendment of a HUD required fair housing document is needed as described in 24 CFR §5.164, reasonable notice by publication on TDHCA’s website will be given, comments will be received

for no less than 30 days after notice is given, and any public hearing(s) held (although optional) will be held at a board meeting, or within the public comment period.

**Language needs**

The State conducted an analysis of eligible program participants with Limited English Proficiency (LEP). The analysis was performed for households at or below 200% poverty, roughly equivalent to 80% area median income statewide in Texas. The overwhelming need was for Spanish language translation, which comprised the language of 74% of LEP persons. The state will translate vital documents into Spanish, and other languages as determined by the individual program. The state will analyze market areas for program beneficiaries to determine if documents should be translated into additional languages. The state will apply four-factor analysis to consider the resources available and costs considering the frequency with which LEP persons come into contact with the applicable programs and the nature and importance of the program, activity, or service. The State will make reasonable efforts to provide language assistance to ensure meaningful access to participation by non-English speaking persons.

## **AP-12 Participation - 91.115, 91.300(c)**

### **1. Summary of citizen participation process/Efforts made to broaden citizen participation Summarize citizen participation process and how it impacted goal-setting**

Comprehensive outreach was conducted to gather input on the Plan. The consultations conducted before the creation of the draft Plan, as well as discussion of the participation of local, regional, and statewide institutions, CoCs, and other organizations affected by the Plan are listed in Process Section 10. The Plan, as adopted, any future substantial amendments, and the Consolidated Plan Annual Performance and Evaluation Report (CAPER) will be available to the public online at <https://www.tdhca.texas.gov/> and will have materials accessible to persons with disabilities, upon request.

#### Public hearings

The Draft Plan was released for a 31-day public comment period from April 22, 2024, to May 22, 2024. One Public Hearing was held, May 8, 2024, in doing so, the State met HUDs requirement of holding, at minimum, one Public Hearing during the comment period. The Department informed stakeholders of the hearing through a notification on its website, by sending a listserv announcement, and posting in the *Texas Register*. Constituents were encouraged to provide input regarding all programs in writing or at a public hearing.

Public hearing schedules were published in the *Texas Register*, on TDHCA's website at <https://www.tdhca.texas.gov/>, advertised by opt-in email distribution and during various workgroups and committee meetings. During the public comment period, printed copies of the draft plans were available from TDHCA, and electronic copies were available for download from TDHCA's website. Constituents were encouraged to provide input regarding all programs in writing or at the public hearings. See the Citizen Participation Outreach table below for details of annual outreach. In the case of extenuating circumstances, when there are concerns of public health and safety, TDHCA may host virtual public hearings to allow stakeholders and the public to provide oral comment on Plans and Reports.

#### Criteria for Amendment to the Consolidated Plan

Substantial amendments will be considered, if needed, when a new activity is developed for any of the funding sources or there is a change in method of distribution. If a substantial amendment is needed, reasonable notice by publication on TDHCA's website at <https://www.tdhca.texas.gov/> will be given, and if a substantial amendment, comments will be received for no less than 30 days after notice is given. A public hearing will be optional.

### Performance Report

The CAPER will analyze the results of the Plan annually after the end of the state's HUD Program Year. Due to the short 90-day turnaround time between the end of The State of Texas' HUD Program Year (8/31) and the due date of the CAPER (11/30), the public will be given reasonable notice by publication on TDHCA's website at <https://www.tdhca.texas.gov/>. Comment will be accepted for a minimum of 15 days. A public hearing will be optional.

### One-Year Action Plan

The draft 2024 One Year Action Plan (OYAP) was released for public comment prior to HUD's release of actual annual allocation amounts, and the draft 2024 OYAP reflected estimated allocation amounts. HUD released official annual allocation amounts and prior to submission to HUD, proposed activities' budgets were increased or decreased from the estimated funding levels to match actual allocation amounts, and proposed program goals were adjusted proportionally or as otherwise described in the respective year Action Plan. Complaints related to the Consolidated planning process follow the TDHCA complaint process, as defined by 10 Texas Administrative Code §1.2.

For details on the development of or amendments to HUD required Fair Housing document, see the PR-10 Narrative section located in the 2020-2024 State of Texas Consolidated Plan.



## **2. Summary citizen participation process and efforts made to broaden citizen participation in Colonias**

The Colonia Self-Help Center (CSHC) Program subgrants funds to Cameron/Willacy, El Paso, Hidalgo, Maverick, Nueces, Starr, Val Verde, and Webb counties, and each written agreement includes a four-year term for expenditures and performance. Awards and funding associated with this program are reviewed and recommended by a Colonia Resident Advisory Group (C-RAC), which is a group of colonia residents who live in the specific service area served by the centers. The C-RAC members prioritize housing rehabilitation, reconstruction and new construction development in the targeted colonias served.

TDHCA provides guidance, technical assistance and oversight to the units of local government with which TDHCA has executed CSHC Program contracts. Technical assistance areas include program administration, guidelines, and best practices needed to fulfill contractual requirements in serving colonia residents with CDBG funding. Periodically, TDHCA convenes a meeting with C-RAC. This grass-roots-style committee considers contract proposals, recommends approval of and amendments to contracts, evaluates county recommendations, and provides TDHCA and the counties guidance on programming and activities in the colonias. Texas colonias have a great need for assistance. The CSHC program focuses primarily in improving the housing stock through rehabilitation, reconstruction, and new construction in the targeted colonias. A percentage of funding is earmarked for public service activities that have a direct and colonia wide impact. Lastly, approximately every two years, TDHCA updates its CSHC Program rules, and initiates this process by first soliciting comment from the public at large.

### Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/ attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1	Public Meeting – TDHCA Board Meeting	Non-targeted/ broad community	TDHCA’s board agenda and information is filed with the Texas Office of the Secretary of State (SOS) in advance of each meeting, in accordance with the Texas Open Meetings Act. The Draft 2024 OYAP was presented at the TDHCA Board meeting of April 11, 2024.	Public comments are accepted at each meeting of the TDHCA Board in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov’t Code.	n/a	Board materials are posted at <a href="https://www.tdhca.texas.gov/tdhca-board-meeting-information-center">https://www.tdhca.texas.gov/tdhca-board-meeting-information-center</a>
2	Public Comment Period	Non-targeted/ broad community	The Draft 2024 OYAP was released for a 31-day public comment period from April 22, 2024 to May 22, 2024.	Public comment was held April 22, 2024 to May 22, 2024.	No comment was received	<a href="https://www.tdhca.texas.gov/tdhca-public-comment-center">https://www.tdhca.texas.gov/tdhca-public-comment-center</a>

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/ attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
3	Public Hearing	Non-targeted/ broad community	A public hearing was held on May 8, 2024  Barbara Jordan State Office Building Room 2.006 1601 Congress Ave, Austin, TX 78711	No public comment was received	n/a	<a href="https://www.tdhca.texas.gov/t dhca-public-comment-center">https://www.tdhca.texas.gov/t dhca-public-comment-center</a>
4	Internet Outreach	Non-targeted/ broad community	TDHCA has a centralized webpage for public comment on all plans, reports, and program rules.	No public comment was received	n/a	<a href="https://www.tdhca.texas.gov/t dhca-public-comment-center">https://www.tdhca.texas.gov/t dhca-public-comment-center</a>

**Table 4 – Citizen Participation Outreach**

## Expected Resources

### AP-15 Expected Resources – 91.320(c)(1,2)

#### Introduction

CPD funding is governed by this Consolidated Plan, but the State also works to collaborate, coordinate, and layer non-CPD funding sources in order to reach more Texans and more efficiently use available funds. Programs listed in the anticipated resources narrative sections below may be used to leverage CPD funds.

These include:

- 4% Housing Tax Credit (HTC)/Private Activity Bond (PAB) Program;
- 9% HTC Program;
- Multifamily Direct Loan Program Tax Credit Assistance Program Repayment Funds (TCAP RF);
- Homeless and Housing Services Program (HHSP);
- State Ending Homelessness Fund (EH Fund);
- State Housing Trust Fund Program;
- Texas Mortgage Credit Certificate (TX MCC) Program;
- First time homebuyer loan programs, including the My First Texas Home Program;
- Neighborhood Stabilization Program - Program Income (NSP PI);
- Section 8 Housing Choice Voucher (HCV) Program; and
- Section 811 Project Rental Assistance (Section 811 PRA) Program

For the programs above, the expected future funding amounts, to the extent known, are in the planning documents governing those programs. These documents are online at <https://www.tdhca.texas.gov/>. The anticipated resources below focus on CPD Programs.

TDHCA participates in numerous committees, workgroups, and councils, which help TDHCA stay apprised of other potential resources and considerations in addressing affordable housing needs. Relationships with other federal and state agencies and local governments are extremely valuable, helping Texas agencies to coordinate housing and services and serve all Texans efficiently and effectively. TDHCA's involvement in these committees can promote opportunities to pursue federal funding opportunities. TDHCA actively seeks engagement and input from community advocates, funding recipients, potential applicants for funding, and others to obtain input regarding the development of effective policies, programs and rules. Changes to funding plans are made periodically based on

feedback received through these avenues.

TDHCA is the lead agency for the following workgroups:

**C-RAC:** C-RAC is a committee of colonia residents appointed by the TDHCA Governing Board. It advises TDHCA regarding the needs of colonia residents and the types of programs and activities, which should be undertaken by the Colonia Self-Help Centers.

**Disability Advisory Workgroup (DAW):** The DAW augments TDHCA's formal public comment process, affording staff the opportunity to interact more informally and in greater detail with various stakeholders and to get feedback on designing more successful programs, with a specific focus on gaining insight on issues impacting persons with disabilities.

**Housing and Health Services Coordination Council (HHSCC):** HHSCC is established by Texas Government Code §2306.1091. Its duties include promoting coordination of efforts to offer Service-Enriched Housing and focusing on other cross-agency efforts.

**Texas Interagency Council for the Homeless (TICH):** The TICH was statutorily created in 1989 to coordinate the State's homeless resources and services. The TICH consists of representatives from eight state agencies. TDHCA, as the primary source for state homelessness funding, provides administrative and planning support to the TICH.

**Weatherization Assistance Program Planning Advisory Committee (WAP PAC):** The WAP PAC is comprised of a broad representation of organizations and agencies and provides balance and background related to the weatherization and energy conservation programs at TDHCA.

The descriptions of the collaborations for DSHS and TDA are in the Discussion question of this section below.

**Anticipated Resources**

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	\$63,552,277	\$663,000	\$10,900,000	\$75,115,277	\$75,115,277	TDA's CDBG Program funds community and economic development, including program income collected by the state, and program income retained by local subgrantees, excluding the colonia set-aside. Program Income will be allocated to TDA's State Revolving Loan Fund, which supports economic development. TDHCA administers a portion of the CDBG funding through its Colonia SHCs.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG Colonias Set-aside	public - federal	Acquisition Admin and Planning Homeowner rehab Public Improvements Public Services	\$7,061,364	0	\$2,753,872	9,815,237	9,815,237	The Colonia Set-Aside is used for goals described in the Strategic Plan Section 45. The Colonia Economically Distressed Areas Program (CEDAP) Legislative Set - Aside leverages funding other federal and state funding programs.

HOME	public - federal	Acquisition Homebuyer assistance Homeowner rehab Multifamily rental new construction Multifamily rental rehab New construction for ownership TBRA	32,197,601	10,868,443.00	3,532,601.00	46,598,645	46,598,645	TDHCA's HOME Program goals are described in the Strategic Plan Section 45 for multifamily and single-family activities. Single-family HOME activities may be coordinated with State Housing Trust Fund resources, including Bootstrap Loans and the Amy Young Barrier Removal Program. HOME Multifamily Development Funds can be layered with 4% and 9% HTCs and TDHCA Multifamily Direct Loan funds, including NHTF, TCAP Repayment Funds, and NSP Program Income. TDHCA also develops rules that govern all multifamily programs, including the Multifamily Direct Loan (MFDL) Program Rule and Housing Tax Credit
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Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
								Program Qualified Allocation Plan (QAP).
HOPWA	public - federal	Permanent housing in facilities Permanent housing placement Short term or transitional housing facilities STRMU Supportive services TBRA	\$7,643,288	0	\$953,584	\$8,596,872	\$8,596,872	DSHS will reserve \$466,666 from the latest allocation for use in the next annual plan and include this amount under Prior Year Resources. DSHS will only use \$8,130,206 during this annual plan. Tenant-Based Rental Assistance; Short-Term Rent, Mortgage, and Utility; Facility-Based Housing Assistance; Permanent Housing Placement; Housing Case Management; Housing Information Services; Resource Identification; Project Sponsor Administration ; and Grantee Administration.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
ESG	public - federal	Conversion and rehab for transitional housing Financial Assistance Overnight shelter Rapid re-housing (rental assistance) Rental Assistance Services Transitional housing	9,723,237	0	0	9,723,237	9,723,237	TDHCA's ESG funds are awarded via contract to Subrecipient agencies that provide emergency shelter, homelessness prevention, rapid rehousing, and Homeless Management Information Systems (HMIS) activities. HHSP is Texas state general revenue funding for the nine largest cities to provide flexibility to undertake activities that complement ESG activities. Note that not all ESG direct recipients in Texas are HHSP grantees.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
Housing Trust Fund	public - federal	Multifamily rental new construction Multifamily rental rehab	\$8,605,523	258,714	0	\$8,864,237	\$8,864,237	TDHCA's NHTF Program goals are described in the Strategic Plan Section 45 for multifamily and single family activities. NHTF Multifamily Development Funds may be layered with 4% HTC's and 9% HTC's, and TDHCA Multifamily Direct Loan funds, including HOME, HOME-CHDO, NSP Program Income and TCAP Loan Repayment. TDHCA also develops rules that govern all multifamily programs, including the Multifamily Direct Loan (MFDL) Program Rule specifically for the MFDL Program and the Housing Tax Credit Program Qualified Allocation Plan (QAP).

**Table 5 - Expected Resources – Priority Table**

**Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied**

**HOME**

HOME multifamily development is often used to leverage with the HTC Program, which authorizes 9% low-income housing tax credits of \$2.90 per capita for each state, and 4% HTC in amounts linked to the usage of the state's cap for issuance of tax exempt PABs to finance affordable housing development. In Texas, this equates to approximately \$88,000,000 in 9% tax credits available to be awarded annually. These credits may be claimed each year for ten years and represents potential tax credit value on the magnitude of \$880,000,000. The credits are usually syndicated to limited partner investors to yield cash for use in eligible development activities. Currently, typical syndication rates range between 88% and 92%. TDHCA's Qualified Allocation Plan (QAP) identifies the criteria used for selection of eligible developments to provide housing for low-income tenants. HOME provides increased leverage, allowing property owners to utilize fewer tax credits and less private debt and local funding, thus providing more efficient use of resources. In addition, HOME is used as a source to fill funding gaps that have occurred in previously-awarded HTC developments due to increased materials costs or interest rates. Other leveraging sources may include United States Department of Agriculture (USDA) operating subsidies and loans, and conventional and FHA-insured loans. Match requirements for the HOME Multifamily Direct Loan Program will in part be met through Rules and NOFAs that establish awardees' requirement to provide up to 7.5% of the award amount, or a higher, or lower amount as reflected in the NOFA. In addition to match provided as part of the developer's obligation, TCAP RF may be utilized as HOME match, and TDHCA calculates to below market interest rates on eligible loans provided to the HOME development which is included in the match funds reported in the CAPER. TDHCA will also use eligible multifamily bonds that are used to finance developments that also receive 4% HTC financing as HOME match. TDHCA requires Subrecipients and state recipients to provide match of up to 15% of the project hard costs for some single family activities.

**ESG**

To meet the ESG match requirement, TDHCA requires the commitment of proposed match as part of the ESG application process. TDHCA awards additional points to applicants that commit to provide match in excess of the requirements. Subrecipients that also administer HHSP funds or funds from the EH Fund may utilize those funds as match for ESG, if they are otherwise eligible to be counted as match.

**HOPWA**

Texas HOPWA does not have a match requirement but leverages funds whenever possible. Project Sponsors leverage available funds from Ryan White and State Services grants, private funding sources, foundations, and local assistance to help clients. DSHS shares grantee administrative costs with AAs. However, AAs leverage much of their administrative expenditures from other funding sources.

Due to IDIS character limits, CDBG and NHTF Leveraging is described in the question below.

**If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan**

CDBG Leverages Some categories of grant applications award points to encourage local match; a sliding scale allows smaller communities to contribute less match funding than larger communities. Match funds may be provided by the applicant, or by a water or sewer utility benefiting from the project.

**NHTF Program Leveraging**

NHTF multifamily development may be used to leverage with the HTC Program, which was created by the Tax Reform Act of 1986 and authorizes 9% low-income housing tax credits in the amount of \$2.90 per capita for each state, and 4% low-income housing tax credits in amounts linked to the usage of the state's cap for issuance of tax exempt bond to finance affordable housing development. In Texas, this equates to approximately \$80,000,000 in 9% tax credits available to be awarded by TDHCA annually.

These credits may be claimed each year for ten years and this represents potential tax credit value on the magnitude of \$880,000,000. The tax credits are syndicated to limited partner investors to yield cash for use in eligible development activities. Currently typical syndication rates range between 88% and 92%. TDHCA must develop a Qualified Allocation Plan (QAP) each year for the selection of eligible developments to provide housing for the low-income tenants. NHTF provides increased leverage, allowing the property owners to utilize fewer tax credits and less private debt and local funding, therefore providing more efficient use of resources. In addition, NHTF is used as a source to fill funding gaps that have occurred in previously-awarded HTC developments due to increased materials costs or interest rates.

**State Owned Land**

The Texas General Land Office manages state owned lands and mineral rights totaling approximately 13 million acres. Much of this is leased for the benefit of the Permanent School Fund, an endowment fund established in 1876 for the benefit of Texas public school education. Generally, state owned land is not utilized for affordable housing or community development goals; however, local jurisdictions occasionally donate land or property in support of activities designed to address the needs identified in the plan as part of their contribution to locally administered programs.

**Discussion**

**HOPWA**

Continuing with the discussion of collaboration begun in the introduction of this section,

DSHS HIV initiatives strive to reduce the number of undiagnosed persons and increase the number of virally suppressed PLWH. DSHS works with community partners, stakeholders, and health care providers statewide to strengthen services that prevent HIV transmission, improve diagnosis rates, and fill gaps in clinical treatment and related support services. The Texas HIV Syndicate serves as the Texas integrated HIV prevention and care planning group and facilitates this collaboration. The Syndicate includes

representation from PLWH, HIV prevention and care organizational leaders, and other community stakeholders, many of which provide HOPWA services. The Texas HIV Syndicate produced Achieving Together, a community plan to end the HIV epidemic in Texas. This plan reflects the ideas, recommendations, and guidance of the Texas HIV Syndicate and Achieving Together Partners, as well as statewide community engagement efforts with PLWH, people impacted by HIV, clinicians, and researchers. The plan has six focus areas, one of which addresses mental health, substance use, housing, and criminal justice. Within DSHS, the HIV/STD/HCV Epidemiology and Surveillance Unit collects and reports data on HIV in Texas, which includes data submission to the Centers for Disease Control and Prevention (CDC). Subsequently, HUD uses this data to determine HOPWA formula allocations, while other federal agencies use it for planning, developing, implementing, and evaluating of HIV service programs, including HOPWA.

Finally, TDA participates in the following workgroups:

Texas Water Infrastructure Coordination Committee (TWICC): TWICC is a voluntary organization of federal and state funding agencies and technical assistance providers that address water and wastewater needs throughout the State. TDA participates in TWICC to coordinate efforts to leverage funds.

Drought Preparedness Council, The Council was authorized and established by the 76th Texas Legislature in 1999, and is responsible for assessment and public reporting of drought monitoring and water supply conditions, along with other duties.

Texas Joint Housing Solutions Workgroup. The Texas Joint Housing Solutions Workgroup is a collection of state and federal agencies and organizations who work to identify resources that can address temporary unmet housing needs and solutions that allow disaster survivors to transition to permanent housing. TDHCA and TDA both participate in this workgroup.

These workgroups, committees, and councils help to strengthen communication between state agencies as well as provide opportunities to layer or combine funding sources.

With the block grants and the layering resources listed above, there are also CDBG Disaster Recovery (DR) funds for disasters that have affected that State of Texas. More details and action plans for the various disasters CDBG-DR have been awarded for can be found at <http://recovery.texas.gov/action-plans/index.html>.

## Annual Goals and Objectives

### AP-20 Annual Goals and Objectives – 91.320(c)(3)&(e)

#### Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Homeless Goals	2020	2024	Homeless	State of Texas	Emergency Shelter and Transitional Housing Rapid Re-housing Homeless Prevention	ESG: \$9,723,237	Tenant-based rental assistance / Rapid Rehousing: 730 Households Assisted Homeless Person Overnight Shelter: 15,385 Persons Assisted Homelessness Prevention: 3,097 Persons Assisted
2	Acquisition & Construction of Single Family Housing	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Production of New Units	HOME: \$0	Homeowner Housing Added: 0 Household Housing Unit
3	Reconstruction of Single Family Housing	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Rehabilitation of Housing	HOME: \$14,298,979	Homeowner Housing Rehabilitated: 95 Household Housing Unit
4	Tenant Based Rental Assistance with HOME Funding	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Rental Assistance	HOME: \$10,419,274	Tenant-based rental assistance / Rapid Rehousing: 1,401 Households Assisted

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
5	Households in New/Rehabilitated Multifamily Units	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Production of New Units Rehabilitation of Housing	HOME: \$17,423,787.65	Rental units constructed: 87 Household Housing Unit Rental units rehabilitated: 10 Household Housing Units
6	NHTF Households in New/Rehabbed Multifamily Units	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Production of New Units Rehabilitation of Housing	Housing Trust Fund: \$7,744,970	Rental units constructed: 40 Household Housing Units Rental units rehabilitated: 15 Household Housing Units
7	HOPWA Tenant-Based Rental Assistance	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Rental Assistance Homeless Prevention	HOPWA: \$4,492,748	Tenant-based rental assistance / Rapid Rehousing: 575 Households Assisted.  DSHS will reserve \$243,881 from the latest allocation for use in the next annual plan and include this amount under Funding.



Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
8	HOPWA Short-Term Rent, Mortgage & Utilities Asst.	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Homeless Prevention	HOPWA: \$892,526	Homelessness Prevention: 295 Persons Assisted.  DSHS will reserve \$48,449 from the latest allocation for use in the next annual plan and include this amount under Funding.
9	HOPWA Facility-Based Housing Subsidy Assistance	2020	2024	Affordable Housing Homeless Non-Homeless Special Needs	State of Texas	Rental Assistance Emergency Shelter and Transitional Housing Rapid Re-housing Homeless Prevention	HOPWA: \$499,263	Homelessness Prevention: 136 Persons Assisted. HIV/AIDS Housing Operations: 136 Household Housing Unit.  DSHS will reserve \$27,102 from the latest allocation for use in the next annual plan and include this amount under Funding.

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
10	HOPWA Permanent Housing Placement Assistance	2020	2024	Affordable Housing Homeless Non-Homeless Special Needs	State of Texas	Rental Assistance Rapid Re-housing Homeless Prevention	HOPWA: \$183,624	Public service activities other than Low/Moderate Income Housing Benefit: 132 Persons Assisted.  DSHS will reserve \$9,968 from the latest allocation for use in the next annual plan and include this amount under Funding.
11	HOPWA Funded Supportive Services	2020	2024	Affordable Housing Homeless Non-Homeless Special Needs	State of Texas	Supportive Services for Persons with HIV/AIDS	HOPWA: \$1,722,055	Public service activities other than Low/Moderate Income Housing Benefit: 1,031 Persons Assisted.  DSHS will reserve \$93,479 from the latest allocation for use in the next annual plan and include this amount under Funding.

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
12	HOPWA Housing Information Services	2020	2024	Affordable Housing Non-Homeless Special Needs	State of Texas	Supportive Services for Persons with HIV/AIDS	HOPWA: \$2,831	Public service activities other than Low/Moderate Income Housing Benefit: 7 Persons Assisted.  DSHS will reserve \$153 from the latest allocation for use in the next annual plan and include this amount under Funding.
13	HOPWA Resource Identification	2020	2024	Affordable Housing Homeless Non-Homeless Special Needs	State of Texas	Rental Assistance Supportive Services for Persons with HIV/AIDS Emergency Shelter and Transitional Housing Homeless Prevention	HOPWA: \$79,284	Other: 0 Other.  Activities that establish, coordinate, and develop housing assistance resources for eligible households (including preliminary research and expenditures necessary to determine the feasibility of specific housing-related initiatives).  DSHS will reserve \$4,304 from the latest allocation for use in the next annual plan and include this amount under Funding.

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
14	CDBG Public Improvements and Facilities	2020	2024	Non-Housing Community Development	State of Texas	Public Improvements and Infrastructure Public Facilities Public Services	CDBG: \$51,094,890	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 240,007 Persons Assisted
15	CDBG Economic Development	2020	2024	Non-Housing Community Development Economic Development	State of Texas	Public Improvements and Infrastructure Economic Development Public Facilities Public Services	CDBG: \$ \$8,473,637	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 178,083 Persons Assisted
16	CDBG Planning/Capacity Building	2020	2024	Non-Housing Community Development	State of Texas	Public Improvements and Infrastructure Public Facilities Public Services	CDBG: \$0	Other: 0 Other
17	CDBG Urgent Need	2020	2024	Non-Housing Community Development	State of Texas	Public Improvements and Infrastructure Public Facilities	CDBG: \$0	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 9,010 Persons Assisted

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
18	CDBG Colonia Set-Aside	2020	2024	Affordable Housing Non-Housing Community Development	State of Texas	Production of New Units Acquisition of existing units Rehabilitation of Housing Public Improvements and Infrastructure Public Facilities Public Services	CDBG Colonias Set-aside:  \$7,061,364	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 2,175 Persons Assisted
19	CDBG Colonia Self-Help Centers	2020	2024	Self-Help Centers	State of Texas	Production of New Units Acquisition of existing units Rehabilitation of Housing Public Services	CDBG: \$  \$1,765,341	Other: 4533 Other

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
20	CDBG Administration	2020	2024	Administration/Technical Assistance	State of Texas	Rehabilitation of Housing Public Improvements and Infrastructure Economic Development Public Facilities Public Services	CDBG: \$  \$2,218,409	Other: 0 Other
21	HOME Administration	2020	2024	HOME Administration	State of Texas	Rental Assistance Production of New Units Acquisition of existing units Rehabilitation of Housing	HOME: \$4,306,604	Other: 0 Other
22	NHTF Administration	2020	2024	NHTF Administration	State of Texas	Production of New Units Rehabilitation of Housing	Housing Trust Fund: \$860,553	Other: 0 Other

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
23	HOPWA Project Sponsor Administration	2020	2024	Non-Homeless Special Needs	State of Texas	Rental Assistance Supportive Services for Persons with HIV/AIDS Emergency Shelter and Transitional Housing Rapid Re-housing Homeless Prevention	HOPWA: \$469,723	Other: 0 Other.  DSHS will reserve \$25,498 from the latest allocation for use in the next annual plan and include this amount under Funding.
24	HOPWA Grantee Administration	2020	2024	Non-Homeless Special Needs	State of Texas	Rental Assistance Supportive Services for Persons with HIV/AIDS Emergency Shelter and Transitional Housing Rapid Re-housing Homeless Prevention	HOPWA: \$254,818	Other: 0 Other.  DSHS will reserve \$13,832 from the latest allocation for use in the next annual plan and include this amount under Funding.

**Table 6 – Goals Summary**

**Goal Descriptions**

<b>1</b>	<b>Goal Name</b>	Homeless Goals
	<b>Goal Description</b>	Funds will be utilized to provide Administration, HMIS services, emergency shelter, rapid re-housing, homeless prevention and street outreach to eligible persons who are experiencing homelessness or at-risk of homelessness. Actual funding amounts will be determined based on the actual requested funds by component. The estimates for the funding amount per activity type and number of persons served are extrapolated from data collected over the prior three years, TDHCA limits the amount of funding available for street outreach and emergency shelter to not more than 60% of the total ESG funding available. Likewise, funds for administration and HMIS are limited proportionate to the funds made available in each service component to ensure that the regulatory caps for these expenditures are not exceeded.
<b>2</b>	<b>Goal Name</b>	Acquisition & Construction of Single Family Housing
	<b>Goal Description</b>	While no funds under the 2024 allocation are programmed for the implementation of Homebuyer Assistance with New Construction, TDHCA may use deobligated funding or funding remaining from prior year allocations to perform these activities. This activity allows homebuyers to work with Subrecipients to select lots for purchase, and provide financing for construction of a new unit of housing on the selected lot. TDHCA does not plan to have a 2024 HOME Program goal for single-family development activities performed by a Community Housing Development Organization (CHDO) for the construction of new single-family housing, but may amend program income, or use deobligated funding or other available HOME funding for such an activity. PY 2024 CHDO set aside funding is initially targeted for multifamily development activities as reflected under the Households in new/rehabilitated multifamily units strategic plan goal, but may be revised to program some funding for single-family development activities if TDHCA identifies future interest in the program. Single-family development activities will remain an eligible activity that may be funded in the event future CHDO funding becomes available.
<b>3</b>	<b>Goal Name</b>	Reconstruction of Single Family Housing
	<b>Goal Description</b>	The 2024 goal for HOME Program reconstruction activities is to provide assistance to a minimum of 95 households through units of general local governments, and nonprofit organizations. These entities qualify applicants to receive assistance for the repairs and reconstruction necessary to make their homes decent, safe, sanitary, and accessible.



4	<b>Goal Name</b>	Tenant Based Rental Assistance with HOME Funding
	<b>Goal Description</b>	The 2024 goal for HOME Program TBRA activity is to provide on-going rental assistance or stand-alone rental security deposit assistance (which may include utility deposit assistance) to an estimated 1,401 households.
5	<b>Goal Name</b>	Households in New/Rehabilitated Multifamily Units
	<b>Goal Description</b>	The 2024 goal for HOME Multifamily Program is creating/rehabilitating over 97 multifamily rental units. TDHCA's HOME Multifamily Development Programs awards HOME funds as low-interest loans to CHDOs, for-profit, and nonprofit developers. These loans leverage other public and private financing including housing tax credits, United States Department of Agriculture (USDA) operating subsidies and loans, and conventional and Federal Housing Administration-insured loans. The result is safe, decent, and affordable multifamily rental housing.
6	<b>Goal Name</b>	NHTF Households in New/Rehabbed Multifamily Units
	<b>Goal Description</b>	The 2024 goal for Housing Trust Fund is creating and/or rehabilitating 55 multifamily rental units based on the performance period of the previous Program Year, September 1, 2023 – August 31, 2024.
7	<b>Goal Name</b>	HOPWA Tenant-Based Rental Assistance
	<b>Goal Description</b>	The number of households that received TBRA services during the program year. TBRA provides an ongoing and portable rental subsidy that helps households obtain or maintain permanent housing, including assistance for shared housing arrangements, in the private rental housing market until they can enroll in the Housing Choice Voucher Program (HCVP) or other affordable housing programs. DSHS set an annual goal of assisting 575.households. The estimated funding and number of individuals served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
8	<b>Goal Name</b>	HOPWA Short-Term Rent, Mortgage & Utilities Asst.
	<b>Goal Description</b>	The number of households that received STRMU services during the program year. STRMU provides short-term, rent, mortgage, and utility payments for households experiencing a financial crisis related to their HIV health condition or a change in their economic circumstances. STRMU helps prevent homelessness by enabling households to remain in their own homes DSHS set an annual goal of assisting 295persons. The estimated funding and number of individuals served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.

9	<b>Goal Name</b>	HOPWA Facility-Based Housing Subsidy Assistance
	<b>Goal Description</b>	The number of households that received FBHA services during the program year. HOPWA Facility-Based Housing Assistance (FBHA) activities include Short-Term Supportive Housing (STSH) and Transitional Supportive Housing (TSH). STSH facilities provide temporary shelters to households experiencing homelessness as a bridge to permanent housing. TSH facilities allow households an opportunity to prepare for permanent housing and develop individualized housing plans that culminate in permanent housing. DSHS set an annual goal of assisting 136 households. The estimated funding and number of individuals served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
10	<b>Goal Name</b>	HOPWA Permanent Housing Placement Assistance
	<b>Goal Description</b>	The number of households that received PHP services during the program year. PHP helps households access, secure, and establish a permanent residence, maintained either on their own or with the help of ongoing rental assistance. Eligible PHP housing assistance costs include, but are not limited to, application fees, first and last month’s rent, and reasonable utility and security deposits required for lease approval and occupancy. DSHS set an annual goal of assisting 132 persons. The estimated funding and number of persons served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
11	<b>Goal Name</b>	HOPWA Funded Supportive Services
	<b>Goal Description</b>	The number of households that received Housing Case Management services during the program year. The DSHS HOPWA Program currently limits the use of Supportive Service funds to Housing Case Management. Housing Case Management plays a vital role in HOPWA Supportive Services and can contribute to successful program outcomes for housing stability and access to care. “Housing case management” primarily centers around matters related to housing issues, including housing options, stability, and goals. The intensity or level of housing case management provided to a household will depend on the household’s assessed level of need. DSHS set an annual goal of assisting 1,031 persons. The estimated funding and number of households served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.

12	<b>Goal Name</b>	HOPWA Housing Information Services
	<b>Goal Description</b>	The number of households that received Housing Information Services during the program year. Housing Information Services include, but are not limited to, counseling, information, and referral services to assist households with locating, acquiring, financing, and maintaining housing. This may also include fair housing guidance for households that have encountered discrimination based on race, color, religion, sex (including gender identity and sexual orientation), age, national origin, familial status, or disability. DSHS set an annual goal of assisting 7 persons. The estimated funding and number of households served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
13	<b>Goal Name</b>	HOPWA Resource Identification
	<b>Goal Description</b>	The work products, deliverables, and other activities of projects that used Resource Identification funds. Resource Identification encompasses activities that establish, coordinate, and develop housing assistance resources for eligible households (including preliminary research and expenditures necessary to determine the feasibility of specific housing-related initiatives). The estimated funding may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
14	<b>Goal Name</b>	CDBG Public Improvements and Facilities
	<b>Goal Description</b>	Public Improvements and Facilities includes community grants for basic infrastructure, public facilities, public services, and other community needs.  The Texas CDBG encourages the use of funds not only to improve existing locations but to provide facilities in other areas to accommodate residential opportunities that will benefit low and moderate income persons. Funding allocated includes annual allocation in addition to previously deobligated funds. The estimated funding and number of persons served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.

15	<b>Goal Name</b>	CDBG Economic Development
	<b>Goal Description</b>	This economic development funding is used for projects that will create or retain permanent employment opportunities, primarily for low to moderate income persons, for downtown revitalization activities, and for other economic development activities for rural communities. Funding allocated includes annual allocation in addition to previously deobligated funds and program income. The estimated funding and number of persons served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
16	<b>Goal Name</b>	CDBG Planning/Capacity Building
	<b>Goal Description</b>	This goal allows for assistance to eligible cities and counties in conducting planning activities that assess local needs, develop strategies to address local needs, build or improve local capacity, or that include other needed planning elements (including telecommunications and broadband needs). No funds are set aside specifically for this goal; planning activities are eligible under the Community Development Fund along with other community development priorities.
17	<b>Goal Name</b>	CDBG Urgent Need
	<b>Goal Description</b>	Urgent Need assistance is available through the SUN fund as needed for eligible activities in relief of natural disasters and other emergency situations. Funding allocated includes previously deobligated funds. The estimated funding and number of persons served may fluctuate depending on actual natural disaster events, HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
18	<b>Goal Name</b>	CDBG Colonia Set-Aside
	<b>Goal Description</b>	This fund is available to eligible county applicants for projects in severely distressed unincorporated areas which meet the definition of a “colonia” under this fund. Funding allocated includes annual allocation. The estimated funding and number of persons served may fluctuate depending on HUD’s final allocation amounts and based on the target percentages identified in Action Plan Section 25.
19	<b>Goal Name</b>	CDBG Colonia Self-Help Centers
	<b>Goal Description</b>	Colonia residents receiving direct assistance through Colonia Self-Help Centers. Assistance includes residential rehabilitation, reconstruction, new construction, utility connections, solid waste removal, and access to a technology center, tool lending library, and educational classes.

20	<b>Goal Name</b>	CDBG Administration
	<b>Goal Description</b>	CDBG Administrative costs including Technical Assistance and indirect costs.
21	<b>Goal Name</b>	HOME Administration
	<b>Goal Description</b>	HOME Administrative expenses based on HOME allocation and program income received in PY 2023 that is being programmed in the 2024 Action Plan.
22	<b>Goal Name</b>	NHTF Administration
	<b>Goal Description</b>	NHTF Administrative funds for PY 2024.
23	<b>Goal Name</b>	HOPWA Project Sponsor Administration
	<b>Goal Description</b>	Administration funds for HOPWA Project Sponsors
24	<b>Goal Name</b>	HOPWA Grantee Administration
	<b>Goal Description</b>	Funds for HOPWA Administration

**Estimate the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined by HOME 91.215(b)**

Based on the goal descriptions for HOME in the table above, it is estimated that the State will provide affordable housing to 734 extremely low-income, low-income, and moderate-income families.

Beginning in Program Year 2023, \$0 have been dedicated to Goal 16: CDBG Planning/Capacity Building. The principles behind this goal remain important for CDBG subrecipients. Rather than address this goal through a separate competitive opportunity, activities that support this goal are eligible to be requested by subrecipients under the Community Development Fund. The amount to be awarded is currently unknown and depends on how many communities prioritize planning and capacity building activities over other local needs, therefore the amount dedicated to this goal is \$0.

## **AP-25 Allocation Priorities – 91.320(d)**

### **Introduction:**

The CPD Programs serve special needs populations and meet the 13 Priority Needs found in Strategic Plan 25 of the 2020-2024 Consolidated Plan. These Needs in Strategic Plan 25 are correlated with Goals in Action Plan 20 to show which activities will serve which priority needs. The goals from Action Plan 20 are listed below with allocation percentages. Percentages in the chart below are estimated and may change depending on funding received from HUD, legislative priorities, and funding requests from administrators or subrecipients. Due to software restrictions, allocations are rounded to the nearest whole number and do not reflect precise percentages.

Also, for the other programs listed in the anticipated resources (Action Plan 15) that could be used to leverage funds (including 4% HTC, 9% HTC, HHSP, State Housing Trust Fund, TX MCC, My First Texas Home Program, NSP PI, Section 8 HCV programs, and Section 811 PRA), goals are tailored to each program in the planning documents governing those programs. These documents can be found at <https://www.tdhca.texas.gov/>. In addition to meeting the priority needs, the CPD Programs work to serve special needs populations as described in this section. HOME and ESG's special needs populations are discussed in the introduction, and HOPWA and CDBG's are included in the discussion below.

### **HOME Serves Special Needs**

TDHCA has determined that TDHCA may have and TDHCA administrators may request to establish a preference to serve the following special needs populations: persons with disabilities, persons with substance use disorders, persons living with HIV/AIDS (PLWH), persons with Violence Against Woman Act (VAWA) protections, colonia residents, farmworkers, homeless populations, veterans, (including wounded warriors as defined by the Caring for Wounded Warriors Act of 2008), public housing residents, persons transitioning out of incarceration, persons impacted by a state or federally declared disaster, and persons transitioning out of foster care and nursing facilities.

For administrators with programs that are designed to limit assistance to certain populations, TDHCA will only approve program designs that limit assistance to households that include a member within the following populations if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR §8.4(b)(1)(iv): PLWH, mental illness, substance use disorders, or households that would qualify under the TDHCA's Project Access program as defined in 10 TAC §5.801. Otherwise, administrators may only request a preference for populations described in the special needs section. TDHCA may limit assistance of directly administered HOME funds for TBRA for security and utility deposits to persons that have been issued vouchers through its PHA, so long as the assistance is not duplicative.

For HOME or NHTF rental housing, TDHCA will allow development of housing that meets requirements under the Housing for Older Persons Act. TDHCA may also consider permitting rental housing owners to give a preference or limitation as indicated in this section and may allow a preference or limitation that

is not described in this section to encourage leveraging of federal or state funding, provided that another federal or state funding source for the rental housing requires a limitation or preference. TDHCA may put further guidelines on development of specific types of rental housing by rule or NOFA. In order to have consistent requirements for Developments with 100% Single Room Occupancy Units, the Department will utilize the HOME definition in 24 CFR §92.2 for HOME and NHTF, in addition to the Department's definition of Single Room Occupancy at 10 TAC §11.1(d)(120) and the definition of Unit at 10 TAC §11.1(d)(136).

## Funding Allocation Priorities

	Homeless Goals (%)	Acquisition & Construction of Single Family Housing (%)	Reconstruction of Single Family Housing (%)	Tenant Based Rental Assistance with HOME Funding (%)	Households in New/Rehabilitated Multifamily Units (%)	NHTF Households in New/Rehabed Multifamily Units (%)	HOPWA Tenant-Based Rental Assistance (%)	HOPWA Short-Term Rent, Mortgage & Utilities Asst. (%)	HOPWA Facility-Based Housing Subsidy Assistance (%)	HOPWA Permanent Housing Placement Assistance (%)	HOPWA Funded Supportive Services (%)	HOPWA Housing Information Services (%)	HOPWA Resource Identification (%)	CDBG Public Improvements and Facilities (%)	CDBG Economic Development (%)	CDBG Urgent Need (%)	CDBG Colonia Set-Aside (%)	CDBG Colonia Self-Help Centers (%)	CDBG Administration (%)	HOME Administration (%)	NHTF Administration (%)	HOPWA Project Sponsor Administration (%)	HOPWA Grantee Administration (%)	Colonias Set-Aside (%)	Total (%)
CDBG	0	0	0	0	0	0	0	0	0	0	0	0	0	72	12	0	10	3	3	0	0	0	0	0	100
CDBG Colonias Set-aside	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100	100
HOME	0	0	34	25	41	0	0	0	0	0	0	0	0	0	0	0	0	0	10	0	0	0	0	0	100
HOPWA	0	0	0	0	0	0	52	10	6	2	20	0	1	0	0	0	0	0	0	0	0	6	3	0	100
ESG	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100
Housing Trust Fund	0	0	0	0	0	90	0	0	0	0	0	0	0	0	0	0	0	0	0	10	0	0	0	0	100

Table 7 – Funding Allocation Priorities



## **Reason for Allocation Priorities**

### **Disaster Recovery**

With the block grants and the layering resources listed above, there are also CDBG Disaster Recovery (DR) funds for disasters that have affected that State of Texas. More details and action plans for the various disasters CDBG-DR have been awarded for can be found at <http://recovery.texas.gov/action-plans/index.html>.

### **How will the proposed distribution of funds will address the priority needs and specific objectives described in the Consolidated Plan?**

#### **ESG Serves Special Needs**

ESG does not have funding allocation priorities for special needs populations, but the Department's subrecipient selection criteria include prioritization for homeless subpopulations as defined in the most recent Point in Time data collection guidance.

TDHCA requires ESG subrecipients to comply with the Violence Against Women Reauthorization Act of 2021 (VAWA). Forms and information are required to be distributed to applicants and program participants for short- and medium-term rental assistance in accordance with 24 CFR §5.2005(e). Also pursuant to 24 CFR §5.2005(e), ESG Subrecipients are required to develop and follow an Emergency Transfer Plan.

#### **HOPWA Serves Special Needs**

HOPWA serves as the only federal program dedicated to addressing the housing needs of low-income PLWH and their households. HOPWA helps eligible PLWH and their households establish or maintain affordable and stable housing, reduce their risk of homelessness, and improve their access to health care and supportive services. Stable housing helps PLWH access comprehensive healthcare, adhere to HIV treatment, and achieve viral suppression. The proposed distribution of funds by HOPWA activity category reflects local needs and comports with historical expenditure outputs. The program reallocates funding within and between HIV Service Delivery Areas (HSDAs) throughout the program year to meet changing needs

#### **CDBG Serves Special Needs**

CDBG provides approximately 85% of available funds for projects that primarily benefit low-to moderate-income persons through basic infrastructure, housing, job creation and other activities as identified at the local level. Among those projects, CDBG sets aside 12.5% of funds to benefit colonia residents through planning activities, infrastructure and housing construction, self-help center services, construction activities, and public services. Funding for community development projects in colonias and

other LMI communities is a critical element in the well-being of these communities.

The Office of Colonia Initiative (OCI) at TDHCA is charged with the responsibility administering the Colonia Self-Help Center (CSHC) Program, with the goal of improving the living conditions and lives of border and colonia residents. As part of its plan to improve the living conditions in colonias, OCI assigns specific employees to focus on supporting and providing technical assistance to border counties which maintain Colonia Self-Help Centers funded under the CSHC Program.

## AP-30 Methods of Distribution – 91.320(d)&(k)

### Introduction:

Given that Texas is the second largest state in the nation by total area, the method of distribution of its funds has to take into account a very large area. To serve this large area it is necessary for the State to use subrecipients to administer the programs funded under CPD. The selection processes for these entities are generally described below.

### Distribution Methods

**Table 8 - Distribution Methods by State Program**

<b>1</b>	<b>State Program Name:</b>	Colonia Economically Distressed Areas Program
	<b>Funding Sources:</b>	CDBG CDBG Colonias Set-aside
	<b>Describe the state program addressed by the Method of Distribution.</b>	Colonia Economically Distressed Areas Program (CEDAP) Legislative Set-Aside fund provides funding to eligible cities and counties to assist colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with being connected to a TWDB Economically Distressed Area Program or similar water or sewer system improvement project.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	<p>The TDA will evaluate the following factors prior to awarding CEDAP funds:</p> <ul style="list-style-type: none"> <li>• The proposed use of the CDBG funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through Economically Distressed Area Program or similar program;</li> <li>• The ability of the applicant to utilize the grant funds in a timely manner;</li> <li>• The availability of funds to the applicant for project financing from other sources;</li> <li>• The applicant's past performance on previously awarded CDBG contracts;</li> <li>• Cost per beneficiary; and</li> <li>• Proximity of project site to entitlement cities or metropolitan statistical areas (MSAs).</li> </ul>

	<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation are available upon request once mainline construction has been confirmed.</p>
	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>The Texas Legislature has set aside 3.5% of the State CDBG allocation for the CEDAP program.</p> <p>The allocation is distributed on an as-needed basis. In order to fully obligate the annual Colonia Funds to benefit colonia residents, funds not requested for the CEDAP activities may be transferred to other Colonia Fund programs.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum \$1,000,000/Minimum \$250,000</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Activities Benefitting LMI Persons</p>
<p><b>2</b></p>	<p><b>State Program Name:</b></p>	<p>Colonia Fund and Construction Program</p>
	<p><b>Funding Sources:</b></p>	<p>CDBG CDBG Colonias Set-aside</p>
	<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>The goal of the Colonia Fund: Construction (CFC) program is to develop viable communities by providing decent housing, viable public infrastructure, and a suitable living environment, principally for persons residing within a community or area that meets the definition of a colonia. An eligible county applicant may submit an application for eligible construction activities, prioritizing access to public utilities and other basic human needs for colonia residents.</p>

	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	While the Colona Planning and Needs Assessment is underway, the selection criteria for the Colonia Fund: Construction will focus upon the following factors: number of colonia communities identified in the county, and previous funding
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a> .
	<b>Describe how resources will be allocated among funding categories.</b>	Of the State CDBG allocation 6.5% (approximately) is allocated to the Colonia Fund Construction Program. Subsequent to awarding funds, any portion of the CFC allocation that is unable to be awarded may be used to fund additional eligible applications under any other Colonia Fund Set-aside program.
	<b>Describe threshold factors and grant size limits.</b>	Maximum \$1,000,000/Minimum \$250,000
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting LMI Persons
<b>3</b>	<b>State Program Name:</b>	Colonia Fund Planning & Needs Assessment Program
	<b>Funding Sources:</b>	CDBG CDBG Colonias Set-aside

	<b>Describe the state program addressed by the Method of Distribution.</b>	The Colonia Fund Planning Program is designed to provide needs assessments for colonia communities on a county-by county basis.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	The Colonia Fund Planning Program funds assess the conditions and current needs of colonia communities in to each county within 150 miles of the Texas-Mexico border on a rotating basis. All counties eligible to participate in the colonia set-aside have been offered an opportunity to receive planning and needs assessment services coordinated through a CFP grant to a designated Planning Zone.
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a> .
	<b>Describe how resources will be allocated among funding categories.</b>	As planning activities are currently funded for all eligible counties, no funds are allocated to the Colonia Fund Planning Program for this Program Year.
	<b>Describe threshold factors and grant size limits.</b>	Not applicable for Program Year 2023
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting LMI Persons
<b>4</b>	<b>State Program Name:</b>	Colonia SHC Legislative Set-Aside (administered by TDHCA)
	<b>Funding Sources:</b>	CDBG

<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>Administered by TDHCA and funded through CDBG, the Colonia Self-Help Center (CSHC) Program serves colonias along the Texas-Mexico border. Colonia Self-Help Centers (Centers) provide concentrated on-site technical assistance to low- and very low-income individuals and families in a variety of ways including housing, community development activities, infrastructure improvements, outreach and education. Key services include: housing rehabilitation; reconstruction; new construction; surveying and platting; construction skills training; tool library access for self-help construction; housing finance; credit and debt counseling; grant writing; infrastructure construction and access; contract-for-deed conversions; and capital access for mortgages.</p>
<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>Approximately 36,136 residents live in the targeted colonias served by the CSHC Program. The Centers process applications from income eligible households using a selection criteria established by each Center. Eligible households must reside in a targeted colonia, which has been preselected by each county and approved by C-RAC. Households must earn less than 80% of AMI.</p>
<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>The CSHC Program is statutorily required to be provided in Cameron/Willacy, El Paso, Hidalgo, Nueces, Starr, and Webb counties. Statute allows for additional Centers to be established in any other county if TDHCA deems it necessary and appropriate and if the county is designated an economically distressed area under statute. TDHCA established additional Centers in Maverick, and Val Verde counties. Each Center must serve five targeted colonias within the county it serves. The Centers conduct outreach activities throughout the contract period to inform colonia residents of program benefits and eligibility criteria and to provide application assistance.</p>

	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>The Texas Legislature has set aside 2.5% of the State CDBG allocation for the CSHC program.</p> <p>Resources are allocated after analysis and input from each community. Counties that are statutorily designated to participate in the CSHC Program conduct a needs assessment before proposing which target colonias should receive concentrated attention and the scope of program activities and funding. Each county designs a proposal unique to the needs of a specific community. After the C-RAC, composed of colonia residents, reviews and discusses the proposals from the counties, the proposals are then reviewed and approved by the TDHCA Governing Board for implementation. Funds deobligated from prior CSHC Program grant years and any program income recovered from CSHC funds shall be used by TDHCA for the CSHC Program.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum \$1,000,000/Minimum \$500,000</p> <p>If there are insufficient funds available to fully fund an application, the Administrator may accept the amount available and wait for remaining funds to be committed the next program year. Each program activity, such as new construction, rehabilitation, and tool library operation, for example, are limited to specific dollar amounts. TDHCA, at its discretion and in coordination with the county, may amend a contract to increase the budget amount based on performance and other factors.</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Outcomes include the number of colonia residents assisted and housing units assisted or created. In general, these are Activities Benefiting LMI Persons.</p>
<p>5</p>	<p><b>State Program Name:</b></p>	<p>Colonias to Cities Initiative Program</p>
	<p><b>Funding Sources:</b></p>	<p>CDBG CDBG Colonias Set-aside</p>



<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>The Colonia to Cities Initiative (CCIP) provides funding for basic infrastructure considered necessary for a colonia area to be annexed by an adjoining city. Priority is given to colonias that have received prior CDBG funding. The city's application must include documentation that annexation procedures have begun and a firm commitment from the city to annex the colonia upon completion of the project. Failure to annex the colonia may result in a requirement to repay the CDBG funding to TDA.</p>
<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>The TDA will evaluate the following factors prior to awarding CCIP funds:</p> <ul style="list-style-type: none"> <li>• the proposed use of the TxCDBG funds including the eligibility of the proposed activities;</li> <li>• the ability of the community to utilize the grant funds in a timely manner;</li> <li>• the availability of funds to the community for project financing from other sources;</li> <li>• The support of colonia residents for the proposed annexation;</li> <li>• the applicant's past performance on previously awarded TxCDBG contracts, if applicable;</li> <li>• cost per beneficiary; and</li> <li>• commitment by the city to annex the colonia area within one year of project completion.</li> </ul> <p>If applications exceed the available funding, the Department may use the scoring factors established for the Colonia Fund-Construction component.</p>
<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation are available upon request.</p>

	<b>Describe how resources will be allocated among funding categories.</b>	If there are an insufficient number of projects ready for CEDAP or CFC funding, the available Colonia funds may be transferred to the Colonias to Cities Initiative.
	<b>Describe threshold factors and grant size limits.</b>	Maximum \$1,000,000/Minimum \$250,000
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting Low and Moderate Income (LMI) Persons
6	<b>State Program Name:</b>	Community Development Fund
	<b>Funding Sources:</b>	CDBG
	<b>Describe the state program addressed by the Method of Distribution.</b>	<p>The Community Development (CD) Fund is available on a biennial basis through a competition based on of the State's 24 planning regions. The goal of the CD Fund is to develop viable communities by providing decent housing, viable public infrastructure, and a suitable living environment, principally for persons of low to moderate income.</p> <p>Applicants are encouraged to provide for infrastructure and housing activities that will improve opportunities for LMI persons. When considering and designing projects, applicants must continue to consider project activities that will affirmatively further fair housing, which includes project activities that provide basic infrastructure (such as water, sewer, and roads) that will benefit residential housing and other housing activities. Beginning in PY 2023, planning activities that meet the Planning/Capacity Building goal are eligible under this program; subrecipients may prioritize community-wide or activity/system focused planning activities as part of their CD Fund application request, rather than requesting these funds through a separate competition.</p>

<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>CD applicants are scored using a shared system with 25% of the final score determined by regional project priorities; 65% of the final score determined scoring factors identified by the Unified Scoring Committee, and 10% of the final score determined by state scoring factors. The USC is made up of one representative from each of the 24 geographic regions. The USC is responsible for determining objective scoring criteria for all regions for the CD Fund in accordance with the requirements in this Action Plan, including the numerical value of the points assigned to each scoring factor, during a public meeting. The USC may not adopt scoring factors that directly negate or offset the State's scoring factors. The state scoring will be based on the following:</p> <ol style="list-style-type: none"> <li>1. Past Performance– including timely submission of closeout reports, timeliness of environmental clearance, maximum utilization of funds, and timeliness of completing projects - 16 points.</li> <li>2. TxCDBG Priorities – including early public hearings and fair housing activities – 4 points.</li> </ol>
<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a>.</p>
<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>72.35% (approximately) of the State CDBG allocation is allocated to this fund. In addition, deobligated funds may be allocated to the CD Fund according to the procedures described in the Additional Detail on Method of Distribution section following this table.</p>
<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum \$500,000/Minimum \$200,000</p>

	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting LMI Persons
7	<b>State Program Name:</b>	Downtown Revitalization Programs
	<b>Funding Sources:</b>	CDBG
	<b>Describe the state program addressed by the Method of Distribution.</b>	The Downtown Revitalization awards grant funds for public infrastructure to foster and stimulate economic development in rural downtown areas. This program is considered one of the Rural Economic Development (RED) programs.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	<p>The selection criteria for the Downtown will focus upon the following factors:</p> <ul style="list-style-type: none"> <li>a. Applicant Need criteria, including median income, unemployment rate, and community need.</li> <li>b. Project criteria, including match ratio, economic development consideration, project priorities, emphasis on benefit to LMI persons, consistency with Main Street program or other community strategic plan (if applicable), and other HUD or TDA programmatic priorities; and</li> <li>c. Past performance on previously awarded TxCDBG contracts, if applicable.</li> </ul> <p>The department may set aside funds within this Downtown Revitalization Program specifically for Main Street communities.</p>
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a> .

	<b>Describe how resources will be allocated among funding categories.</b>	Approximately 12% of the State CDBG allocation is allocated to the Downtown Revitalization Program, less any funds required to meet the obligations of the RED Stage 2 pilot program; in addition, deobligated funds, program income funds, and other RED program funds may be allocated for the DRP programs if such funds have not been utilized by other RED programs (if available).
	<b>Describe threshold factors and grant size limits.</b>	Maximum \$500,000/Minimum \$250,000
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Eliminate or prevent slum and blight conditions.
8	<b>State Program Name:</b>	Fire, Ambulance, & Services Truck (FAST) Fund
	<b>Funding Sources:</b>	CDBG
	<b>Describe the state program addressed by the Method of Distribution.</b>	The Fire, Ambulance, & Services Truck (FAST) Fund provides funds for eligible vehicles to provide emergency response and special services to rural communities.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	Applications will be scored and ranked based on: <ul style="list-style-type: none"> <li>• Applicant need criteria, including Poverty Rate (Census data)</li> <li>• Project Priorities</li> <li>• Past performance on TxCDBG grants (see CD Fund State scoring factors)</li> </ul>

	<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a>.</p>
	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>Funding for the FAST Fund is dependent on availability of deobligated funds that can be awarded and expended prior to the grant origin year expiration date. No funds will be made available for the FAST Fund on the first day of the program year; if additional funds are deobligated during the program year, funds may be made available according to the procedures described in the Additional Detail on Method of Distribution section following this table.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum \$750,000/Minimum \$100,000</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Activities Benefiting LMI Persons</p>
<p><b>9</b></p>	<p><b>State Program Name:</b></p>	<p>General HOME Funds for Single-Family Activities</p>
	<p><b>Funding Sources:</b></p>	<p>HOME</p>

<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>TDHCA awards single-family activity funds as grants and loans through a network of local administrators for Homeowner Reconstruction (HRA), Tenant Based Rental Assistance (TBRA), and Homebuyer Assistance with New Construction (HANC). Assistance length and term depends on the type of activity. Non set-aside funds are initially made available on a regional basis in accordance with state statute (unless waived by the Governor in response to a state of federally declared disaster). Remaining funds are made available statewide through a first-come, first-served Reservation System, a contract-based system or some combination of these two methods. The method will be described in NOFAs and is informed by needs analysis, oversubscription for the activities, and public input.</p>
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<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>Applicants must comply with requirements stated in NOFAs, the Single-Family Programs Umbrella Rule, and State HOME Program Rules in effect at the time they receive their award.</p> <p>Review of Applications:  All programs will be operated through direct administration by TDHCA, reallocation of deobligated funding and program income, or through the release of a NOFA with an emphasis on geographic dispersion of funds, particularly in rural areas of the state, using a Regional Allocation Formula (RAF) which uses objective measures to determine rural housing needs such as poverty and substandard housing. For NOFAs, applicants must submit a complete application to be considered for funding or eligibility to access the Reservation System. Applications received by TDHCA will be reviewed for applicable threshold, eligibility and/or scoring criteria in accordance with the Department’s rules and application review procedures published in the NOFA and/or application materials. Information related to NOFAs, application requirements and fees, and application review procedures and materials is available at <a href="https://www.tdhca.texas.gov/home-application-materials">https://www.tdhca.texas.gov/home-application-materials</a>.</p> <p>Selection Process:  Qualifying applications for funding are recommended to TDHCA’s Board based on the Department’s rules and any additional requirements established in the NOFA. Applications for participation in the Reservation System are not submitted to the TDHCA Board for approval, but are subject to all other review requirements. Should TDHCA reprogram unutilized HOME funds for development activities, applications submitted for development activities will also receive a review for financial feasibility, underwriting, and compliance under the HOME Final Rule as well as the Department’s existing previous participation review process.</p> <p>The state may select subrecipients or state recipients as described in program rules and NOFAs, or may conduct a portion of HOME activities directly in accordance with §92.201.</p> <p>When administrators have not successfully expended the HOME funds within their contract period, TDHCA de-obligates the funds and pools the dollars for redistribution according to TDHCA’s Reallocation of Financial Assistance rule at 10 TAC §1.19, and consistent with the reservation system and any open NOFAs. TDHCA may also reallocate these funds through a competitive NOFA process resulting in an award of funds.</p>
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	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>TDHCA announces the annual allocation of HOME Single-Family funds through a NOFA and specifies that the funds will initially be made available using a Regional Allocation Formula (RAF) which divides funds among 26 sub-regions as required by state statute. The allocation method is developed based on a formula which considers need and funding availability. After a period of time established in the NOFA, regional allocations collapse. Following the release of the annual allocation through the RAF, TDHCA periodically adds HOME program income and deobligated funds to the funds available via the Reservation System and either allocates a specific amount of funds per activity based on funding priorities or may allow HOME administrator’s requests for funding through the system to determine how the funds are finally allocated among fund categories. TDHCA may specify the maximum amount of funds that will be released for each activity type and may allocate funds via a first come, first served Reservation System or alternate method based on public comment. All NOFAs can be found on TDHCAs NOFA page on the website at <a href="https://www.tdhca.texas.gov/notices-funding-availability-nofas">https://www.tdhca.texas.gov/notices-funding-availability-nofas</a>.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Applicants must comply with requirements stated in the HOME NOFA and State HOME Program Rules in effect the year they receive their award. These sources provide threshold limits and grant size limits per activity type.</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Assistance to LMI households.</p>
<p><b>10</b></p>	<p><b>State Program Name:</b></p>	<p>HOME Multifamily Development</p>
	<p><b>Funding Sources:</b></p>	<p>HOME</p>
	<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>The Multifamily Direct Loan Program awards HOME loans to for-profit and nonprofit multifamily developers to construct and rehabilitate affordable rental housing. These loans typically carry a 2% interest rate (or higher/lower if reflected in the NOFA) and have terms ranging from 15 years to 40 years. The vast majority of the loans are made to developments that also have awards of 4% or 9% HTC.</p>

<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>TDHCA's Texas Administrative Code Chapters 10, 11, and 13 set forth the minimum requirements that document a project owner's readiness to proceed with the development as evidenced by site control, notification of local officials, the availability of permanent financing, appropriate zoning for the site, and a market and environmental study. Additionally, the development must also meet financial feasibility and subsidy layering requirements. After a period of Regional Allocation, HOME funds are typically awarded on a first-come, first-served basis, as long as the criteria above are met, although the NOFA may specify other priorities used to rank applications, such as giving priority to requests for larger amounts of funding. After a certain date, for HOME Multifamily Development applications layered with 9% HTCs, the highest scoring applications in the 9% cycle that also request HOME funds are prioritized according to 9% criteria.</p>
<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>A maximum of 85% of HOME Multifamily Funds, are available for general activities and at least 15% for Community Housing Development Organizations (CHDOs). The HOME Multifamily Direct Loan Program may make funds available annually or through a special purpose NOFA under the General, Supportive Housing/Soft Repayment, or CHDO Set-Asides, or specifically to previously-awarded developments that have experienced cost increases since initial award.</p>
<p><b>Describe threshold factors and grant size limits.</b></p>	<p>TDHCA's Qualified Allocation Plan set forth a minimum set of requirements that document a project owner's readiness to proceed with the development as evidenced by site control, notification of local officials, the availability of permanent financing, experience of the developer, appropriate zoning for the site, and a market and environmental study. The development must also meet financial feasibility and subsidy layering requirements. Awards of HOME Multifamily Direct Loan Program funds range from approximately \$4,000,000 to \$10,000,000 per application typically in the form of a loan, but these amounts may change and the caps may be lower or higher if so reflected in a published NOFA.</p>
<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Assistance to LMI households.</p>

<b>11</b>	<b>State Program Name:</b>	Local Revolving Loan Funds
	<b>Funding Sources:</b>	CDBG
	<b>Describe the state program addressed by the Method of Distribution.</b>	TxCDBG allows communities that received Texas Capital Fund awards to support job creation or retention, and that created a local revolving loan fund, prior to implementation of the interim rule published November 12, 2015, to retain the program income generated by the economic development activities and to reinvest the funds to support job creation/retention activities.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	Criteria are established by local subrecipients, with guidance from the TxCDBG Revolving Loan Fund Information Guide provided by TDA.
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	The TxCDBG Revolving Loan Fund Information Guide is provided directly to subrecipients that have established revolving loan funds.
	<b>Describe how resources will be allocated among funding categories.</b>	Program Income generated by a local RLF is retained by that community or returned to TDA for distribution according to the Action Plan. See "Grantee Unique Appendices" for table of local revolving loan funds.
	<b>Describe threshold factors and grant size limits.</b>	Parameters for minimum or maximum loan amounts may be established by the subrecipient.

	<b>What are the outcome measures expected as a result of the method of distribution?</b>	<p>Activities Benefitting LMI Persons</p> <p>Activities Benefitting LMI Persons through Job Creation/Retention</p>
12	<b>State Program Name:</b>	National Housing Trust Fund
	<b>Funding Sources:</b>	Housing Trust Fund
	<b>Describe the state program addressed by the Method of Distribution.</b>	<p>The NHTF Program awards loans to for-profit and nonprofit multifamily developers to construct/rehabilitate multifamily affordable housing. Because the NHTF is required to benefit ELI households at or below the greater of 30% of AMI or the poverty rate, the units will likely not be able to service a debt payment. The constraints on NHTF dictate that the funds typically be available as construction only loans, 2% interest rate permanent loans with fixed monthly payments, deferred payment, deferred forgivable permanent loans, partially amortizing loans (with the amount not in a fixed payment due at sale, refinance, or at the end of the loan term), or 75% cash flow loans (FHA only) if required, to leverage with tax credits or other financing mechanisms. Loan types may be further limited by NOFA.</p>
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	<p>TDHCA's Texas Administrative Code Chapters 11 and 13 set forth a minimum set of requirements that document a project owner's readiness to proceed with the development. The Development must also meet financial feasibility requirements. After applied period of regional distribution, the funds are awarded on a first-come, first-served basis, as long as the criteria above are met, although the NOFA may specify other priorities used to rank applications, such as giving priority to requests for larger amounts of funding. In the event that multiple qualifying applications are submitted on the same date and insufficient funding exists to award all of them, applications will be scored according to the criteria specified in the NOFA. 10 TAC §13.6 establishes criteria that may be used for scoring; however, staff might identify within a given NOFA that additional scoring criteria is necessary to meet current needs.</p> <p>Remaining NHTF may then be made available statewide in the annual NOFA in other set-asides, or transferred to a special purpose NOFA.</p>

	<b>Describe how resources will be allocated among funding categories.</b>	NHTF will not be allocated among funding categories. The NHTF funds are provided for multiple uses, to meet the requirement to serve ELI households.
	<b>Describe threshold factors and grant size limits.</b>	TDHCA's Texas Administrative Code Chapters 10, 11, and 13 set forth a minimum set of requirements that document a project owner's readiness to proceed with the development as evidenced by site control, notification of local officials, the availability of permanent financing, experience of the developer, appropriate zoning for the site, and a market and environmental study. Additionally, the development must have certain unit amenities and common development amenities. Developments must also meet financial feasibility requirements. Award funds typically range up to \$10,000,000 per application in the form of a loan for this program, but which may be capped at a lower or higher amount in the NOFA.
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Assistance to ELI households.
13	<b>State Program Name:</b>	Rural Economic Development Program – Stage 1
	<b>Funding Sources:</b>	CDBG
	<b>Describe the state program addressed by the Method of Distribution.</b>	The Rural Economic Development Program – Stage 1 (RED1) provides eligible communities with financial assistance to prepare an economic development strategy, redevelopment plan, economic resiliency plan, or similar plan for economic development opportunities in the community. A RED1 project must develop a plan that provides the grant recipient with a detailed assessment of current and long-term community needs, proposes business recruitment and expansion strategies, and identifies potential projects to support sustainable economic growth.

	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	The selection criteria for the RED1 program will focus upon the following factors: a. Community Distress; b. Benefit to LMI Persons; c. Economic Development organizational structure and capacity; d. Planning Strategy and Products; and e. Previous funding for RED1 or RED2 programs.
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a> .
	<b>Describe how resources will be allocated among funding categories.</b>	No funds have been set aside for RED 1 for Program Year 2024 as the pilot program is evaluated.
	<b>Describe threshold factors and grant size limits.</b>	Maximum \$45,000 / Minimum \$20,000
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting LMI Persons Activities to Eliminate Slum and Blighted Areas
<b>14</b>	<b>State Program Name:</b>	Rural Economic Development Program – Stage 2
	<b>Funding Sources:</b>	CDBG

	<b>Describe the state program addressed by the Method of Distribution.</b>	The Rural Economic Development Program – Stage 2 (RED2) provides financial assistance to implement eligible projects identified in previously adopted economic development plans. Eligible economic development projects include, but are not limited to, projects that create and retain businesses owned by community members, address slum and blighted conditions, and create LMI jobs. Projects must meet a national objective (see 24 CFR 570.483) and identify an eligible activity.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	The RED2 program will be offered first-come-first-served to communities that have completed the RED1 pilot program. The competitive RED 2 opportunity - where RED2 grant applications will be received annually for communities with completed economic development plans that are comparable to RED1 products but not prepared through the CDBG program – is not yet available pending the outcome of the pilot program.
	<b>Describe how resources will be allocated among funding categories.</b>	\$3 million in program funds have been set aside for RED 2 for Program Year 2024 to complete the pilot program.
	<b>Describe threshold factors and grant size limits.</b>	Maximum \$1,000,000 / Minimum \$350,000
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting LMI Persons Activities to Eliminate Slum and Blighted Areas
15	<b>State Program Name:</b>	State Mandated Contract for Deed Set-Aside
	<b>Funding Sources:</b>	HOME

	<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>Rider 6 of the TDHCA bill pattern within the General Appropriations Act for Fiscal Years 2024-2025 requires TDHCA to identify funding sources and estimated funding levels for contract for deed conversions and other activities for families that reside in a colonia and earn 60 percent or less of the applicable area median family income (AMFI) and the home converted must be their primary residence. Funds are set-aside for households at or below 60 percent AMFI and who reside in a colonia for a period of not less than 60 days before being made available statewide, excluding Participating Jurisdictions, to those at or below 80% AMFI.</p>
	<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>Administrators must meet HOME Program threshold requirements to access funding. Funding is made available to contract for deed administrators on a first-come, first-served basis, in addition to threshold requirements outlined in the State HOME Program Rule, through the Reservation System.</p>
	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>TDHCA will set aside \$1,000,000 for Contract for Deed activities annually and will release the funds through the reservation system as a method of distribution.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Applicants must meet the thresholds provided in the NOFA and State HOME Program Rules in effect the year in which they receive their award. Administrators are not awarded a grant following a successful application. Rather funds are awarded on a household by household basis.</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Assistance to households with incomes at or below 60% AMFI.</p>
<p><b>16</b></p>	<p><b>State Program Name:</b></p>	<p>State Revolving Fund</p>
	<p><b>Funding Sources:</b></p>	<p>CDBG</p>



<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>TxCDBG retains the program income generated by economic development activities and reinvests the funds to continue supporting economic development activities.</p> <p>In accordance with 24 CFR 570.479(e)(ii), the State has determined that program income generated by TCF beginning PY 2017 must be returned to the State for redistribution to new economic development activities. TCF awards are made for a specific project, based on the minimum necessary work to support the creation or retention of specific jobs, which must be completed prior to close out of the TCF contract. Therefore the community is unlikely to continue funding the same activity in the near future as described in the regulation.</p>
<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>Application Guides for the Rural Economic Development programs can be found on the TDA website.</p>
<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Application Guides for the Rural Economic Development programs can be found on the TDA website.</p>
<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>Program Income generated by the State Revolving Fund in prior Program Years will be allocated to the Rural Economic Development programs. Program Income collected during the current Program Year will be made available through the State Revolving Fund in subsequent Program Year(s).</p>
<p><b>Describe threshold factors and grant size limits.</b></p>	<p>The amount of program income generated will determine the amount of funds available.</p>

	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefitting LMI Persons and the elimination of slum and blight conditions.
17	<b>State Program Name:</b>	State Urgent Need Fund
	<b>Funding Sources:</b>	CDBG
	<b>Describe the state program addressed by the Method of Distribution.</b>	The State Urgent Need Fund is available following natural disasters and events that are not eligible for federal disaster assistance. The SUN program provides financial assistance to address disaster-related damage to public infrastructure and utilities, including repair, replacement, and mitigation measures.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	<p>The State Urgent Need Fund is available as needed following events that receive a proclamation or other formal request for state agency assistance from the Governor (or designee), for which the Governor has not requested federal assistance.</p> <ul style="list-style-type: none"> <li>• Priority will be given to projects that address safe drinking water, clearance of debris creating unsafe conditions, and other priorities as announced by the Commissioner of Agriculture.</li> <li>• The situation addressed by the applicant must be both unanticipated and beyond the control of the local government.</li> <li>• The problem being addressed must be of recent origin. For SUN assistance, this means that the application for assistance must be submitted no later than twelve months from the date of the state disaster declaration.</li> <li>• The applicant must demonstrate that adequate local funds are not available. For SUN assistance, this generally means the applicant has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit required by state statute, and funds from other state or federal sources are not available to completely address the problem.</li> </ul> <p>TDA may consider whether funds under an existing CDBG contract are available to be reallocated to address the situation.</p>

	<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a>.</p>
	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>Of the State CDBG allocation, \$0 is allocated initially. However, a maximum \$3 million may be transferred from other fund categories for either State Urgent Need Fund or Water Crisis Assistance Fund projects as needed.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum: \$500,000 for projects benefitting a single jurisdiction / \$1 million may be authorized for projects benefitting multiple communities.</p> <p>Minimum: \$50,000</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Activities Benefitting LMI Persons</p> <p>Activities Addressing an Urgent Need</p>
<p><b>18</b></p>	<p><b>State Program Name:</b></p>	<p>Texas ESG Program</p>
	<p><b>Funding Sources:</b></p>	<p>ESG</p>

<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>The ESG Program awarded contracts in PY2023, by making a portion of the funds available to prior subrecipients who have demonstrated effective performance under their prior award, with the remainder of funds offered under a competitive funding application. This process will carry over to the PY2024 funds, and some portion of the allocation may be set aside for direct awards to Subrecipients receiving funds for development of non-congregate shelter under HOME-ARP or awarded to nonprofit legal services providers who will accept referrals from subrecipients of ESG funds. ESG funds are awarded to private nonprofit organizations, cities, and counties in the State of Texas to provide the services necessary to help persons who are experiencing or at-risk of homelessness quickly regain stability in permanent housing. To prioritize geographic dispersion of funds, funding is allocated to each CoC based on an allocation formula that includes population and other data as described in the State ESG rules. Award authority for all ESG funds remains with TDHCA's Board, and TDHCA contracts directly with all subrecipients.</p> <p>Any funds returned to the Department from prior year ESG allocations will be redistributed in accordance with the 10 TAC §7.41, or as otherwise approved by the TDHCA Board or as required by HUD.</p>
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<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>TDHCA will review the performance of existing subrecipients to determine whether they meet criteria, including timely expenditure of funds and acceptable monitoring history, prior to making a determination about the suitability of the subrecipient to be offered a new award of funding. In a competitive process with TDHCA, applications will be selected for an award based on requirements stated in the ESG NOFA and State ESG Program Rules in effect the year they receive their award. These sources provide threshold requirements, which must be met prior to an application being considered for an award, and selection criteria, which are utilized to rank applications and determine the order in which applications may be funded. ESG Subrecipients that are awarded ESG funds will be required to maintain the terms of the contract under which they were competitively awarded, including the performance targets that were a condition of the award.</p> <p>Threshold requirements: information necessary to conduct a previous participation review (including review of single audit compliance), and documentation sufficient to determine that the subrecipient has adequate capacity to administer the ESG funds, including but not limited to timely reporting.</p> <p>Selection criteria include items related to program design, including the type and quality of services offered and performance outcomes.</p>
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<p><b>Describe the process for awarding funds to state recipients and how the state will make its allocation available to units of general local government, and non-profit organizations, including community and faith-based organizations. (ESG only)</b></p>	<p>TDHCA may retain some portion of the allocation of funds and offer this portion for direct awards to certain subrecipients that have either successfully administered a prior ESG award, or have an existing HOME-ARP funded non-congregate shelter, or will provide legal services to clients referred by other ESG subrecipients. For a competitive process, TDHCA will release a NOFA prior to receipt of ESG funding. The NOFA will include both threshold and selection criteria, and awards will be made to eligible applicants based on the application rank within their CoC region.</p> <p>Eligible applicant organizations are Units of General Purpose Local Government, including cities, counties and metropolitan cities; urban counties that receive ESG funds directly from HUD; and a consolidation of units of general purpose local governments, like a Council of Governments. Other instrumentalities of a city or county, like a Local Mental Health Authority, may be eligible and should seek guidance from TDHCA to determine if they may apply. Governmental organizations such as Public Housing Authorities (PHAs) and housing finance agencies are not eligible and cannot apply directly for ESG funds.</p> <p>Eligible applicants also include private nonprofit organizations that are secular or religious organizations described in section 501(c) of the Internal Revenue Code of 1986, are exempt from taxation under subtitle A of the Code, have an acceptable accounting system and a voluntary board, and practice non-discrimination in the provision of assistance. Faith-based organizations receiving ESG funds, like all organizations receiving HUD funds, must serve all eligible beneficiaries without regard to religion.</p>
<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>ESG funds may be used for four service components: street outreach, emergency shelter, homelessness prevention, and rapid re-housing assistance. Funds may also be utilized for HMIS/HMIS comparable database and administration in proportion to funding utilized for service components. In order for TDHCA to meet the requirement of no more than 60% of funds expended in street outreach and emergency shelter per 24 CFR §576.100(b), TDHCA reserves the right to remove applications proposing street outreach and emergency shelter from competition when 60% of ESG funds have been awarded to higher ranking applications proposing these activities.</p>

	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>While applications for TDHCA ESG funds may request funds for multiple service component, each service type proposed in an application is individually considered for an award of funds. Applicants will be awarded an amount not to exceed an amount set forth in the program rules or NOFA for street outreach activities, rapid re-housing, homeless prevention, and emergency shelter activities. Funds for HMIS are limited to 12% of the amount awarded for Street Outreach, Emergency Shelter, Rapid Rehousing, and Homeless Prevention, and funds for administration are limited to 3% of these amounts.</p> <p>Threshold requirements; information necessary to conduct a previous participation review (inclusive of single audit requirements), and documentation sufficient to determine that the subrecipient has adequate capacity to administer the ESG funds, including but not limited to timely reporting.</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>The expected outcome is that funds will be awarded to organizations that have the administrative and performance capacity to provide the services needed in their communities, with a broad distribution of funding to reach as many areas of the state with quality services as possible.</p>
<p><b>19</b></p>	<p><b>State Program Name:</b></p>	<p>Texas HOPWA Program</p>
	<p><b>Funding Sources:</b></p>	<p>HOPWA</p>
	<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>The DSHS HIV Care and Medications Unit administers the State of Texas HOPWA formula grant from HUD. The DSHS HOPWA Program serves all 254 counties in Texas, prioritizing those located outside of the six HOPWA-funded Metropolitan Statistical Areas: Austin, Dallas, El Paso, Fort Worth, Houston, and San Antonio. Therefore, the program targets less populated and non-urban areas of Texas.</p>
	<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>Visit the DSHS website for information on grant applications, available funding opportunities, application criteria, etc. <a href="http://www.dshs.texas.gov/fic/default.shtm">http://www.dshs.texas.gov/fic/default.shtm</a>. The Texas Health and Human Services Procurement and Contracting Services (PCS) Division oversees procurement and contracting services for DSHS. This division handles solicitations, contract development, contract execution, and serves as the office of record for DSHS' contracting needs.</p>

	<p><b>Identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community-based organizations). (HOPWA only)</b></p>	<p>DSHS contracts with AAs in six Ryan White Part B HIV planning areas encompassing 26 HSDAs. AAs subcontract with Project Sponsors in each HSDA for statewide service delivery. DSHS selects AAs through a combination of competitive requests for applications (RFAs) and intergovernmental contracts. AAs act as an administrative arm for DSHS, with DSHS oversight, by administering the HOPWA program locally for a five-year project period. A Project Sponsor is a nonprofit organization or governmental housing agency that receives funds under a contract with the AA to provide eligible housing and other support services or administrative services. Historically, many of the nonprofit Project Sponsors that provide HOPWA services have met the definitions of grassroots, faith-based, or community-based organizations</p>
	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>Project Sponsors propose funding allocations and submit them to their respective AA and DSHS for approval. Project Sponsors base allocations on many factors, including but not limited to, number of households projected to continue into the next year, local unmet need, housing costs, prior number of households served, average expenditures per household, changes in the number of PLWH in poverty, etc. During the program year, DSHS reallocates funds within and between HSDAs throughout each planning region as needed.</p> <p>DSHS will reserve \$466,666 from the latest allocation for use in the next annual plan and include this amount under Prior Year Resources. DSHS will only use \$8,130,206 during this annual plan.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>DSHS uses a formula to determine allocations by HSDA. The formula uses the number of PLWH by county with adjustments for overlapping HOPWA formula jurisdictions, poverty rates, and housing costs DSHS reserves the right to adjust formula allocations when accounting for local factors, including unmet need, prior performance and expenditures, and any other relevant metrics. The formula does not provide a minimum or maximum grant size limit.</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>PLWH and their households will establish or maintain affordable and stable housing, reduce their risk of homelessness, and improve their access to health care and supportive services. With stable housing, PLWH can access comprehensive healthcare, adhere to HIV treatment, and achieve viral suppression.</p>
<p><b>20</b></p>	<p><b>State Program Name:</b></p>	<p>Utility U Job Training Program</p>
	<p><b>Funding Sources:</b></p>	<p>CDBG</p>



<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>Utility U provides funds to cities and counties, in coordination with water and wastewater utilities, to provide job training opportunities in the utility field. Both classroom and on-site training methods provided by a community based development organization (CBDO) or similar organization shall provide critical utility industry skills to current and newly hired employees to create or enhance job opportunity.</p>
<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>The Utility U Program will be available to cities and counties only upon recommendation by two or more state or federal regulatory or funding agencies. These agencies are expected to evaluate the need for job training for a specific utility or group of utilities prior to making a recommendation to TDA. The utility must agree to employ the trainee for a minimum of two years following completion of the training.</p>
<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation are available upon request.</p>
<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>\$0 of allocation is made available for the Utility U Program on the first day of the program year. If an eligible project is recommended for funding, up to \$200,000 may be transferred from other fund categories as needed.</p>
<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum \$100,000/Minimum \$30,000</p>
<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Activities Benefiting LMI Persons</p>

21	<b>State Program Name:</b>	Water Crisis Assistance Fund
	<b>Funding Sources:</b>	CDBG
	<b>Describe the state program addressed by the Method of Distribution.</b>	The Water Crisis Assistance Fund is available to assist communities where the utility system has been placed under alternative management by state regulators. The WCA Fund provides financial assistance following a appointment of a Receiver and/or temporary Manager, and may be used to address system deficiencies needed to return the system to regular operations.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	The Water Crisis Assistance Fund is available as needed following state appointment of a utility district or other political subdivision to serve as a Receiver or Temporary Manager, pursuant to Texas Water Code §13.412. Projects must address critical system deficiencies, such as those identified in a Notice of Violation issued by the Texas Commission on Environmental Quality (TCEQ).  Once a utility receives a Water Crisis Assistance Fund project, that utility is no longer eligible to apply for future WCA funding.
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a> .
	<b>Describe how resources will be allocated among funding categories.</b>	Of the State CDBG allocation, \$0 is allocated initially. However, a maximum \$3 million may be transferred from other fund categories for either State Urgent Need Fund or Water Crisis Assistance Fund projects as needed.
	<b>Describe threshold factors and grant size limits.</b>	Maximum \$500,000/Minimum \$50,000

<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Activities Benefitting LMI Persons</p>
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**Discussion:**

The distribution process for 4% HTC Program, 9% HTC Program, HHSP, State Housing Trust Fund Program, MCC Program, My First Texas Home Program, NSP PI Program, Section 8 HCV Program, Section 811 PRA Program, and TCAP RF can be found in the documents that govern these programs, all available at <https://www.tdhca.texas.gov> The CDBG Colonia Set-Aside Methods of Distribution will be included in Action Plan Section 48, which is specifically about colonias.

Along with selecting appropriate entities to administer funding, the State must ensure that these entities appropriately expend their funds. For example, in addition to tracking of the number of households supported by HOPWA, AAs routinely monitor Project Sponsors for compliance and performance. DSHS and annually compiles program progress reports, reviewing household and expenditure outputs as well as, housing stability outcomes. More information on CPD Programs monitoring efforts are described in Strategic Plan Section 80, Monitoring.

Additional information for Allocation of CDBG program income and deobligated funds has been provided as an attachment.

## **AP-35 Projects – (Optional)**

### **Introduction:**

Per the IDIS Desk Guide, Project-level detail is not required for a state grantee’s Annual Action Plan. Once a state grantee has allocated funding via its Method of Distribution, the state grantee will use the Projects sub-menu in IDIS Online to add its projects for the program year.

### **Describe the reasons for allocation priorities and any obstacles to addressing underserved needs**

Because no projects have been entered to date in this section, this section is not applicable. Allocation priorities are discussed in Action Plan Section 25, which also includes meeting special needs. Actions to meeting underserved needs are found in Action Plan Section 85. CDBG-DR allocation priorities can be found in the CDBG-DR Action Plans at: <http://recovery.texas.gov/action-plans/index.html>

**AP-40 Section 108 Loan Guarantee – 91.320(k)(1)(ii)**

**Will the state help non-entitlement units of general local government to apply for Section 108 loan funds?**

No

**Available Grant Amounts**

Not applicable

**Acceptance process of applications**

Not applicable

## **AP-45 Community Revitalization Strategies – 91.320(k)(1)(ii)**

**Will the state allow units of general local government to carry out community revitalization strategies?**

Yes

### **State’s Process and Criteria for approving local government revitalization strategies**

TDA's CDBG program operates with a principle of “local control” – supporting locally identified projects that primarily benefit LMI persons, prevent/eliminate slum and blight conditions, and support community planning efforts.

The Community Development Fund provides funds to meet needs identified at both the local and regional level, including utility infrastructure, road reconstruction, community facilities, fire protection, and community or utility planning activities.

The Downtown Revitalization Program is intended to stimulate economic growth through the funding of pedestrian-center public infrastructure improvements to aid in the elimination of slum and blight conditions in the historic downtown areas of rural communities; the Main Street set aside is available to communities designated as an official Texas Main Street City by the Texas Historical Commission. Awarded cities receive funds to make public infrastructure improvements in the designated historic, downtown business district. TDA consistently receives more applications than can be funded through this popular program.

TDA is developing the RED1 and RED2 programs to allow communities to create their own economic development strategies and then implement the action steps outlined in that plan.

The Colonia Fund offers housing and utility infrastructure improvements to disadvantaged communities near the Texas-Mexico border that have been identified by the county as colonia communities.

# AP-48 Method of Distribution for Colonias Set-aside – 91.320(d)&(k)

## Introduction

## Distribution Methods

Table 9 - Distribution Methods by State Program for Colonias Set-aside

<b>1</b>	<b>State Program Name:</b>	Colonia Economically Distressed Areas Program
	<b>Funding Sources:</b>	CDBG CDBG Colonias Set-aside
	<b>Describe the state program addressed by the Method of Distribution.</b>	Colonia Economically Distressed Areas Program (CEDAP) Legislative Set-Aside fund provides funding to eligible cities and counties to assist colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with being connected to a TWDB Economically Distressed Area Program or similar water or sewer system improvement project.
	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	<p>The TDA will evaluate the following factors prior to awarding CEDAP funds:</p> <ul style="list-style-type: none"> <li>• The proposed use of the CDBG funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through Economically Distressed Area Program or similar program;</li> <li>• The ability of the applicant to utilize the grant funds in a timely manner;</li> <li>• The availability of funds to the applicant for project financing from other sources;</li> <li>• The applicant's past performance on previously awarded CDBG contracts;</li> <li>• Cost per beneficiary; and</li> <li>• Proximity of project site to entitlement cities or metropolitan statistical areas (MSAs).</li> </ul>

	<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation are available upon request once mainline construction has been confirmed.</p>
	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>The Texas Legislature has set aside 3.5% of the State CDBG allocation for the CEDAP program.</p> <p>The allocation is distributed on an as-needed basis. In order to fully obligate the annual Colonia Funds to benefit colonia residents, funds not requested for the CEDAP activities may be transferred to other Colonia Fund programs.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum \$1,000,000/Minimum \$75,000</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Activities Benefitting LMI Persons</p>
<p><b>2</b></p>	<p><b>State Program Name:</b></p>	<p>Colonia Fund Construction Program</p>
	<p><b>Funding Sources:</b></p>	<p>CDBG CDBG Colonias Set-aside</p>
	<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>The goal of the Colonia Fund: Construction (CFC) program is to develop viable communities by providing decent housing, viable public infrastructure, and a suitable living environment, principally for persons residing within a community or area that meets the definition of a colonia. An eligible county applicant may submit an application for eligible construction activities, prioritizing access to public utilities and other basic human needs for colonia residents.</p>



	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	While the Colona Planning and Needs Assessment is underway, the selection criteria for the Colonia Fund: Construction will focus upon the following factors: number of colonia communities identified in the county, and previous funding.
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a> .
	<b>Describe how resources will be allocated among funding categories.</b>	Of the State CDBG allocation 6.5% (approximately) is allocated to the Colonia Fund Construction Program. Subsequent to awarding funds, any portion of the CFP allocation that is unable to be awarded may be used to fund additional eligible applications under any other Colonia Fund Set-aside program.
	<b>Describe threshold factors and grant size limits.</b>	Maximum \$1,000,000/Minimum \$150,000
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting LMI Persons
<b>3</b>	<b>State Program Name:</b>	Colonia Fund Planning & Needs Assessment Program
	<b>Funding Sources:</b>	CDBG CDBG Colonias Set-aside
	<b>Describe the state program addressed by the Method of Distribution.</b>	The Colonia Fund Planning Program is designed to provide needs assessments for colonia communities on a county-by county basis.

	<b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b>	The Colonia Fund Planning Program funds assess the conditions and current needs of colonia communities in each county within 150 miles of the Texas-Mexico border on a rotating basis. All counties eligible to participate in the colonia set-aside have been offered an opportunity to receive planning and needs assessment services coordinated through a CFP grant to a designated Planning Zone.
	<b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b>	Guidelines, applications and additional program documentation can be found on TDA's website at <a href="http://www.texasagriculture.gov">www.texasagriculture.gov</a> .
	<b>Describe how resources will be allocated among funding categories.</b>	As planning activities are currently funded for all eligible counties, no funds are allocated to the Colonia Fund Planning Program for this Program Year.
	<b>Describe threshold factors and grant size limits.</b>	Not applicable for Program year 2024.
	<b>What are the outcome measures expected as a result of the method of distribution?</b>	Activities Benefiting LMI Persons
.4	<b>State Program Name:</b>	Colonia Self-Help Center Legislative Set-Aside (administered by TDHCA)
	<b>Funding Sources:</b>	CDBG

<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>Administered by TDHCA and funded through CDBG, the Colonia Self-Help Center (CSHC) Program serves colonias along the Texas-Mexico border. Colonia Self-Help Centers (Centers) provide concentrated on-site technical assistance to low- and very low-income individuals and families in a variety of ways including housing, community development activities, infrastructure improvements, outreach and education. Key services include: housing rehabilitation; reconstruction; new construction; surveying and platting; construction skills training; tool library access for self-help construction; housing finance; credit and debt counseling; grant writing; infrastructure construction and access; contract-for-deed conversions; and capital access for mortgages.</p>
<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>Approximately 36,136 residents live in the targeted colonias served by the CSHC Program. The Centers process applications from income eligible households using a selection criteria established by each Center. Eligible households must reside in a targeted colonia, which has been preselected by each county and approved by C-RAC. Households must earn less than 80% of AMI.</p>
<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>The CSHC Program is statutorily required to be provided in Cameron/Willacy, El Paso, Hidalgo, Nueces, Starr, and Webb counties. Statute allows for additional Centers to be established in any other county if TDHCA deems it necessary and appropriate and if the county is designated an economically distressed area under statute. TDHCA established additional Centers in Maverick and Val Verde counties. Each Center must serve five targeted colonias within the county it serves. The Centers conduct outreach activities throughout the contract period to inform colonia residents of program benefits and eligibility criteria and to provide application assistance.</p>

	<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>The Texas Legislature has set aside 2.5% of the State CDBG allocation for the Colonia SHC program.</p> <p>Resources are allocated after analysis and input from each community. Counties that are statutorily designated to participate in the CSHC Program conduct a needs assessment before proposing which target colonias should receive concentrated attention and the scope of program activities and funding. Each county designs a proposal unique to the needs of a specific community. After the C-RAC, composed of colonia residents, review and discuss the proposals from the counties, the proposals are then reviewed and approved by the TDHCA Governing Board for implementation. Funds deobligated from prior CSHC Program grant years and any program income recovered from CSHC Program funds shall be used by TDHCA for the CSHC Program.</p>
	<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Maximum \$1,000,000/Minimum \$500,000</p> <p>CSHC program rules limit the assistance to up to \$1,000,000 per CSHC per contract period. If there are insufficient funds available to fully fund an application, the Administrator may accept the amount available and wait for remaining funds to be committed the next program year. Each program activity, such as new construction, rehabilitation, reconstruction, and tool library operation, for example, are limited to specific dollar amounts. TDHCA, at its discretion and in coordination with the county, may amend a contract to increase the budget amount, based on performance and other factors.</p>
	<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Outcomes include: colonia residents assisted, housing units assisted or created, instances of technical assistance provided, and instances of information delivered. In general, these are Activities Benefiting LMI Persons.</p>
<p><b>5</b></p>	<p><b>State Program Name:</b></p>	<p>Colonias to Cities Initiative Program</p>
	<p><b>Funding Sources:</b></p>	<p>CDBG CDBG Colonias Set-aside</p>

<p><b>Describe the state program addressed by the Method of Distribution.</b></p>	<p>The Colonia to Cities Initiative (CCIP) provides funding for basic infrastructure considered necessary for a colonia area to be annexed by an adjoining city. Priority is given to colonias that have received prior CDBG funding. The city's application must include documentation that annexation procedures have begun and a firm commitment from the city to annex the colonia upon completion of the project. Failure to annex the colonia may result in a requirement to repay the CDBG funding to TDA.</p>
<p><b>Describe all of the criteria that will be used to select applications and the relative importance of these criteria.</b></p>	<p>The TDA will evaluate the following factors prior to awarding CCIP funds:</p> <ul style="list-style-type: none"> <li>• the proposed use of the TxCDBG funds including the eligibility of the proposed activities;</li> <li>• the ability of the community to utilize the grant funds in a timely manner;</li> <li>• the availability of funds to the community for project financing from other sources;</li> <li>• The support of colonia residents for the proposed annexation;</li> <li>• The applicant's past performance on previously awarded TxCDBG contracts, if applicable;</li> <li>• cost per beneficiary; and</li> <li>• commitment by the city to annex the colonia area within one year of project completion.</li> </ul> <p>If applications exceed the available funding, the Department may use the scoring factors established for the Colonia Fund-Construction component.</p>
<p><b>If only summary criteria were described, how can potential applicants access application manuals or other state publications describing the application criteria? (CDBG only)</b></p>	<p>Guidelines, applications and additional program documentation are available upon request.</p>
<p><b>Describe how resources will be allocated among funding categories.</b></p>	<p>If there are an insufficient number of projects ready for CEDAP or CFC funding, the available Colonia funds may be transferred to the Colonias to Cities Initiative.</p>

<p><b>Describe threshold factors and grant size limits.</b></p>	<p>Minimum \$100,000/Maximum \$1,000,000</p>
<p><b>What are the outcome measures expected as a result of the method of distribution?</b></p>	<p>Activities Benefiting Low and Moderate Income (LMI) Persons</p>

**Outcome Measures expected as results of Distribution Method**

Activities Benefiting LMI Persons

**Discussion**

Texas has the largest number of colonias and the largest colonia population of all the Border States. The method of distribution for funds set aside to serve colonias relies on subgrantees along the Texas-Mexico border as well as interagency cooperation between TDHCA, TDA, TWDB, the Office of the Attorney General, and others. The majority of the funding that assists colonias is through infrastructure development, but funds are also available to address housing, community planning, economic revitalization and disaster relief. TDA administers the 10% CDBG colonia set-aside. TDHCA’s role in administering colonia funding is limited to the Colonia Self-Help Center (CSHC) Program (2.5% set-aside of all Texas’ CDBG funds, in addition to the 10% federal set aside) and HOME Contract for Deed set-aside. TDHCA focuses efforts of the OCI to counties along the Texas-Mexico Border that include a Colonia Self-Help Center (Center) funded by the Colonia SHC Program and support Center staff and counties with problem solving and training.

The majority of the funding that assists colonias is through the CDBG Program. However, HOME and ESG have a scoring prioritization for colonias. In addition, HOPWA may also provide funding in that area, as described in Action Plan Section 30.

## **AP-50 Geographic Distribution – 91.320(f)**

### **Description of the geographic areas of the state (including areas of low-income and minority concentration) where assistance will be directed**

#### HOME/NHTF Addresses Geographic Areas for Assistance

TDHCA does not provide priorities for allocation of investment geographically to areas of minority concentration. TDHCA is statutorily required by the Texas Government Code to provide a comprehensive statement of its activities through the State of Texas Low Income Housing Plan and Annual Report. Part of this document describes the ethnic and racial composition of families and individuals receiving assistance from each housing program.

HOME/NHTF funds used for multifamily development are typically paired with tax-exempt bond and/or HTC. TDHCA rules that govern the HTC Program include incentives for developments utilizing the competitive 9% HTC in high opportunity areas, which are defined as high-income and low-poverty areas, with multiple community amenities in close proximity to the development. It also provides competitive incentive to develop in colonias or economically distressed areas. Developments using tax-exempt bond financing and 4% HTCs are more frequently located in qualified census tracts due to federal guidelines that cause these to be more financially viable.

#### ESG Addresses Geographic Areas for Assistance

Assistance provided by ESG funds will be directed statewide, according to the 11 HUD-designated CoC regions. TDHCA does not provide priorities for allocating investment geographically to areas of minority concentration, as described in 24 CFR §91.320(f).

#### HOPWA Addresses Geographic Areas for Assistance

The DSHS HOPWA Program serves all 254 counties in Texas, prioritizing those located outside of the six HOPWA-funded Metropolitan Statistical Areas: Austin, Dallas, El Paso, Fort Worth, Houston, and San Antonio. Therefore, the program targets less populated and non-urban areas of Texas. DSHS contracts with AAs in six Ryan White Part B HIV planning areas encompassing 26 HSDAs. AAs subcontract with Project Sponsors in each HSDA for statewide service delivery.

#### CDBG Addresses Geographic Areas for Assistance

TDA does not provide priorities for allocation of funds geographically to areas of minority concentration as described in Section 91.320(f). CDBG funds are allocated across the state in three ways.

1. The CD Fund assigns a percentage of the annual allocation to each of the 24 Regional COGs, ensuring that each region of the state receives a portion of the funds.
2. The Colonia Fund directs funding to communities within 150 miles of the Texas-Mexico border. All

remaining funds are distributed through state-wide competitions without geographic priorities.

3. The Colonia Self-Help Center (CSHC) Program is offered along the Texas-Mexico border in Cameron/Willacy, El Paso, Hidalgo, Maverick, Nueces, Starr, Val Verde, and Webb counties. The CSHC Program serves approximately 40 colonias in seven border counties, which are comprised of primarily Hispanic households and have concentrations of very low-income households.

NHTF Geographic Priorities description is added to Discussion section text below.

### Geographic Distribution

Target Area	Percentage of Funds
State of Texas	100

Table 10 - Geographic Distribution

### Rationale for the priorities for allocating investments geographically

#### HOME Addresses Geographic Investments

HOME funds are allocated geographically using a regional allocation formula (RAF), as described in Strategic Plan Section 10, of the 2020-2024 State of Texas Consolidated Plan. This process directs funds to areas of the State that demonstrate high need. Unless waived by the Governor in the event of a disaster, at least 95% of TDHCA-administered HOME funds are used in areas that are not Participating Jurisdictions (PJs) per statute. This results in more HOME funds in smaller communities than in larger Metropolitan Statistical Areas (MSAs) that receive HOME funds directly from HUD. The current RAF is online at <https://www.tdhca.texas.gov/housing-resource-center-annual-or-biennial-plans-and-reports>

#### ESG Addresses Geographic Investments

ESG allocates ESG funds to each CoC region based on an allocation formula. This formula includes factors such as homeless population, people living in poverty, cost burden of renters, point in time counts and ESG funds available from federal and state sources.

#### HOPWA Addresses Geographic Investments

DSHS uses a formula to determine allocations by HSDA. The formula uses the number of PLWH by county with adjustments for overlapping HOPWA formula jurisdictions, poverty rates, and housing costs. DSHS reserves the right to adjust formula allocations when accounting for local factors, including unmet need, prior performance and expenditures, and any other relevant metrics.

#### CDBG Addresses Geographic Investments

Texas CDBG Funds for projects under the CD Fund are allocated by formula to 24 regions based on the methodology that HUD uses to allocate CDBG funds to the non-entitlement state programs (27.35% of annual allocation), along with a state formula based on poverty and unemployment (45% of annual



allocation). 12.5% of the annual allocation is allocated to projects under the Colonia Fund categories, which must be expended within 150 miles of the Texas-Mexico border.

State statute mandates designation of six Colonia Self-Help Centers (Centers) along the Texas-Mexico border in Cameron/Willacy, El Paso, Hidalgo, Nueces, Starr, and Webb counties to address the long history of poverty and lack of institutional resources. In 2001, TDHCA added two additional Centers in Maverick and Val Verde counties. These eight counties collectively have approximately 36,136 colonia residents who may qualify to access Center services.

NHTF Geographic Investments description is added to Discussion section text below.

## **Discussion**

Many of the Target Areas available in the Integrated Disbursement and Information System (IDIS), HUD's electronic system in which this Plan has been entered, were too detailed for use at the macro-level; therefore, the State entered the "State of Texas" as a Target Area in Strategic Plan Section 10. Within Texas, each program relies on a formula to distribute funds geographically.

### **NHTF Geographic Priorities**

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

### **NHTF Addresses Geographic Investments**

NHTF funds are allocated geographically using a Regional Allocation Formula, as described in Strategic Plan Section 10. Acknowledging that all regions of the State have a need to create housing for ELI households, the formula provides opportunity for access to NHTF. This process directs funds to areas of the State that demonstrate high need. Regions may be grouped together for application and funding purposes. Any such grouping will be specified in the NOFA, but in no circumstance will fewer than four groups of regions be created.

## Affordable Housing

### AP-55 Affordable Housing – 24 CFR 91.320(g)

**Introduction:**

Affordable Housing goals for PY 2024 are indicated in the table below for the number of homeless, non-homeless, and special needs households, and for the number of affordable housing units that will be provided by program type, including rental assistance, production of new units, reconstruction of existing units, utility connections for existing units, or acquisition of existing units. Note that goals entered for ESG are only for Rapid Re-housing. The HOME goals include multifamily and single-family activities.

<b>One Year Goals for the Number of Households to be Supported</b>	
Homeless	730
Non-Homeless	1648
Special-Needs	575
Total	2,953

**Table 11 - One Year Goals for Affordable Housing by Support Requirement**

<b>One Year Goals for the Number of Households to be Supported Through</b>	
Rental Assistance	2706
The Production of New Units	127
Rehab of Existing Units	120
Acquisition of Existing Units	0
Total	2,953

**Table 12 - One Year Goals for Affordable Housing by Support Type**

**Discussion:**

The one-year goals for TDHCA's HOME Program include TBRA, homeowner reconstruction assistance, and rehabilitation and construction of single family and multifamily units.

The one-year goals for TDHCA’s NHTF program include construction of new/rehabilitated multifamily units.

TDHCA's ESG Program provides Rapid Re-housing assistance to help homeless individuals and households quickly regain stability in housing. Homelessness Prevention and Emergency Shelter outcome indicators are counted as persons, not households, so is not added into the chart above. ESG also provides street outreach, but as this does not directly equate to affordable housing, it is not

counted above.

DSHS' HOPWA Program provides TBRA, STRMU, FBHA, PHP, HCM, and HIS to assist eligible PLWH and their households establish or maintain affordable and stable housing, reduce their risk of homelessness, and improve their access to health care and supportive services. Stable housing helps PLWH access comprehensive healthcare, adhere to HIV treatment, and achieve viral suppression

Currently, Texas CDBG funds primarily support affordable housing through water and sewer infrastructure for housing. The CDBG funding provides a cost savings for housing when used to install water and sewer yard lines and pay impact and connection fees for qualifying residents. Housing rehabilitation projects are prioritized in several fund categories. CDBG funds also help communities study affordable housing conditions, providing data on affordable housing stock and planning tools for expanding affordable housing. CDBG provides approximately 250 utility connections per year, which are not reflected in the chart above, but could prove essential to obtaining or maintaining housing.

Colonia residents are considered “Special Needs” households who are supported through the production, rehab or acquisition of units. The Colonia Self-Help Center (CSHC) Program continues to address affordable housing needs in border counties by assisting qualifying colonia residents in improvement or maintenance a safe home in suitable areas, with the contribution of the residents’ self-help construction. In addition, the CSHC Program provides other development opportunities that support the creation of affordable housing for beneficiaries, such as tool lending and training in home construction and repair, financial literacy, and homeownership skills.

## **AP-60 Public Housing - 24 CFR 91.320(j)**

### **Introduction:**

TDHCA believes that the future success of PHAs will center on ingenuity in program design, emphasis on resident participation towards economic self-sufficiency, and partnerships with other organizations to address the needs of this population. While TDHCA does not have any direct or indirect jurisdiction over the management or operations of PHAs, it is important to maintain a relationship with these service providers.

### **Actions planned during the next year to address the needs to public housing**

TDHCA, acting as a small PHA itself, works with other PHAs around the State to port vouchers when necessary. This is especially true for Project Access (PA), a TDHCA program that uses Section 8 HCV vouchers to serve people with disabilities living in certain institutions by transitioning them into residences in the community, described fully in Action Plan Section 65. For the PA Program, an applicant is issued a voucher from TDHCA. In most cases, TDHCA works with the Receiving Public Housing Authority (RPHA) to transfer the documents and the voucher. The voucher holder is briefed and given an introduction on the RPHAs program rules. The RPHA can decide to absorb the voucher or bill the Initial PHA (IPHA). If the RPHA absorbs the voucher, the RPHA will send notice to the IPHA for documentation. This allows TDHCA to use another HCV for another applicant on the PA waiting list. If the RPHA bills the IPHA, the RPHA is required to submit a billing notice within an allotted time to the IPHA so payment can be received. In this way, TDHCA and local PHAs work closely together. TDHCA is also an administrator of Emergency Housing Vouchers and is coordinating, as needed, with local PHAs and CoCs for service delivery and referrals.

#### **HOME/NHTF Addresses PHA Needs**

TDHCA provides NOFAs under the HOME Program to interested parties around the State, including PHAs. TDHCA may utilize HOME funds through Tenant-Based Rental Assistance to pay security and utility deposits for Section 8 voucher holders, when other sources are not available. Furthermore, staff of PHAs, especially those receiving HOME funds and those with Section 8 Homeownership programs, are targeted by TDHCA's Texas Statewide Homebuyer Education Program for training to provide homebuyer education opportunities and self-sufficiency tools for PHA residents. PHAs may also administer HOME TBRA funds, for either on-going rental assistance or as a stand-alone program which provides security deposits with TBRA funds, enabling them to provide households with rental assistance and services to increase self-sufficiency.

Regarding HOME/NHTF Multifamily Developments that are financed with the HTC Program, PHAs are incentivized in the QAP to use HTCs for Rental Housing Assistance conversion of PHA properties.

#### **ESG Addresses PHA Needs**

PHA residents are eligible to receive assistance and services from ESG Subrecipients, as long as the

assistance does not violate 24 CFR §576.105(d) of HUD's ESG rules regarding use of funds with other subsidies. Fostering public housing resident initiatives is not an initiative for which TDHCA provides funding or that TDHCA tracks for the ESG Program.

#### HOPWA Addresses PHA Needs

The DSHS HOPWA Program does not provide public housing assistance. However, Project Sponsors interface with local public housing agencies to coordinate housing assistance and supportive services efforts. Project Sponsors share HOPWA program information and eligibility criteria with local housing authorities and other affordable housing programs in their HSDA. While households that participate in HCV or public housing programs do not qualify for HOPWA-funded housing assistance services, Project Sponsors may provide PHP services to secure a subsidized unit. Additionally, Project Sponsors may provide Housing Case Management services to public housing residents and public housing residents may receive core medical and support services through the Ryan White HIV/AIDS Program.

#### CDBG Addresses PHA Needs

The Texas CDBG Program serves public housing areas through various funding categories as residents of PHAs qualify as low- to moderate-income beneficiaries for CDBG projects.

CDBG grant recipients must also comply with local Section 3 policies, including outreach to public housing residents and other qualified Section 3 persons in any new employment, training, or contracting opportunities created during the expenditure of CDBG funding.

### **Actions to encourage public housing residents to become more involved in management and participate in homeownership**

HOME, ESG, HOPWA, NHTF, and CDBG are subject to 24 CFR Part 75 which requires that HUD funds invested in housing and community development construction contribute to employment opportunities for low-income persons living in or near the HUD-funded project. These requirements, called Section 3 requirements, are covered at trainings for Subrecipients; persons who may benefit from employment opportunities include PHA residents.

#### HOME Addresses Public Housing Resident Initiatives

PHAs are eligible to apply to administer HOME funds to provide homebuyer assistance with new construction in their areas. PHAs also provide services to increase self-sufficiency, which may include homebuyer education services. In addition, TDHCA targets its Texas Statewide Homebuyer Education Program to PHAs, among other groups, which provide homebuyer education training opportunities and self-sufficiency tools for PHA residents.

#### ESG Addresses Public Housing Resident Initiatives

PHA residents are eligible to receive assistance and services from ESG Subrecipients, as long as the assistance does not violate Section 576.105(d) of the ESG rules regarding use of funds with other

subsidies.

#### HOPWA Addresses Public Housing Resident Initiatives

The DSHS HOPWA Program does not provide public housing assistance. However, Project Sponsors interface with local public housing agencies to coordinate housing assistance and supportive services efforts.

#### CDBG Addresses Public Housing Resident Initiatives

The CDBG Program serves public housing areas through various funding categories as residents of PHAs qualify as low- to moderate-income beneficiaries for CDBG projects.

### **If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance**

TDHCA has worked to promote programs that will rehabilitate and bring substandard housing into compliant condition and will develop additional affordable housing units. For example, most of the PHA applications for HTCs are for rehabilitation and the applications for new construction usually include a demolition of the existing units. TDHCA also offers a variety of funding sources for assistance. Most PHAs that apply are usually from larger Metropolitan Statistical Areas, which are usually PJs and, as such, are limited by state law in the HOME funding they may receive through TDHCA. Consistent with fair housing objectives, TDHCA seeks ways to accomplish these activities in a manner that disperses the placement of PHA units including dispersion into areas of greater opportunity and not into areas that involve unacceptable site and area features.

TDHCA has a history of assisting troubled housing authorities and has absorbed vouchers from several PHAs that have had difficulties. HUD identified, in two separate instances, public housing authorities that it thought might be well advised to have its voucher programs absorbed by TDHCA. The Navasota Housing Authority and the Alamo Area Council of Governments (which was operating as a PHA) each contacted TDHCA to discuss the possibility of absorbing their housing choice voucher programs. During a series of meetings with HUD staff and the PHAs, discussion resulted in multiple on-site visits. Ultimately, the Navasota Housing Authority and the Alamo Area Council of Governments transferred their voucher programs to TDHCA and HUD reassigned the files' PHA codes.

To expand its work with PHAs, TDHCA has developed a relationship with the Texas Housing Association and the Texas chapter of the National Association of Housing and Redevelopment Officials (NAHRO), which serve the PHAs of Texas. Whenever possible, the State will communicate to PHAs the importance of serving special needs populations.

#### **Discussion:**

To address PHA needs, TDHCA has designated PHAs as eligible participants in some of its programs, such as the HTC Program and HOME Program. PHAs have successfully administered HTC funds to rehabilitate

or develop affordable rental housing. The PHA needs to submit an application and be awarded in order to access funding.

There are also federal sources available for PHAs that can be paired with HOME/NHTF. Also, through HUDs Rental Assistance Demonstration (RAD) Program, PHAs can use public housing operating subsidies along with the HTC Program once the older PHA units are demolished and replaced with new housing.

## **AP-65 Homeless and Other Special Needs Activities – 91.320(h)**

### **Introduction**

TDHCA will address requirements in 24 CFR §91.320 by using funds to reduce and end homelessness. Each ESG Applicant is required to coordinate with the lead agency of the CoC, which provides services and follows a centralized or coordinated assessment process; has written policies and procedures in place as described by 24 CFR §578.7(a)(8) and (9); and follows a written standard to provide street outreach, emergency shelter, rapid re-housing, and homelessness prevention assistance. To assist low-income individuals and families to avoid becoming homeless, TDHCA requires each ESG Subrecipient to set performance targets that are part of its scoring criteria for the NOFA, and these targets will be maintained for any offer of a direct award in the future. A Subrecipient must address the housing and supportive service needs of individuals assisted with ESG funds in a plan to move the client toward housing stability.

ESG is one of several programs that work to help transition persons out of institutions, such as the HOPWA Program, Section 811 PRA Program, Project Access Program, Money Follows the Person Program, and the Mainstream Voucher Program. The HHSCC also works to enhance coordination between housing and service agencies to assist persons transitioning from institutions into community-based settings.

**Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including:**

**Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs**

The Texas ESG Program provides funds to service providers for outreach to unsheltered homeless persons in order to connect them to emergency shelter, housing, or critical services; and to provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or other appropriate facilities. Of critical importance is assisting the unsheltered homeless with emergency shelter or other placement. Subrecipients serving clients through street outreach will be measured against their targets to help persons experiencing homelessness move into temporary, transitional or permanent housing. Subrecipients conducting street outreach may provide case management, such as assessing housing and service needs; arranging, coordinating, and monitoring the delivery of services; and planning a path to permanent housing stability.

ESG Subrecipients are required to describe how they provide outreach to sheltered and unsheltered homeless persons in the ESG application.

For clients receiving emergency shelter, rapid re-housing, or homelessness prevention, clients will be required to receive case management services with exceptions pursuant to the VAWA and the Family



Violence Prevention and Services Act (FVPSA). Subrecipients are required to develop a plan to assist program participants to retain permanent housing after the ESG assistance ends.

### **Addressing the emergency shelter and transitional housing needs of homeless persons**

The ESG Program provides support to organizations that provide emergency services and shelter to homeless persons and households.

If assisting persons experiencing homelessness that are in an emergency shelter, Subrecipients will be measured against their annual targets to serve clients with essential services and to help persons experiencing homelessness move into temporary, transitional or permanent housing. If assisting persons with rapid re-housing or homelessness prevention, Subrecipients will be measured against their annual targets to help persons experiencing or at-risk of homelessness maintain housing for 3 months or more, exit to a permanent housing destination, exit to a positive housing destination, or gain a higher income.

In addition, the State considers transitional housing as having characteristics associated with instability and an increased risk of homelessness, which may allow clients living in transitional housing to access Homelessness Prevention services.

### **Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again**

ESG funds may be utilized for short-term and medium-term rental assistance (24 CFR §576.106, unless otherwise waived) and for a variety of housing relocation and stabilization services such as rental application fees, security deposits, utility deposits, utility payments, and moving costs for homeless individuals or persons at risk of homelessness (24 CFR §576.106). Funds may also be utilized for housing service costs related to housing search and placement, housing stability case management, mediation, legal services, and credit repair. ESG funds can also be used to pay for essential service costs including case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, transportation, and costs related to serving special populations. It should be noted that, while the assistance listed above are eligible under ESG, an ESG Subrecipient may choose to not provide all the assistance listed. Applicants for ESG funds are incentivized through the application scoring process to provide a wide array of services. ESG Subrecipients specify in their written standards which services they will provide.

Subrecipients that request an award of funds must set targets within their application for funding

intended to reduce the length of time from program intake to placement in permanent housing and positive housing destination for persons experiencing homelessness, as well as targets for the percentage of persons served that maintain housing for three or more months after existing the program. These targets will be evaluated and will be a factor in funding decisions.

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs**

ESG funds promote coordination with community providers and integration with mainstream services to gather available resources. One possible performance measure for Subrecipients is their ability to help increase non-cash benefits for program participants; the Subrecipients help program participants obtain non-ESG resources, such as veterans benefits or food stamps.

Individuals eligible for the State's HOPWA Program who are exiting from an institution receive a comprehensive housing plan and linkage and referrals to health professionals from a case manager. The State HOPWA Program provides TBRA, which can be used to transition persons from institutions into stable housing. Some project sponsors also provide rental deposits and application fees. Other programs included in this Plan also provide Facility-Based Housing Subsidy Assistance to address the temporary housing assistance needs of persons transitioning from institutions.

TDHCA has contracts for more than \$31 million for the Section 811 PRA Program, which is providing approximately 500 integrated supportive housing units in eight areas of the state for extremely low-income individuals with disabilities and their families. The target population includes individuals transitioning out of institutions, people with serious mental illness, and youth and young adults with disabilities transitioning out of the state's foster care system. Individuals in the Section 811 PRA Target Population are eligible for assistance from Texas Health and Human Services or the Department of Family and Protective Services, are Medicaid-eligible, and are between the ages of 18 and 62.

TDHCA has received a preliminary award letter from HUD providing notification that TDHCA has been selected for an award of \$6,982,087 that could create an additional 140-assisted Section 811 PRA Program units.

Coordination between housing and the Health and Human Services (HHS) agencies is exemplified by the Project Access and Money Follows the Person programs. Project Access uses Section 8 Housing Choice Vouchers administered by TDHCA to assist low-income persons with disabilities transitioning from nursing homes and Intermediate Care Facilities (ICFs) to the community while using the Money Follows the Person Program to provide services by HHS agencies. The TDHCA Governing Board has approved

changes to Project Access since it began in 2002 based on input from advocates and the HHS agencies including incremental increases to vouchers from 35 to 140 and creation of a pilot program with DSHS for persons with disabilities transitioning out of State Psychiatric Hospitals. In September 2018, TDHCA received an additional 50 vouchers, awarded by HUD through the Mainstream Voucher Program (MVP), for the Project Access program. An additional 15 MVP vouchers were awarded to TDHCA through the CARES Act also directed toward Project Access recipients.

TDHCA offers TBRA to individuals on the Project Access Wait List, allowing them to live in the community until they can utilize a Project Access voucher. TDHCA conducted outreach and technical assistance to Texas Health and Human Services (HHS) Relocation Specialists and HOME TBRA administrators to help them serve individuals on the Project Access wait list.

To further address the needs of individuals transitioning from institutions, HHSCC seeks to increase coordination of housing and health services by supporting agencies to pursue funding, such as Relocation Contractor services for people with behavioral health challenges and Intellectual and Developmental Disabilities; Medicaid waiver programs; vouchers from PHAs for people with disabilities and aging Texans; housing resources from the Texas Department of Criminal Justice for people with criminal histories transitioning to the community; and DSHS' rental assistance program.

## **Discussion**

The Texas ESG Program is designed to assist, assess and, where possible, shelter the unsheltered homeless; to quickly re-house persons who have become homeless and provide support to help them maintain housing; and to provide support that helps persons at risk of becoming homeless maintain their current housing. Other special needs populations are described in Action Plan Section 25.

**AP-70 HOPWA Goals – 91.320(k)(4)**

<b>One year goals for the number of households to be provided housing through the use of HOPWA for:</b>	
Short-term rent, mortgage, and utility assistance to prevent homelessness of the individual or family	295
Tenant-based rental assistance	575
Units provided in permanent housing facilities developed, leased, or operated with HOPWA funds	0
Units provided in transitional short-term housing facilities developed, leased, or operated with HOPWA funds	136
<b>Total</b>	<b>1,006</b>

## **AP-75 Barriers to affordable housing – 91.320(i)**

### **Introduction:**

The Analysis of Impediments to Fair Housing Choice (AI) identifies impediments to fair housing choice in the State of Texas and action steps that the State intends to take to address identified impediments. The State of Texas is currently operating under the 2019 AI and is in the process of updating it for 2024. The 2019 AI describes state and local regulatory and land use barriers in detail and may be accessed at <https://www.tdhca.texas.gov/state-texas-analysis-impediments-ai-fair-housing-choice>.

TDHCA staff track goals, efforts, and progress made under the AI. The Fair Housing Tracking database provides the State with an ability to pull basic metrics and provide reports by AI, Impediments, Recommendations, Action Items, and other meaningful search criteria. This assists the state in identifying areas of improvement and success under its HUD related obligation to affirmatively further fair housing choice. The content of the database is maintained on an ongoing basis with periodic reports shared with TDHCA's governing board.

TDHCA and the Texas Workforce Commission Civil Rights Division (TWC CRD) annually collaborate on a Fair Housing webinar series. The series includes training sessions providing general fair housing information and specific sessions on HUD's guidance, how to respond to reasonable accommodation requests, and best practices in fair housing. The webinars are available for free 24/7 on TDHCA's website at: <https://www.tdhca.texas.gov/fair-housing-training-presentations>, [a GoToStage channel](#), and the [Department's YouTube channel](#).

In May 2020, TDHCA was awarded a 1-year grant under HUD's Fair Housing Initiative Program – Education and Outreach Initiative and has created a library of training presentations, designed a Fair Housing rights brochure distributed statewide to community organizations, and created short form webinar videos, based on the longer presentations, to provide training, education, and outreach on Fair Housing related issues. In January of 2023, the Housing Resource Center (HRC) applied for another 1-year grant under the same HUD program with the goal of creating professional, on-demand webinars and marketing these webinars to a far larger audience. In March 2023, HRC was notified that TDHCA was awarded the grant for \$124,913.

### **Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment**

TDHCA reviews all guiding documents, rules, and practices internally to determine if known barriers or impediments to fair housing choice can be addressed through actions within TDHCA's authority. TDHCA's Fair Housing, Team collaborates with TDHCA Division Directors to develop and improve tools, rules, and other initiatives to address possible barriers to housing choice. TDHCA has been making and

will continue to make a concerted effort to increase staff and subrecipient education to ensure that all programs are providing best practices guidance to recipients and the general public.

### **Discussion:**

For its Single Family programs, TDHCA has promulgated a rule relating to Fair Housing, Requirements, Waitlist Policies, Affirmative Marketing Plans, Homebuyer Counseling, Reasonable Accommodations, and Limited English Proficiency. This rule exists under TDHCA's Single-Family programs umbrella rule. The rule requires administrators of federal funds to have an affirmative marketing plan, which identifies the least likely to apply populations and methods of affirmative marketing. Further, the rule requires all TDHCA Single-Family administrators to accept applications for a 21-day calendar period and select applications via a neutral, random selection process, unless the administrator is providing TBRA to assist in the event of a declared disaster. This selection process helps to level the playing field and provide equal access for all households, regardless of disability status or language proficiency. Also included in the rule are specific provisions related to Limited English Proficiency to provide meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits.

For its Multifamily programs, TDHCA consolidated rules for Affirmative Fair Housing Marketing Plans (AFHMP) and Tenant Selection Criteria (TSC), also known as Written Policies and Procedures, and placed them under the purview of Fair Housing staff. When Fair Housing staff provides a review of the AFHMP and TSC of a Multifamily property, additional training and technical assistance is provided to owners, property staff, and management company on Fair Housing issues and policies in order to provide meaningful access for applicants and residents to enjoy Multifamily housing opportunities.

A current collaboration between federal funding recipients in Texas known as the Texas State Fair Housing Workgroup began in May 2014, and continues to meet as needed. This workgroup is assisting State agencies in adopting a coordinated approach to Fair Housing issues and providing streamlined direction to essential Fair Housing information and best practices. To date, the workgroup has looked at sharing language assistance contracts, has generated ideas on streamlining Fair Housing discrimination complaint information and resources, has collaborated on Fair Housing month activities, and has served as a vehicle for comparing internal Fair Housing tracking and record keeping measures.

Finally, the State has a Fair Housing website available at <https://www.tdhca.texas.gov/fair-housing> that includes fair housing information for a variety of audiences (renters and homebuyers, owners and administrators, real estate agents, and local governments and elected officials) and includes fair housing toolkits and resources, and links to the Fair Housing email list and community events calendar. Through this education and outreach, the State is hoping to make its best practices guidance widely known and to integrate such guidance with other state resource information.

## **AP-80 Colonias Actions – 91.320(j)**

### **Introduction**

Based on a 2014 assessment by the Texas Office of the Secretary of State’s Colonia Initiatives Program, an estimated 500,000 people live in 2,294 colonias in Texas. Six Texas counties (El Paso, Maverick, Webb, Starr, Hidalgo, and Cameron) have the largest population of colonias and are home to an estimated 369,500 people. Texas’ colonias lie outside of city limits in the rural areas of their respective counties, where few to no local building codes exist to protect the households that seek affordable and sanitary housing solutions. Egregious housing conditions persist while residents also endure substandard infrastructure, inadequate potable water and wastewater systems, and a host of public health, environmental and employment risks. TDA’s redesigned Colonia Fund Planning and Needs Assessment Program is intended to provide updated needs assessments across the colonia-eligible area of the state.

As discussed in Action Plan Section 48, the majority of the funding that assists colonias is through the CDBG Program, which funds both state agencies working to develop infrastructure and water services, as well as subgrantees at the local government level who work in concert with nonprofit service providers for housing, community affairs, and economic development. TDHCA’s Office of Colonia Initiatives offer technical assistance in applying for and administering the Colonia Self-Help Center (CSHC) Program. The HOME Program also has a specific Contract for Deed set-to improve the housing affordability and quality of housing for colonia residents.

### **Actions planned to address obstacles to meeting underserved needs**

The State dedicates 12.5% of CDBG funds annually for colonia areas– 10% through the Colonia set-aside and an additional 2.5% set-aside by the State legislature. Additional funds are also awarded for colonia projects through other competitive fund categories. Basic human needs, including water and sewer infrastructure and housing rehabilitation, are prioritized for colonia set-aside funding, with a particular emphasis on connecting colonia households to public utilities. Colonia set-aside funds are not able to effectively address other local priorities for colonia communities, including road reconstruction and drainage improvements that are also important for daily activities. Colonia planning funds are available to research and document characteristics and needs for colonia communities.

The Colonia Self-Help Centers (Centers) experience the obstacle of wavering capacity to meet the needs of extremely under resourced colonia residents. The typical challenges that nonprofits face, such as high turnover, lack of succession planning, lack of long-term funding opportunities, limited access to high quality training, and limited access to continuing education resources, are all exacerbated for subgrantees serving border colonias. In response, TDHCA has an Office of Colonia Initiatives (OCI), with designated employees that are focused on the needs of Centers along the border. The OCI is tasked with providing support to Center staff with problem solving and training.

Colonia residents may also receive benefit through the HOME Program, which provides rental

assistance, reconstruction of owner-occupied units with or without refinancing acquisition and new construction of affordable single-family housing, single-family and multifamily development, and rental housing preservation of existing affordable or subsidized developments.

### **Actions the state plans to take to reduce the number of poverty-level families**

Colonia set-aside funding is intended to improve the living conditions of low and moderate income families in colonias, including basic human needs. As with all CPD funds, Section 3 goals encourage job, contracting, and training opportunities for qualifying residents when such opportunities become available as a result of grant funding.

The CSHC Program provides 40 targeted colonias in eight border counties with a multitude of opportunities to create a one-stop shop for low-income colonia families to gain a foothold out of poverty. The Centers prioritize housing services in the form of new construction, reconstruction, rehabilitation, tool lending, construction skills training and utility connections. CSHC Program community development activities include homeownership education, access to and training in computers/technology, consumer rights education and financial literacy, and solid waste disposal assistance. While the above listed services are limited only to residents of pre-identified colonias in the CSHC Program, the Centers themselves are open to all who wish to use the meeting space for activities beneficial to the community or simply to seek information on locating other services. By creating an accessible and consistent manner for which services and information are disseminated among colonias, more households can become beneficiaries of multiple kinds of assistance that build their self-sufficiency over time.

### **Actions the state plans to take to develop the institutional structure**

TDHCA and TDA are committed to working with other state and federal regulatory and funding agencies. Agency coordination continues through the Texas Water Infrastructure Coordinating Committee (TWICC), which addresses concerns in colonias and other areas throughout the state. The information sharing within the group facilitates delivery for multiple programs besides affordable housing, and proactively addresses potential obstacles that could affect large areas of the state, including the Texas–Mexico border.

The state legislature has also set aside a portion of the CDBG administration funding for technical assistance and administrative support provided by the regional Councils of Government (COGs). This funding can provide institutional structure and assistance to small communities without administrative resources.

### **Specific actions the state plans to take to enhance coordination between public and private**



## **house and social service agencies**

In addition to the cooperation among various state agencies that help to support and develop colonias, TDHCA focuses efforts of the OCI on counties administering the CSHC Program. The OCI supports administrators, disseminate funding information, and problem solve with administrators and the Colonia Resident Advisory Committee (C-RAC), which is comprised of colonia residents appointed by the counties with a Center. This requires facilitating communication related to administration of the CSHC Program with other service providers, the private sector (such as colonia landowners, title companies, lenders), and other government agencies. The OCI increases the efficiency with which TDHCA can apply solutions and build institutional knowledge in the community.

TDA has an ongoing working relationship with each of the state planning regions, many of which provide services such as workforce development, aging and disability resources, and emergency management services. In addition, TDA field representatives are available to provide general information on potential resources to communities and residents.

## **AP-85 Other Actions – 91.320(j)**

### **Introduction:**

The actions listed below are Other Actions taken by TDHCA, TDA, and DSHS to meet the requirements of §91.320(j). Other Actions include Meeting Underserved Needs, Fostering and Maintaining Affordable Housing, Lead-Based Paint Hazard Mitigation, Reducing Poverty-Level Households, Developing Institutional Structure, and Coordination of Housing and Services. The HOME, ESG, HOPWA, and CDBG programs address the other actions in concert with other federal, state, and local sources.

### **Actions planned to address obstacles to meeting underserved needs**

#### **HOME Addresses Underserved Needs**

Obstacles to meeting underserved needs with HOME funds, particularly multifamily activities, include NIMBYism and a lack of understanding of federal requirements surrounding the use of HOME funds. TDHCA works to overcome these obstacles by educating developers and the communities where affordable housing is being proposed.

#### **ESG Addresses Underserved Needs**

Lack of facilities and services for homeless persons in rural areas is ESG's greatest underserved need. To help meet this need, TDHCA has used Community Services Block Grant discretionary funds to provide training and technical support to organizations in the Balance of State CoC. Shelters in the Balance of State CoC have limited funds for operations and maintenance, with little access to federal funds which often require substantial organizational capacity less common in smaller organizations. ESG and TDHCAs HHSP, which is state-funded only in some urban areas, may supplement federal funds in operational support.

#### **HOPWA Addresses Underserved Needs**

Some PLWH face significant obstacles to obtaining and maintaining medical insurance, income, and employment. Rising costs of living (rent, deposits, utilities, food, transportation, etc.) and limited available affordable housing contribute to hardships for many PLWH.

DSHS's HOPWA program addresses the needs of this underserved population by integrating with the administrative structure of the Texas Ryan White Part B HIV/AIDS Program and the larger, multi-sectoral system for delivering treatment and care to PLWH in Texas. This helps PLWH and their households establish or maintain affordable and stable housing, reduce their risk of homelessness, and improve their access to health care and supportive services. The program reallocates funding within and between

HSDAs throughout the program year to meet changing needs.

#### CDBG Addresses Underserved Needs

TDA encourages projects addressing underserved community development needs. In PY 2023 CDBG funds will be available through multiple grant categories to provide water or sewer services on private property for low- and moderate-income households by installing yard lines and paying connection fees. Regional priorities for funding allow each area of the state to determine its highest priority needs, which may vary from first-time water service to drought relief to drainage projects.

Since the first legislative reforms in the 1990s, service providers in colonias have made gains in their capacity to address colonia issues, but unmet needs still exist, and the Texas-Mexico border population growth is still increasing. OCI's main obstacle in addressing colonia housing needs is the varying capacities of subrecipients to administer assistance. The OCI staff provides technical assistance and on-going training to organizations and local governments that use the CSHC Program to serve colonia residents.

### **Actions planned to foster and maintain affordable housing**

#### HOME Addresses Affordable Housing

The HOME Program provides grant funds, deferred forgivable loans, and repayable loans to households or developments assisted by or through entities including units of local government, public organizations, nonprofit and for-profit organizations, CHDOs, and PHAs. These funds are primarily used to foster and maintain affordable housing by providing rental assistance, reconstruction of owner-occupied housing units with or without refinancing, acquisition and new construction of affordable single family housing, single-family development and funding for rental housing preservation of existing affordable or subsidized developments. HOME funds may also be used in conjunction with the HTC Program or Bond Program to construct or rehabilitate affordable rental housing.

In addition, credits awarded through the HTC program can be layered with awarded funds from the HOME Multifamily Development program. When more than one source of funds is used in an affordable housing project, the State is able to provide more units of affordable housing than with one funding source alone.

#### ESG Addresses Affordable Housing

While TDHCA encourages the use of ESG funds to provide affordable transitional housing, the majority of funds are utilized to provide emergency shelter. Fostering affordable housing is not an initiative for which TDHCA provides ESG funding or that TDHCA monitors in relation to the ESG Program.

#### HOPWA Addresses Affordable Housing

The shortage of available affordable housing persists. Rising housing costs price eligible households out

of the market while household incomes remain the same or decrease. Rent-to-income-ratio requirements prevent households from accessing housing. Many households have poor credit, rental, and criminal histories that affect housing access. Corporate owners regularly exclude applicants with minor infractions. In response to these market characteristics, the DSHS HOPWA Program provides TBRA, an ongoing and portable rental subsidy that helps households obtain or maintain permanent housing, including assistance for shared housing arrangements, in the private rental housing market until they can enroll in the Housing Choice Voucher Program (HCVP) or other affordable housing programs.

#### CDBG Addresses Affordable Housing

Currently, CDBG funds primarily support affordable housing through water and sewer infrastructure for housing. The CDBG funding provides a cost savings for housing when used to install water and sewer yard lines and pay connection fees for qualifying residents. Housing rehabilitation projects are also prioritized in colonia areas.

CDBG funds can help communities study affordable housing conditions, providing data on affordable housing stock and planning tools for expanding affordable housing. The Colonia SHCs continue to address affordable housing needs in border counties by assisting qualifying colonia residents to improve or maintain a safe, suitable home in suitable areas.

The OCI provides training and technical assistance to the Centers to assist with carrying out activities, such as housing rehabilitation, new construction, reconstruction, low-interest mortgages, grants for self-help programs, revolving loan funds for septic tanks, and tool lending.

#### **Actions planned to reduce lead-based paint hazards**

##### HOME Addresses Lead-based Paint

The HOME Program requires lead screening in housing built before 1978 for all HOME eligible activities in accordance with 24 CFR §92.355 and 24 CFR Part 35, subparts A, B, J, K, M, and R. Furthermore, single-family and multifamily development activities in HOME increase the access to lead-based-paint-free housing through the construction of new housing or reconstruction of an existing housing unit. There is significant training, technical assistance, and oversight of this requirement on each activity funded under the HOME Program.

##### ESG Addresses Lead-based Paint

For ESG, TDHCA requires Subrecipients to evaluate and reduce lead-based paint hazards as part of its habitability review. During the annual contract implementation training, TDHCA will provide ESG Subrecipients with information related to lead-based paint regulations and TDHCA's requirements related to such. TDHCA will require ESG-funded Subrecipients to determine if a housing unit was built prior to 1978, for households seeking ESG funded rent or rent deposit assistance whose household has a family member(s) six years of age or younger. If the housing unit is built prior to 1978, the ESG

Subrecipient will notify the household of the hazards of lead-based paint.

While currently not offered under administrative rule, if TDHCA were to program funds for ESG to be used for renovation, rehabilitation, or conversion Subrecipients must comply with the Lead-Based Paint Poisoning and Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992. Through renovation, rehabilitation or conversion, ESG increases access to shelter without lead-based paint hazards. TDHCA evaluates, tracks, and reduces lead-based hazards for conversion, renovation, leasing or rehabilitation projects.

#### NHTF Addresses Lead-Based Paint

The Multifamily Direct Loan Program evaluates the potential for the presence of lead-based paint for NHTF assisted activities, and takes appropriate steps in accordance with 24 CFR §93.351 and the applicable provisions in 24 CFR Part 35, as provided in TDHCA's NHTF Minimum Rehabilitation Standards. The aforementioned include notification of potential lead-based paint hazards to households residing in housing units that pre-date 1978. Furthermore, multifamily development and reconstruction activities with NHTF increase the access to lead-based-paint-free housing because they create new housing.

#### HOPWA Addresses Lead-Based Paint

Per 24 CFR §574.310(b), §574.635, §35, and HUD CPD Notices 94-05 and 22-15, assisted housing, including shared housing arrangements, must meet safety and sanitation standards and comply with applicable state and local housing codes, licensing provisions, and any other structural or operational requirements. Assisted housing must also meet all Habitability Standards, Lead Safe Housing Rules, Fire Safety Requirements, and Carbon Monoxide Safety Requirements. While the DSHS HOPWA Program does not undertake lead-based paint abatement activities, Project Sponsors perform Housing Quality Standards certifications for each assisted unit to assess for lead-based paint health risks.

#### CDBG Addresses Lead-Based Paint

Lead-based paint mitigation is an activity eligible under housing rehabilitation that is funded under the Colonia Fund and Community Development Funds. Each contract awarded requires the sub-grantee to conform to Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) and procedures established by TDA's CDBG in response to the Act.

### **Actions planned to reduce the number of poverty-level families**

#### HOME Addresses Poverty-Level Households

Through the HOME TBRA Program, TDHCA assists households with rental subsidy, and security, and utility deposit assistance for an initial term not to exceed 24 months. As a condition to receiving rental assistance, households must participate in a self-sufficiency program, which can include job training, General Education Development (GED) classes, or drug dependency classes. The HOME Program enables households to receive rental assistance while participating in programs that will enable them to improve employment options and increase their economic independence and self-sufficiency. Additionally,

TDHCA allocates funding toward the construction of affordable housing, incentivizing units to assist very low-income households, and assists very low-income households along the international border of Texas and Mexico by promoting the conversion of contract for deed arrangements to traditional mortgages.

#### ESG Addresses Poverty-Level Households

The ESG Program funds activities that provide shelter and essential services for homeless persons, as well as intervention services for persons threatened with homelessness. Essential services for homeless persons include medical and psychological counseling, employment counseling, substance abuse treatment, transportation, and other services. While TDHCA supports the use of ESG funds to help ESG clients lift themselves above the poverty line, it is not a specific initiative for which TDHCA earmarks ESG funding or that TDHCA monitors for the ESG Program.

For individuals threatened with homelessness, homelessness prevention funds may be utilized for short-term subsidies to defray rent and utility arrearages for households receiving late notices, and security deposits.

#### HOPWA Addresses Poverty-Level Households

The DSHS HOPWA Program helps low-income PLWH and their households establish or maintain affordable and stable housing, reduce their risk of homelessness, and improve their access to health care and supportive services. HOPWA activities principally benefit low-income PLWH and their households. HOPWA serves households that fall at or below 80 percent of AMI. While the DSHS HOPWA Program does not specifically target households at or below the poverty level, most of the households enrolled in the program fall at or below 30 percent of AMI. Subject to local conditions, HUD permits Project Sponsors to establish additional program eligibility and service requirements as a means of prioritizing benefits to those with the greatest need. For example, a Project Sponsor could prioritize rental assistance services to households at or below 30 percent of AMI.

#### CDBG Addresses Poverty-Level Households

A substantial majority of TDA's CDBG funds, 90% in 2023, are awarded to principally benefit low and moderate income persons. In addition, the formula used to distribute CD funds among regions includes a variable for poverty/income to target funding to the greatest need; scoring criteria in the CD Fund, DRP Program, and Colonia Fund also direct funding toward communities with the greatest need. Economic development activities improve local opportunities for jobs and entrepreneurship.

### **Actions planned to develop institutional structure**

#### HOME Addresses Institutional Structure

The HOME Program encourages partnerships in order to improve the provision of affordable housing. Organizations administering programs that require a federal affordability period resulting in a mortgage loan are required to ensure that participating household receive HUD approved housing counseling prior to loan closing. In addition, organizations receiving TBRA funds must provide self-sufficiency services

directly, or coordinate with a local organization that will provide the services. Finally, partnerships with CHDOs and nonprofit and private-sector organizations facilitate the development of quality rental housing developments and assist in the reconstruction of owner-occupied housing.

#### ESG Addresses Institutional Structure

TDHCA encourages ESG subrecipients to coordinate services with housing and other service agencies. Likewise, the CoCs funded with ESG funds are required to coordinate services and their local funded organizations to provide services as part of the local CoC. TDHCA reviews ESG subrecipients' coordination efforts during on-site and desk monitoring. A map of local CoCs can be found online at: <https://www.thn.org/texas-balance-state-continuum-care/>.

#### HOPWA Addresses Institutional Structure

DSHS contracts with AAs in six Ryan White Part B HIV planning areas encompassing 26 HSDAs. AAs subcontract with Project Sponsors in each HSDA for statewide service delivery. AAs act as an administrative arm for DSHS, with DSHS oversight, by administering the HOPWA program locally for a five-year project period. AAs also administer funding for other HIV medical and support, including the Ryan White HIV/AIDS Program funds. This structure ensures the coordination of all agencies serving PLWH, avoids duplication, saves dollars, and provides comprehensive core medical and support services for PLWH in each local community.

#### CDBG Addresses Institutional Structure

Each CDBG applicant must invite local housing organizations to provide input into the project selection process. TDA coordinates with state and federal agencies, regional Councils of Governments, and other partners to further its mission in community and economic development.

TDA also uses conference calls and webinars to provide training and technical assistance throughout the state. On-site project reviews may be conducted based on risk and other factors.

### **Actions planned to enhance coordination between public and private housing and social service agencies**

TDHCA has staff members that participate in several State advisory workgroups and committees. The workgroups and committees which TDHCA leads are listed in Action Plan Section 15. The groups in which TDHCA participates include, but are not limited to, the Community Resource Coordination Groups, led by the Health and Human Services Commission (HHSC); the Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, led by DSHS; Reentry Task Force, led by Texas Department of Criminal Justice; Interagency Workgroup on Border Issues, led by Secretary of State; Texas Foreclosure Prevention Task Force, led by Texas State Affordable Housing Corporation; Money Follows the Person Demonstration Project, led by HHSC; Promoting Independence Advisory Committee, led by HHSC; and Texas State Independent Living Council, led by the

HHSC.

TDHCA's participation in HUD's Section 811 PRA Program requires linkages between housing and services through a partnership with TDHCA, the State Medicaid Agency (i.e., HHSC), and the Texas Department of Family and Protective Services (DFPS). Because the program is designed so that an individual can access both affordable housing and services in the community, TDHCA staff and HHSC/DFPS staff work closely to ensure both housing and services are coordinated for the program. TDHCA and HHSC/DFPS have responsibilities to execute the program. TDHCA uses units in multifamily housing financed by TDHCA and a network of local service providers coordinated by the HHSC enterprise agencies provides the services.

HHSCC, established by Texas Government Code §2306.1091, seeks to improve interagency understanding and increase the number of staff in state housing and health services agencies that are conversant in both housing and services.

Other coordination efforts for HHSCC involving people leaving institutions are in Action Plan Section 65.

Senate Bill 7 passed during the 83rd Legislative session directed further cooperation. Texas Government Code §533.03551 directs the commissioner of HHSC to work in cooperation with TDHCA, TDA, Texas State Affordable Housing Corporation (TSAHC), and other federal, state, and local housing entities to develop housing supports for people with disabilities, including individuals with intellectual and developmental disabilities.

Finally, HHSC provides Money Follows the Person Demonstration funds to TDHCA to support three full-time employees to increase affordable housing options for individuals with disabilities who currently reside in institutions and choose to relocate into the community and to support a unit damages fund and a barrier busting fund. These enhanced coordination efforts further the implementation of many programs included in the Consolidated Plan, including the Section 811 PRA Program, Section 8 Project Access, and HOME Single-family activities.

### **Discussion:**

In addition to the program actions mentioned above, TDHCA strives to meet underserved needs by closely monitoring affordable housing trends and issues as well as conducting its own research. TDHCA also makes adjustments to address community input gathered through roundtable discussions, webinars and public hearings held throughout the State.

To foster and maintain affordable housing, TDHCA, TDA, and DSHS provide funds for nonprofit and for-profit organizations and public organizations to develop and maintain affordable housing. Funding sources include grants, low-interest loans, housing tax credits, and mortgage loans.

For lead-based paint hazard mitigation, DSHS has been charged with oversight of the Texas



Environmental Lead Reduction Rules (TELRR). TELRR cover areas of lead-based paint activities in target housing (housing constructed prior to 1978) and child-occupied facilities, including the training and certification of persons conducting lead inspections, risk assessments, abatements, and project design. For all projects receiving over \$25,000 in federal assistance, contractors need to follow inspections and abatements standards overseen by DSHS. By following these standards, the State is increasing the access to housing without lead-based paint hazards. The adherence to inspection and abatement standards is related to the extent of lead-based paint in that a majority of the housing in need of rehabilitation is likely housing built before 1978.

Furthermore, TDHCA, DSHS, and TDA's programs are aimed at reducing the number of Texans living in poverty, thereby providing a better quality of life for all Texans. The departments provide long-term solutions to the problems facing people in poverty and focus resources to those with the greatest need.

Regarding institutional structure, TDHCA, DSHS, and TDA are primarily pass-through funding agencies and distribute federal funds to local entities that in turn provide assistance to households. Because of this, the agencies provide housing and social services through work with many partners, including consumer groups, community based organizations, neighborhood associations, community development corporations, councils of governments, community housing development organizations, community action agencies, real estate developers, social service providers, local lenders, investor-owned electric utilities, local government, nonprofits, faith-based organizations, property managers, state and local elected officials, and other state and federal agencies. Because the agencies do not fund individuals directly, coordination with outside entities is essential to the success of their programs. By structuring its operations this way, the State allows local providers to focus on local needs.

## Program Specific Requirements

### AP-90 Program Specific Requirements – 91.320(k)(1,2,3)

**Introduction:**

Program specific requirements as referenced in 24 CFR §91.320 (k)(1,2,3) are described below for the CDBG, HOME, and ESG programs.

For the CDBG Program, it is expected that the total amount of program income collected in PY 2023 and made available for programming in PY 2024 will be approximately. \$663,000, including program income collected by the state and program income retained by local subgrantees. The amount of CDBG urgent need activities is not expected to exceed \$3,000,000. The 85% of CDBG funds anticipated to benefit persons of low to moderate income includes PY 2024-2026.

#### Community Development Block Grant Program (CDBG) Reference 24 CFR 91.320(k)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	663,000
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan.	0
5. The amount of income from float-funded activities	0
<b>Total Program Income</b>	<b>663,000</b>

#### Other CDBG Requirements

1. The amount of urgent need activities	3,000,000
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	85.00%

**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:

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. The amount subject to recapture will be calculated by determining number of complete years that the affordability requirements were met regardless of any additional months, and deducting that number from the number of years in the affordability period. The total HOME subsidy will be divided by the number of years of the affordability period; the result will then be multiplied by the number of years resulting from the calculation above. The calculation would appear as follows:

$$(\text{Number of years in affordability period} - \text{Number of complete years affordability was met}) \times (\text{Total HOME subsidy} / \text{Number of years in affordability period}) = \text{Amount subject to recapture}$$

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 ownership of assisted property is not transferred, and the assisted property is rented or leased, or otherwise ceases to be the principal residence of the initial household prior to

the end of the affordability period, 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 mortgage lien debt with priority to the HOME funds 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 11 and 13, 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 Scope and Cost Review, (2) the request is in accordance with this plan, TDHCA's rules, and the applicable NOFA, and (3) TDHCA's Board agrees to waive the minimum rehabilitation costs in 10 TAC §11.101(b)(3). At a minimum, this requires the following:

1. 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);
2. 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;
3. That a review of management practices is required to demonstrate that disinvestments in the property has not occurred;
4. That long-term needs of the project can be met;
5. That the financial feasibility of the development will be maintained over an extended affordability period;
6. That whether new investment is being made to maintain current affordable units and/or creates additional affordable units is stated;
7. That the required period of affordability is specified;

8. 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
  9. That HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG, is stated.
5. If applicable to a planned HOME TBRA activity, a description of the preference for persons with special needs or disabilities. (See 24 CFR 92.209(c)(2)(i) and CFR 91.220(l)(2)(vii)).

HOME TBRA is a planned activity for Texas, but TDHCA does not administer this program directly. TBRA is offered through a network of Administrators, who may select to utilize a preference in administration of the TBRA locally. These preferences are limited to those special populations listed in AP-25, and establishment of a preference by an Administrator must be included on their application for funding, which is reviewed by TDHCA. The available preferences include: persons with disabilities, persons with substance use disorders, persons living with HIV/AIDS (PLWH), persons with Violence Against Woman Act (VAWA) protections, colonia residents, farmworkers, homeless populations, veterans, (including wounded warriors as defined by the Caring for Wounded Warriors Act of 2008), public housing residents, persons transitioning out of incarceration, persons impacted by a state or federally declared disaster, and persons transitioning out of foster care and nursing facilities.

Additionally, for administrators with programs that are designed to limit assistance to certain populations, TDHCA will only approve program designs that limit assistance to households that include a member within the following populations if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR §8.4(b)(1)(iv): PLWH, mental illness, substance use disorders, or households that would qualify under the TDHCA's Project Access program as defined in 10 TAC §5.801. Otherwise, administrators may only request a preference for populations described in the special needs section.

6. If applicable to a planned HOME TBRA activity, a description of how the preference for a specific category of individuals with disabilities (e.g. persons with HIV/AIDS or chronic mental illness) will narrow the gap in benefits and the preference is needed to narrow the gap in benefits and services received by such persons. (See 24 CFR 92.209(c)(2)(ii) and 91.220(l)(2)(vii)).

The allowable preferences established that may be selected by administrators in their local TBRA Programs are necessary to increase affordability and accessibility to meaningful housing subsidy. These populations are shown to be at increased risk of being cost burdened or at risk of homelessness as shown in the Needs Assessment in the Consolidated Plan. TBRA typically has a shorter waiting list for subsidy than other tenant-based voucher program, and reduces their rent to

30% of their income, assuming that they select a unit that is at or below the Fair Market Rent for their area.

7. If applicable, a description of any preference or limitation for rental housing projects. (See 24 CFR 92.253(d)(3) and CFR 91.220(l)(2)(vii)).

Note: Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a).

Not applicable

### **Emergency Solutions Grant (ESG) Reference 91.320(k)(3)**

1. Include written standards for providing ESG assistance (may include as attachment)

ESG Written Standards are evaluated based on questions that are Included as an attachment.

2. If the Continuum of Care has established centralized or coordinated assessment system that meets HUD requirements, describe that centralized or coordinated assessment system.

Each of the 11 CoCs in Texas has a different centralized or coordinated assessment system. TDHCA ensures that its Subrecipients participate in the local CoC's coordinated assessment. Applicants for ESG funding are required to certify their participation in the CoC centralized or coordinated assessment system. ESG Subrecipients are required to use this process per 24 CFR §576.400(d), with an exception for victim service providers. ESG Subrecipients are also required to certify that they have written standards that are consistent with the CoC's screening, assessment and referral of ESG program participants, or to certify that the Subrecipient is a victim services provider and not required to participate in coordinated assessment/entry.

3. Identify the process for making sub-awards and describe how the ESG allocation available to private nonprofit organizations (including community and faith-based organizations).

ESG funds may be offered to eligible prior subrecipients who have demonstrated effective performance under their prior award, or may be offered under a competitive funding application. Some portion of the allocation may be set aside for direct awards to Subrecipients receiving funds for development of non-congregate shelter under HOME-ARP. The allocation amounts available in each CoC region are established by formula.

Eligible applicant organizations include Units of General Purpose Local Government, including cities, counties and metropolitan cities; and a consolidation of units of general purpose local governments, like a Council of Governments. Other instrumentalities of a city or county, like a Local Mental Health Authority, may have been eligible and were advised to seek guidance from TDHCA to determine

their eligibility for application. Governmental organizations such as Public Housing Authorities (PHAs) and housing finance agencies are not eligible subrecipients and applications from such agencies would not be awarded ESG funds.

Eligible applicants also include private nonprofit organizations that are secular or religious organizations exempt from taxation under Section 501(c) of the Internal Revenue Code of 1986, have an acceptable accounting system and a voluntary board, and practice non-discrimination in the provision of assistance. Faith-based organizations receiving ESG funds, like all organizations receiving HUD funds, must serve all eligible beneficiaries without regard to religion.

4. If the jurisdiction is unable to meet the homeless participation requirement in 24 CFR 576.405(a), the jurisdiction must specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering policies and funding decisions regarding facilities and services funded under ESG.

As a State recipient, TDHCA is not required to provide for the participation of a homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity. However, TDHCA may prioritize funding for Subrecipients by allocating points if they have participation of homeless or formerly homeless individuals in their programs.

5. Describe performance standards for evaluating ESG.

TDHCA has transitioned from evaluating performance based on whole numbers of persons or households served to percentages of persons or households served who achieve particular outcomes.

Subrecipients providing street outreach will be required to meet contractual performance targets for the percentage of assisted persons placed in temporary or transitional housing.

Subrecipients providing emergency shelter and transitional shelter will be required to meet contractual performance targets for the provision of essential services and the percentage of assisted persons who will exit to temporary, transitional, positive, or permanent housing destinations.

Subrecipients providing homelessness prevention and rapid re-housing assistance will be required to meet contractual performance targets for the percentage of assisted persons receiving higher income at exit than at entry, the percentage of persons who will exit to permanent or positive housing destinations and, the percentage of persons who will maintain housing three months or more as a result of receiving ESG assistance.



**Housing Trust Fund (HTF)**  
**Reference 24 CFR 91.320(k)(5)**

**1. How will the grantee distribute its HTF funds? Select all that apply:**

- Applications submitted by eligible recipients
- Subgrantees that are HUD-CPD entitlement grantees

**2. If distributing HTF funds through grants to subgrantees, describe the method for distributing HTF funds through grants to subgrantees and how those funds will be made available to state agencies and/or units of general local government. If not distributing funds through grants to subgrantees, enter "N/A".**

N/A

**3. If distributing HTF funds by selecting applications submitted by eligible recipients,**

a. Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR § 93.2). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

Selection criteria typically only applies when funds are oversubscribed; in cases where the application is layered concurrently with 9% Housing Tax Credits and submitted during the competitive HTC cycle, for instance, scoring in 10 TAC §11.9 would be applicable. To the extent that two or more applications for NHTF have the same received by date and the funds are oversubscribed, the criteria listed in the Multifamily Direct Loan Rule (10 TAC Chapter 13), found in the attachments, will apply, unless alternative scoring or prioritization criteria has been specified in the NOFA. If applications for NHTF are not combined with 9% HTC or do not need to be prioritized in a regional allocation formula, they will be prioritized based on the Application Acceptance Date and reviewed according to the priorities established in the NOFA to ensure they meet the Department's threshold criteria, which takes into account all of the selection criteria in 24 CFR §91.320(k)(5)(i).

The Texas Department of Housing and Community Affairs' Multifamily Division awards or allocates more than \$1 billion annually of debt and equity in an efficient and compliant manner. Our processes for Application selection are comprehensive, and assure that the resulting Developments satisfy strong standards for financial feasibility and long-term stability. Our Compliance Monitoring Division assures that all properties meet these standards for the duration of their affordability period, and is frequently cited as one of the best Compliance divisions nationally.

Program requirements are outlined in the Texas Administrative Code the Qualified Allocation Plan and Multifamily Direct Loan Rule are updated annually through an open and transparent public input process. Additionally, the QAP is approved annually by the Governor. All of the selection criteria

described in 24 CFR §91.320(k)(5)(i) are addressed by the rules, although not necessarily contained in one rule dedicated solely to NHTF. We hold all Applications for multifamily funds to the same standards through the application of consistent requirements across all fund sources.

All Applications for NHTF funds must meet threshold criteria in 10 TAC Chapter 11, Subchapters A through D, and the Multifamily Direct Loan Rule, which address Definitions, Site and Development requirements, Applicant and Application requirements, and loan structure and underwriting requirements.

b. Describe the grantee’s application requirements for eligible recipients to apply for HTF funds. If not distributing funds by selecting applications submitted by eligible recipients, enter “N/A”.

Texas' application requirements can be found in 10 TAC Chapter 11, Subchapter C: Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; as well as 10 TAC Chapter 13 (Multifamily Direct Loan Rule). See link in attachments to rules.

c. Describe the selection criteria that the grantee will use to select applications submitted by eligible recipients. If not distributing funds by selecting applications submitted by eligible recipients, enter “N/A”.

Selection criteria typically only applies when funds are oversubscribed; in cases where the application is layered concurrently with 9% Housing Tax Credits and submitted during the competitive HTC cycle, for instance, scoring in 10 TAC §11.9 would be applicable. To the extent that two or more applications for NHTF have the same received by date and the funds are oversubscribed, the scoring criteria listed in the linked Multifamily Direct Loan Rule (10 TAC Chapter 13) in the attachments, will apply, unless alternative priorities or scoring criteria are established in the applicable NOFA.

If applications for NHTF are not combined with 9% HTC or do not need to be prioritized in a regional allocation formula, they will be prioritized based on the Application Acceptance Date and reviewed to ensure they meet the Department's threshold criteria, which takes into account all of the selection criteria in 24 CFR §91.320(k)(5)(i).

Please see response to 3a for additional detail on selection criteria.

d. Describe the grantee’s required priority for funding based on geographic diversity (as defined by the grantee in the consolidated plan). If not distributing funds by selecting applications submitted by eligible recipients, enter “N/A”.

As described in SP-10 Geographic Priorities the Texas NHTF will distribute NHTF funds through a competitive NOFA process. As reflected in 10 TAC §13.4(b) the funds will initially be available geographically, based on the proportion of Extremely Low Income Renter households to the total

population of Renter Households in each of thirteen State Service Regions. A minimum will be calculated for each region as a ratio of the available allocation divided by thirteen, and available competitively within each region for at least the first 30 days after a NOFA is published prior to being collapsed into a statewide competition. Regions may be combined within the NOFA, but in no case will there be fewer than four geographic groups for distribution unless the state's annual allocation is \$4 million or less, in which case there may be fewer regions to allow each region to have at least \$1 million in its initial allocation.

Thereafter, consideration of geographic diversity will not be a factor in evaluating applications. Please see attached Multifamily Direct Loan Rule for text of 10 TAC §13.4(b).

e. Describe the grantee's required priority for funding based on the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

Applicants must provide evidence of their experience in developing and managing multifamily developments as required under 10 TAC §11.204(6) if layered with other fund sources, or 10 TAC §13.5(h)(1) if MFDL only. Both 10 TAC §11.204(6) or 10 TAC §13.5(d)(1) are mentioned in the table HTF Funding Priorities Question 3a.

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

Furthermore, 10 TAC §13.11(c)(3) through (4) states:

"(3) After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

(4) Loan closing must occur and construction must begin on or before the date described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated."

Execution of a Contract fulfills the Commitment definition in 24 CFR §93.2 in that the Contract is the "legally binding written agreement (that includes the date of the signature of each person signing the agreement) with an eligible recipient for a project that meets the definition of 'commit to a specific local project.'" Additionally, 10 TAC §13.11(c)(13) states: "Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract." Finally, the Department may impose a two year ban on applying for MFDL for any applicant that fails to meet commitment and/or expenditure requirements in accordance with 10 TAC §13.11(a) and (b), which states: "Direct Loan awardees must satisfactorily complete the following Post-Award Requirements after the Board approval date. If a Direct

Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f)(relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.” See attachments for full text of referenced TDHCA 10 TAC rules.

f. Describe the grantee’s required priority for funding based on the extent to which the rental project has Federal, State, or local project-based rental assistance so that rents are affordable to extremely low-income families. If not distributing funds by selecting applications submitted by eligible recipients, enter “N/A”.

While the availability of project-based rental assistance will be considered, only applications that demonstrate the ability to meet Underwriting requirements will be funded.

The State of Texas will consider project based rental assistance to the extent that the existence of it allows or the lack of it does not allow an application to meet TDHCA’s underwriting requirements. A development that would otherwise be characterized as infeasible may be deemed feasible if the criteria, as described in 10 TAC §11.302(i)(6)(B) are applicable. See link in the attachments for 10 TAC Chapter 11. For Applications layered with 9% credits, leveraging is a scoring item under 10 TAC §11.9(e)(4). See link in the attachments for 10 TAC Chapter 11. If an application is not layered with 9% credits, it must have other sources of funding, such as project based vouchers, in order to be viable over the affordability period.

10 TAC §13.8 from the Multifamily Direct Loan Rule and 10 TAC §§11.301 through .306 of the Uniform Multifamily Rule will comprise TDHCA’s underwriting requirements.

g. Describe the grantee’s required priority for funding based on the financial feasibility of the project beyond the required 30-year period. If not distributing funds by selecting applications submitted by eligible recipients, enter “N/A”.

No priority for funding based on the feasibility of the project beyond the required 30-year period will be given except in instances where a first-lien loan ahead of an NHTF loan or grant has a term greater than 30 years that would result in the NHTF loan or grant having a term greater than 30 years. Texas Government Code §2306.185(c) further limits the length of the affordability period that the State can impose, stating: “The department shall require that a recipient of funding maintains the affordability of the multifamily housing development for households of extremely low, very low, low, and moderate incomes for the greater of a 30-year period from the date the recipient takes legal possession of the housing or the remaining term of the existing federal government assistance. In addition, the agreement between the department and the recipient shall require the renewal of rental subsidies if available and if the subsidies are sufficient to maintain the economic viability of the multifamily

development.” In other words, absent scoring considerations, unless an FHA-insured loan or similar type of federal government-insured loan with a term greater than 30 years is part of the financing, the longest NHTF affordability period that the State will impose is 30 years. Additionally, for bond layered transactions the NHTF state affordability period will match the length of the affordability period required for the bonds.

h. Describe the grantee’s required priority for funding based on the merits of the application in meeting the priority housing needs of the grantee (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations). If not distributing funds by selecting applications submitted by eligible recipients, enter “N/A”.

The State of Texas will prioritize HTF funding for the needs of ELI households in accordance with its 2019 State of Texas Analysis of Impediments (AI) recommendations and high opportunity measures of the QAP.

Threshold requirements for all multifamily projects are found in 10 TAC Chapter 11 Subchapter B, which include criteria such as Mandatory Development Amenities, Common Amenities, Unit Requirements, Tenant Supportive Services requirements, and Development Accessibility Requirements. 10 TAC Chapter 11 Subchapter B also includes threshold requirements such as Undesirable Site Features and Undesirable Neighborhood Characteristics. Additionally, Applications layered with 9% Tax Credits are scored on proximity to desirable community features, as are Direct Loan Applications if the fund source or set-aside is over-subscribed.

i. Describe the grantee’s required priority for funding based on the extent to which the application makes use of non-federal funding sources. If not distributing funds by selecting applications submitted by eligible recipients, enter “N/A”.

It is anticipated that Applications for NHTF will require multiple funding sources in order to meet threshold feasibility requirements.

Without other fund sources, this range of subsidy level will not be possible, so other funding sources – whether owner equity if NHTF is the only source of Department funding or, more likely, Housing Tax Credits since NHTF works best as gap financing – are required. Finally, although not federally required, 10 TAC §11.204(7)(E) discusses documentation requirements for HOME Match funds of requested Direct Loan funds. See link in attachments for text of 10 TAC Chapter 11.

Applications layered with 9% Housing Tax Credits will be subject to scoring in 10 TAC §11.9(e)(4) - Leveraging of Private, State, and Federal Resources - which states:

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items

may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph: (i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than seven 9% of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than eight 10% of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than nine 11% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

**4. Does the grantee’s application require the applicant to include a description of the eligible activities to be conducted with HTF funds? If not distributing funds by selecting applications submitted by eligible recipients, select “N/A”.**

Yes

**5. Does the grantee’s application require that each eligible recipient certify that housing units assisted with HTF funds will comply with HTF requirements? If not distributing funds by selecting applications submitted by eligible recipients, select “N/A”.**

Yes

**6. Performance Goals and Benchmarks.** The grantee has met the requirement to provide for performance goals and benchmarks against which the grantee will measure its progress, consistent with the grantee’s goals established under 24 CFR 91.315(b)(2), by including HTF in its housing goals in the housing table on the SP-45 Goals and AP-20 Annual Goals and Objectives screens.

Yes

**7. Maximum Per-unit Development Subsidy Amount for Housing Assisted with HTF Funds.**

Enter or attach the grantee’s maximum per-unit development subsidy limits for housing assisted with HTF funds.

The limits must be adjusted for the number of bedrooms and the geographic location of the project. The limits must also be reasonable and based on actual costs of developing non-luxury housing in the area.

If the grantee will use existing limits developed for other federal programs such as the Low Income Housing Tax Credit (LIHTC) per unit cost limits, HOME’s maximum per-unit subsidy amounts, and/or Public Housing Development Cost Limits (TDCs), it must include a description of how the HTF maximum per-unit development subsidy limits were established or a description of how existing limits developed for another program and being adopted for HTF meet the HTF requirements specified above.

TDHCA adopted the Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits) published by HUD, subject to the High Cost Adjustment as allowed for all jurisdictions in Fort Worth HUB, for 2021, 2022 and 2023 PY awards made through the Multifamily 2021, 2022, and 2023 NOFAs. It plans to do the same with 2024 awards. While TDHCA does not make any FHA-insured loans, the department has adopted the per unit limits for substantial rehab for our Direct Loans (HOME, NHTF, TCAP RF, NSP1 PI) for 2024. The attached limits do not vary based on geographic location in Texas since the limits were approved by HUD for use throughout the state. They will be used statewide for ease of use both for applicants and TDHCA staff.

Additional limits may apply if the NHTF funds are used in conjunction with other affordable housing programs. Also, these subsidy limits may be subject to stricter limits in NOFAs.

Funds from the HOME-American Rescue Plan Program will not be included when evaluating subsidy layering.

See the attached justification as to why the State will not establish separate maximum limitations on the total amount of NHTF.

**8. Rehabilitation Standards.** The grantee must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The grantee’s description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the

minimum requirements of the codes. The grantee must attach its rehabilitation standards below.

In addition, the rehabilitation standards must address each of the following: health and safety; major systems; lead-based paint; accessibility; disaster mitigation (where relevant); state and local codes, ordinances, and zoning requirements; National Standards for the Physical Inspection of Real Estate; Scope and Cost Review; and Capital Needs Assessments (if applicable).

Rehabilitation Standards are attached.

**9. Resale or Recapture Guidelines.** Below, the grantee must enter (or attach) a description of the guidelines that will be used for resale or recapture of HTF funds when used to assist first-time homebuyers. If the grantee will not use HTF funds to assist first-time homebuyers, enter "N/A".

N/A

**10. HTF Affordable Homeownership Limits.** If the grantee intends to use HTF funds for homebuyer assistance and does not use the HTF affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with §93.305. If the grantee will not use HTF funds to assist first-time homebuyers, enter "N/A".

The grantee has determined its own affordable homeownership limits using the methodology described in § 93.305(a)(2) and the limits are attached.

N/A

**11. Grantee Limited Beneficiaries or Preferences.** Describe how the grantee will limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population to serve unmet needs identified in its consolidated plan or annual action plan. If the grantee will not limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population, enter "N/A."

Any limitation or preference must not violate nondiscrimination requirements in § 93.350, and the grantee must not limit or give preferences to students. The grantee may permit rental housing owners to limit tenants or give a preference in accordance with § 93.303(d)(3) only if such limitation or preference is described in the action plan.



The State will limit beneficiaries and/or give preferences to the segments of the extremely low-income population in accordance with AP-25 of the 2024 One-Year Action Plan.

**12. Refinancing of Existing Debt.** Enter or attach the grantee’s refinancing guidelines below. The guidelines describe the conditions under which the grantee will refinance existing debt. The grantee’s refinancing guidelines must, at minimum, demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing. If the grantee will not refinance existing debt, enter “N/A.”

TDHCA may use NHTF funds to refinance existing debt secured by multifamily housing that is being rehabilitated with NHTF funds as described in 24 CFR §93.201(b). TDHCA shall use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 TAC Chapters 11 and 13, for refinanced properties in accordance with its administrative rules. The NOFA may allow for lower per unit rehabilitation costs than those described at 10 TAC §13.7(c), and the Board may waive the rehabilitation minimums at 10 TAC §11.101(b)(3). At a minimum:

- Rehabilitation costs must be the primary eligible activity for developments involving refinancing of existing debt so the NHTF eligible rehabilitation costs – whether funded entirely or partially by TDHCA’s NHTF funds – are greater than the total refinancing costs (i.e. payoff amount plus closing and title costs);
- The proportional rehabilitation cost per NHTF unit must be greater than the proportional amount of debt per NHTF unit that is being refinanced; and
- The proposed NHTF rent on a unit at application must be less than the greater of actual rent being collected from tenants at application or the tenant’s portion of the rent payment, as restricted by any entity through a project-based contract, operating subsidy, or by a use agreement.

**Discussion:**

The State is not proposing to use any form of investment in its NHTF Program that is not already listed as an eligible for investment in 24 CFR §93.201(b). As described above, TDHCA may use NHTF funds to refinance existing debt secured by multifamily housing that is being rehabilitated as described in 24 CFR §93.201. TDHCA will use its underwriting and evaluation standards, site and development requirements, and application and submission requirements found in 10 Texas Administrative Code, Chapters 11 and 13, for refinanced properties in accordance with its administrative rules.

For HOME, 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). 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 1, 10, 11, and 13, for refinanced properties in accordance with its administrative rules. For any HOME funds utilized for homebuyer assistance or for rehabilitation of owner-occupied single family housing TDHCA utilizes HUDs homeownership limits for the area provided by HUD.

# Attachments

## General OYAP Attachments:

- CDBG Allocation of CDBG program income and deobligated funds
- ESG Written Standards

## AP-90 NHTF Attachments:

- 2024 Multifamily Rules
  - [10 TAC Chapter 1, Administration \(Link\)](#)
  - [10 TAC Chapter 11, Qualified Allocation Plan \(Link\)](#)
  - [10 TAC Chapter 13, Multifamily Direct Loan Rule \(Link\)](#)
- 2024 Multifamily Direct Loan Certification
- AP-90 Question 3a – Table of Corresponding Requirements in 24 CFR §93.2 and State Rules
- AP-90 Question 3d –Estimated Allocation Amounts and Map of the State Service Regions
- NHTF Rehabilitation Maximum Subsidy Limits
- NHTF Rehabilitation Standards

## Summary of OYAP Public Comment

- No Public Comment was received for the 2024 One-Year Action Plan

# 2024 One Year Action Plan

## CDBG Method of Distribution Attachment

### **Attachment: Allocation of CDBG program income and deobligated funds**

**Deobligated Funds:** Deobligated funds may be used to fully fund pending applications in any fund category for which only partial funding is available, or to fund additional grants in categories experiencing high demand. At the discretion of the Department, TDA may open an application cycle for the FAST Fund, SUN Fund, or other appropriate fund category in order to effectively utilize deobligated funds available.

### **Program Income:**

Program income is defined as gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG funds. When program income is generated by an activity that is only partially funded with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. Any remaining program income must be returned to the State.

The State may use up to the maximum allowable percentage of the amount recaptured and reportable to HUD each year for administrative expenses under the CDBG Program. This amount will be matched by the State on a dollar-for-dollar basis.

### TCF, RED Programs and Revolving Loan Fund ("RLF") Program Income

Funds retained in any existing local RLF must be committed within three years of the original CDBG contract programmatic close date. At least one eligible loan/award from the local RLF must be made every three years. Every award from the RLF must be used to fund the same type of activity from which such income was derived. A local RLF may retain a cash balance not greater than 33% of its total cash and outstanding loan balance. All activities funded with RLF funds must comply with CDBG regulations and rules and guidelines. If a local government does not comply with the RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

To the extent there are eligible applications, program income derived from the Texas Capital Fund real estate and/or infrastructure projects (from prior Program Years) will be used to fund awards under the Rural Economic Development Programs. Other available program income shall be allocated based on the methodology used to allocate Deobligated Funds.

### **Additional detail for Geographic Allocation:**

Funds for projects under the CD Fund are allocated among the 24 State planning regions based on the following: The original CD formula is used to allocate 45% of the annual State CDBG allocation.

1) Original CD formula (45%) factors:

- a. Non-Entitlement Population 30%
- b. Number of Persons in Poverty 25%
- c. Percentage of Poverty Persons 25%
- d. Number of Unemployed Persons 10%
- e. Percentage of Unemployed Persons 10%

To the extent possible, the information used to calculate the regional allocations through these factors will be based on the eligible non-entitlement applicants within each region. The population and poverty information used is from the current available decennial census data. The unemployment information used is the current available annual average information. TDA does not provide priorities for allocation of funds geographically to areas of minority concentration as described in Section 91.320(f).

2) The HUD formula is used to allocate 27.35% of the annual State CDBG allocation.

The formula is the same methodology that HUD uses to allocate CDBG funds among the States for use in non-entitlement areas. The HUD factors, percentages, and methodology are specified in 42 USC §5306(d). TDA will use available data to calculate the allocations to each region.

Using the HUD methodology, the allocation for each region shall be the greater of an amount that bears the same ratio to the allocation for all 24 regions available as either:

(A) the average of the ratios between:

- o the population of the non-entitlement counties in that region and the population of the nonentitlement counties of all 24 regions (counted one time - 25% weight);
- o the extent of poverty in the non-entitlement counties in that region and the extent of poverty in the non-entitlement counties of all 24 regions (counted two times - 50% weight); and
- o the extent of housing overcrowding in the non-entitlement counties in that region and the extent of housing overcrowding in the non-entitlement counties of all 24 regions (counted one time - 25% weight);

OR

(B) the average of the ratios between:

- o the age of housing in the non-entitlement counties in that region and the age of housing in the nonentitlement counties in all 24 regions (counted two and one half times - 50% weight);
- o the extent of poverty in the non-entitlement counties in that region and the extent of poverty in the non-entitlement counties of all 24 regions (counted one and one half times - 30% weight); and
- o the population of the non-entitlement counties in that region and the population of the nonentitlement counties of all 24 regions (counted one time - 20% weight).

## **Unobligated Funds**

For an award that is withdrawn from an applicant, the TDA follows different procedures for the use of those recaptured funds depending on the fund category in which the award is withdrawn.

1. The CD Fund – funds from the withdrawal of an award shall be offered to the next highest ranked applicant from that region that was not recommended to receive an award due to depletion of the region’s allocation. A marginal amount may be offered to the next highest ranked applicant as long as the amount of funds still available exceeds the minimum CD Fund grant amount. Any funds remaining from a regional allocation that are not accepted by an applicant, that are not offered to an applicant, or remain due to lack of additional, unfunded applications, may be allocated among regions with eligible, unfunded applications. If unallocated to another region, they are then subject to the procedures used to allocate Deobligated Funds.

2. RED Programs – funds from the withdrawal of a Downtown Revitalization/ Main Street Program, RED-Strategy Program, or RED-Project Program shall be offered to the next highest ranked application that was not recommended to receive an award due to depletion the program’s allocation. Any unallocated RED funds are then subject to the procedures used to allocate Deobligated Funds.

3. The Colonia Funds – funds from the withdrawal of any Colonia Fund award remain available to potential Colonia Fund applicants during that program year. If unallocated within the Colonia Fund, funds then may be used for other CDBG fund categories to fund eligible projects or activities that assist colonia residents. Remaining unallocated funds are then subject to the procedures used to allocate Deobligated Funds.

4. SUN Funds - funds from the withdrawal of a SUN award shall be returned to the fund category from which the funds were previously transferred, consistent with the procedures used to allocate Deobligated Funds.

## ESG Written Standards

TDHCA requires that its Subrecipients establish and implement written standards for providing ESG assistance. TDHCA reviews the standards to ensure they answer the following questions.

### 1. Evaluation (24 CFR §576.400(e)(3)(i))

- a) Are the definitions of homeless or at-risk of homelessness included in the evaluation?
- b) Are there standard policies and procedures for evaluating individual and household eligibility for ESG?
- c) Are priority populations listed?
- d) Are the priority populations listed the same as the Continuum of Care priority populations?

### 2. Targeting - 24 CFR §576.400(e)(3)(ii),(iv)

- a) Are there standards for targeting and providing essential services related to street outreach?
- b) Are there standards determining how providers will assess, prioritize, and reassess participant's needs for essential services related to emergency shelter?

### 3. Evaluation for Emergency Shelter - 24 CFR §576.400(e)(3)(iii)

- a) Is there a description of:
  - i. Clients that will be admitted?
  - ii. Clients that will be diverted?
  - iii. Clients that will be referred?
  - iv. Clients will be discharged?
- a) Are there safeguards to secure safety (if applicable)?
- b) Are reasonable accommodations for persons with disabilities included?

### 4. Coordination - 24 CFR §576.400(e)(3)(v)

- a) Are there policies and procedures for coordination among:
  - i. Emergency shelter providers?
  - ii. Essential service providers?
  - iii. Homelessness prevention providers?
  - iv. Rapid re-housing assistance providers?
  - v. Other homeless assistance providers?
  - vi. Mainstream services and housing providers?

### 5. Assistance Levels - 24 CFR §576.400(e)(3)(vi)

- a) Is there a description of:
  - i. Which clients will receive rapid re-housing or homelessness prevention?
  - ii. Whether a percentage or amount of rent will be paid by client?
  - iii. Whether a percentage or amount of utilities will be paid by client?
  - iv. How long will client receive rental assistance?
  - v. How or if rental assistance be adjusted over time?
  - vi. What is amount of assistance will be provided?
  - vii. How will the duration of assistance be determined?
  - viii. What happens after a break in service (i.e., Program participant stops receiving assistance one month)?
  - ix. What unit sizes are appropriate for rapid re-housing?
  - x. What data sources/formats are used for rent reasonableness?

**6. Housing Stability Case Management/Relocation Services – 24 CFR §576.400(e)(3)(ix)**

- a) Is there a description of:
  - i. What types of services offered and not offered?
  - ii. What amounts are offered for the services?
  - iii. How long will case management/relocation services last?
- b) Does case management include monthly meetings to assist with housing stability? (n/a for Domestic Violence providers)
- c) Does case management include development for participant to retain permanent housing once ESG assistance ends? (n/a for Domestic Violence providers)
- d) Does case management include assistance for program participants' access supportive services for which they may be eligible? (n/a for Domestic Violence providers)

**7. Relocation Services: Financial – 24 CFR §576.105(a)**

- a) Do the written standards specify when the following financial assistance is offered or not offered:
  - i. Rental application fees
  - ii. Security deposits/Last month's rent
  - iii. Utility deposits/payments
  - iv. Moving costs
  - v. Storage fees (3 months maximum)

**8. Service Costs (Include if services are offered and which community organizations can act as a referral source, if applicable) – 24 CFR §576.105(b)(3)-(5)**



- a) Do the written standards specify when the following services are offered or not offered, and which community resources can be used?
  - i. Mediation
  - ii. Legal Services
  - iii. Credit Repair

**9. Denials 24 CFR §576.402**

- a) Are there policies and procedures for terminating assistance?
- b) Does the appeal process include notification of denial?
- c) Does the appeal process include the household's process to appeal the decision?
- d) Does the appeal process include recordkeeping process for denial requests?

## Multifamily Direct Loan Certification

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I (We) hereby make application to the Texas Department of Housing and Community Affairs (the “Department”) for an award of Multifamily Direct Loan funds, which may be composed of HOME Investment Partnerships Program (“HOME”), HOME American Rescue Plan (“HOME-ARP”), Emergency Rental Funds (“ERA”), Tax Credit Assistance Program Repayment Funds (“TCAP RF”), and/or national Housing Trust Fund (“NHTF”). The undersigned hereby acknowledges that an award by the Department does not warrant that the Development is deemed qualified to receive such award. I (We) agree that the Department or any of its directors, officers, employees, and agents will not be held responsible or liable for any representations made to the undersigned or its investors relating to the Multifamily Direct Loan; therefore, I (We) assume the risk of all damages, losses, costs, and expenses related thereto and agree to indemnify and save harmless the Department and any of its officers, employees, and agents against any and all claims, suits, losses, damages, costs, and expenses of any kind and of any nature that the Department may hereinafter suffer, incur, or pay arising out of its decision concerning this application for Multifamily Direct Loan funds or the use of information concerning the Multifamily Direct Loan.

On behalf of the Applicant and all affiliates of the Applicant (hereinafter “Applicant”), I (We) hereby certify that the Applicant is familiar with the state Rules, as published in 10 TAC Chapters 1, 2, 10, 11, and 13, as well as Chapter 12 as applicable. I (We) hereby acknowledge that this Application is subject to disclosure under Tex. Gov’t Code Chapter 552, the Texas Public Information Act, unless a valid exception exists.

I (We) hereby assert that the information contained in this Application as required or deemed necessary by the materials governing the Multifamily Direct Loan program are true and correct and that I (We) have undergone sufficient investigation to affirm the validity of the statements made and the Department may rely on any such statements.

Further, I (We) hereby assert that I (We) have read and understand all the information contained in the application. By signing this document, I (We) affirm that all statements made in this government document are true and correct under penalty of Tex. Penal Code Chapter 37 titled Perjury and Other Falsification and subject to criminal penalties as defined by the State of Texas.

I (We) understand and agree that if false information is provided in this Application which has the effect of increasing the Applicant’s competitive advantage, the Department will disqualify the Applicant and may hold the Applicant ineligible to apply for Multifamily Direct Loan funds or until any issue of restitution is resolved. If false information is discovered after the award of

Multifamily Direct Loan funds, the Department may terminate the Applicant's written agreement and recapture all Multifamily Direct Loan funds expended.

I (We) shall not, in the provision of services, or in any other manner discriminate against any person on the basis of age, race, color, religion, sex, national origin, familial status, or disability. Verification of any of the information contained in this application may be obtained from any source named herein.

I (We) have written below the name of the individual authorized to execute the Multifamily Direct Loan agreement and any and all future Multifamily Direct Loan commitments and contracts related to this application. This individual is named in the Application as able to exercise Control over the Application and proposed Development. If this individual is replaced by the organization, I (We) must inform the Department within 30 days of the person authorized to execute agreements, commitment and/or contracts on behalf of the Applicant.

I (We) certify that no person or entity that would benefit from the award of Multifamily Direct Loan funds has committed to providing a source of match.

I (We) certify that I (We) will meet, Texas Minimum Construction Standards, 2010 ADA Standards for Accessible Design, as well as the Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973, as further detailed in 10 TAC Chapter 1, Subchapter B. I (We) certify that the Development will meet all local building codes or standards that may apply as well as the Uniform Physical Conditions Standards in 24 CFR §5.705

I (We) certify that if refinancing is a component of the proposed development the Applicant must confirm that Multifamily Direct Loan funds will not be used to replace loans, grants or other financing provided or insured by any other Federal program, or in violation of the provisions of 10 TAC Chapter 13.

I (We) certify that if federal, governmental, or any other assistance is used in the financing of this development I (We) will notify the Texas Department of Housing and Community Affairs.

I (We) certify that I (We) do not 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.

If, after receiving a public subsidy, I (We), am convicted of a violation under 8 U.S.C Section 1324a (f), I (We) shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Tex. Gov't Code Section 2264.053, not later than the 120th day after the date TDHCA notifies Applicant of the violation.

If applying for HOME, HOME-ARP, or TCAP-RF funds, on behalf of the Applicant, I (We) hereby certify that the Applicant is familiar with the provisions of the federal HOME Final Rule, as published in 24 CFR Part 92, and other related administrative rules and regulations and court rulings issued by the Federal government or State of Texas with respect to the HOME Investment Partnerships Program and all Developments eligible to receive these funds will comply with such rules during the application process and, in the event of award of these funds, for the duration of the proposed Development. HOME-ARP Applicants also certify familiarity with CPD Notice 21-10.

If applying for NHTF funds, on behalf of the Applicant, I (We) hereby certify that the Applicant is familiar with the provisions of the interim Housing Trust Fund rule, as published in 24 CFR Part 93, and other related administrative rules and regulations and court rulings issued by the Federal government or State of Texas with respect to the NHTF and all Developments eligible to receive NHTF funds will comply with such rules during the application process and, in the event of award of NHTF funds, for the duration of the proposed Development.

If applying for ERA funds, on behalf of the Applicant, I (We) hereby certify that the Applicant is familiar with the provisions of Section 3201(a) of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (March 11, 2021), U.S. Department of the Treasury Emergency Rental Assistance Frequently Asked Questions, and other related administrative rules, regulations, and guidance (and related court rulings) issued by the Federal government or the State of Texas with respect to the ERA; and all Developments eligible to receive ERA funds will comply with such rules during the application process and, in the event of award of ERA funds, for the duration of the proposed Development.

### **Threshold Certification**

On behalf of the Applicant and all affiliates of the Applicant (hereinafter “Applicant”), I (We) hereby certify that the Applicant is familiar with the provisions and requirements of the applicable Multifamily Direct Loan Notice of Funding Availability (NOFA) approved by the Department’s Governing Board for which I (We) am applying.

I (We) understand that housing units subsidized by Multifamily Direct Loan funds must be affordable to low, very low or extremely low-income persons. I (We) understand that mixed income rental developments may only receive funds for units that meet the Multifamily Direct Loan affordability standards. I (We) understand that all Applications intended to serve persons with disabilities must adhere to the Department’s Integrated Housing Rule at 10 TAC §1.15.

I (We) understand that, all contractors, consulting firms, Borrowers, Development Owners and Contract Administrators must sign and submit the appropriate documentation with each draw to attest that each request for payment of Multifamily Direct Loan funds is for the actual cost of

providing a service and that the service does not violate any conflict of interest provisions in the Texas Grant Management Standards, 24 CFR Part 200, 24 CFR Part 92, or 24 CFR Part 93, as applicable.

I (We) certify that I (We) am eligible to apply for funds or any other assistance from the Department. I (We) certify that all audits are current at the time of application. I (We) certify that any Audit Certification Forms have been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance pursuant to 10 TAC §1.403.

I (We) certify that, the Development will meet the broadband infrastructure requirements of 81 FR 92626, and that these costs are included in the Application.

**Applications for Developments Previously Awarded Department Funds**

This Development proposed in this Application has \_\_\_\_\_ has not \_\_\_\_\_ previously received Department funds. (check one)

If the Development proposed in this Application has previously received Department funds and construction has already started or been completed, and acquisition and rehabilitation is not being proposed, a letter from the Applicant that seeks to explain why this Application should be found eligible is provided behind this tab, except if applying in the COVID-Impacted Set-Aside or HOME-ARP. I (we) understand that such funding from federal sources may not be eligible, and depending on the fund sources available in the applicable NOFA, the proposed Development may not be eligible for assistance.

***All applicants applying under a Multifamily Direct Loan Notice of Funding Availability (NOFA) must read and initial after each of the following sections regarding federal cross cutting requirements in the boxes below.***

**HUD Section 3**

I (We) hereby agree that the work to be performed in connection with any award of HOME or NHTF funds is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. These regulations were updated in 2021. I (We) agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. I (We) agree to put the Department’s Section 3 clause in all applicable construction contracts. For more information about HUD Section 3, please

reference the TDHCA website dedicated to Section 3 at: <http://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

(initial)

**Environmental**

I (We) understand that the environmental effects of each activity carried out with an award of HOME or HOME-ARP funds must be assessed in accordance with the applicable provisions of National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §4321 et seq.) and the related activities listed in HUD’s implementing regulations at 24 CFR Parts 50, 51, 55, and 58 (NEPA regulations). Each such activity must have an environmental review completed and support documentation prepared complying with the NEPA and NEPA regulations. **No loan may close or funds be committed to an activity before the completion of the environmental review process, including the requirements of 24 CFR Part 58, and the Department has provided written clearance.**

The Department as the Responsible Entity must ensure that environmental effects of the property are assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities listed in HUD’s implementing regulations at 24 CFR Parts 50 and 58.

I (We) certify that all parties involved in any aspect of the development process began the project with no intention of using Federal assistance.

I (We) certify that as of the date of the Multifamily Direct Loan application all project work, other than as allowed in 24 CFR Part 58, has ceased.

I (We) understand that the environmental effects of each activity carried out with an award of NHTF funds must be assessed in accordance with the provisions of CPD Notice 16-14.

I (We) certify that I (we) have read and understand the requirements in 24 CFR §58.22 or CPD Notice 16-14, and I (we) understand that **acquisition of the site, even with non-HUD funds, prior to completion of the environmental review process will jeopardize any federal funding.**

I (We) certify that we will not engage in any choice limiting actions until the site has achieved Environmental Clearance as required in CPD Notice 16-14 or 24 CFR Part 58, as applicable.

**Choice-limiting activities include but are not limited to these examples:**

- Acquisition of land, except through the use of an option agreement, regardless of funding source;
- Closing on loans including loans for interim financing;
- Signing a construction contract.

(initial)





**Relocation and Anti-Displacement**

The property proposed for this Application is \_\_\_\_\_ is not \_\_\_\_\_ occupied. (check one)

If occupied, the occupant(s) are owners \_\_\_\_\_ tenants (residential) \_\_\_\_\_ tenants (commercial inclusive of businesses, nonprofit organizations, and farms)\_\_\_\_\_ (check all that apply).

The property will have a transfer of federal assistance from an existing multifamily development \_\_\_\_\_ yes \_\_\_\_\_ no.

**Displacement of Existing Tenants**

I (We) certify that that the work to be performed in connection with any award of federal funds is subject to Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”), as amended, and implementing regulations at 49 CFR Part 24. HOME and HOME ARP also subject to the relocation requirements of 24 CFR Part 42. Consistent with the goals and objectives of activities assisted under the Act and HUD Handbook 1378, if the Development is eligible for federal funds the Applicant must prepare and submit the following to TDHCA with the Multifamily Uniform Application, in accordance with the TDHCA Relocation Handbook <https://www.tdhca.state.tx.us/program-services/ura/docs/TDHCA-RelocationHandbook.pdf>:

- 1) A detailed explanation of the reasons for displacement relocation;
- 2) A detailed plan of the relocation, including evidence of comparable replacement housing or commercial space;
- 3) Copies of the General Information Notices (signed by the tenant or sent Certified Mail, return recipient requested) sent to all residential and commercial tenants on the Rent Roll listed with the Multifamily Direct Loan Application, and
- 4) Estimated costs and funding sources available to complete the permanent relocation.

(initial)

**Demolition and Conversion**

I (We) certify that when the work is to be performed in connection with any award of federal funds that are subject to 24 CFR Part 42 (CDBG, HOME, and as revised for HOME ARP), then Development Owner will replace all occupied and vacant occupiable low-income housing that is

demolished or converted to a use other than low-income housing as a direct result of the project. All replacement housing will be provided within three (3) years after the commencement of the demolition or conversion. Before receiving a commitment of federal funds for a project that will directly result in demolition or conversion, the project owner will make the information public in accordance with 24 CFR Part 42 and submit the information to TDHCA along with the following information in writing at application:

- 1) The location map, address, and number of commercial or dwelling units by bedroom size of lower income housing that will be demolished or converted to use other than as lower income housing as a direct result of the project;
- 2) A time schedule for the commencement and completion of the demolition and conversion;
- 3) To the extent known, the location, map, address, and number of dwelling units by bedroom size of the replacement housing or commercial space that has been or will be provided;
- 4) The amount and source of funding and a time schedule for the provision of the replacement housing;
- 5) The basis for concluding that the replacement housing will remain lower income housing beyond the date of initial occupancy;
- 6) Information demonstrating that any proposed replacement of housing units with similar dwelling units (e.g. a 2-bedroom unit with two 1-bedroom units) or any proposed replacement of efficiency or SRO units with units of a different size is appropriate and consistent with the housing needs of the community; and
- 7) The name and title of the person or persons responsible for tracking the replacement of lower income housing and the name and title of the person responsible for providing relocation payments and other relocation assistance to any lower-income person displaced by the demolition of any housing or the conversion of lower-income housing to another use.

(initial)

**Lead Based Paint**

I (We) certify that documentation of compliance with the Texas Environmental Lead Reduction Rules in 25 TAC Chapter 295, Subchapter I and 24 CFR Part 35 (Lead Safe Housing Rule), as applicable, will be maintained in project files. I (We) understand that for Developments subject to 24 CFR Part 35, standard forms are available in the Federal Register, as indicated by the sources noted below.

- 1) Applicability 24 CFR §35.115 – A copy of a statement indicating that the property is covered by or exempt from Lead Safe Housing Rule.

- a) If the property is exempt, the file should include the reason for the exemption and no further documentation is required.
- b) if the property is covered by the Rule, the file should include the appropriate documentation to indicate basic compliance, as listed below:
  - i) Summary Paint Testing Report or Presumption Notice 24 CFR §35.930(a) – A copy of any report to indicate the presence of lead-based paint (LBP) for projects receiving up to \$5,000 per unit in rehabilitation assistance. If no testing was performed, then LBP is presumed to be on all disturbed surfaces;
  - ii) Notice of Evaluation 24 CFR §35.125(a) – A copy of a notice demonstrating that an evaluation summary was provided to residents following a lead-based-paint inspection, risk assessment or paint testing;
  - iii) Clearance Report 24 CFR §35.930(b) (3) – A report indicating a “clearance examination” was performed of the work site upon completion; and
  - iv) Notice of Hazard Reduction Completion 24 CFR §35.125(b) – Upon completion, a copy of a notice to show that a LBP remediation summary was provided to residents.

(initial)

### **Labor Standards**

On behalf of the Applicant and all affiliates of the Applicant (hereinafter “Applicant”), I (We) hereby certify that the Applicant is familiar with the applicable provisions and requirements of the Davis-Bacon Act (40 U.S.C. §§3141-3144 and 3146-3148).

I (We) understand that a Development assisted by the Department under this Application containing more than twelve (12) HOME or HOME ARP-assisted Units, must use the appropriate rate as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §§3141-3144 and 3146-3148).

I (We) understand that contracts involving such employment shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-3708) as supplemented by the Department of Labor regulations (“Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction” at 29 CFR Part 5), Copeland (Anti-Kickback) Act (40 U.S.C. Sec. §3145 et seq.) and 24 CFR Part 70 (with regards to volunteers).

I (We) understand that construction contractors and subcontractors must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs, as applicable.

I (We) agree to put the Department’s Davis-Bacon clause in all applicable contracts.

(initial)



**Question 3a:** Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR §93.2).

The State of Texas will distribute FY 2024 Housing Trust Fund (“HTF”) Program funds by selecting applications submitted by eligible recipients as defined in §93.2 (definition of recipient) through the Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications provisions found in Chapter 11 of the Texas Administrative Code (TAC), Subchapter C (10 TAC §§11.201 through 11.207). The State of Texas will not limit recipients to a specific category such as nonprofits. Please see the table below for the requirements in §93.2 and the corresponding requirements found in state rules at 10 TAC Chapter 11 and 10 TAC Chapter 13.

Recipient requirements in §93.2	State Rules
<p>(1) Make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF- funded activities</p> <p>(2) Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs;</p>	<p>10 TAC §11.204 establishes the required documentation for application submission, including a required certification that the applicant understands and will comply with all applicable requirements. Please see the full text of the rule for further information.</p> <p>Full text of 10 TAC Chapter 11 can be found here:  <a href="https://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=4&amp;ti=10&amp;pt=1&amp;ch=11">https://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=4&amp;ti=10&amp;pt=1&amp;ch=11</a></p>
<p>(3) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;</p> <p>(4) Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to:</p> <p>(i) Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development; or</p> <p>(ii) Design, construct, or rehabilitate, and market affordable housing for homeownership.</p> <p>(iii) Provide forms of assistance, such as down payments, closing costs, or interest rate buy downs for purchasers.</p>	<p>10 TAC §13.5(g) establishes minimum experience requirements that are required to be eligible for funding. Please see the full text of the rule for further information.</p> <p>Full text of 10 TAC Chapter 13 can be found here:  <a href="https://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=4&amp;ti=10&amp;pt=1&amp;ch=13&amp;rl=Y">https://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=4&amp;ti=10&amp;pt=1&amp;ch=13&amp;rl=Y</a></p>

# 13 State Service Regions of Texas

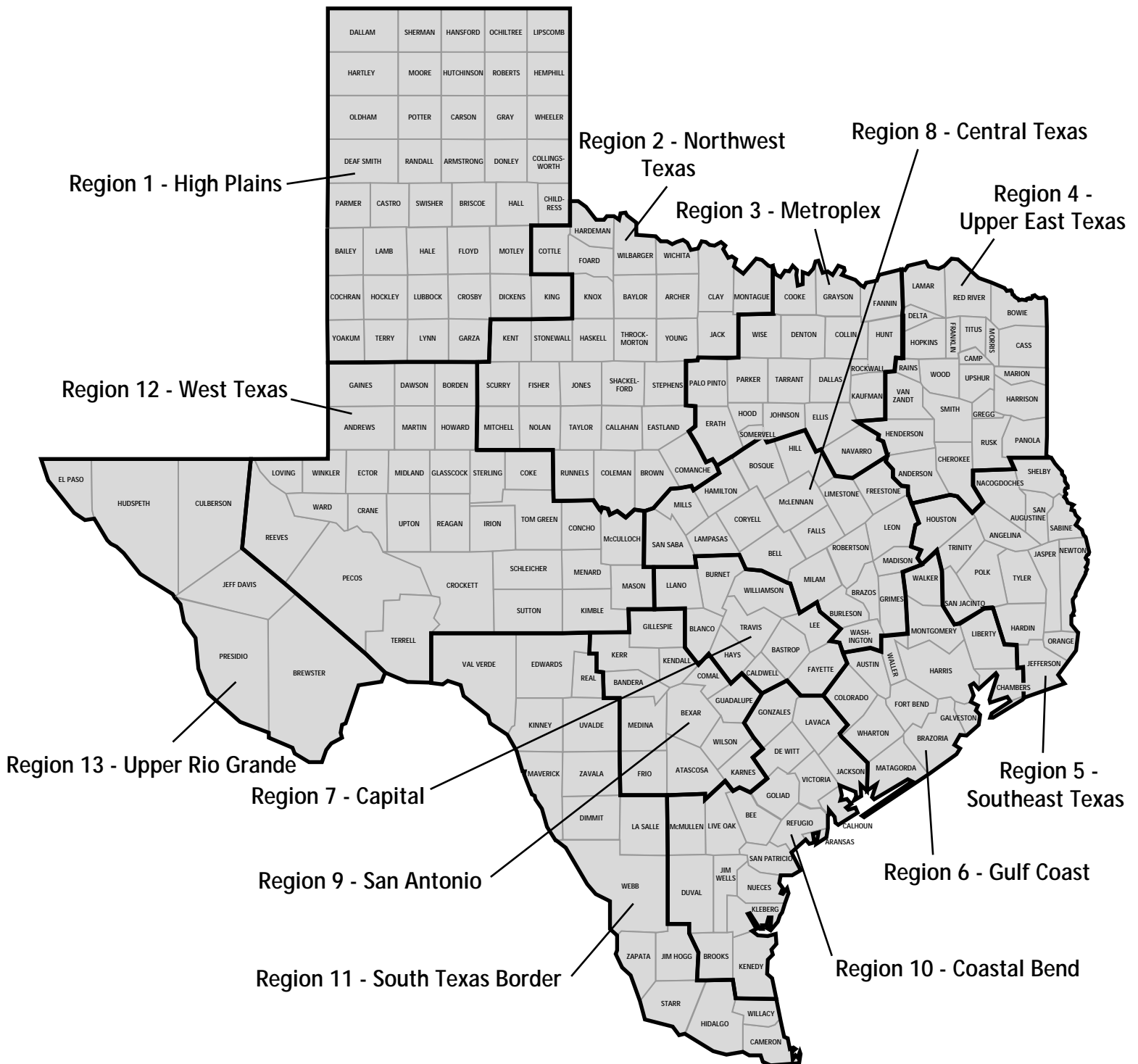


illustration showing the study area is available in the docket where indicated under **ADDRESSES**.

The PR PARS will analyze navigation routes to/from the Commonwealth of Puerto Rico and the U.S. Virgin Islands to international routes to and from the United States. Current capabilities and planned improvements to handle maritime conveyances will be considered. The analyses will be conducted in accordance with COMDTINST 16003.2B, Marine Planning to Operate and Maintain the Marine Transportation System (MTS) and Implement National Policy. This Instruction is available at [https://media.defense.gov/2019/Jul/10/2002155400/-1/-1/0/CI\\_16003\\_2B.PDF](https://media.defense.gov/2019/Jul/10/2002155400/-1/-1/0/CI_16003_2B.PDF).

We will publish the results of the PR PARS in the **Federal Register**. It is possible that the study may validate the status quo (no fairways or routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to address navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

This notice is published under the authority of 46 U.S.C. 70003(c)(1).

Dated: April 3, 2023.

**Brendan. C. McPherson,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2023-07367 Filed 4-6-23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-6394-N-01]

**Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs; Annual Indexing of Substantial Rehabilitation Threshold**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with the National Housing Act, HUD is providing notice of adjustment to the Basic Statutory Mortgage Limits for Multifamily Housing Programs for calendar year 2023. HUD is also providing notice of adjustment to the per unit cost threshold for determining substantial rehabilitation in the Multifamily Housing Programs pursuant to its administrative guidance for calendar year 2023.

**DATES:** Applicable January 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Willie Fobbs III, Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410-8000, telephone (202) 402-3242 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

**SUPPLEMENTARY INFORMATION:**

Section 206A of the National Housing Act (12 U.S.C. 1712a) provides authority for the annual adjustment for the following FHA multifamily statutory dollar limits:

- I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
- II. Section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A));
- III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I));
- IV. Section 221(d)(4)(ii)(I) (12 U.S.C. 1715l(d)(4)(ii)(I));
- V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
- VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

Section 206A goes on to state that the preceding “Dollar Amounts” shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board’s adjustment of the \$400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

**(b) Notification**

The Federal Reserve Board on a timely basis shall notify the Secretary, or his designee, in writing of the adjustment described in subsection (a) and of the effective date of such adjustment to permit the Secretary to undertake publication in the **Federal Register** of corresponding adjustments to the Dollar Amounts. The dollar amount of any adjustment shall be rounded to the next lower dollar.

Note that 206A has not been updated to reflect the fact that HOEPA has been revised to use \$1,000 as the basis for the adjustment rather than \$400, and the Consumer Finance Protection Bureau has replaced the Federal Reserve Board in administering the adjustment. These

changes were made by the Dodd-Frank Wall Street Reform and Consumer Protection Act’s amendments to the Truth in Lending Act, as further explained in the regulatory implementation of said changes found in 78 FR 6856, 6879 (Jan. 31, 2013).

The percentage change in the CPI-U used for the HOEPA adjustment is an 8.3 percent increase and the effective date of the HOEPA adjustment is January 1, 2023. The Dollar Amounts under section 206A have been adjusted correspondingly and have an effective date of January 1, 2023. (See 87 FR 78831, Dec. 23, 2022).

These revised statutory limits may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2023, so long as the loan has not been initially endorsed.

The adjusted Dollar Amounts for calendar year 2023 are shown below.

**Basic Statutory Mortgage Limits for Calendar Year 2023 Multifamily Loan Program**

Section 207—Multifamily Housing; Section 207 pursuant to Section 223(f)—Purchase or Refinance Housing; and, Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-elevator	Elevator
0 .....	\$61,944	\$72,252
1 .....	68,618	80,058
2 .....	81,964	98,166
3 .....	101,027	122,948
4+ .....	114,373	139,021

Section 213—Cooperatives

Bedrooms	Non-elevator	Elevator
0 .....	\$67,130	\$71,480
1 .....	77,404	80,984
2 .....	93,351	98,477
3 .....	119,491	127,399
4+ .....	133,122	139,848

Section 234—Condominium Housing

Bedrooms	Non-elevator	Elevator
0 .....	\$68,500	\$72,088
1 .....	78,983	82,638
2 .....	95,256	100,490
3 .....	121,932	130,002
4+ .....	135,837	142,701

Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-elevator	Elevator
0 .....	\$61,646	\$66,591
1 .....	69,980	76,340
2 .....	84,589	92,831
3 .....	106,172	120,090
4+ .....	119,973	131,826



## Section 231—Housing for the Elderly

Bedrooms	Non-elevator	Elevator
0 .....	\$58,609	\$66,591
1 .....	65,522	76,340
2 .....	78,244	92,831
3 .....	94,163	120,090
4+ .....	110,705	131,826

## Section 207—Manufactured Home Parks

Per Space—\$28,437

**Indexing of per Unit Limit for Substantial Rehabilitation for Calendar Year 2023**

The 2016 Multifamily Accelerated Processing (MAP) Guide established a base amount of \$15,000 per unit to define substantial rehabilitation for FHA insured loan programs. Section 5.1.2.A.2.b of the 2020 MAP Guide requires that this base amount be annually adjusted for inflation based on the percentage change published by the Bureau of Labor Statistics of the Department of Labor or other inflation cost index. Applying the HOEPA adjustment to the base amount, the 2023 base amount per dwelling unit to determine substantial rehabilitation for FHA insured loan programs is \$18,392.

This per unit cost threshold for substantial rehabilitation may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2023, so long as the loan has not been initially endorsed.

**Environmental Impact**

This issuance establishes mortgage and cost limits that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

**Julia R. Gordon,**

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2023-07344 Filed 4-6-23; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****[FWS-R4-ES-2023-0048; FXES1113040000EA-123-FF04EF1000]****Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Alabama Beach Mouse, Baldwin County, AL; Categorical Exclusion****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability; request for comment.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Sampath Srikanth (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates*) incidental to construction on Fort Morgan Peninsula, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

**DATES:** We must receive your written comments on or before May 8, 2023.**ADDRESSES:** *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS-R4-ES-2023-0048 at <https://www.regulations.gov>.*Submitting Comments:* If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <https://www.regulations.gov>.

Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2023-0048.

- *U.S. mail:* Public Comments

Processing; Attn: Docket No. FWS-R4-ES-2023-0048; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Lynn, Project Manager, by U.S.

mail (see **ADDRESSES**), via telephone at 251-441-5868, or by email at [william\\_lynn@fws.gov](mailto:william_lynn@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Sampath Srikanth (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally endangered Alabama beach mouse (ABM; *Peromyscus polionotus ammobates*) incidental to the construction of a single-family home (project) on Fort Morgan Peninsula, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this proposed ITP qualifies as "low effect," and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

**Proposed Project**

The applicant requests a 25-year ITP to take ABM by converting approximately 0.079 acre (ac) of occupied ABM foraging and sheltering habitat incidental to the construction of a single-family home located on a 0.492-ac parcel within the Government Subdivision #1, located on the central portion of Fort Morgan Peninsula in Baldwin County, Alabama. The proposed use of the parcel will provide for a compressed development footprint, which allows for areas of contiguous habitat to remain post development. Landforms and vegetative communities on the parcel consist of 0.418 ac of secondary dune ABM habitat. The applicant would impact 0.079 ac of the occupied 0.418 ac of ABM habitat in constructing the single-family home. The remaining 0.34 ac of suitable

**2024 Program Year  
TDHCA | Multifamily Finance Division  
Multifamily Direct Loan Program**

# **2024 National Housing Trust Fund (NHTF) Multifamily Minimum Rehabilitation Standards**

## **IMPORTANT NOTICE REGARDING THESE STANDARDS**

**TDHCA encourages the reproduction and distribution of this document to all relevant parties participating in Rehabilitation; including but not limited to, staff, general contractors, and subcontractors. If not distributed, at a minimum, all parties with the ability to exercise control over the Development must be informed and so acknowledge compliance with all applicable construction requirements, building codes, necessary materials, accessibility standards, installation methods, etc., regardless of whether expressly stated herein. As such, these Standards must be included in all construction and maintenance documents by reference. Moreover, specific sections may be expressly required in, or the Standards in their entirety, may be required to be attached to particular documents, as determined by the Department.**

**Moreover, it is important to remember these Standards serve as a starting point for eligible NHTF-assisted Multifamily Rehabilitation activities. Additional project requirements, rules, and regulations WILL APPLY and may be more detailed in Program Documents. IT IS THE RESPONSIBILITY OF THE DEVELOPMENT OWNER/BORROWER TO ENSURE COMPLIANCE WITH ANY AND ALL APPLICABLE PROGRAM REQUIREMENTS, RULES, AND REGULATIONS THAT MAY BE REQUIRED IN ADDITION TO THE MINIMUM CONDITIONS PROVIDED IN THESE STANDARDS.**

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# NHTF MINIMUM REHABILITATION STANDARDS MULTIFAMILY DIRECT LOAN PROGRAM

**2024 Program Year  
(ending Aug. 31, 2025)**

## **Introduction**

These National Housing Trust Fund (NHTF) Minimum Rehabilitation Standards (hereinafter referred to as “Standards”) are intended to provide the minimum acceptable standards for affordable multifamily rental housing developments Rehabilitated in whole or part using Multifamily Direct Loan Program (MFDL Program) NHTF funds in the State of Texas.

These Standards are designed to ensure clarity, efficiency, and feasibility in the successful completion of eligible rehabilitation projects. Accordingly, these Standards only provide the necessary descriptions of the minimum elements of rehabilitation, as required by the U.S. Department of Housing and Urban Affairs (HUD) and 24 CFR §93.301(b). Accordingly, these Standards only address those minimum standards for: (1) Health and Safety; (2) Major Systems; (3) Lead-Based Paint; (4) Accessibility; (5) Disaster Mitigation; (6) National Standards for the Physical Inspection of Real Estate (NSPIRE); and (7) Property Condition or Capital Needs Assessment (SCR/CNA).

Recommendations made in applicable Mandatory Assessments regarding health and safety or life expectancy of major systems must be implemented. Additionally, estimates (based on age and condition) of the remaining useful life of major system(s) are required to be conducted upon project completion of each major system, in accordance with 24 CFR §93.301(b)(1)(ix). If the remaining useful life of one or more major system is determined to be less than the applicable period of affordability, a replacement reserve shall provide adequate monthly payments to effectively repair or replace the systems as needed. 24 CFR §93.301(b)(1)(ix).

Unless otherwise required, these Standards do not supersede or preempt State and local codes, ordinances, and requirements for developing and maintaining the Development. All applicable codes, ordinances, and zoning requirements must also be adhered. In the absence of State or local building codes, ordinances, or requirements for Rehabilitation, the International Existing Building Code (IEBC) or International Building Code (IBC) (as applicable) of the International Code Council (ICC), in the version adopted by the Multifamily Direct Loan Rule, 10 TAC Chapter 13, shall apply in addition to these minimum Standards.

## Definitions

The following words and terms, when used in these Standards, shall have the meaning as provided herein, unless the context clearly indicates otherwise. Any capitalized terms or phrases not specifically mentioned in this section shall have the meaning as defined in Title 10, Part 1, Chapter 1 of the Texas Administrative Code (**Administration**), Title 10, Part 1, Chapter 2 of the Texas Administrative Code (**Enforcement**), Title 10, Part 1, Chapter 10 of the Texas Administrative Code (the **Uniform Multifamily Rules**), Title 10, Part 1, Chapter 11 of the Texas Administrative Code (the **Qualified Allocation Plan (QAP)**), Title 10, Part 1, Chapter 13 of the Texas Administrative Code (the **Multifamily Direct Loan Rule**)(collectively referred to as the **State Multifamily Rules**); or as otherwise defined in Tex. Gov't Code, Chapter 2306 (the **Governing Statute**), §141, 142, and 145 of the Internal Revenue Code (the **Code**), or 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200.

1. **Accessible Route**--a continuous, unobstructed path connecting all accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable accessibility standard(s).
2. **Plumbing Fixtures**--all relevant plumbing components, which include toilets, urinals, bidets, faucets, lavatories, sinks, showers, bathtubs, and floor drains. Plumbing appliances include washing machines, dishwashers, domestic water heaters, garbage disposals, and water softeners.
3. **Plumbing System**--all relevant plumbing components, which include but are not limited to: piping, fittings, devices, faucets, containers and receptacles that are used to supply, distribute, receive or transport potable water and wastewater.
4. **Substandard Conditions**--any condition that threatens the health and/or safety of the occupants. Substandard Conditions include any condition which threatens, defeats, or will lead to the lack of functional viability of a single feature of a structure. Hazardous conditions are a type of Substandard Conditions.

## **Minimum Standards for Major Systems (24 CFR §93.301(b) and 24 CFR §93.301(b)(1)(ix))**

### **Major Systems**

These Standards provide the minimum rehabilitation requirements for Major Systems herein. In accordance with 24 CFR §93.301(b), the Major Systems with minimum standards provided herein are:

- foundation;
- structural support, roofing;
- cladding & weatherproofing;
- plumbing;
- electrical; and
- heating, ventilation, and air conditioning (HVAC).

### **General Requirements, Standard Conditions, and Substandard Conditions**

The Minimum Standard Conditions and Substandard Conditions for each Major System are sufficiently detailed in method and material to provide the MINIMUM threshold for Rehabilitation activities that NHTF-assisted Multifamily Developments MUST MEET OR EXCEED.

It is important to remember any threshold requirements provided herein do not supersede or preempt State and local codes, ordinances, and requirements for building and maintenance with which NHTF-assisted housing must comply. Rather, compliance must be accomplished in addition to meeting or surpassing these Standards. In the absence of such State or local building codes, ordinances, or other requirements, the applicable version(s) of the International Existing Building Code (IEBC) or International Building Code (IBC) of the International Code Council (ICC), as adopted in 10 TAC Chapter 13, shall apply in addition to these Standards.

### **Determining the Scope of Work**

This section shall guide the determination as to the minimum scope of work required. In conjunction with the mandatory property assessments required in these Standards, a determination must consider the requirements of the ICC Code Set, in the version adopted by 10 TAC Chapter 13 and as applied to these Standards. Accordingly, the determination will consider the ICC Principles of Safety, Capacity, and Convenience.

Each repair should be detailed as required through the use of plans, drawings, specifications (conforming to the MasterFormat) and work write-ups. At a minimum, each repair should be detailed in a work write up that accurately specifies the location, required demolition (if applicable), and the methods and materials for the project -- all with enough detail to determine the desired outcome or finished product. Work write ups may reference plans and specifications as needed but must be detailed enough to complete repairs.

### **1.0 Basic Site Work**

**a. Minimum Standard Conditions.** The subject lot or defined site shall be free of debris, garbage or other accumulations of site stored items which create possibilities of infestations. The site should be generally level as allowed by natural topography, well drained, and accessible. Additional drainage features should be added if need is evidenced by existing erosion, standing water or evidence of water damage. In addition to any applicable requirements herein, any and all deficiencies noted in the Uniform Property Conditions Standards or the 2012 ICC Property Maintenance Code must also be addressed.

**b. Substandard Conditions.** Substandard conditions for Basic Site Work include but are not limited to those conditions listed in **(1) – (14)**, for which adequate repair or replacement is required, as applicable and further detailed herein:

- (1)** Accumulated debris, waste, or garbage either in enclosed areas such as storage buildings or on the property;
- (2)** Deteriorated outbuildings, sheds, wells, privies, or other structures which are no longer in use or are made unusable by their condition;
- (3)** Holes, ditches, exposed water meter boxes or other condition which creates a tripping hazard, excluding drainage ditches which are part of a designed drainage system;
- (4)** Rodents, insects, or other infestations;
- (5)** Standing water or depressions which hold water during wet weather;
- (6)** Leaking water supply or leaking sewage system;
- (7)** Obsolete sanitary piping systems such as Orangeberg, clay or other non-standard pipe;
- (8)** Scaling, calcified or otherwise compromised water supply lines;
- (9)** Exposed pipes, railings or other installations creating tripping hazards;
- (10)** Damaged, missing or deteriorated walkways, steps and decks which create tripping hazards or are otherwise unsafe;
- (11)** Stairways or steps above 30" from the finished grade without a functioning guard rail;
- (12)** Except on an Accessible Route any change in level in a walkway shall not be greater than  $\frac{3}{4}$ ";
- (13)** On any Accessible Route any change in level shall not be greater than  $\frac{1}{2}$ ". Any change in level between  $\frac{1}{4}$ " and  $\frac{1}{2}$ " must be beveled 45 degrees; and
- (14)** Any walkway or driveway that exceeds 5% damage in the form of cracking, spalling, holes, heaving or other damage.

**c. Other Conditions/Requirements.**

**(1) Debris and Brush Removal.** The premises shall be free from accumulations of rubbish and garbage that present health and safety hazards. The premises shall be free from trees and shrubs that are damaging the dwelling or present a hazard. Tree limbs in danger of falling on roof areas shall be removed. No vegetation should touch existing buildings, utility service lines, fences, or extend over walkways or parking areas.

**(2) Drainage.** Surface drainage shall be diverted to a storm sewer or other approved point of collection that does not create a hazard. Lots need to be graded to drain surface water away from the foundation at a minimum slope of 6" within the first 10'. Where lot lines or other physical barriers prohibit this, drains, swales, and/or rain gardens shall be constructed to ensure drainage away from the structure. Use of alternative drainage methods must be approved by TDHCA. Rain gutters shall be installed if none exist. Gutters shall slope 1" for every 20 linear feet with downspouts installed at a minimum every 40'. Downspouts must empty into a splashblock or be diverted at least five feet from the building. Special care must be taken to not discharge water onto adjacent properties.



**(3) Driveways, Sidewalks, and Patios.** Paved surfaces shall be free from hazards which can cause tripping and falling. Paved surfaces adjacent to the foundation shall not slope towards the structure so that water can collect at the foundation. If tripping hazards and drainage problems exist, the paved surface shall be removed and rebuilt.

**(A) Driveways.** Following existing driveway demolition, all organic matter shall be removed. Subsoil shall be compacted uniformly and evenly. Forms shall be constructed to provide a minimum slope of 1/8" per foot away from the house and at a depth to provide 4" of concrete. Install either number 4 rebar on 12" centers or 6" x 6" number 10 welded reinforcing wire. Expansion joints shall be installed at all radius points, sidewalk intersections and house slab tie-ins. Concrete mix shall provide a minimum of 3,500 psi at 28 days. If reinforcing steel is not used, control joints shall be sawed in every 10' and be broom finished. Asphalt or gravel driveways may be installed if concrete is prohibitively expensive due to the length of a driveway, or if they are customary for the neighborhood.

**(B) Sidewalks and Patios.** Following existing sidewalk demolition, all organic matter shall be removed. Subsoil shall be compacted uniformly and evenly. Forms shall be constructed to provide a minimum slope of 1/8" per foot away from any building, at a depth to provide 3 1/2" of concrete, and at least 3' wide. Accessible Route cross slope shall not exceed 2%. Expansion joints shall be installed at all radius points, sidewalk intersections and slab tie-ins. Control joints shall be sawed in every 5' and be room finished. If sidewalks and patios are installed and are connected to an entry door an accessible entry will be required.

**(4) Ramps.** On Accessible Routes, ramps shall meet the requirements of the 2010 ADA and the applicable Accessibility requirements provided in these Standards.

**(5) Vermin and Insects.** The premises shall be free from infestations of vermin and wood-boring insects. Inspections shall be performed by state licensed extermination contractors if evidence of infestation exists. Conditions which increase or cause infestation shall be removed (e.g. accumulation of rubbish garbage, unsanitary conditions, presence of consistent moisture, untreated wood in contact with soil, etc.). One or more of the following termite treatments shall be included in the Rehabilitation if infestation is observed; chemical termiticide treatment, termite baiting system installed and maintained according to the manufacturer's label, use of pressure-preservative treated wood, use of naturally durable termite-resistant wood, and/or termite shields.

**(6) Landscaping for Additions.** When an addition is built, underground utilities run, grade changes made, or the soil is otherwise disturbed, proper compaction and a fine finish grading shall be done and seed, sod or native plants shall be installed matching as closely as possible the existing surrounding yard.

## **2.0 Foundations**

**a. General Requirements and Standard Conditions.** Foundation work shall be completed in its entirety prior to beginning work on other areas of the housing unit(s). Leveling shall be done in such a manner as to provide an acceptable degree of tolerance. When leveling takes place, doors, windows and other openings shall be reasonably plumb, level and easy to operate. Interior wall coverings shall be repaired and Plumbing Systems shall be inspected to insure the system functions as intended. Foundation leveling shall include grading of the soil to provide a slope away from the home of at least 6" for the first 10'. If the lot does not allow for this grade, a French drain shall be installed to drain water away from the house, or swales shall be designed and built to control rain water runoff. Refer to Section 6.3 (relating to Minimum Standards for Sanitary Drainage).

Foundation walls shall be a minimum of 6" above grade, or 4" above grade if masonry veneer is existing or will be installed. Underpinning shall be required when foundation leveling is a part of Rehabilitation. Any room additions shall comply with the 2015 IRC or later.

In regards to safety, the ICC contains provisions considered necessary for safe installation; however, they are merely minimum requirements. Providing a safe foundation, leveling, repair, or installation and minimizing hazards can be done by following the principles of foundation construction and stabilization, fully complying with any limitations placed on the use of products and materials and permitting only qualified persons to participate.

With foundations, capacity refers to its ability to carry live and dead loads with respect to the soil's plasticity. Unsafe conditions often occur because existing foundations were not properly planned or designed for the soil conditions at the site low to the ground making it difficult to access Plumbing Systems. Convenience also refers to similar concerns, whereby crawlspaces are often too low to the ground, making it difficult to access Plumbing Systems. While raising the housing may not be feasible, every practical effort must be made to increase the crawlspace clearance to a minimum of 12" above grade when leveling housing.

**b. Substandard Conditions.** At a minimum, repair or replacement is required if any of the conditions in (1) – (7) exist:

- (1) Evidence of wood destroy insect damage;
- (2) Water and/or fire damage or dry rot to wooden piers, beams, joists, and subfloor;
- (3) Inadequate support of beams, sills, or joists;
- (4) Lack of drainage away from the home;
- (5) Cracked, damaged, buckled skirting;
- (6) Untreated wood in contact with the soil; or
- (7) Any other condition which meets the definition of a hazardous or substandard condition.

**c. Other Requirements/Conditions.**

**(1) Slab on Grade.** All concrete floors shall be without serious deterioration or conditions that present a falling or tripping hazard. With existing concrete floors, cracks longer than six inches in concrete slabs, 3/4 inch along walkways or steps, or any missing or uneven sections shall be repaired. Slab on grade foundations that are failing, as demonstrated by an inspection by a structural engineer, shall not be rehabilitated.

**(2) Pier and Beam.** Piers shall have allowable spans between piers or posts. Piers shall support beams which in turn support floor joists. Joists must not be more than 24" on center and, if not continuous, overlap beams shall be at least 12". If major leveling is required, a structural engineer shall inspect the foundation to determine the number of piers that need to be added, repaired, or replaced.

Newly installed footings shall be a minimum of 12" below undisturbed ground surface and the surface shall be level. Termite shields shall be installed on newly installed posts, regardless of pier material.

Skirting shall extend four inches below and at least 18" above grade or up to the exterior cladding and be lapped and fastened under the cladding material. Access to the crawlspace

shall be 18" high by 24" wide (if in the floor) or 16" high by 24" wide (if on the perimeter wall), and is not allowed to be installed under a door. Venting of the crawlspace shall be one square foot per 350 square feet of crawl space area and one vent opening within three feet of each corner. Crawlspace floor shall be covered with six mil polyethylene. Skirting is not permitted in flood zones.

### **3.0 Structural Support and Roofing**

#### **3.1 Roofing Systems**

**a. Description.** All relevant roofing components, which include but are not limited to, trusses, rafters, ridge beams, collar ties, ceiling joists, top plates of walls, and sheathing. Moreover, Truss Designs for Replacement Roofs complying with wood roof framing, includes: slope, span, and spacing; location of all joints, required bearing widths; design loads; joint connector type and description; lumber size, species, and grade; connection requirements; bracing locations; and roof tie-downs and uplift resistance details for high wind areas, or as otherwise provided in Section R802 of the 2015 IRC.

**b. General Requirements and Standard Conditions.** The Roof System and the roof covering shall safely support the loads imposed. Framing and decking shall be structurally sound, properly fastened, and form a sound base for attaching the roof covering. The Roof System shall be configured to provide a positive drainage plane.

**c. Substandard Conditions.** At a minimum, any Roof System that is incapable of safely supporting the load or fails to safely provide adequate drainage must be repaired or replaced. Deteriorated, missing or loose framing or sheathing must also be corrected. Generally, repair or replacement is required for any applicable condition listed in (1) – (10):

- (1) Multiple layers of roof covering materials (more than two);
- (2) Water damage caused by leaks through the roofing system;
- (3) Missing, worn, or upturned shingles;
- (4) Damaged, missing, or improperly installed roof jacks, flashings, drip edges on both rakes and eaves;
- (5) Exposed nails or other fasteners;
- (6) Structural damage to trusses;
- (7) Extensive patchwork and repairs;
- (8) Missing, damaged, loose, leaking, blocked, improperly sloped gutters and downspouts;
- (9) Wear and tear leading to a failed system within five years from the initial inspection; or
- (10) Any other Hazardous or Substandard condition.

#### **3.2 Structures**

**a. General Requirements and Standard Conditions.** Roof structures incapable of safely supporting the load or providing adequate slope for drainage shall be repaired or replaced. Sagging roofs shall be replaced or stabilized. Stabilization of sagging roofs that will not be replaced shall be designed by a structural engineer.

**b. Other Requirements/Conditions.**

**(1) Truss Design for Replacement Roofs.** Truss designs for replacement roofs shall comply with wood roof framing in Section R802 of the 2015 IRC which includes; slope, span, and spacing; location of all joints, required bearing widths; design loads; joint connector type and description; lumber size, species, and grade; connection requirements; bracing locations; and roof tie-downs and uplift resistance details for high wind areas.

**(2) Roof Framing for Replacement Roofs.** Purlin support braces shall be installed every 4' O.C. Continuous purlins shall be installed between support braces. Purlins shall be a minimum of 2" x 4" studs. Ceiling joists shall comply with Span Tables R802.4(1) and R802.4(2).

**(3) Sheathing Replacement.** 5/8" CDX plywood shall be installed with clips spaced O.C. between rafters for rafter spacing of 24".

**(4) Ventilation.** Unconditioned attics shall be cross ventilated. A one to one ratio shall be installed; for every one foot of soffit vent area there shall be one foot of ridge, gable, or turtle vent area. Soffit vents shall have baffles installed providing at least one inch of airspace to prevent wind washing and/or attic insulation blocking soffit vents. All vents shall have corrosion-resistant wire cloth screening or similar material.

**(5) Radiant Barrier.** A radiant barrier should be installed in all accessible attic areas.

Powered attic vents, whether connected to the structure's electrical system or powered by photovoltaic, are not allowed.

### **3.3 Roof Covering**

**a. General Requirements and Standard Materials.** Asphalt shingles shall be fastened to solidly sheathed decks. Asphalt shingles shall be used only on roof slopes of 2:12 or greater slope. Slopes, if applicable, less than 2:12 require appropriate membrane designed for such surfaces. Metal roof panels must either be naturally corrosion resistant or provided corrosion resistance per the manufacturer's requirements. Metal roofs shall only be installed on slopes of 3:12 (for lapped, nonsoldered-seam), ½:12 (for lapped, nonsoldered-seam panels with applied lap sealant), or ¼:12 (for standing-seam roof systems). Otherwise, roof weatherproofing, reinforcement, and surfacing shall be completed in accordance with applicable provisions of the IBC or IEBC.

**(1) Flashings.** Flashings shall be installed in a manner that prevents moisture from entering walls or the roof through penetrations, at eaves and rakes, at wall/roof intersections, wherever there is a change in roof slope or direction and around roof openings. Wall/roof intersections extending to eaves shall be provided with kick-out flashing. All wall/roof intersections shall have step flashing with at least 1" space between the roof covering and the adjacent wall cladding. Metal flashings shall be a No. 26 galvanized sheet metal and corrosion resistant. A cricket or saddle shall be installed on the ridge side of any chimney or penetration greater than 30" wide.

**(2) Valley Flashings.** Closed valleys (covered with asphalt shingles) shall be lined with one ply of smooth roof roofing or self-adhering polymer modified bitumen underlayment prior to asphalt shingle installation.

## **4.0 Minimum Standards for Walls, Ceilings, & Flooring**

### **4.1 Walls and Ceilings**

**a. General Requirements and Standard Conditions.** On exterior walls, all defects or deterioration that would allow the elements to enter wall cavities shall be corrected through Rehabilitation. Replacement of sections of walls and ceilings shall match adjoining materials as closely as possible (e.g. thickness of the existing material). When replacement of entire wall or ceiling coverings or sections of them is replaced, priming and painting of the entire wall or ceiling shall be completed.

**b. Substandard Conditions.** Repair or replacement is required if any condition listed in (1) – (7) exists:

- (1) Water damage or dry rot of siding, trim, or interior wall coverings;
- (2) Exposed nails or popped seams;
- (3) Peeling or chipped paint, holes, cracks, or gaps in interior wall coverings or exterior cladding;
- (4) Broken, fire damaged or missing exterior cladding;
- (5) Sagging or missing ceiling sections;
- (6) Wood destroying insect damage in exterior cladding; or
- (7) Any other condition characterized Hazardous or Substandard.

**c. Other Requirements/Conditions.**

**(1) Walls.**

**(A) Exterior Walls.** If removing the exterior cladding, deteriorated exterior wall sheathing, studs, and bottom and top plates shall be replaced. Deteriorated or missing insulation shall be replaced and wall cavities shall be insulated to a minimum R-13.

Masonry repair or replacement shall match existing masonry as closely as possible, installed plumb, true, and in line with existing courses. If weep holes are filled or nonexistent, they shall be provided at least every 3' at the slab and at least 1 above each window.

Siding repair or replacement shall match existing siding as closely as possible and provide for a positive drainage plain. All joints and seams shall fall on center of wall framing. Overlap and water sealing shall be completed in accordance with the manufacturer's installation instructions.

**(B) Interior Walls.** A structural engineer shall inspect interior bearing walls that are proposed to be moved. Non-bearing walls do not require a structural engineer. Moved or newly installed walls shall be constructed with 2x4 studs with the bottom plate securely fastened to the floor and the top plate securely fastened to ceiling joists.

All new gypsum board shall be installed according the manufacturer's installation instructions and shall be installed a minimum of ½" above the finished floor, taped, floated, and feathered prior to painting. New wall coverings shall not show noticeable blemishes or dents and tape shall not show

after painting. All interior walls shall be painted with a No Volatile Organic Compound (VOC) paint.

**(C) Bathroom Walls.** Bathroom walls that are to be replaced shall be replaced with appropriate backer board. If tile will be installed in the shower/tub area, concrete board, or equivalent, shall be installed. Green board shall be installed in the rest of the bathroom. Bathroom wall coverings shall be installed a minimum of ½" above the finished floor, taped, floated, and feathered prior to painting. New wall coverings shall not show noticeable blemishes or dents and tape shall not show after painting. All bathroom walls shall be painted with a semi- or high-gloss paint No Volatile Organic Compound (VOC) paint.

**(2) Ceilings.** For ceiling structure, see the Roofing Chapter. Replacement of ceiling coverings shall be with 5/8" Type X gypsum board. Fastening shall be in accordance with the manufacturer's installation instructions. All new gypsum board shall be taped, floated, feathered, primed, and painted with at least 2 coats of No Volatile Organic Compound (VOC) paint. When ceilings are replaced, all ceiling fixtures removed and reinstalled for replacement shall be air sealed.

**(3) Painting and Finishes.** All areas not to be painted shall either be removed and reinstalled or completely covered to prevent overspray or splatter. Receptacle and switch plates shall be removed and reinstalled.

**(A) Interior Walls:** All walls that were repaired or replaced shall be painted with at least two coats of No Volatile Organic Compound (VOC) paint. Bathroom walls shall have a semi- or high-gloss sheen.

**(B) Exterior Walls:** Replaced or repaired exterior cladding, with the exception of brick veneer, shall be painted with at least two coats of exterior grade paint. Existing exterior walls not replaced or repaired but still painted must comply with all applicable requirements in (i) – (iv):

**(i)** The ground shall be protected with a drop cloth. For pre-1978 housing determined or assumed to have lead-based paint, all scraped paint shall be disposed of in accordance with applicable HUD and EPA guidelines, and as provided in these Standards;

**(ii)** Peeling and chipped paint shall be scraped loose;

**(iii)** The entire area to be painted shall be power washed prior to painting; and

**(iv)** All areas not to be painted (e.g. windows, doors and their trim, exterior lighting fixtures) shall be covered to prevent overspray.

**(C) Trim and Baseboards.** All installed trim around doors, windows, and floors shall be painted with at least one coat of No Volatile Organic Compound (VOC) paint on both sides (except for baseboard trim).

#### 4.1 Minimum Standards for Flooring

**a. General Requirements and Standard Conditions.** All flooring, including transitions between rooms, must be effective, relatively level, free of tripping hazards, and adhere to or exceed all applicable Accessibility standards. Floor covering and subflooring(s) must function as intended, as demonstrated through sufficient inspection. Related deficiencies must be corrected during Rehabilitation, as provided in these Standards.

**b. Substandard Conditions.** Deteriorated, inadequate, and weakened floor framing and subfloors can be the result of poor initial construction, foundation settling or failure, careless remodeling, water, or wood boring insects. A thorough inspection shall be conducted to identify all subfloor and flooring deficiencies.

**(1) Repair or Replacement.** The conditions in (A) – (D) require corrective measures be completed:

**(A)** Damaged, rotten, loose, weak or otherwise deteriorated subfloor;

**(B)** Torn, missing, broken, or otherwise damaged floor covering that creates a tripping hazard;

**(C)** Missing baseboards, shoe molding, or transition strips; or

**(D)** Any other condition that meets the definition of Hazardous or Substandard.

In doing so, repairs to severely sloped or uneven floors must satisfy all corrective measures or replacement will be required. New floor coverings shall be installed because the existing floor covering is ineffective, there are obvious trip hazards, because the subfloor was replaced, or because other work requires it, such as increasing the square footage of a room.

Replacement flooring may be required if necessary for Accessibility purposes; other concurrent work; or significant subflooring repairs/replacement occur. If required, any and all applicable Foundation work must be completed first. Thereafter, flooring replacement shall be conducted in accordance with the manufacturer's installation requirements.

**c. Other Requirements/Conditions.**

**(1) Subfloor.**

**(A) Concrete Slab.** If the concrete slab foundation is functioning as intended and is relatively level, no additional subfloor preparation is required. If it is functioning as intended, but not relatively level or has settlement cracks, self-leveling flooring compound shall be installed prior to installation of the floor covering.

**(B) Bathrooms, Kitchens, and High Traffic Areas.** When replacing subflooring in bathrooms, kitchens, and high traffic areas (e.g. hallways, breezeways) in housing with pier and beam foundations, the newly installed subfloor shall be 19/32" high performance paneling or 3/4" CDX plywood installed as the subfloor with floor joists not more than 24" on center.. All subfloor shall be installed with screws and include subfloor caulking adhesive.

**(C) Other Habitable Rooms.** Other habitable rooms requiring subfloor replacement shall have 3/4" CDX plywood installed as the subfloor with floor joists not more than 24" on center. All subfloor shall be installed with screws and include subfloor caulking adhesive.

**(2) Floor Coverings.**

**(A) Kitchens and Bathrooms.** Replacement floor coverings in kitchens, bathrooms, laundry rooms, and utility rooms shall be water resistant. Transitions between rooms shall match the new floor covering or match as closely as possible existing floor covering that is left in place. Sheet vinyl and VCT shall not be used in rooms with Plumbing Fixtures in pier and beam housing. Replacement floor coverings shall be selected for durability, safety, and ease of maintenance.

**(B) Other Habitable Rooms.** Replacement flooring in other habitable rooms may include VCT, however laminate planks or ceramic tile is preferred (if ceramic tile is installed on a

pier and beam foundation, the floor system may need to be structurally reinforced to support the extra load). Transitions between rooms shall match the new floor covering or match as closely as possible existing floor covering that is left in place. Sheet vinyl shall not be installed. Replacement floor coverings shall be selected for durability, safety, and ease of maintenance.

**(C) Vinyl Composition Tile (VCT).** VCT shall be 12" x 12" x 1/8" and stored inside a conditioned space for a minimum of 48 hours prior to installation to allow materials to condition to the inside environment. VCT shall be fitted tightly, with no gaps showing at walls, doors, or trim. Full cover shall be achieved. Base boards or shoe molding shall be installed.

**(D) Laminate Planks.** Laminate flooring shall be stored inside a conditioned space for a minimum of 48 hours prior to installation to allow materials to condition to the inside environment, and installed per the manufacturer's instructions. Door trim may need to be cut to fit planks seamlessly between rooms. Laminate planks shall be fitted tightly, with no gaps showing at walls, doors, or trim. Full cover shall be achieved, but it shall not fit tightly against walls so that it is allowed to "float". Base boards or shoe molding shall be installed.

**(E) Carpeting.** Carpeting is generally discouraged; removal of existing carpeting should be conducted where practicable. Otherwise, carpeting must be of good quality, in sanitary condition, and preferably low pile. Carpet installation must be completed per the manufacturer's instructions and over appropriate pad(s). Carpet installation is not permitted in kitchens or bathrooms. Replacement floor covering(s) shall be selected for durability, safety, and ease of maintenance.

## **5.0 Other Cladding and Weatherproofing (e.g. Windows, Doors, Siding, Gutters)**

### **5.1 Minimum Standards for Doors and Windows**

- a. General Requirements and Standard Conditions.** Applicable Foundation work must be completed prior to repairing or replacing doors and windows. Each habitable room that contains a window shall have at least one window that is in operable condition and capable of being held in the open condition without assistance or device. Habitable bedrooms must have a minimum of one window that meets egress requirements. Bathrooms, bedrooms and utility rooms shall have a door that is easily operable and fitted with functioning hardware that tightly latches the door.

All windows repaired or replaced as part of the scope of work must operate safely, effectively, and conveniently regardless of user's age or ability. Each window must have an operable screen. Repaired or replaced windows must meet or exceed the requirements of an Energy-Star Rating. Additionally, blinds or window coverings must be provided for all windows.

- b. Substandard Conditions.** At a minimum, the conditions in (1) – (11) must be repaired or replaced:

- (1)** Broken, missing or cracked window panes;
- (2)** Rotten or deteriorated sills, frames or trim;
- (3)** Missing seal or sealant or dried, cracked or missing putty or caulking around window panes;
- (4)** Windows painted shut, inoperable or difficult to open and close;
- (5)** Security bars that do not open from the inside without any special knowledge or tools;



- (6) Windows and exterior doors that do not lock;
- (7) Broken, damaged, or deteriorated doors;
- (8) Doors that do not shut and latch or lock smoothly with the strike plate;
- (9) Exterior doors that are not listed as exterior doors;
- (10) Rotted, deteriorated or damaged thresholds, jambs, frames, or trim; and
- (11) Any other condition that can reasonably be characterized as Hazardous or Substandard.

**5.2 Minimum Standards for Doors**

**a. General Requirements and Standard Conditions.**

All doors shall be in good operating order, easy to open, close and latch. All replacement doors must be installed true and plumb with trim installed on both sides. Hardware style (e.g. knob, lever handle, passage), finish (e.g. chrome, brushed nickel, satin), and any glazing shall be identified in the scope of work. All doors that come into contact with interior walls when opened shall have base board mounted, rubber tipped door stops installed.

**(1) Interior Doors.** Interior door replacements must be installed true and plumb, with trim installed on both sides. Bathroom doors shall be able to be locked.

**(2) Exterior Doors.** Exterior doors include, but are not limited to, doors connecting the conditioned space with an attached garage. Replacement exterior doors must be at least Energy Star qualified, or its equivalent, double bore exterior doors. Doors connecting the conditioned space to an attached garage shall also be fire rated. All exterior doors shall be keyed alike with a sufficient number of key copies provided to the residents.

**b. Other Requirements/Conditions.**

**(1) Accessibility and Universal Design.** Accessible doors may be required depending on the Unit or Household Type(s). Universal design principles state that housing should be built to accommodate any person regardless of age or physical ability. Consultation(s) should be made to determine whether the conditions in (A) – (C) are necessary:

**(A)** Heavily used Interior doors widened to accommodate a 36" door with a threshold no higher than 1/8". If not feasible due to structural constraints, clear swing hinges can be installed;

**(B)** Automatic door openers can be installed; and

**(C)** Lever handles will be installed on all doors.

**5.3 Minimum Standards for Windows**

**a. General Requirements and Standard Conditions.** All windows shall be in good operating order, easy to open, close, latch, and lock. Windows that cannot be repaired must be adequately replaced. Flashing materials shall provide a positive drainage plane.

**b. Performance Chart.** Replacement windows shall meet or exceed Energy-Star or equivalent Ratings. The Performance Chart included herein provides the minimum performance ratings required for all replaced and, if practical, repaired windows.

<b>Performance:</b>	<b>CZ2</b>	<b>CZ3</b>	<b>CZ4</b>
<b>Performance Measure:</b>			
U-Factor	0.65	0.50	0.35

SHGC	0.35	0.35	Not Required
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#### 5.4 Minimum Standards for Gutters and Downspouts

**a. General Requirements and Standard Conditions.** All gutters and downspouts must be installed or replaced (repair alone is insufficient). Gutters shall have a slope no less than 1:20 and all seams made weather tight, if applicable. Downspouts shall be installed at a minimum every 40' and shall discharge water at least five feet from the foundation. Drainage five feet away from the foundation may be accomplished through the installation of a French drain, swales, or other means of directing water away from the foundation. Water shall not be discharged onto an adjoining property.

### 6.0 Plumbing, Potable Water, and Sanitary Sewer Systems

#### 6.1 Minimum Standards for Plumbing Systems

**a. General Requirements and Standard Conditions.** The Plumbing System must effectively provide both a safe and adequate supply of potable water, and a safe and sanitary method of distributing wastewater. Effective Plumbing Systems adhere to the mandatory plumbing principles in (1)-(7):

- (1) Sewer gases shall not be allowed to enter any housing Unit;
- (2) Sewer leaks must be identified, repaired or replaced, and improper disposal methods discontinued;
- (3) Water leaks must also be identified and repaired or replaced;
- (4) Water must be free from hazardous contaminants and safe for drinking, bathing and other uses.
- (5) An adequate supply of water must be available for all water needs, which includes having adequate pressure at each fixture.
- (6) Supply, drain, waste, and vent pipes shall not interfere with structural integrity. Notching and drilling of structural members shall comply with the requirements of the 2009 IRC, Figure R602.6(1) and (2).
- (7) Plumbing work shall be performed by state licensed individuals, and plumbing inspections performed by experienced and qualified individuals knowledgeable in the field of plumbing.

**b. Substandard Conditions.** Existence of any condition listed in (1)-(11) shall require, at a minimum, adequate repair or replacement. If replaced, newly installed Plumbing Systems, piping, and fittings must be properly installed, connected, free flowing; and must be free of leakage and corrosion of water or sewer gases.

- (1) Lack of any required condition, as provided in (A) – (F):
  - (A) Continuous sanitary water supply;
  - (B) Continuously functioning sanitary waste water disposal system;
  - (C) Functioning shut-off valves at toilets, sinks and lavatories;
  - (D) Access to waste lines such as clean-outs;
  - (E) A minimum of one functioning toilet, bathroom sink, or tub/shower;
  - (F) Functioning kitchen sink; or

- (2) Septic system or Plumbing Fixtures not performing as intended;
- (3) Leaks in any supply or waste lines;
- (4) Deteriorated, corroded, or leaky supply or drain pipes;
- (5) Supply or drain piping consisting of a mixture of different types of piping or fittings, or is run in an inefficient manner;
- (6) Missing, blocked, or improperly installed required conditions listed in (A)-(D):
  - (A) Vent pipes;
  - (B) Gas shut off valve on natural gas Domestic Water Heater (DWH);
  - (C) Temperature and pressure-relief valve (TPRV) on DWH;
  - (D) Shut off valves at the water meter, each toilet, each sink, DWH, or tub/shower locations; or
- (7) Natural gas domestic water heaters (DWH) located in bathrooms, bedrooms, closets or utility rooms where a clothes dryer is present;
- (8) Natural gas DWH combustion air taken from conditioned space;
- (9) Inadequate natural gas DHW vent (e.g. not double walled or skirted at roof penetrations);
- (10) Rusted or corroded DHW pipes or storage tanks; and
- (11) Any other condition reasonably characterized Hazardous or Substandard.

## 6.2 Minimum Standards for Potable Water

a. **General Requirements and Standard Conditions.** Water service lines shall be properly connected to a public or approved private system functioning as intended. All newly installed supply lines must be flushed and fittings tested. Privately owned wells and systems must also be tested for water quality. Testing must occur prior to commencing Rehabilitation; and must be conducted by a local health department or other qualified, unaffiliated source. Appropriate corrective measures are required for privately supplied water determined not suitable for use.

b. **Other Requirements/Conditions.**

(1) **Water Supply.** All dwellings shall have adequate, safe, and potable water supplied through a safe Plumbing System to all fixtures.

(2) **Water Quality.** Supply systems shall provide for the delivery of potable water through a safe system of piping, free from leaks and other defects and not subject to the hazards of backflow. If supplied water is not free of bacteria, chemicals, excessive minerals, relatively free of odor, taste, color and turbidity, corrective measures to improve water quality (e.g. water softening, water filtering) should be installed.

(3) **Exterior Pipe Protection.** All newly installed exterior water lines shall be buried at a minimum depth of 6" below the final grade, or be protected from freezing in accordance with local climate.

(4) **Water Pressure.** The average static pressure at the building entrance shall be between 40-80 psi. If pressure exceeds 80 psi, an approved pressure reducing device shall be installed. If pressure is less than 40 psi, a thorough evaluation shall be conducted to determine the reason(s) for low pressure and appropriate corrective measures shall be completed.

(6) **Pipes.** New supply water piping shall be type "L" copper tubing with wrought copper solder joint fittings, PEX, or CPVC. All fittings shall be compatible with pipe material. Joints between dissimilar metals shall be made with dielectric fittings to prevent joint

deterioration due to electrolysis. All piping shall be adequately supported to prevent sagging or breakage.

**(7) Valves.** The main water line shall have an accessible service shut-off valve for each building or Unit, as applicable. All hot and cold water supply lines feeding all Plumbing Fixtures shall be equipped with functional and accessible shut-off valves. Access panels for tub/shower enclosures must be provided for access to valves and maintenance, if possible with wall and plumbing configuration prior to rehabilitation. Movement of plumbing fixtures or similar changes are not required to create access. All valves shall be tested and must not leak.

### 6.3 Minimum Standards for Sanitary Drainage

**a. General Requirements and Standard Conditions.** The sanitary drainage system consists of the pipes designed to provide adequate circulation of air, exhaust of sewer gasses, prevent loss of water seals in traps and provide for wastewater flowing out of the home and into an approved sewage disposal system. All fixtures shall be connected to an approved sewage disposal system and free of leaks. New sewage disposal systems shall comply with EPA and Texas Commission on Environmental Quality (TCEQ) requirements.

**b. Substandard Conditions.**

**(1) Unapproved Private Systems.** Unapproved systems include pit privies, cesspools, ponds, lakes, streams and rivers. If any of these systems are in use, they must be abandoned and the housing Unit must be connected to an approved sewer disposal system.

**(2) On-Site Sewage Facilities (OSSF).** Prior to conducting Rehabilitation, all OSSF systems shall be inspected by a licensed OSSF inspector. If not performing as intended, an existing OSSF system must be repaired, replaced, or abandoned as provided in (A)-(B):

**(A) Repair or Replacement.** If repair is suitable, the tank shall be drained and all components tested and repaired or replaced. Special attention must be given to the drainage field; tree cutting and site clearing of the field may be required and replacement made. The drainage field must be designed for the existing soil conditions and the water table at the site and installed by a licensed installer.

**(B) Abandonment.** If a public system is available to connect to, and the existing OSSF system has reached the end of its Useful Life, abandonment is required. The existing tank shall be pumped, collapsed, and filled. A licensed plumber shall connect the housing to a public system and include a clean out close to the home.

**c. Other Requirements/Conditions.**

**(1) Traps.** Bell traps, "S" traps, and drum traps are prohibited. If any of these exist, they shall be replaced with a "P" trap. All fixtures shall be trapped and conform to the requirements in (A)-(F):

**(A)** All waste lines shall be trapped by a water seal trap as near to the fixture as possible but in no case more than 24" from the fixture;

**(B)** All traps shall be set level with respect to their water seals and sink traps shall be protected from contact and damage if sinks are made accessible for individuals using wheelchairs or other mobility device(s);

- (C) Trap size shall not be less than the following inside diameters: 1 ¼" for lavatories; 1 ½" for tubs, showers, kitchen sinks and dishwashers; 2" for clothes washers and; and 3" for floor drains in utility rooms;
- (D) No trap shall be larger than the drainage pipe coming from a fixture;
- (E) Access panels shall be provided to enclosed traps and concealed connections, if possible with wall and plumbing configuration prior to rehabilitation. Movement of plumbing fixtures or similar changes are not required to create access; and
- (F) Wall and ceiling openings for plumbing shall be air sealed with caulk (gap less than ¼") or expanding foam (gaps more than ¼").

**(2) Vents.** Plumbing Systems shall be designed to prevent sewer gases from entering the housing Unit(s), allow waste to adequately drain into an approved sewer system, and shall be vented to the exterior so that water released from fixtures may draw in air to allow for smooth and even drainage. All vents must also meet or exceed the requirements in (A) – (E):

- (A) All Plumbing Systems shall have at least one main vent stack, running from the main drain through the roof, terminating to the exterior. If only one main vent exists, it shall be no less than 3" inside diameter from top to bottom;
- (B) Plumbing vent systems shall only be used for the purpose of venting the system;
- (C) Existing vents shall be at a minimum 6" above the high side of the roof penetration. Newly installed vents shall be a minimum 12" above the high side. Through the roof vent penetrations shall be flashed and sealed to provide a positive drainage plain;
- (D) All vent stacks terminating in an attic shall be extended or replaced. No vent stacks shall terminate near any window or door or under soffits; and
- (E) Air admittance valves are allowed as long as they are American Society of Sanitary Engineering (ASSE) 1051-2009 approved and installed in accordance with the manufacturer's installation instructions.

#### **6.4 Minimum Standards for Plumbing Fixtures**

**a. General Requirements for Standard Conditions.** All Plumbing Fixtures shall be free of leaks or defects which interfere with their ability to perform as intended. Existing fixtures in good and safe working order are generally not required to be repaired or replaced.

**b. Other Requirements/Conditions.** Any and all replacement Plumbing Fixtures and appliances must be installed per the manufacturer's installation instructions, including water sealing, and must be completed in accordance with all applicable requirements provided in (1)-(7):

- (1) All replacement fixtures shall meet or exceed the requirements of WaterSense qualified or equivalent products. Kitchen faucets requiring replacement shall provide 2.2 gallons per minute (GPM) and a 15-year drip free warranty. The scope of work must identify the height toilet(s), whether it is round or elongated, and whether a new faucet is single lever or not.
- (2) All replacement plumbing appliances must meet or exceed the requirements of Energy Star, or equivalent, qualified products.
- (3) All replacement shower fixtures shall use anti-scald control devices. Access panels shall be provided to these valves, if possible with wall and plumbing configuration prior

to rehabilitation. Movement of plumbing fixtures or similar changes are not required to create access.

**(4)** All fixtures shall be supported and securely attached in a manner consistent with normal installation methods and installed level.

**(5)** All faucets shall have the hot water line on the left side of the faucet. Existing supply lines that are reversed shall be changed.

**(6)** If existing garbage disposals are not performing as intended or are not hardwired to the electrical system, they shall be removed, repaired or replaced. New garbage disposals shall be hard wired and switched in an accessible location as close as possible to the kitchen sink.

**(7)** All repaired or replacement fixtures and appliances shall be tested for leaks and proper operation.

**6.5 Minimum Standards for Domestic Water Heaters (DWH)**

**a. General Requirements and Standard Conditions.** All DWHs, with the exception of tankless water heaters, shall have, at a minimum, a 30 gallon storage capacity that can supply a continuous flow of hot water that is at least 102 degrees F, with gas or electric shut-off valves as well as cold water supply shut-off valves, all installed and functioning as intended. Larger capacity DWHs may be installed if necessary to serve larger households. Replacement DWHs shall meet or exceed the requirements of Energy Star qualified, or equivalent, products.

**(1) Temperature and Pressure Release Valve (TPRV).** Each unit shall be equipped with a TPRV must capable of releasing pressure at 150 psi or 210 degrees Fahrenheit. Water release shall extend to the exterior of the housing, if possible with wall and plumbing configuration prior to rehabilitation. Movement of plumbing fixtures or similar changes are not required to create access.

**(2) DWH Enclosure.** Each DSW shall be enclosed in a sealed closet designed for this purpose, with gas DSWs having combustion air drawn from outside the conditioned space. Gas DWHs inside conditioned spaces must be in separate closets that is not in the same room as a clothes dryer or any type of exhaust vent. All DWHs installed in a garage must be installed at a minimum 18" AFF with primary drainage draining to the exterior. DWHs in other locations shall be supported by a minimum three foot concrete base, if possible with wall and plumbing configuration prior to rehabilitation. Movement of plumbing fixtures or similar changes are not required to install a concrete base.

**(3) Energy Factors (EF) Table.** Replacement DWHs shall meet or exceed the Energy Factors (EF) requirements identified by size and type in the Energy Factors (EF) Table:

2024 Program Year Energy Factors (EF) Table		
Energy Factors (EF):	Gas DWH EF	Electric DWH EF
Replacement DSWs must meet or exceed the EF		

identified for each size in this table.		
<b>Storage Size (Gal):</b>		
30	0.63	0.94
40	0.61	0.93
50	0.59	0.92
60	0.57	0.91
70	0.55	0.90
80	0.53	0.89

## 7.0 Electrical Systems

### 7.1 Minimum Standards for General Electrical Service

**a. General Requirements and Standard Conditions.** Electrical systems must provide a safe and adequate supply of electrical current that meets the needs of the residents. Accordingly, Electrical Systems must meet or exceed the safety and efficiency requirements provided in (1)-(6), which require that the system is:

- (1) Properly grounded and free of hazards with all components properly secured and covered to prevent contact or electric shock;
- (2) In good condition, with all electrical components up to date, lacking deterioration, and free of shorts;
- (3) Sufficiently providing adequate, consistent, and appropriate current and voltage levels at each outlet, fixture, and piece of equipment, as per its intended use;
- (4) Equipped with conductors, fixtures, boxes, and equipment that are properly sized and rated for their intended use;
- (5) Adequate for its current use considering resident behavior and lifestyles;
- (6) Equipped with an adequate quantity of appropriately located lighting, receptacles, and switches; and
- (7) Maintained, repaired, or otherwise replaced primarily in accordance with the ICC Principles of Safety, Capacity, and Convenience.

**b. Substandard Conditions.** At a minimum, repair or replacement is required if any of the conditions in (1)-(17) exist:

- (1) Inadequate capacity (e.g. excessive use of power strips and/or multiple outlet adaptors);
- (2) Two-wire systems (lacking grounding);
- (3) Wiring or components missing, broken, disconnected, loose, burnt or melted, unsupported, corroded, cracked, or split;
- (4) Panel boxes that show evidence of water intrusion or infestation;
- (5) Frayed or burnt wiring or wire insulation;
- (6) Circuits, switches, receptacles, or wiring is not compatible with the amperage or other characteristics of the electricity in use;
- (7) Flexible cords are used as permanent wiring (unless Non-Metallic (NM) cable(s) otherwise installed in accordance with local building codes);
- (8) Exposed wiring on interior walls or the exterior that are not protected in conduit or raceways (unless Non-Metallic (NM) cable(s) otherwise installed in accordance with local building codes);
- (9) Receptacles in bathrooms and kitchens within 6' of a water source and exterior receptacles that are not ground fault circuit interrupter (GFCI) protected;

- (10) Reverse polarity;
- (11) Unlabeled circuits;
- (12) Missing cover plates;
- (13) Components not securely attached to the structure;
- (14) Inadequate lighting in rooms and outside of entry doors; or
- (15) Any other condition reasonably characterized as meeting the definition of a Hazardous or Substandard Condition.

**c. Other Requirements/Conditions.** Additions, alterations, renovations, and repairs to electrical systems and equipment must be conducted in accordance with the applicable requirements of new electrical systems and equipment by appropriately licensed electricians. Rehabilitation of existing systems and equipment is generally not simultaneously required to comply with the overlapping, otherwise applicable provisions of the IEBC. Nevertheless, any and all additions, alterations, and repairs MUST NOT cause existing electrical systems or equipment to become unsafe, hazardous, or overloaded. IBC 2015, Appendix K (Administrative Provision).

## 7.2 Minimum Standards for Existing Wiring and Fixtures

**a. General Requirements and Standard Conditions.** Existing electrical service and components must be safe, efficient, and in good working condition for its intended use. Moreover, the capacity of the system must meet the demand of the residents. Replacement is not mandatory for existing service and components that meet or exceed these Standard Conditions, unless otherwise required by code or local ordinance. Voluntary replacement may be permitted to more efficiently and cost-effectively meet the needs of the community and the current or intended demands of the residents.

**b. Substandard Conditions.** Overloaded circuits are not permitted and must be addressed by separating the load and adding an adequate number of circuits necessary to safely and efficiently carry the load.

**c. Other Requirements/Conditions.**

**(1) Secure Fastening of Fixtures and Equipment.** All components shall be securely fastened to framing members by mechanical means. No fixture or socket shall hang by unsupported wiring. All existing receptacles, switches, and junction boxes shall contain a proper cover plate. In no case shall the structural integrity of the building be compromised.

**2. New Wiring.** New wiring shall be installed in a neat and workmanlike manner with all wiring run inside of walls. If wall or ceiling cavities are not accessible, wiring shall be run in properly sized and rated raceway or wire mold, secured along the walls with proper fasteners, flush to the surface and straight.

**3. Aluminum Wiring:** All aluminum wiring in housing to be rehabilitated shall be replaced with a 3-wire system and in accordance with these Standards. Properly sized service aluminum entry wiring is generally not required to be replaced.

**4. Knob and Tube Wiring.** Knob and tube wiring shall be replaced with a 3-wire system and in accordance with these Standards.

## 7.3 Minimum Standards for Sizing of Service and All Electrical Homes



**a. General Requirements and Standard Conditions.** The service entrance cable shall have the same rating (amperage) as the meter base and service equipment. Replacement of a service entrance shall require calculation of the usage or load within the building to assist in determining the appropriate size. The service entrance must be properly sized for its intended post-Rehabilitation capacity. Room-by-room specifications noting electrical outlets and fixtures shall be included in the scope of work. Nameplate ratings of all appliances must be reviewed for actual VA ratings.

**b. Other Requirements/Conditions:**

**Main Service Panel.** Panels shall be in proper working condition with no evidence of overheating, arcing, corrosion, or failure. The panel shall bear the UL label and shall be marked as suitable for service equipment. Any panels (or installed breakers) identified as substandard by the U.S. Consumer Product Safety Commission shall be replaced. Panels with evidence of malfunction or deterioration shall be replaced.

#### **7.4 Minimum Standards for Material and Equipment Installation**

**General Requirements and Standard Conditions.** All materials, components, and equipment shall be listed or labeled by a qualified electrical products testing laboratory (e.g. "UL" or "CSA"). Listed materials, components, and equipment must be installed per the intended use, with location determined in accordance with the manufacturer's installation instructions.

#### **7.5 Minimum Standards for Grounding**

**General Requirements and Standard Conditions.** All electrical systems shall consist of a single phase 3-wire grounded neutral service entrance and shall provide system grounding and equipment grounding protection.

The service panel shall be connected to the grounding electrode system and an eight foot (8') galvanized or copper clad steel ground rod. All electrical panels shall meet or exceed the bonding requirements of the National Electrical Code (NEC).

If present, metal water pipes shall be bonded to the grounding electrode systems as a means to ground the Plumbing System and prevent pipes and fixtures from becoming energized and hazardous.

All wiring and equipment shall be grounded in accordance with the grounding requirements of the NEC.

#### **7.6 Minimum Standards for Overcurrent Protection**

**a. General Requirements and Standard Conditions.** The number of circuits installed shall not exceed the rating on the panel. The selection of a panel shall provide room for future expansion. All circuits shall be clearly, accurately, and permanently labeled with tags

provided. All unused openings shall be properly plugged, capped or sealed with listed materials.

**b. Substandard Conditions.** Tandem breakers shall only be used in panels designed for them. The use of tandem breakers in order to exceed the 16 circuits permitted on an 100 amp panel shall not be permitted. Any service equipment containing fuse over-current protection shall be replaced with properly rated circuit breaker type over-current protection devices.

**c. Other Requirements/Conditions.** Panel board over-current devices shall be properly sized and located at the exterior in a subpanel if the main service panel is in the interior. All existing circuits shall be load tested for tripping.

### **7.7 Minimum Standards for Service Panel and Sub-Panel Connections**

**a. General Requirements and Standard Conditions.** All existing or new service panels shall be securely fastened to the dwelling. All panel boxes shall be listed and enclosed in 16 gauge sheet steel cabinets with doors and catches. Conductors entering the service shall have proper connectors and shall be securely and neatly attached at terminals. All circuits shall be marked and identified inside the panel box and any sub-panels.

**b. Substandard Conditions.** Wires shall not have any obvious nicks in the insulation and shall be properly bonded. Service panels shall not be located in bathrooms or closets. When replacement is necessary, the design and location of the service panel shall be considered in conjunction with the relevant needs and desires of the residents.

**c. Other Requirements/Conditions.**

**(1) Panel Boxes.** If replacement is required, new panel boxes and subpanels must be installed at 48" AFF (as measured from the main shut off switch or to the highest breaker in the box). Relevant local code requirements will apply with regard to this measurement should this Section 7.7(c) conflict with the local code.

**(2) Weather head(s).** Weather heads shall be at least 12' above the finished grade.

**(3) Sub-panels.** Sub-panels, add-on boxes, or disconnects to existing services for additional circuits shall be allowed only if the existing service equipment is listed and designed for such extension and the installation is in compliance with the NEC. Sub-panels are allowed if the existing service panel has adequate capacity but no available expansion slots.

**(4) Service Disconnect.** The main disconnect shall be accessible and clearly marked as a service disconnect.

### **7.8 Minimum Standards for Branch Circuits**

**a. General Requirements and Standard Conditions.** Protection against physical damage of exposed electrical equipment shall be provided throughout Rehabilitation.

**b. Other Requirements/Conditions.**

**(1) Dedicated Circuits.** No less than one dedicated 20 amp circuit shall be present for each bathroom and no less than two 20 amp small appliance branch circuits serving the kitchen. A dedicated circuit shall not serve other receptacles. All 240 volt appliances or

equipment shall be on separate circuits. The number of small appliances used by the occupants shall be taken into consideration when planning the circuit loads and placement of receptacles to avoid overloading a circuit and to eliminate the use of extension cords or multiplex outlets. Additional circuits may be necessary and are allowed. Dedicated circuits are required for at least those appliances listed in subparagraphs (A) – (L) of this paragraph, if applicable and as sized in accordance with the manufacturer’s instructions:

- (A) Refrigerators;
- (B) Separate freezers;
- (C) Electric range or cook top;
- (D) Electric oven;
- (E) Clothes dryer;
- (F) Electric water heater;
- (G) Electric furnace/air handler;
- (H) Microwave oven;
- (I) Air conditioner;
- (J) Sump pumps and water wells;
- (K) Septic system aerators; and
- (L) Any other major electric appliance.

**(2) Circuit Load Distribution.** All circuit wiring shall be properly sized to serve the load.

**(3) Two-wire Systems.** All 2-wire, ungrounded wiring shall be replaced with 3-wire, grounded wiring.

**(4) Unused Switches, Receptacles, Fixtures, Conductors and Openings.** Unused switches, receptacles, fixtures, and conductors that are obtainable or otherwise within reach shall be removed. All unused openings in outlets, devices, junction boxes, conduit bodies and fittings, raceways, cabinets, and equipment cases or housings shall be effectively closed with knockout seals to prevent vermin, insects, and building materials from coming into contact with wiring.

**(5) Wire Splices.** All splices shall be placed in accessible and listed junction boxes that are properly covered.

**(6) AFCI Protected Circuits.** All newly installed branch circuits that supply 15 and 20 amp receptacles installed in family rooms, dining rooms, living rooms, parlors, libraries, dens, sun rooms, recreational rooms, closets, hallways and similar rooms or areas shall be protected by a combination type arc-fault circuit interrupter installed to provide protection of the branch circuit.

## 7.9 Minimum Standards for Receptacles

**a. General Requirements and Standard Conditions.** All replacement receptacles must be tamper resistant, and shall be listed/labeled and installed per manufacturer’s instructions. Boxes must be specifically designed for its intended purpose, properly sized (rated for the size of the circuit), and mechanically fastened with attached cover plates installed. Receptacles located in damp or we areas must be weatherproof and the wiring shall be run in boxes, conduit(s) and fittings that are listed for wet locations.

### **(1) Receptacle Locations**

**(A) All Rooms.** All habitable spaces must have receptacles. In each family room, dining room, living room, parlor, library, den, sun room, bedroom, recreation room,

or similar room or area, receptacles shall be installed so that at a minimum each wall has at least one receptacle. Receptacles shall be spaced so that at no point along the perimeter of the floor is more than 6' from a receptacle. Other rooms that are not regularly used by residents/occupants are permitted to have only a minimum of one receptacle per room. Receptacles should not be located lower than 15" above the finished floor.

**(B) Bathrooms.** All bathrooms must have at least one dedicated 20 amp receptacle outlet that is GFCI protected and located at least 3' from the outside edge of the sink. The receptacle shall be located not lower than 30" and not higher than 48" above the finished floor. Receptacles shall not be located within or directly over a bathtub or shower stall, and shall be at least 12" from the outer edge of the bathtub or shower opening.

**(C) Kitchens.** The kitchen shall have GFCI protected duplex receptacles on at least two separate 20 amp appliance circuits at the kitchen counter top spaced not more than 48" from each other. A separate dedicated, non-GFCI protected receptacle shall be required for each refrigerator and electric range or cook top, located directly behind it.

**(D) Other Exterior(s).** Exterior receptacles shall be GFCI protected and enclosed in a listed or labeled weatherproof box. One shall be required at the front of the house and one at the back.

**(2) GFCI Protection.** Receptacles located in bathrooms, kitchens, in a garage, at the exterior, and anywhere else located within 6' of a sink, shall be GFCI protected. Single use, dedicated receptacles for use by equipment and appliances such as washing machines and sump pumps shall not be GFCI protected, and shall be single, rather than duplex, receptacles when replaced.

## 7.10 Minimum Standards for Lighting

**General Requirements and Standard Conditions.** Every habitable room and all living spaces (e.g., bathroom, toilet room, laundry room, furnace or utility room, and hallways) shall be provided adequate natural or artificial lighting, as applicable, and in accordance with paragraphs (1) – (3) of this section:

**(1) Natural lighting.** Natural lighting must be provided by exterior glazed openings that generally open directly onto a public way, yard, or court. The net glazed area generally must span a minimum eight (8) foot area of the floor in the room or adjoining space served.

**(2) Artificial lighting.** Artificial lighting must provide at least an average illumination of 10 footcandles (107 lux) over an area of the room served at a height of 30 inches above the floor.

**(3) Safety lighting.** All stairways (e.g. interior within dwelling unit and exterior serving dwelling unit(s)) must be illuminated by at least one artificial light fixture controlled by a remote wall switch located at the top and bottom of the stairway.

## 7.10 Minimum Standards for Fixtures and Switches

**a. General Requirements and Standard Conditions.** All replacement fixtures shall be listed or labeled, Energy Star qualified or equivalent, and must be installed in accordance with the

manufacturer's installation instructions. If existing fixtures are in a good and safe condition, securely fastened to framing members, replacement is not required.

**b. Substandard Conditions.** No fixture or receptacle shall hang from a base by unsupported wiring.

**c. Other Requirements/Conditions.**

**(1) Fixture and Switch Locations.** At a minimum, a permanently installed lighting fixture controlled by a wall switch is required in each room of the structure. Switches shall not be located in tub/shower areas or behind the swing of a door. All new wall switches must be located in a convenient and Accessible location.

**(2) Closet Fixtures.** All light fixtures installed in closets shall be surface mounted or recessed can lights. Recessed can lights shall be Insulation Contact Air Tight (ICAT) rated or its equivalent. Closet fixtures shall be a minimum 6" away from any storage, clothing, or other items, and have a protective cover over the bulb.

**(3) Lamps (Light Bulbs).** All replacement lamps must meet or surpass the industry standards for Energy Star qualified or equivalent Compact Florescent Lamps (CFLs) or Light Emitting Diodes (LEDs). Refer to Section 4.12 (*regarding* Minimum Standards for Lighting) for additional details.

### **7.11 Minimum Standards for Smoke and Carbon Monoxide Detectors**

**a. General Requirements for Smoke Detectors.** Each dwelling shall have listed or labeled smoke detectors installed in each bedroom and in the hallway immediately adjacent to bedrooms. Smoke detectors shall draw their primary power from the electrical system, with battery backup, and without interruption except for over current protection. Smoke detectors shall be interconnected so that all detectors sound the alarm when any one senses smoke

**b. General Requirements for Carbon Monoxide Detectors.** In dwellings with attached garages and/or fuel-fired appliances, carbon monoxide detectors shall be installed. CO detectors shall be listed as complying with UL 2075 and installed outside the immediate vicinity of bedrooms. CO detectors shall be permanently installed and hard wired to the electrical system with battery backup.

## **8.0 Heating, Ventilation, and Air Conditioning (HVAC)**

### **8.1 Minimum Standards for HVAC Systems**

**a. General Requirements and Standard Conditions.** In conjunction with other systems, the HVAC system of a housing unit must effectively maintain a comfortable living environment for the residents/occupants. At a minimum, paragraphs (1) – (3) of this Section 8.1(a) require all HVAC systems:

**(1)** Provide a reliable source of heated or cooled air, as applicable, and at a comfortable temperature for all habitable rooms;

**(2)** Control ventilation and indoor air quality; and

**(3)** Be free of contaminants that negatively affect indoor air quality.

**b. Substandard Conditions.** Repair or replacement is required if any Hazardous condition applies, which include but are not limited to, those listed in paragraphs (1) - (14) of this Section:

**(1)** Lack of a steady and dependable source of heating and cooling to all living areas;

- (2) Gas-fired air handler inside the conditioned space which draws; combustion air from the interior;
- (3) Combustion gases not venting to the exterior;
- (4) Leaking, damaged, rusted or cracked heat exchanger;
- (5) Leaking, corroded or damaged gas supply pipe;
- (6) Missing gas shut-off at each appliance;
- (7) Lack of a functioning pilot or electric start;
- (8) Inadequate duct system that does not supply necessary conditioned air to all living areas;
- (9) Leaking ducts or returns;
- (10) Mismatched or poorly repaired equipment;
- (11) Deficiencies are too numerous to justify repair expenses;
- (12) Unvented gas-fired wall heaters in enclosed rooms. If existing, the wall unit shall be removed and the gas line capped;
- (13) Gas-fired kitchen stoves and/or ovens without ventilation to the exterior;
- (14) Lack of a functioning carbon-monoxide detector in homes with gas-fired appliances or equipment.

**c. Other Requirements/Conditions.**

**(1) Sizing and Selecting a New System.** Replacement heating and cooling equipment shall be sized in accordance with the current version of the Air Conditioning Contractors of America (ACCA) 16 Manual J or other approved methodology. Equipment selection shall comply with the current version of ACCA Manual S or other approved methodology. Data for heating and cooling loads shall be calculated in accordance with required post-rehabilitation conditions.

**(2) Installation.** Installation of new systems shall comply with the manufacturer's installation instructions, as appropriate for the fuel source. All replacement equipment shall have a permanent electrical receptacle, switch, light fixture near the equipment, and installed in an accessible manner so that future inspecting, maintaining, and repairing the system can be completed.

**(3) Programmable Thermostat.** A programmable thermostat shall be installed when a new heating and cooling system is installed. Upon installation, the temperature settings shall be done by the contractor, the occupants shall be educated on using the thermostat and the instructions and warranty shall be provided to the occupants. The location of the thermostat shall be in a central location and not within 3' of doors, windows, appliances, or televisions and installed not higher than 48" AFF, measured from the center of the thermostat.

**(4) Specific Requirements for Cooling Equipment.**

**(A) Climate Zones.**

**(i)** Cooling equipment in Climate Zones 2 and 3 shall be 14.5 Seasonal Energy Efficiency Ratio (SEER)/12 Energy Efficiency Ratio (EER) Energy Star qualified, or its equivalent; or alternatively, shall be a heat pump.

**(ii)** Cooling equipment in Climate Zone 4 shall be 13 SEER, or its equivalent; or alternatively, shall be a heat pump.

*\*Refer to Section 8.1(c)(3) of these Standards for details regarding Heating Equipment.\**

**(B) Indoor Air Handler.** If the indoor air handler is being replaced, the outdoor coil shall also be replaced and it shall be matched to the indoor air handler, unless the outdoor coil is in good working condition and is compatible and properly sized to the new indoor air handler.

**(5) Specific Requirements for Heating Equipment.**

**(A) Climate Zones.**

(i) Heating equipment in Climate Zones 2 and 3 shall be greater than or equal to 80% AFUE gas furnace (or its equivalent); greater than or equal to 8.2 HSPF/14.5 SEER/12 EER air-source heat pump, Energy Star qualified with electric backup (or its equivalent); or alternatively, shall be a ground-source heat pump, Energy Star qualified (or its equivalent).

(ii) Heating equipment in Climate Zone 4 shall be greater than or equal to 90% AFUE gas furnace (or its equivalent); greater than or equal to 8.5 HSPF/14.5 SEER/12 EER air-source heat pump, Energy Star qualified with electric backup (or its equivalent); or alternately, shall be a ground-source heat pump, Energy Star qualified (or its equivalent).

## **8.2 Minimum Standards for the Distribution System.**

**a. General Requirements and Standard Conditions.** The distribution system (e.g. ductwork) must provide an adequate supply of conditioned air to each habitable room, as well as an adequate amount of return air from each habitable room. Existing distribution systems must be inspected to determine whether the system is operating efficiently, properly balanced, and adequately supplying conditioned air -- as this is required for all habitable rooms.

### **b. Other Requirements/Conditions.**

**(1) Duct Cleaning.** If the distribution system is dirty, but is otherwise operating effectively, duct cleaning is required. This requires complete duct sealing by mechanical means and with duct mastic (so as to adequately eliminate the source of dirt and debris entering the system). Duct cleaning must include all dryer vents.

**(2) Replacement and Relocation.** Replacement shall ensure all newly installed distribution systems are sized per the current version of the ACCA Manual D (or other Agency-approved methodology). Every effort should be made to relocate the replacement distribution system to the conditioned space through the installation of dropped soffits. If this is not possible, locating the distribution system in the attic shall require mechanical fastening, sealed with duct mastic, and insulated to R-8. Distribution systems shall not be located at the exterior of the home exposing the system to the elements

**(3) Installation.** Connections and routing of new ductwork shall be completed without kinks or sharp bends and without excessive coiled or looped flexible ductwork. All connections shall be mechanically fastened, sealed with mastic, and properly supported. Runs shall be insulated to R-8 if installed in unconditioned space.

**(4) Room Pressurization.** Room pressure balancing systems are recommended. Unbalanced distribution systems require transfer grills or jumper ducts to be installed to provide balance with rooms when doors are closed (with respect to the rest of the housing unit). Undercutting doors is prohibited.

## **8.3 Minimum Standards for Ventilation and Indoor Air Quality**

**a. General Requirements and Standard Conditions.** At a minimum, sufficient ventilation must be provided so as to ensure adequate, continuous, non-contaminated air circulation throughout the Development.

### **b. Additional Requirements/Conditions.**

**(1) Exhaust fans.** Exhaust fans shall comply with or exceed the applicable requirements in 2012 IRC, Chapter 15, and must be at least Energy Star qualified (or its equivalent). All bathroom, toilet rooms, and kitchen fans shall exhaust to the exterior (either through the

roof or a gable wall), be mechanically fastened, sealed with duct mastic, insulated to R-6, and have a mechanical damper. Flashing shall be installed to provide a positive drainage plain. Flex duct terminating at a gable vent is prohibited.

**(A) Bathroom and Toilet Room Exhaust Fans.** All bathrooms and toilet rooms must be ventilated by exhaust fans (vented to the outside) unless an operable window is present. If a continuous fan is installed, it shall be greater than or equal to 20 cfm. Intermittent fans shall be greater than or equal to 50 cfm. Neither shall exceed 1.5 sones. Bathroom exhaust fans shall be installed on a dedicated GFCI protected circuit. Light kit, night light, and/or a heating element may be included with exhaust fans. Combustion appliances venting to the exterior shall not be located in bathrooms.

**(B) Kitchen Exhaust Fans.** Kitchens require mechanical exhaust fan(s) (e.g. kitchen range hoods) be installed unless adequately ventilated by an existing and operational exhaust fan (vented to the outside). If a continuous fan is installed, it shall be greater than or equal to 5 cfm. Intermittent fans shall be greater than or equal to 100 cfm.

**(C) Garage Exhaust Fans.** If a garage is attached to a Unit (e.g. sharing a common wall), then a UL listed exhaust fan shall be installed in the garage and connected to the operation of the garage door. The exhaust fan must at least turn on when the door is opened and off after 20 minutes.

**(2) Supply Air.** If supply air is installed and connected to the return plenum, subparagraphs (A) - (D) of this paragraph shall apply, which requires:

**(A)** Supply air inlets must not be located within 10 linear feet from known contamination sources such as stacks, vents, exhaust hood, or vehicle exhaust;

**(B)** Rodent and insect screens must be installed;

**(C)** Ventilation must come directly from the outdoors and not from adjacent dwelling units, garages, crawlspaces, or attics; and

**(D)** The duct must be mechanically fastened, sealed with duct mastic, insulated to R-6, and shall have a mechanical damper.



## **Mandatory Development and Unit Standards**

### **Health and Safety**

NHTF-assisted housing must be free of all health and safety defects, must meet minimum standards of habitability and functionality, and all inspected items with an observed deficiency must be corrected. Additionally, NHTF-assisted housing is subject to the requirements in 24 CFR §93.301(b)(1)(i) regarding identifying life-threatening deficiencies, which must be addressed immediately if the housing is occupied at the time of rehabilitation.

### **Lead-Based Paint**

NHTF-assisted housing is subject to the regulations at 24 CFR Part 35, subparts A, B, J, K, and R regarding lead-based paint poisoning prevention in residential structures. Applicants, developers, and builders of any project requiring the rehabilitation of structures built prior to 1978 must read, fully understand, and comply with 24 CFR Part 35, subparts A, B, J, K, and R. Inspection and testing for lead-based paint must be completed prior to determination of the scope of rehabilitation, a copy of the inspection and testing report must be provided as part of the work write-up.

### **Accessibility & Visitability**

NHTF-assisted housing must meet the accessibility requirements of 24 CFR Part 8 (implementing Section 504 of the Rehabilitation Act of 1973) and Titles II and III of the Americans with Disabilities Act (implemented at 28 CFR Parts 35 and 36), as applicable. “Covered multifamily dwellings”, as defined at 24 CFR §100.201, must also meet applicable design and construction requirements at 24 CFR §100.205 (implementing Fair Housing Act). Other required accessibility and visitability features are further described in 10 TAC Chapter 1, Subchapter B, and 10 TAC §11.101(b)(8).

### **Disaster Mitigation**

Where relevant, NHTF-assisted housing must be improved to mitigate the impact of potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, in addition to the Uniform Physical Condition Standards or other requirements established by HUD.

### **Broadband Infrastructure**

HTF-assisted housing must provide for the installation of broadband infrastructure to be completed in accordance with 24 CFR §93.301(b)(2)(vi) and at no charge to the residents. 10 TAC §11.101(b)(4)(A).

### **Environmental Requirements**

HTF-assisted housing must meet the minimum environmental requirements in 24 CFR §93.301(f)(2).

### **Development and Unit Amenities**

Housing improvements beyond those described in these Standards must include all applicable amenities and energy and water efficiency features in accordance with 10 §TAC 11.101(b)(4), (5), and (6), as amended.

## **Inspections, Construction Documents, & Compliance (24 CFR §93.301(b)(2)-(3))**

### **Inspections**

All NHTF-assisted rehabilitation projects must comply with TDHCA written inspection procedures. TDHCA will conduct initial, mid-progress, and final inspections during construction to identify any deficiencies that must be addressed and ensure that all work is in accordance with approved standards, as applicable. *See*, 24 CFR §93.301(b)(3). TDHCA is responsible for initial and ongoing on-site inspections for rental housing during the affordability period. *See*, 24 CFR §§93.301(b)(3) and 93.301(e); *see also*, 10 TAC §13.11(Post-Award Requirements).

### **Work Write-Ups**

Each repair should be detailed as required through the use of plans, drawings, specifications (conforming to the MasterFormat work write-ups). At a minimum each repair should be detailed in a work write up that specifies the location, required demolition, and methods and materials with enough detail to determine the desired outcome or finished product. Work-write ups can reference plans and specifications as needed but must be detailed enough to complete repairs. Moreover, work write-ups must comply with State and local codes, ordinances, requirements, and TDHCA standards.

### **Cost Estimates**

Written Cost Estimates are required for all NHTF-assisted rehabilitation projects. Cost estimates must be reasonably prepared and submitted to the Department for approval in accordance with Title 10, Part 1, Chapter 10 of the Texas Administrative Code and these Standards. *See*, 24 CFR 93.301(b)(2) and (3); *see also*, 10 TAC §13.11(Post-Award Requirements)(regarding documents that must be submitted to the Department for review and approval prior to loan closing).

### **NHTF Annual Auditing, Recordkeeping, and Certifications**

NHTF-assisted housing must comply with the auditing, recordkeeping, and cost certification requirements of 24 CFR §93.406 and 24 CFR §93.406.

## Scope of Work and Post-Rehabilitation Standards

### **National Standards for the Physical Inspection of Real Estate (NSPIRE)**

All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the entire Affordability Period. 10 TAC §10.621; To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units are functionally adequate, operable, and free of health and safety hazards. 24 CFR §5.703.

At a minimum, NHTF-assisted housing must comply with HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE)], as found in 24 CFR §5.705 and further provided for in 24 CFR §5.703. Developments must also comply with all local health, safety, and building codes; ordinances; and zoning requirements. Developments in jurisdictions without applicable State or local building codes must adhere to the International Existing Building Code (IEBC), and where the International Building Code (IBC) of the International Code Council in addition to the UCPS. Refer to **Appendix A: National Standards for the Physical Inspection of Real Estate (NSPIRE)** for additional details.

### **AND**

### **Scope and Cost Review (SCR)**

This report is required for NHTF-assisted Rehabilitation Developments. The SCR Report must be prepared in accordance with 10 TAC §11.306 (relating to Scope and Cost Review Guidelines) and submitted as required under 10 TAC §11.205(3)(relating to Scope and Cost Review (SCR)). Importantly, the report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. Refer to **Appendix B: Scope and Cost Review (SCR)** for additional details.

### **AND**

### **Capital Needs Assessment (CNA)**

All NHTF-assisted Rehabilitation Developments must also submit a capital needs assessment (CNA) estimating the useful life of each major system. 10 TAC §11.205(3). The CNA shall determine the work to be performed and identify the long-term physical needs of the project. 24 CFR §93.301(b)(1)(ii). Moreover, the assessment must include a comparison between the local building code and no earlier than the 2015 version of the IEBC of the International Code Council. 10 TAC §11.205(3). If the remaining useful life of one or more major system is less than the applicable period of affordability, a replacement reserve must be established with adequate monthly payments made to repair or replace the systems as needed. See, 24 CFR §93.301(b)(1)(ii); *see also*, 10 TAC §10.404 (Reserve Accounts).

In addition to the minimum CNA requirements, the Report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. 10 TAC §11.205(3)(relating to Scope and Cost Review(SCR)). Refer to **Appendix C: Capital Needs Assessment (CNA)** for additional details.

**APPENDIX TO  
2024 NHTF MINIMUM REHABILITATION STANDARDS**

## APPENDIX A: National Standards for the Physical Inspection of Real Estate (NSPIRE)

### Introduction

All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the entire Affordability Period. 10 TAC §10.621; To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units are functionally adequate, operable, and free of health and safety hazards. 24 CFR §5.703. This requires that, at a minimum, NHTF-assisted housing comply with HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) provided in 24 CFR Part 5, Subpart G.

Importantly, the NSPIRE is a minimum threshold requirement for NHTF-assisted housing. Developments are still responsible for complying with applicable local health, safety, and building codes; ordinances; and zoning requirements. Even Developments in jurisdictions without applicable State or local building codes must still comply with the 2012 International Existing Building Code (IEBC) in addition to the NSPIRE.

### NSPIRE Compliance Inspections

The Department's Compliance Division or its Affiliate(s) is responsible for conducting NSPIRE inspections of NHTF-assisted multifamily developments. See §200.853. Inspection frequency will be determined using the scoring and ranking methodology of HUD's Real Estate Assessment Center (REAC). See §200.857(a) – (b). Unless otherwise determined by the Department, NSPIRE Inspections will be conducted once every three years during the Affordability Period.

During an Inspection, observable deficiencies for inspectable items will be identified for all major areas of NHTF-assisted rehabilitated housing, including the **(1) Inside; (2) Outside ; (3) Units ; and (4) Health and Safety Considerations**. Correcting deficiencies is an important part of the Applicant/Borrower's ongoing responsibility to maintain the physical state of the Development so that it is decent, safe, sanitary, and in good repair. This responsibility must be maintained throughout the entire Affordability Period.

**Depending on the type of Deficiency identified, the responsibility to address and remedy Deficiencies may either be (1) immediate or (2) completed with the project's scope of work.**

- 1. Severe and Life Threatening Deficiencies (LTD)** are identified in the Exigent Health and Safety Report(s) and require immediate attention or remedy. **For projects involving the acquisition or rehabilitation of occupied housing, Severe and Life Threatening Deficiencies MUST be immediately addressed AND remedied.** Severe and Life Threatening Deficiencies include, but not are limited to, the following (categorized by Severe and Life-Threatening deficiencies):
  - **Life-Threatening:**Call-for-aid system is blocked, or pull cord is higher than 6 inches off the floor
  - Call-for-aid system does not function properly
  - Carbon monoxide alarm is missing, not installed, or not installed in a proper location
  - Carbon monoxide alarm is obstructed
  - Carbon monoxide alarm does not produce an audio or visual alarm when tested
  - Chimney exhibits signs of structural failure

- Chimney is incomplete or damaged such that it may not safely contain fire and convey smoke to the exterior
- Electric dryer exhaust ventilation system has restricted airflow
- Gas dryer exhaust ventilation system has restricted airflow
- Electric dryer transition duct is detached or missing
- Gas dryer transition duct is detached or missing
- Electric dryer exhaust ventilation system has restricted airflow
- Dryer transition duct is constructed of unsuitable material
- Entry door is missing
- Fire labeled door is missing
- Obstructed means of egress
- Sleeping room is located on the 3rd floor or below and has an obstructed rescue opening
- Outlet or switch is damaged
- Exposed electrical conductor
- Water is currently in contact with an electrical conductor
- The overcurrent protection device is damaged
- Exit sign is damaged, missing, obstructed, or not adequately illuminated
- Fire escape component is damaged or missing
- Fire extinguisher pressure gauge reads over or under-charged
- Fire extinguisher service tag is missing, illegible, or expired

**Severe:**

- Fire extinguisher is damaged or missing
- Flammable or combustible item is on or within 3 feet of an appliance that provides heat or a fuel-burning water heater OR Improperly stored chemicals
- Guardrail is missing or not installed
- Guardrail is not functionally adequate
- Unvented space heater that burns gas, oil, or kerosene is present
- Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance
- Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing
- The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit
- Unvented space heater that burns gas, oil, or kerosene is present
- Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance
- Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing
- Natural gas, propane, or oil leak
- Presence of mold-like substance at extremely high levels is observed visually
- Smoke alarm is not installed where required
- Smoke alarm does not produce an audio or visual alarm when tested
- Smoke alarm is obstructed

- Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head
- Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance
- Sprinkler assembly has evidence of corrosion
- Sprinkler assembly has evidence of foreign material that is detrimental to performance
- Structural system exhibits signs of serious failure
- Only 1 toilet was installed, and it is missing
- Chimney or flue piping is blocked, misaligned, or missing
- Gas shutoff valve is damaged, missing, or not installed
- Only 1 bathtub or shower is present and it is inoperable or does not drain
- Ceiling component(s) is not functionally adequate
- Cooking range, cooktop, or oven does not ignite or produce heat
- A microwave is the primary cooking appliance and it is damaged
- Entry door is missing
- Entry door will not close
- Entry door cannot be secured
- Fire labeled door does not open
- Fire labeled door does not close and latch or the self-closing hardware is damaged or missing such that the door does not self-close and latch
- Fire labeled door assembly has a hole of any size or is damaged such that its integrity may be compromised
- Fire labeled door seal or gasket is damaged or missing
- An object is present that may prevent the fire labeled door from closing and latching or self-closing and latching
- Fire labeled door cannot be secured
- Three prong outlet not properly wired or grounded
- Outlet does not have visible damaged and testing indicates it is not energized
- Testing indicates a three-pronged outlet is not properly wired or grounded
- GFCI outlet or GFCI breaker is not visibly damaged and the test or reset button is inoperable
- AFCI outlet or AFCI breaker is not visibly damaged and the test or reset button is inoperable
- An unprotected outlet is present within six feet of a water source
- The overcurrent protection device is contaminated
- Heating system or device safety shield is damaged or missing
- The inspection date is on or between October 1 and March 31 and the permanently installed heating source is working and the interior temperature is 64 to 67.9 degrees Fahrenheit
- Heating system or device safety shield is damaged or missing
- Extensive rat infestation
- Extensive cockroach infestation
- Extensive bedbug infestation
- Extensive mouse infestation
- Extensive rat infestation
- Blocked sewage system

- Leak in sewage system
- Auxiliary lighting is damaged, missing, or fails to illuminate when tested
- Presence of mold-like substance at high levels is observed visually
- 

2. **Moderate and Low Deficiencies** generally include all other observable deficiencies. Any and all Moderate and Low Deficiencies must be completed with a project's scope of work and thus corrected prior to project completion. Moderate and Low Deficiencies include but are not limited to those listed as "Mod" or "Low Deficiencies" in ***Attachment A – TDHCA National Standards for the Physical Inspection of Real Estate (NSPIRE Checklist)***.

#### **Required Documentation**

All NHTF-assisted multifamily housing must complete and timely submit the ***TDHCA National Standards for the Physical Inspection of Real Estate (NSPIRE Checklist)*** to the Department for review and approval.



## **APPENDIX B: Scope and Cost Review (SCR) (10 TAC §11.205(3); 10 TAC §11.306)**

### **Introduction**

All NHTF-assisted Developments (excluding Reconstruction) must submit a Scope and Cost Review (SCR) Report. The SCR must meet the minimum requirements provided in 10 TAC §11.306 (relating to Scope and Cost Review Guidelines) and 10 TAC §11.205(3)(relating to Required Third Party Reports: Scope and Cost Review). Pursuant to 10 TAC §11.306(a), the objective of the SCR is to provide a self-contained report that comprehensively details and evaluates the current conditions of the Development, and identifies a scope of work for the proposed repairs, replacements, and improvements to an existing multifamily property.

### **Scope and Cost Review Guidelines**

The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. It is the Applicant's responsibility to ensure the scope of work and cost estimates (including the Development Cost Schedule) submitted in the Application are provided to the author, as these must also be included in the SCR Report. Importantly, the report should be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." 10 TAC §11.306(a).

Under 10 TAC §11.306(b), the SCR must include analysis in conformity with the American Society for Testing and Materials (ASTM) "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)," unless the exceptions in 10 TAC §11.306(f) or (g) apply. Moreover, 10 TAC §11.306(c) requires good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure) be included. Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables must also be included.

**Discussion and analysis must be provided for 10 TAC §11.306(d)(1) – (8). This includes, but is not limited to, discussion and analysis of:**

- (1) Descriptions of Current Conditions;**
- (2) Descriptions of Scope of Work;**
- (3) Useful Life Estimates;**
- (4) Code Compliance;**
- (5) Program Rules;**
- (6) Accessibility Requirements;**
- (7) Reconciliation of Scope of Work and Costs; and**
- (8) Cost Estimates.**

Any costs not identified and discussed in sufficient detail in the SCR as part of 10 TAC §11.306(d)(6), (d)(8)(A), and (d)(8)(B) will not be included in the underwritten Total Development Cost in the Report.

### **Third Party, Unrelated, and Nonaffiliated Author(s)**

The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address the Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to the Texas Department of Housing and Community Affairs. 10 TAC §11.306(h).

The SCR report must also include a statement that the individual and/or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of 10 TAC §11.306 (esp., §11.306(i)).

### **Health and Safety Recommendations**

Any recommendations made in the SCR regarding health and safety, life expectancy of major systems (structural support; roofing; cladding and waterproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented. 10 TAC §13.9(1); 24 CFR §93.301(b)(1)(ix) (requiring an estimate (based on age and condition) of the remaining useful life of these systems be conducted upon project completion of each major system). If the remaining useful life of one or more major system is less than the applicable period of affordability, a replacement reserve must provide adequate monthly payments, so as to repair or replace the systems as needed. 24 CFR §93.301(b)(1)(ix).

For properties originally constructed prior to 1978, the SCR and rehabilitation scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing. 10 TAC §13.9(2). The rehabilitation must implement the mitigation recommendations of the testing report. 10 TAC §13.9(2).

### **Required Documentation**

#### ***Attachment B – TDHCA Scope and Cost Review (SCR Supplement)***

The SCR must include the Department's Scope and Cost Review Supplement (SCR Supplement) in the excel form published on the Departments website (and attached for reference purposes). The purpose of the SCR Supplement is to consolidate and show reconciliation of the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs provided in the Application. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis, as it details the projected repairs and replacements through at least thirty (30) years.

## **APPENDIX C: Capital Needs Assessment (CNA) (24 CFR §93.301(b)(1)(ii))**

### **Introduction**

All NHTF-assisted Rehabilitation Developments must also submit a capital needs assessment that estimates the useful life of each major system. The CNA will determine the work to be performed and identify the long-term physical needs of the project. 24 CFR §93.301(b)(1)(ii). If the remaining useful life of one or more major system is less than the applicable period of affordability, a replacement reserve must be established with adequate monthly payments made to repair or replace the systems as needed. 24 CFR §93.301(b)(1)(ii).

Importantly, the CNA must adhere to all applicable requirements of 10 TAC §11.205(3)(relating to Required Third Party Reports), including being accompanied by the Department's SCR Supplement in the excel form published on the TDHCA website (and attached to these Standards for reference purposes).

### **Capital Needs Assessment Guidelines**

The CNA must be completed by an independent, Third Party engineer or architect approved by the Department. The performing engineer or architect must:

- conduct an interview with the appropriate onsite Development personnel (e.g. property management, maintenance personnel) to assess prior, ongoing or chronic repairs, maintenance issues, and deficiencies;
- complete an onsite visit and physical inspection of both the interior and exterior units and structures on the property;
- analyze and provide recommendations regarding the presence of environmental hazards and potential efficiency or other mitigation considerations, in accordance with these standards;
- analyze and provide recommendations as to the reasonability of the proposed budget as it relates to the work to be performed, including but not limited to an analysis of the: (1) Development Site; (2) Structural Systems; (3) Interior Systems; and (4) Mechanical, Plumbing, Electrical, HVAC, and Safety (e.g. fire protection, elevator requirements, safety lighting) Systems and related requirements; and
- depending on the aforementioned determinations, the assessment must assess and provide recommendations regarding the proposed budget as it relates to the conclusions of the assessment. Moreover, any and all components of major systems reaching the end of their useful life or otherwise bearing critical conditions, must be identified. If the remaining useful life of any major system is less than 50% of the expected useful life, immediate rehabilitation (replacement or repair, as appropriate) is required. If the remaining useful life of any component of the major systems is less than the term of the affordability period, replacement reserves with adequate payments being made as required to finance future repair(s) or replacement(s) is required.

### **Required Documentation**

***Attachment B – TDHCA Scope and Cost Review (SCR Supplement)(as detailed in APPENDIX B).***

**ATTACHMENTS TO  
2024 NHTF MINIMUM REHABILITATION STANDARDS**

**ATTACHMENT A: National Standards for the Physical Inspection of Real Estate (NSPIRE Checklist)** (available as posted on the TDHCA website at <https://www.tdhca.texas.gov/physical-inspections> and as may be amended from time to time.

**ATTACHMENT B: Scope and Cost Review Cost Schedule (SCR Supplement)**(available as posted on the TDHCA website at <https://www.tdhca.texas.gov/real-estate-analysis> and as may be amended from time to time.



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 648

**Agenda Date:** 6/13/2024

**Agenda #:** 7.

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Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Waters at Sunrise (HOME # 1002231 / HTC # 1002231 / CMTS # 5046)

**RECOMMENDED ACTION**

**WHEREAS**, Waters at Sunrise, owned by Waters at Sunrise, LP (Owner), has uncorrected compliance findings relating to the applicable Land Use Restriction Agreement (LURA) and the associated statutory and rule requirements;

**WHEREAS**, Owner has a history of violations and previously signed an Agreed Final Order on April 11, 2018, agreeing to a probated and deferred administrative penalty, and requiring corrections of affirmative marketing noncompliance;

**WHEREAS**, the terms of the prior Agreed Final Order were met and the administrative penalty was fully forgiven;

**WHEREAS**, TDHCA identified new findings of noncompliance during its regularly scheduled 2023 file monitoring review, and referred them for an administrative penalty when they were not timely corrected;

**WHEREAS**, unresolved compliance findings include: failure to maintain the specific unit mix required by the HOME LURA, a tenant income certification violation for one unit, and household income violations for two units;

**WHEREAS**, an Enforcement Committee informal conference was held on May 21, 2024, and Owner agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$7,500.00, with \$3,750.00 due upon signature and the remaining \$3,750.00 subject to probation and forgiveness if Owner submits full corrections by July 15, 2024; 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 \$7,500.00, subject to partial forgiveness as outlined above, for noncompliance at Waters at Sunrise (HOME # 1002231 / HTC # 1002231 / CMTS # 5046), 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**

Waters at Sunrise, LP (Owner) is the Owner of Waters at Sunrise (Property), an apartment complex composed of 300 units, located in Williamson County. Of the 300 units at the Property, 237 are restricted by the Housing Tax Credit (HTC) program, and 35 are restricted by the HOME program. Waters at Sunrise, LP is controlled by Housing Initiatives Corporation. Atlantic Housing Foundation, Inc. (AHF), a related entity, is the guarantor. Records of the Texas Secretary of State list the following members and/or officers for Housing Initiatives Corporation: Michael N. Nguyen (president and director), Daniel B. French (secretary and director), and JoAnn Gonzales. The property is self-managed by a related entity, Atlantic Housing Management, LLC. CMTS lists Michael Nguyen as the primary contact for the Owner and property management.

The Property is subject to two LURAs, in consideration for an interest free HOME loan and a HTC award to build and operate the Property. The LURAs were effective in 2015 and 2016, respectively.

AHF currently controls four developments. They have a history of administrative penalty referrals, failing to submit complete corrective documentation, and failing to respond to Department correspondence. During a 2018 informal conference, Owner representatives agreed to attend training, stated that they were hiring additional compliance staff, and stated that they were committed to improving internal processes and accountability to ensure future compliance. AHF made improvements after signing the following three Agreed Final Orders in 2018; however, problems started again in 2021 during the pandemic, and continue today.

1. The 2018 Agreed Final Order for Waters at Sunrise included an administrative penalty of \$500.00, which was forgiven when the Owner submitted acceptable evidence of affirmative marketing;
2. The 2018 Agreed Final Order for Redbud Trail (HTF 92041B / Bond MF018 / CMTS 2515) included an administrative penalty of \$1,500.00, relating to file monitoring noncompliance including: household income, written policies and procedures, utility allowance, affirmative marketing, and not implementing the Tenant Rights and Resources Guide. Redbud Trail violated that 2018 Order, but paid the full penalty upon demand and submitted final corrections a few days later; and
3. The 2018 Agreed Final Order for Stonebriar Village of Plainview included an administrative penalty of \$500.00, which was forgiven when owner submitted acceptable evidence that it had completed exterior painting and driveway repairs.

TDHCA identified new findings of noncompliance during a file monitoring review conducted on October 11, 2023. The TDHCA Compliance Division referred the following findings to the Enforcement Committee for an administrative penalty:

1. Findings that were resolved after referral:
  - a. Failure to implement required veterans statements in the application form;
  - b. Failure to post a customized laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office; and
  - c. Failure to implement the 2023 utility allowance; and
  - d. Failure to annually submit HOME rents to TDHCA for approval.
2. Findings that remain unresolved:
  - a. Failure to provide a complete Tenant Income Certification for unit 6305. File was missing asset verifications;
  - b. Failure to maintain the unit mix required for the HOME program. Thirty-five of the 300 units at the property are restricted for the HOME program, including 11 one-bedroom units. At the time of the monitoring review, HOME households only occupied eight of the required 11 one-bedroom units. The restriction is not associated with specific units, and the number of required units can float;
  - c. Failure to provide documentation that the household income for one-bedroom unit 14105 was within prescribed limits at initial occupancy for a HOME household at or below 80% of Area Median Income (AMI); and
  - d. Failure to provide documentation that household income was within prescribed limits upon initial occupancy for unit 16205. The file did not include verification of employment income for the head of household.

Owner participated in an informal conference with the Enforcement Committee on May 21, 2024. The Enforcement Committee analyzed the required statutory factors for determining an appropriate administrative penalty as follows:

1. The seriousness, extent, and gravity of the violations: There were no health and safety violations, and no evidence of fraud, waste, or abuse. Accordingly, the referral is less serious when compared to other types of referred noncompliance, and most of the referred noncompliance relates to record-keeping and organizational problems. However, not maintaining the HOME unit mix and failing to occupy HOME units as required for an extended period is a serious violation for the HOME program, and a potential event of noncompliance under the loan documents.
2. Hazard posed to the health or safety of the public: There are no hazards posed for health or safety.
3. Hazard posed to the public's economic welfare: There are potential economic impacts for failure to collect complete tenant files to prove initial eligibility. Additionally, there are serious economic impacts with not having enough units restricted at the correct levels. There were also potential economic impacts from not implementing a utility allowance, however, the actual impact was limited since the noncompliance is now corrected, and it did not cause gross rent overcharges.
4. Efforts made to correct the violations: Owner failed to submit a response to the

Compliance Division for this monitoring review. This is a repeated problem, with the Owner not responding fully or timely to deadlines set by Compliance, but quickly submitting corrections after referral for a penalty. During the conference, Owner representatives stated that their policy was for a single staff member to be responsible for uploading corrections to TDHCA. That person failed to submit corrections in response to the corrective action deadline, and then submitted incomplete documentation in response to the administrative penalty referral. She is no longer with AHF. The Enforcement Committee noted that this is a risky strategy, and owner representatives admitted that there was no chain of supervision for reviewing corrections, or managerial oversight of the deadline. They have a new management team, all hired during the fall and winter of 2023, and they implemented changes this month, including a shared calendar for TDHCA deadlines to be handled by the management team, which includes the Director of Property Management for AHF, Associate Director of Property Management for AHF, and the Compliance Manager for AHF. They will share responsibility for ensuring timely responses to TDHCA deadlines, and will meet every Monday to discuss the calendar and upcoming deadlines. Additionally, the Compliance Manager for AHF will double-check all corrective documentation from the site prior to uploading corrections to TDHCA going forward. The Enforcement Committee thought the plan was adequate, however, they noted that the primary CMTS contact, Michael Nguyen, does not respond to any correspondence, and defers all responses to staff. Enforcement Committee members were concerned that if there is not strong supervision from ownership (i.e. Mr. Nguyen), changes discussed by the new management team may not succeed long-term, especially if there is additional staff turn-over.

5. Any other matters that justice may require: The property is required to comply with federal requirements, and has not occupied the required number of HOME units. There is a history of prior penalty referrals, and AHF signed three Agreed Final Orders in 2018, as outlined above. The TDHCA Compliance Division asked the Enforcement Committee to move forward with this administrative penalty referral due to a pattern of repeated noncompliance and administrative penalty referrals by the Owner. AHF currently controls fewer than five developments, so they are not eligible for debarment consideration based upon repeated violations in a portfolio, but an administrative penalty is appropriate. Owner representatives indicated that they think all of the noncompliance can be corrected by the deadline in the proposed Order.
6. Amount necessary to deter future violations: Members unanimously agreed that the administrative penalty needed to be high enough to get the owner's attention so that they correct the noncompliance and make operational changes to prevent future noncompliance. There are multiple uncorrected file monitoring items, but members found it significant that there is no physical noncompliance, and that the property's most recent physical inspection scored a 95 out of 100. Forgiving a portion of the recommended administrative penalty will provide incentive to comply with the Order. The Enforcement Committee therefore recommends a \$7,500.00 administrative penalty, with a \$3,750.00 forgivable portion in light of these factors.



Owner has agreed to sign an Agreed Final Order with the following terms:

1. A \$7,500.00 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit a \$3,750.00 portion of the administrative penalty on or before July 15, 2024;
3. Owner must correct all file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before July 15, 2024;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$3,750.00 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 \$7,500.00 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
WATERS AT SUNRISE, LP WITH RESPECT	§	TEXAS DEPARTMENT OF
TO WATERS AT SUNRISE	§	HOUSING AND COMMUNITY
(HOME # 1002231 / HTC # 1002231 /	§	AFFAIRS
CMTS # 5046)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 13<sup>th</sup> day of June, 2024, 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 **WATERS AT SUNRISE, LP**, a Texas limited partnership (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 2014, Respondent received HOME funds and an allocation of Low Income Housing Tax Credits to build and operate Waters at Sunrise (“Property”) (HOME # 1002231 / HTC # 1002231 / CMTS # 5046).

2. Respondent signed two land use restriction agreements (collectively, the LURAs) regarding the Property:
  - a. In connection with the tax credit allocation, Respondent signed a Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement for Low Income Housing Tax Credits (HTC LURA) regarding the Property. The HTC LURA was dated to be effective October 10, 2016, and filed of record at Document Number 2016117861 of the Official Public Records of Real Property of Williamson County, Texas (the Records); and
  - b. In connection with the HOME funding, Respondent signed a Land Use Restriction Agreement (Multifamily Properties) (HOME LURA) regarding the Property. The HOME LURA was effective May 6, 2015, and filed of record at Document Number 2015037310 of the 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 on April 11, 2018, agreeing to pay a \$500.00 administrative penalty relating to failure to affirmatively market, which was to be fully forgivable if Respondent submitted acceptable evidence of correction within ninety days. Respondent complied with the requirements of that Order, and the administrative penalty was forgiven.
5. The Department conducted an on-site monitoring review on October 11, 2023, to determine whether Respondent was in compliance with LURA requirements to lease units to low-income households and maintain records demonstrating eligibility. TDHCA compliance monitors found violations of the LURA and TDHCA rules. The monitors sent notifications of noncompliance, setting a corrective action deadline of January 22, 2024. Respondent did not submit any corrective documentation, and the following violations were referred for an administrative penalty:
  - a. Respondent failed to implement required veterans statements in its application form, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires the development to implement specific statements relating to veterans in its application form. This violation was corrected on April 17, 2024, after intervention by the Enforcement Committee.
  - b. Respondent failed to post a customized laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy

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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.

of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. This violation remains unresolved. This violation was corrected on April 17, 2024, after intervention by the Enforcement Committee.

- c. Respondent failed to implement the 2023 utility allowance that was issued on December 14, 2022, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to update utility allowances annually. This violation was corrected on April 17, 2024, after intervention by the Enforcement Committee.
- d. Respondent failed to submit rents to the TDHCA Asset Management Division on August 1, 2023, a violation of 10 TAC §10.403 (Review of Annual HOME, HOME-ARP, HOME Match, NSP, TCAP-RF, and National Housing Trust Fund Rents), which requires owners of the noted programs to submit documentation for annual Department review and approval. This violation was corrected on June 3, 2024, after intervention by the Enforcement Committee.
- e. Respondent failed provide complete a complete Tenant Income Certification and Documentation for unit 6305 at initial occupancy. The unit was designated as a HOME unit on the Unit Status Report and the Tenant Income Certification, however, Respondent failed to verify the households assets, including a checking account and a savings account, a violation of 10 TAC §10.612 (Tenant File Requirements) and Section 4.3 of the HOME LURA, which require HOME developments to verify income and assets. The violation remains unresolved.
- f. Respondent failed to maintain the specific required unit mix, a violation of additional rent and occupancy restrictions at Section 2.3(c) of the HOME LURA, which requires Respondent to set aside for the HOME program 35 floating units out of the 300 units at the Property. Those include: 11 one-bedroom units with a Net Rentable Area (NRA) of 658 square feet; 4 two-bedroom units with a NRA of 967 square feet; 12 two-bedroom units with a NRA of 968 square feet; 6 three-bedroom units with NRA of 1158 square feet; and two 4-bedroom units with NRA of 1330 square feet. At the time of the monitoring review, only 8 of the required 11 one-bedroom units were occupied by HOME households. The violation remains unresolved.
- g. Respondent failed to provide documentation that household income at initial occupancy was within prescribed limits for a HOME household at or below 80% AMI for unit 14105, a violation of Sections 2.3(b) and 2.4 of the HOME LURA, which requires Respondent to set aside for the HOME program not less than 28 floating units that do not exceed 80% AMI, and not less than 7 floating units that do not exceed 50% AMI. Per the Unit Status Report at the time of the monitoring review, only 26 units were set aside for HOME households that income qualified at or below 80% AMI. Additionally, an insufficient number of 1-bedroom units were provided for the HOME program, as described above. Accordingly, the next

available 1-bedroom unit needed to be occupied by a HOME household at or below 80% AMI. Instead, this unit was occupied by a Housing Tax Credit household on August 22, 2023. The violation remains unresolved.

- h. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for unit 16205, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the HTC LURA, which require screening of tenants prior to occupancy to ensure qualification for the program. The application and income certification in the file for this HTC household indicated that the head of household is employed, however, Respondent failed to verify employment income. The violation remains unresolved.
6. The following violations remain outstanding at the time of this order:
- a. Annual rent submission violation described in FOF 5d;
  - b. Tenant Income Certification violation described in FOF 5e;
  - c. Unit mix violation described in FOF 5f; and
  - d. Household income violations described in FOF 5g and 5h.

#### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 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. Pursuant to Tex. Gov't Code Chapter 2306, Subchapter DD and Tex. Gov't Code §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
5. Respondent violated application requirements in 10 TAC §10.612 in 2023, by failing to implement specific statements relating to veterans in its application form.
6. Respondent violated leasing requirements in 10 TAC §10.613 in 2023, by failing to post a customized laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.
7. Respondent violated 10 TAC §10.614 in 2023 by failing to implement an updated utility allowance.

8. Respondent violated 10 TAC §10.403 in 2023, by failing to submit HOME rents for annual review.
9. Respondent violated 10 TAC §10.612 and Section 4.3 of the HOME LURA in 2023, by failing to provide tenant income certification and documentation to ensure qualification for the HOME program.
10. Respondent violated additional rent and occupancy restrictions at Section 2.3(c) of the HOME LURA in 2023, by failing to provide the required unit mix.
11. Respondent violated Section 2.3(c) of the HOME LURA in 2023, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 14105.
12. Respondent violated 10 TAC §10.611 and Section 4 of the HTC LURA in 2023, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 16205.
13. 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.
14. 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.
15. 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.
16. An administrative penalty of \$7,500.00 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 \$7,500.00, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$3,750.00 portion of the assessed administrative penalty by check payable to the "Texas Department of Housing and Community Affairs" on or before July 15, 2024.

**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 July 15, 2024.

**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 \$3,750.00 portion amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, 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 \$3,750.00 shall be immediately due and payable to the Department. Such payment shall be made by 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: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.texas.gov](mailto:ysella.kaseman@tdhca.texas.gov) 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 \_\_\_\_\_, 2024.

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

Name: Leo Vasquez

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 13<sup>th</sup> day of June, 2024, personally appeared Leo Vasquez, 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 13<sup>th</sup> day of June, 2024, 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





Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
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 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. Refer to the following link for copies of forms that are referenced below:  
<https://www.tdhca.texas.gov/compliance-forms>
3. Technical support and training presentations are available at the following links:  
Presentations: <https://www.tdhca.texas.gov/compliance-program-training-presentations>  
Technical support guide: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/24-TechSupport-AvoidAdminPenaltyRefs.pdf>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<https://www.tdhca.texas.gov/sites/default/files/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. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

#### **Instructions:**

Any reference to a “full tenant file” below requires submission of the following:

- A. *Tenant application;*
- B. *Verifications of all sources of income and assets;*
- C. *Verification of student status;*
- D. *Tenant income certification;*
- E. *Lease and lease addenda; and*
- F. *Tenant Rights and Resources Guide Acknowledgment*

*Remember that items A-D above must be dated within 120 days of one another.*

- 1. Tenant Income Certification violation, Unit 6305:** Unit was designated as a HOME unit on the Unit Status Report and the Tenant Income Certification (TIC). However, the checking and savings accounts were not verified.

To correct: Respondent must either:

- Obtain the six month average checking account balance and a current savings account balance from the time of move-in for the household occupying the unit on 9/1/2022, and revise the TIC from the time of move-in to reflect the cash value of the assets and the actual income from the assets, if any; OR
  - If the information in "2a" above is not available, Respondent must certify the existing household under current circumstances, and submit the following to the Department via CMTS: new application, new verifications of income, assets, and student status, and a new TIC. All of those documents must be dated within 120 days of one another. If a new certification is performed for the existing household, Respondent must obtain first hand documentation, such as pay stubs and bank statements to document income and assets; OR
  - If the unit is now occupied by a new qualified household, Respondent must submit a full tenant file for that new household.
- 2. Unit mix violation:** During the monitoring review the monitor found that the required unit mix of 11 1-bedrooms with a square footage of 658 has not been met. The Unit Status Report (USR) indicates that only 8 of the required 11 one-bedroom units are occupied appropriately.

To correct: Respondent must update the Unit Status Report to designate 3 additional one-bedroom units as HOME units, and upload full tenant files for those households to CMTS. These three additional units cannot be units already designated as HOME on the USR that was submitted during the monitoring review.

- 3. Household income violation, unit 14105:** Per the USR at the time of the monitoring review, only 26 units were set aside for HOME households that income qualified at or below 80% AMI. Additionally, an insufficient number of 1-bedroom units were provided for the HOME program, as described above. Accordingly, the next available 1-bedroom unit needed to be occupied by a HOME household at or below 80% AMI. Instead, unit 14105 was occupied by a HTC household on August 22, 2023. *NOTE: HOME units float.*

To correct: Lease the next available 1-bedroom unit to an eligible HOME 80% AMI household. Submit the full tenant file for that new household.

- 4. Household income violation, unit 16205:** The application and income certification in the file for this HTC household indicated that the head of household is employed, however, Respondent failed to verify employment income.

To correct: Respondent must either:

- a. Verify the head of household's employment income from the time of move-in. update the TIC, if needed. Submit the income verification and the updated TIC for Department review; OR
  - b. If the information in "5a" above is not available, Respondent must certify the existing household under current circumstances, and submit the following to the Department via CMTS: new application, new verifications of income, assets, and student status, and a new Tenant Income Certification. All of those documents must be dated within 120 days of one another; OR
  - c. If the unit is now occupied by a new qualified household, Respondent must submit a full tenant file for that new household.
- 5. Update the Unit Status Report in CMTS to reflect the changes above.** Additionally, TDHCA compliance monitors found that the household in unit 7106 was designated as an 80% AMI HOME unit on the TIC in the tenant file, however, it was not designated as such on the USR.

## Exhibit 2

### Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as basic technical support. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for Income Determination Training in order to get a full overview of the process. Forms discussed below are available at: <https://www.tdhca.texas.gov/compliance-forms>.

A suggested tenant file checklist is available at this link: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/Suggested-File-Checklist.docx>.

*\*Important Note\* The application, verifications, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.*

1. **Intake Application:** 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, and student status. 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.” Applications must be signed and dated 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. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all 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:** 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. **Income Verification for Households with Section 8 Certificates:** If you use this form, you do not need to verify income further, but you do need to collect all other components of the tenant file. The Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification, signs this form. Since the housing authority performed the necessary verifications. The form must include the following information: a certification date from the housing authority that is within 120 days of that effective date, either at initial move-in or at recertification, number of household members and the gross annual income before any adjustments. This form must also be dated within 120 days of the application and Income Certification that you collect. If the housing authority certification is outside of that period, you must verify income yourself.
  - b. **First hand verifications:** Paystubs or payroll printouts 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 (*at least two months' (60 days) worth of check stubs for MFDL<sup>2</sup> programs is required*);

- c. **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. If received by email, ensure the email address is was received from is evidenced and from the employer;
  - d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) are acceptable for social security and/or unemployment 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;
  - e. **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. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - f. **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:** Regardless of their balances, applicants must report all assets, including assets such as checking or savings accounts. 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. **Under \$50,000 Asset Certification Form (HTC, Exchange, TCAP, THTF only):** If the total cash value of the assets owned by members of the household is less than \$50,000, as reported on the Intake Application, the TDHCA Under \$50,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
  - b. **First hand verifications**, such as bank statements to verify a checking account. If using this method, the most current statement will be needed for both checking and savings accounts. MFDL programs require two months of source documentation.
  - c. **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

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<sup>2</sup> *Multifamily Direct Loan Programs include HOME, National Housing Trust Fund, TCAP, TCAP RF, and NSP.*

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, If received by email, ensure the email address it was received from is evidenced and from the financial institution.

- d. Note: HOME, National Housing Trust Fund, TCAP, TCAP RF, NSP, and Bond developments must fully verify assets at initial occupancy, using method b or c above.*
5. **Verify Student Status:** Must screen for student status; can be collected on the Annual Eligibility Certification, the Certification of Student Eligibility Form, or the income Certification Form. If the household indicates they are students, there are two forms that *must* be used: the Certification of Student Eligibility form must be completed by the household, and the Student Verification form is used to verify and document their student status.
  - a. **With the changes from HOTMA, student income from financial assistance must be evaluated for inclusion/exclusion. A detailed training on this topic is available online: <https://www.tdhca.texas.gov/compliance-program-training-presentations>.**
6. **Verify Special Needs:** This form is generally optional, but is a great way to screen households for special needs. It is required if there is a Special Needs occupancy requirement under your LURA, unless there is another form of special needs verification in the file.
7. **Tenant Income Certification Form:** 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 <https://www.tdhca.texas.gov/income-and-rent-limits>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
8. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <https://www.tdhca.texas.gov/income-and-rent-limits>. Generally speaking, when determining the rent for MFDL programs, you must ensure that the tenant-paid rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limit set by TDHCA. For HTC, BOND, TCEP and TCAP programs, the tenant-paid rent, plus the utility allowance, plus any mandatory fees, must be below the maximum limit set by TDHCA. [10 TAC §10.613\(a\)](#) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, [10 TAC §10.613\(e\)](#) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per [10 TAC 10.613\(f\) and \(h\)](#). TAA has an affordable housing lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease



addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.

9. **Written Policies and Procedures / Tenant Selection Criteria:** Written policies and procedures requirements are at [10 TAC §10.802](#).
10. **Violence Against Women Act of 2013 (VAWA):** The property is required to provide all prospective tenants the VAWA forms 5380 and 5382 at the time of application, at the time they are approved, at the time of denial, and at the time the household is given a notice to vacate or non-renewal. Forms are available at the Forms link above.
11. **Tenant Rights and Resources Guide:** In accordance with [10 TAC §10.613\(l\)](#), you must customize the Guide for your property and post a laminated copy in a common area of the leasing office. Development must also 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 guide includes:
  - a. Information about Fair Housing and tenant choice; and
  - b. Information regarding common amenities, unit amenities, and services.

Additionally, a representative of each household must receive a copy of the 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 signed acknowledgment must be maintained in the tenant file.

**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)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) 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 Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed in lieu of foreclosure.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(d) Transfer Actions Warranting Debarment. 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 or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. 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), an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit 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 Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

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

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of

this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

- (1) A written explanation outlining the reason for the request;
- (2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;
- (3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);
- (4) A list of the names and contact information for transferees and Related Parties;
- (5) Previous Participation information for any new Principal as described in §11.204(13)(C) of this title (relating to Required Documentation for Application Submission);
- (6) Agreements among parties associated with the transfer;
- (7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;
- (8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;
- (9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 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; and
- (10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) 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 years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital

expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(I) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

**Source Note:** The provisions of this §10.406 adopted to be effective February 3, 2022, 47 TexReg 266; amended to be effective February 1, 2023, 48 TexReg 348



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 649**

**Agenda Date: 6/13/2024**

**Agenda #: 8.**

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Presentation, discussion, and possible action regarding the adoption of Agreed Final Orders concerning TwentyFive25 (Bond # MF009, CMTS 2529) and Solaire (Bond # MF011, CMTS 2562)

**RECOMMENDED ACTION**

**WHEREAS**, TwentyFive25 f/k/a The Grove at Trinity Mills (TwentyFive25), owned by 2525 Players Court LLC (2525 Owner), has uncorrected compliance findings relating to the applicable Land Use Restriction Agreement (LURA) and the associated statutory and rule requirements;

**WHEREAS**, Solaire f/k/a Heritage Square (Solaire), owned by 4753 Duncanville Road LLC (Solaire Owner), has uncorrected compliance findings relating to the applicable LURA and the associated statutory and rule requirements;

**WHEREAS**, The Finley f/k/a The Highlands (Finley) (Bond MF012 / CMTS 2535), owned by 2359 Highland Road LLC (Finley Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, 2525 Owner, Solaire Owner, and Finley Owner are related entities, controlled by GVA Pro LLC (collectively known as "Owner");

**WHEREAS**, Owner has a history of violations and previously signed an Agreed Final Order on November 24, 2020, agreeing to pay a collective \$2,500.00 fully payable administrative penalty for file monitoring and physical noncompliance at TwentyFive25, Solaire, The Finley, and 600 East (Bond # MF014 / CMTS 2519);

**WHEREAS**, TDHCA identified new findings of noncompliance during its regularly scheduled 2023 file monitoring reviews at TwentyFive25, Solaire, and The Finley, and referred them for an administrative penalty when they were not timely corrected;

**WHEREAS**, unresolved compliance findings at TwentyFive25 include: failure to provide documentation that household incomes were within prescribed limits upon initial occupancy for 12 units; failure to provide tenant income certification documentation at recertification for one unit; failure to implement required veterans statements in the application form; and failure to post a customized laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;

**WHEREAS**, unresolved compliance findings at Solaire include: failure to provide tenant income certification documentation at recertification for one unit;

**WHEREAS**, all noncompliance has been resolved for The Finley;

**WHEREAS**, an Enforcement Committee informal conference was held on May 21, 2024, and Owner agreed, subject to Board approval, to enter into two Agreed Final Orders;

**WHEREAS**, the Agreed Final Order for TwentyFive25 assesses an administrative penalty of \$10,000.00, with a \$5,000.00 portion due upon signature and the remaining \$5,000.00 subject to subject to probation and forgiveness if 2525 Owner submits full corrections by July 15, 2024;

**WHEREAS**, the Agreed Final Order for Solaire assesses an administrative penalty of \$100.00, and requires Solaire Owner to submit full corrections by July 15, 2024; and

**WHEREAS**, staff has based its recommendations for two Agreed Final Orders 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 two Agreed Final Orders, the first assessing an administrative penalty of \$10,000.00, subject to partial forgiveness as outlined above, for noncompliance at TwentyFive25 (HTC # MF009 / CMTS # 2529), and the second assessing an administrative penalty of \$100.00 for Solaire (Bond # MF011 / CMTS # 2562), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, are hereby adopted as the order of this Board.

**BACKGROUND**

The three properties listed below (collectively, the Properties) were referred for an administrative penalty during 2024. All were originally acquired by Asmara Affordable Housing, Inc. in 1996, using proceeds from NHP Foundation - Asmara Project Series 1996A Bonds; there were no direct loan funds or tax credits issued by TDHCA. The bonds were then refinanced in 2003 using NHP Foundation - Asmara Project Series 2003 Bonds to refund Series 1996, and to finance capital improvements and necessary repairs. The Properties are each subject to LURAs that were amended and restated in 2003. TDHCA approved sales to the entities listed below in 2017:

Property	Former property name	Owner	Units	Location
TwentyFive25 (Bond # MF009, CMTS 2529)	The Grove at Trinity Mills	2525 Players Court LLC	320	Dallas
Solaire (Bond # MF011, CMTS 2562)	Heritage Square	4753 Duncanville Road LLC	112	Dallas
The Finley (Bond # MF012, CMTS 2535)	The Highlands	2359 Highland Road LLC	136	Dallas

GVA Pro, LLC (GVA) currently controls three developments, all of which are listed above. GVA used to control additional properties, but they are reducing their portfolio size, and sold

their other TDHCA-monitored properties prior to 2024. Alan Stalcup is the Sole Member and Manager for GVA. He is the founder and CEO of GVA Real Estate Group, based in Austin. Laura Smith is the primary owner contact in CMTS for Solaire and TwentyFive25. Sheila Cruz is the primary owner contact in CMTS for The Finley. Lenette Proctor is the primary contact for the related property management company, GVA Property Management. GVA properties have a history of administrative penalty referrals, failing to submit complete corrective documentation, and failing to respond to Department correspondence. An informal conference was held September 29, 2020, and an Agreed Final Order was signed for a fully payable administrative penalty of \$2,500.00 for file monitoring and physical noncompliance at TwentyFive25, Solaire, The Finley (Bond MF012 / CMTS 2535), and 600 East (Bond # MF014 / CMTS 2519). GVA submitted final corrections on October 6, 2020, and the Order was signed in November. A flat administrative penalty without a forgivable portion is unusual. However, the Enforcement Committee determined that an administrative penalty was appropriate despite full corrections because a warning letter was issued in 2018 for a prior penalty referral, and the 2020 referrals that they were considering represented 80% of the owner's portfolio, all of which had failed to submit any reply to the Compliance Division during the corrective action period. During the 2020 informal conference, owner representatives discussed improvements intended to decrease the likelihood of future violations, including hiring new staff and district management with tax credit experience. All staff at the properties had attended income eligibility and compliance trainings after referral for a penalty, and management was searching for UPCS trainings and information so that they can perform self-inspections. Management had also implemented new software to improve tenant file tracking and recertifications, a biweekly supervisory review of new tenant files via the new software, and was regularly logging in to CMTS to check for TDHCA correspondence and deadlines. GVA made improvements after signing the 2020 Agreed Final Order; but they had one additional administrative penalty referral that was closed informally during the pandemic, and three referrals during 2024.

TDHCA identified new findings of noncompliance during a file monitoring review conducted at TwentyFive25 on February 28, 2023. The TDHCA Compliance Division referred the following findings to the Enforcement Committee for an administrative penalty:

1. Findings that were resolved after referral:
  - a. Failure to provide documentation that household income was within prescribed limits upon initial occupancy for nine units;
  - b. Failure to provide a complete Tenant Income Certification for two units; and
  - c. Failure to implement the 2023 utility allowance.
2. Findings that remain unresolved:
  - a. Failure to provide documentation that household income was within prescribed limits upon initial occupancy for 12 units. The Bond LURA requires 96 units that are income restricted at or below 50% Area Median Income (AMI), and the remainder must be Eligible Tenants at or below 140% AMI. Of the 12 uncorrected units:



- i. Units 1316 and 1607 were designated as 80% AMI households, but this property only has 50% AMI and Eligible Tenant (140% AMI) designations. The 80% AMI level is not applicable, and the households were not screened for eligibility at initial occupancy. Both units are now vacant, and must be re-occupied by qualified households at 50% AMI, and full tenant files must be submitted;
  - ii. Units 1604, 1805, 314, 316, 514, and 708 had the same noncompliance as above, but these units remain occupied. Owner submitted partial corrections for some of the units, but failed to complete all necessary screening documentation. Owner also submitted corrective documentation re-designating two of the 80% units as market-rate units, but the correct designation is Eligible Tenant, not market-rate, and necessary screening documentation was not submitted;
  - iii. Units 1806, 913, 914, and 1810 were designated as market-rate units on the Unit Status report at the time of the monitoring review. During the monitoring review, the Department could only identify 89 units designated at or below 50% AMI. Market units are not permitted, and these units should have been occupied by 50% AMI households based upon the dates of move-in. Owner must submit full new tenant files demonstrating qualification for the program. Additionally, if one of these units is re-designated as an Eligible Tenant rather than 50% AMI, owner must submit a full tenant file for a new replacement 50% household;
- b. Failure to provide a complete Tenant Income Certification for unit 1814. This unit was designated as a 50% AMI unit on the Unit Status Report at the time of the monitoring review, and the Owner failed to collect an annual recertification. The affected household moved out, and the new household does not qualify at 50% AMI, but can likely be classified as an Eligible Tenant. The Owner must submit a full tenant file for a new replacement 50% household;
  - c. Failure to implement required veterans statements in the application form; and
  - d. Failure to post a customized laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.

TDHCA identified new findings of noncompliance during a file monitoring review conducted at Solaire on January 19, 2023. The TDHCA Compliance Division referred the following finding to the Enforcement Committee for an administrative penalty, and it remains unresolved:

1. Failure to provide Tenant Income Certification and associated documentation for one unit.

TDHCA identified new findings of noncompliance during a file monitoring review conducted at The Finley on February 14, 2023. The TDHCA Compliance Division referred the following findings to the Enforcement Committee for an administrative penalty, and they were resolved on April 4, 2024, after referral. Both findings related to the same unit.

1. Failure to provide documentation that household income was within prescribed limits upon initial occupancy for one unit; and
2. Failure to provide Tenant Income Certification and associated documentation for one unit.

Owner participated in an informal conference with the Enforcement Committee on May 21, 2024. The Enforcement Committee analyzed the required statutory factors for determining an appropriate administrative penalty as follows:

1. The seriousness, extent, and gravity of the violations: There were no health and safety violations, and no evidence of fraud, waste, or abuse. Accordingly, the referral is less serious when compared to other types of referred noncompliance, and most of the referred noncompliance relates to record-keeping and organizational problems, and confusion about the designation of 80%, market-rate, and Eligible Tenant units. Furthermore, the impact of having over-income households or households that are not properly income qualified at TwentyFive25 is less serious than most other properties since its rents are not restricted under the Bond program. Since rents are not restricted, there is less economic impact than is normally the case.
2. Hazard posed to the health or safety of the public: There are no hazards posed for health or safety.
3. Hazard posed to the public's economic welfare: There are potential economic impacts at TwentyFive25 for failure to collect complete tenant files to prove eligibility, and for having market-rate households that may potentially exceed 140% AMI, however, as noted above, that economic impact is less serious in this instance because the property does not have rent restrictions. The units should be available for households at the appropriate income levels, however, so there is an issue of unit availability to the correct population. The 2003 LURA amendment made this development 100% income restricted as Eligible Tenants, with 96 of the units set aside for households that income qualify at or below 50% AMI. Per the LURA, the definition of ET is an individual or family with an annual income that does not exceed 140% of the area median income. The Unit Status Report for this property incorrectly designates multiple households as "market", which is not permitted, and the required number of units at or below 50% AMI was not provided.
4. Efforts made to correct the violations: Owner timely submitted partial corrections, but they were incomplete. They submitted further corrections in response to the administrative penalty referral, but those corrections were also incomplete. Each unit was missing a significant amount of information, and multiple households appear to be leased to market-rate households, which is not permitted. This is a repeated problem, with the Owner submitting corrections, but not ensuring that corrections are fully responsive. During the conference, Owner representatives presented a plan to implement corrective action and prevent future noncompliance, stating that restoring full compliance is their top priority. The plan was short of specifics, and provided no detailed implementation plan to prevent future noncompliance. The primary plan is to sell the properties. GVA states that all three TDHCA properties in their portfolio will be

sold this year; The Finley will be sold before this Board meeting, there is a pending Ownership Transfer Request (OTR) for TwentyFive25, and TDHCA staff anticipates receiving an OTR for Solaire soon. There are no additional properties controlled by GVA.

5. Any other matters that justice may require: There is a history of prior penalty referrals, and GVA signed an Agreed Final Order in 2020, as outlined above. The TDHCA Compliance Division asked the Enforcement Committee to move forward with the administrative penalty referrals for TwentyFive25 and Solaire due to a pattern of repeated noncompliance and administrative penalty referrals by the Owner. As noted above, The Finley will be sold prior to this Board meeting. The potential maximum administrative penalty for The Finley was low because there were only two referred issues of file monitoring noncompliance, both relating to the same unit, and both resolved in April 2024. The TDHCA Compliance Division considered that ownership transfer request in consultation with the TDHCA Asset Management Division, and determined that the low potential administrative penalty was not worth delaying an otherwise approvable sale since noncompliance was minimal and fully resolved. Accordingly, TDHCA closed the 2024 penalty referral for The Finley, but notified GVA that the referred noncompliance for The Finley would be considered as an additional factor when the Enforcement Committee deliberated an appropriate administrative penalty amount to recommend for Solaire and TwentyFive25. GVA currently controls fewer than five developments, so they are not eligible for debarment consideration based upon repeated violations in a portfolio, but an administrative penalty is appropriate for TwentyFive25 and Solaire. Owner representatives indicated that they think all of the noncompliance can be corrected by the deadline in the proposed Orders; this suggests that the market-rate units have either been re-occupied by qualified households, or might qualify as Eligible Tenants.
6. Amount necessary to deter future violations: Enforcement Committee Members unanimously agreed that an administrative penalty should be paid for both TwentyFive25 and Solaire. There is a lot of noncompliance for TwentyFive25, but the seriousness is partly mitigated by the fact that there are no rent restrictions. Forgiving a portion of the recommended administrative penalty for TwentyFive25 will provide incentive to comply with the Order. The Enforcement Committee therefore recommends a \$10,000.00 administrative penalty for TwentyFive25, with a \$5,000.00 forgivable portion in light of these factors. They also recommend a \$100 administrative penalty for Solaire, which is the maximum potential administrative penalty for that property. That amount is so small that a forgivable portion does not make sense. Since there are potential upcoming sales for TwentyFive25 and Solaire, both proposed Orders include clauses for how to handle a potential sale.

Owner has agreed to sign two Agreed Final Orders with the following terms:

1. For Solaire, a \$100.00 administrative penalty, to be submitted on or before July 15, 2024;
2. For TwentyFive25, a \$10,000.00 administrative penalty, subject to partial forgiveness as indicated below;

3. Owner must submit a \$5,000.00 portion of the administrative penalty for TwentyFive25 on or before July 15, 2024;
4. Owner must correct all file monitoring violations as indicated in both Agreed Final Orders, and submit full documentation of the corrections to TDHCA on or before July 15, 2024;
5. If Owner complies with all requirements for TwentyFive25 and addresses all violations as required, the remaining administrative penalty in the amount of \$5,000.00 will be forgiven; and
6. 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 \$10,000.00 is recommended for TwentyFive25, and a \$100.00 fully payable administrative penalty in the amount of \$100.00 is recommended for Solaire. 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
2525 PLAYERS COURT LLC	§	TEXAS DEPARTMENT OF
WITH RESPECT TO TWENTYFIVE25	§	HOUSING AND COMMUNITY
(BOND FILE # MF009 / CMTS # 2529)	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 13<sup>th</sup> day of June, 2024, 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 **2525 PLAYERS COURT 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. Asmara Affordable Housing, Inc. (Prior Owner) acquired multiple properties in 1996 using proceeds from NHP Foundation – Asmara Project Series 1996A Bonds. The bonds were refinanced in 2003 using NHP Foundation – Asmara Project Series 2003 Bonds to refund Series 1996, and to finance capital improvements and necessary repairs to nine projects in Texas, including TwentyFive25 (HTC file No. MF009 / CMTS No. 2529), formerly known as The Grove at Trinity Mills (Property).

2. Prior Owner signed an Amended and Restated Regulatory and Land Use Restriction Agreement (LURA) dated as of December 1, 2003, and filed of record at Document Number 203160 of the Official Public Records of Real Property of Denton County, Texas (the Records).
3. Respondent purchased the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof, via an Assignment, Assumption, and Consent Agreement dated as of December 13, 2017, and filed in the Records at Document Number 153670, thereby binding Respondent to the terms of the LURA.
4. Respondent is further bound to the terms of the LURA in accordance with Section 11 thereof.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

6. Property has a history of violations and previously signed an Agreed Final Order on November 24, 2020, agreeing to pay a \$2,500.00 administrative penalty. All noncompliance was resolved prior to signing.
7. The Department conducted an on-site monitoring review on February 28, 2023, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. TDHCA compliance monitors found violations of the LURA and TDHCA rules. The monitors sent notifications of noncompliance, setting a corrective action deadline of June 25, 2023. Respondent submitted partial corrective documentation on June 23, 2023, and a cure deadline of February 10, 2024, was set to submit final corrective documentation. The following violations were not resolved before the extended corrective action deadline, and were referred for an administrative penalty:
  - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 115, 303, 314, 316, 402, 507, 514, 610, 703, 708, 808, 913, 914, 1316, 1403, 1604, 1607, 1614, 1805, 1806, and 1810, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Sections 2(b) and 4(c) of the LURA, which require screening of tenants to ensure qualification for the program. Violations for units 115, 303, 402, 507, 610, 703, 808, 1403, and 1614 were corrected on April 3, 2024, after intervention by the Enforcement Committee. The violations for units 314, 316, 514, 708, 913, 914, 1316, 1604, 1607, 1805, 1806, and 1810 remain 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.

- b. Respondent failed provide Tenant Income Certification and Documentation for units 212, 1206, and 1814, a violation of 10 TAC §10.612 (Tenant File Requirements) and Sections 2(b) and 4(c) of the LURA, which require Bond developments with less than 100% of units set aside for low income households under 60% to collect data to annually recertify each household. Violations for units 212 and 1206 were corrected on April 3, 2024, after intervention by the Enforcement Committee. The violation for Unit 1814 remains unresolved.
  - c. Respondent failed to implement required veterans statements in its application form, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires the development to implement specific statements relating to veterans in its application form. This violation remains unresolved.
  - d. Respondent failed to post a customized laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. This violation remains unresolved.
8. The following violations remain outstanding at the time of this order:
- a. Household income violations described in FOF #7a for units 314, 316, 514, 708, 913, 914, 1316, 1604, 1607, 1805, 1806, and 1810;
  - b. Tenant income certification violations described in FOF #7b for unit 1814;
  - c. Application violation described in FOF #7c; and
  - d. Leasing violation described in FOF #7d.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 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 §10.611 and Sections 2(b) and 4(c) of the LURA in 2023, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units 115, 303, 314, 316, 402, 507, 514, 610, 703, 708, 808, 913, 914, 1316, 1403, 1604, 1607, 1614, 1805, 1806, and 1810.
4. Respondent violated 10 TAC §10.612 and Sections 2(b) and 4(c) of the LURA in 2023, by failing to provide annual recertifications for units 212, 1206, and 1814.

5. Respondent violated leasing requirements in 10 TAC §10.613 in 2023, by failing to post a customized laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.
6. Respondent violated application requirements in 10 TAC §10.612 in 2023, by failing to implement specific statements relating to veterans in its application form.
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 \$10,000.00 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 \$10,000.00, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$5,000.00 portion of the assessed administrative penalty by check payable to the "Texas Department of Housing and Community Affairs" on or before July 15, 2024, or at least ten business days before a planned Property sale closing, whichever is first.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit complete documentation of the corrections to TDHCA on or before July 15, 2024, or at least ten business days before a planned Property sale closing, whichever is first.

**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: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, Respondent must send an email to Ysella Kaseman at



[ysella.kaseman@tdhca.texas.gov](mailto:ysella.kaseman@tdhca.texas.gov) to inform her that the documentation is ready for review. Penalty payment(s) 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 may not sell the Property until the TDHCA Asset Management Division issues written approval.

**IT IS FURTHER ORDERED** that the TDHCA Asset Management Division may not issue written approval to sell the Property until the TDHCA Compliance Division has reviewed all corrective documentation submitted in response to this Order, and any administrative penalty due under this Order is paid.

**IT IS FURTHER ORDERED** that the TDHCA Compliance Division must have at least ten business days to review corrective documentation prior to any planned Property sale closing. The date that corrections are submitted to TDHCA and the date of an approved closing are excluded from that calculation.

**IT IS FURTHER ORDERED** that for purposes of determining compliance with this Order, the TDHCA Compliance Division will review one set of corrective documentation, after Respondent notifies TDHCA that the corrective documentation is ready for review.

**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 \$5,000.00 portion 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 \$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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Agreed Final Order, or upon the date of the sale closing, whichever is first.

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

Approved by the Governing Board of TDHCA on \_\_\_\_\_, 2024.

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

Name: Leo Vasquez

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 13<sup>th</sup> day of June, 2024, personally appeared Leo Vasquez, 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 13<sup>th</sup> day of June, 2024, 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, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Alan Stalcup, known to me or proven to me through circle one: personally known / driver’s license / passport 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 Alan Stalcup, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Sole Member and Manager for GVA Pro LLC, the Manager of the Sole Member 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. The Taxpayer ID for Respondent is 802796042.
4. The mailing address for Respondent is \_\_\_\_\_.
5. 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:**

**2525 PLAYERS COURT LLC**, a Texas limited liability company

**THE GROVE PORTFOLIO LLC**, a Texas limited liability company, its Sole Member

**GVA PRO LLC**, a Texas liability company, its Manager

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

Name: Alan Stalcup

Title: Sole Member & Manager

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
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 Chapter 10 that are referenced in this 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. Refer to the following link for copies of forms that are referenced below:  
<https://www.tdhca.texas.gov/compliance-forms>

3. Technical support and training presentations are available at:

Presentations: <https://www.tdhca.texas.gov/compliance-program-training-presentations>

Technical support guide: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/24-TechSupport-AvoidAdminPenaltyRefs.pdf>

4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<https://www.tdhca.texas.gov/sites/default/files/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. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

#### **Instructions:**

Any reference to a “full tenant file” below requires submission of the following:

- A. *Tenant application;*
- B. *Verifications of all sources of income and assets;*
- C. *Verification of student status;*
- D. *Tenant income certification;*
- E. *Lease and lease addenda; and*
- F. *Tenant Rights and Resources Guide Acknowledgment*

*Remember that items A-D above must be dated within 120 days of one another.*

1. **Failure to include veteran statement in the application:** A statement was received, stating that the Development would implement the required veterans statement and question in the updated application. However, this did not correct the noncompliance. To correct, submit a blank updated application that includes both of the following:
  - a. The application must provide a space for applicants to indicate if they are a veteran; and

- b. The application must include the following statement: *"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, Air Force, 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/>"*

**2. Noncompliance with lease requirements described in §10.613 of this subchapter:** As of the date of this letter, the Department has not received any response to address this issue of noncompliance. To correct, submit a copy of the Tenant Rights and Resources Guide that is customized regarding the Development's common area amenities and unit amenities.

**3. Program Unit not leased to Low-Income Household/Household income above income limit upon initial occupancy:** The LURA requires all 320 units to be income restricted as Eligible Tenants (ET), with 96 of those units set aside for households that income qualify at or below 50% AMI. The definition of ET is an individual or family with an annual income that does not exceed 140% of the area median income.

- a. Per the Unit Status Report (USR) from the time of the monitoring review, the following units were designated as 80% units, and the files were incomplete. The Development is in the State Restrictive Period, which no longer requires the 80% set aside. However, the LURA does require that during the State Restrictive Period, the units not designated under the 50% requirement are to be ET.

- i. Unit 1316 – The current corrective action response indicated that the household vacated the unit and no previous file can be located.
- ii. Unit 1607 – The current corrective action response indicated that the household vacated the unit and the Income Certification and Tenant Rights and Resources Guide could not be located.

To correct units 1316, and 1607, occupy both units with households that qualify as 50% AMI income restricted households for the BOND program, and then submit full tenant files for those new households.

- b. Per the USR from the time of the monitoring review, the following units were also designated as 80% units. As stated above, the Development is in the State Restrictive Period, which no longer requires the 80% set aside. However, the LURA does require that during the State Restrictive Period, the units not designated under the 50% requirement are to be ET.

- i. Unit 1604 – The corrective action response was missing the full application that screens for all sources of income, assets and student status, the verification of assets and student status (if necessary), and the

executed Income Certification. To correct, submit the missing documents from the time of initial occupancy (October 18, 2022).

- ii. Unit 1805 – As of the date of this Order, the Department has not received a corrective action response for this unit. To correct, submit the file from the time of initial occupancy (May 15, 2020) to establish that the household was qualified as an Eligible Tenant (ET).
- iii. Unit 314 and 514 – The corrective action response included an Income Certification executed from a recertification. Since Eligible Tenants (ET) units are not required to recertify, this is not sufficient to correct. To correct, please submit documentation from the time of initial occupancy to establish that the household was qualified as an ET.
- iv. Unit 316 – The corrective action response indicated that the household is a market unit. The BOND LURA does not allow for market rate units.
- v. Unit 708 – The corrective action response indicated that at recertification the household income exceeded the limit. The unit designated as a market unit. The BOND LURA does not allow for market rate units and the Eligible Tenant requirement does not require recertification.

To correct units 1604, 1805, 314, 316, 514 and 708 if the requested tenant file information listed above is unavailable, or the household was not qualified as an ET at the time of initial occupancy, the household may be qualified as an ET under current circumstances. If certifying household as eligible under current circumstances, please submit a new application, verification of all sources of income, assets and student status, new executed Income Certification with an effective date as of the signature date of the new certification.

- c. Per the Land Use Restriction Agreement (LURA), the Development is required to maintain 96 units income restricted at or below the 50% AMI. During the monitoring review, the Department could only identify 89 units that were designated and qualified at or below the 50% AMI. Per the USR from the time of the monitoring review, the following units were identified as market units.
  - i. Unit 1806 – The current corrective action response indicated that an eligible household income qualified at or below 50% AMI would be occupying the unit on April 17, 2024 and documentation uploaded to the Compliance Monitoring and Tracking System (CMTS) evidencing compliance. This has not been uploaded as of the date of this Order.
  - ii. Unit 913 and 914 – The corrective action response indicated that these units are market units. The BOND LURA does not allow for market rate units.

- iii. Unit 1810 – The current corrective action response indicated that the household has vacated the unit, and the file could not be located.

To correct units 1806, 913, 914 and 1810, submit the following documentation demonstrating that the households qualify at or below the 50% AMI income restriction: application that fully screens for income, assets and student status, verification of all income, assets and student status, executed Income Certification, Lease Contract, and the executed Acknowledgment page of the Tenant Rights and Resources Guide. Since the BOND LURA does not allow for market units and the USR from the time of the monitoring review was not reporting the correct number of 50% units, the units need to be qualified as 50% AMI income restricted units. If qualifying and designating these units as ET as corrective action, to fully correct the submission must include the documentation listed above demonstrating ET eligibility for these units *and* a full tenant file for a replacement unit to meet the 96 units at or below the 50% AMI income restriction. This replacement unit cannot be a household already designated as 50% AMI on the USR submitted during monitoring review. If the unit is designated as ET and a full tenant file for a replacement 50% household is not submitted, the noncompliance will remain unresolved.

**4. Failure to provide annual recertification:**

- a. Unit 1814 – At the time of the monitoring review, the unit on the Unit Status Report (USR) was a 50% AMI unit. The units restricted at 50% AMI are required to complete full recertification. At the time of the review, there was no recertification in the file. The first corrective action response indicated the household vacated on October 6, 2022. The current corrective action response submission was for a new household, however the household does not qualify at the 50% AMI limit. If this unit is being considered an ET unit, to correct submit a full tenant file for a replacement unit not previously identified as a 50% AMI unit on the USR submitted for the monitoring review. If the unit is designated as ET and a full tenant file for a replacement 50% household is not submitted, the noncompliance will remain unresolved.

**5. Update Unit Status Report:** In addition to the corrections above, Respondent must update the Unit Status Report (USR) in CMTS to reflect correct unit designations for all 320 units, either Vacant, Bond: 50, Bond: ET, or Bond: OI. Respondent must also update income and rents for all units. Remember that the Development is required to maintain 96 units income restricted at or below 50% AMI, and the remaining must be Eligible Tenants (ET). No market units are permitted. Per the LURA, the definition of ET is a household income that does not exceed 140% AMI. Any units that are over-income (OI) and do not qualify as either ET or 50% must be designated as Bond: OI, and the lease must not be renewed. Ensure that income and rents are also accurately entered. The Department will review the USR to establish the 50% AMI set aside of 96 units has been met.



## Exhibit 2

### **Tenant File Guidelines**

The following technical support does not represent a complete list of all file requirements and is intended only as basic technical support. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for Income Determination Training in order to get a full overview of the process. Forms discussed below are available at: <https://www.tdhca.texas.gov/compliance-forms>.

A suggested tenant file checklist is available at this link: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/Suggested-File-Checklist.docx>.

*\*Important Note\* The application, verifications, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.*

1. **Intake Application:** 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, and student status. 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.” Applications must be signed and dated 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. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all 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:** 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. **Income Verification for Households with Section 8 Certificates:** If you use this form, you do not need to verify income further, but you do need to collect all other components of the tenant file. The Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification, signs this form. Since the housing authority performed the necessary verifications. The form must include the following information: a certification date from the housing authority that is within 120 days of that effective date, either at initial move-in or at recertification, number of household members and the gross annual income before any adjustments. This form must also be dated within 120 days of the application and Income Certification that you collect. If the housing authority certification is outside of that period, you must verify income yourself.
  - b. **First hand verifications:** Paystubs or payroll printouts 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 (*at least two months' (60 days) worth of check stubs for MFDL<sup>2</sup> programs is required*);

- c. **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. If received by email, ensure the email address is was received from is evidenced and from the employer;
  - d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) are acceptable for social security and/or unemployment 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;
  - e. **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. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - f. **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:** Regardless of their balances, applicants must report all assets, including assets such as checking or savings accounts. 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. **Under \$50,000 Asset Certification Form (HTC, Exchange, TCAP, THTF only):** If the total cash value of the assets owned by members of the household is less than \$50,000, as reported on the Intake Application, the TDHCA Under \$50,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
  - b. **First hand verifications**, such as bank statements to verify a checking account. If using this method, the most current statement will be needed for both checking and savings accounts. MFDL programs require two months of source documentation.
  - c. **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

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<sup>2</sup> *Multifamily Direct Loan Programs include HOME, National Housing Trust Fund, TCAP, TCAP RF, and NSP.*

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, If received by email, ensure the email address it was received from is evidenced and from the financial institution.

- d. Note: HOME, National Housing Trust Fund, TCAP, TCAP RF, NSP, and Bond developments must fully verify assets at initial occupancy, using method b or c above.*
5. **Verify Student Status:** Must screen for student status; can be collected on the Annual Eligibility Certification, the Certification of Student Eligibility Form, or the income Certification Form. If the household indicates they are students, there are two forms that *must* be used: the Certification of Student Eligibility form must be completed by the household, and the Student Verification form is used to verify and document their student status.
  - a. **With the changes from HOTMA, student income from financial assistance must be evaluated for inclusion/exclusion. A detailed training on this topic is available online: <https://www.tdhca.texas.gov/compliance-program-training-presentations>.**
6. **Verify Special Needs:** This form is generally optional, but is a great way to screen households for special needs. It is required if there is a Special Needs occupancy requirement under your LURA, unless there is another form of special needs verification in the file.
7. **Tenant Income Certification Form:** 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 <https://www.tdhca.texas.gov/income-and-rent-limits>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
8. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <https://www.tdhca.texas.gov/income-and-rent-limits>. Generally speaking, when determining the rent for MFDL programs, you must ensure that the tenant-paid rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limit set by TDHCA. For HTC, BOND, TCEP and TCAP programs, the tenant-paid rent, plus the utility allowance, plus any mandatory fees, must be below the maximum limit set by TDHCA. [10 TAC §10.613\(a\)](#) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, [10 TAC §10.613\(e\)](#) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per [10 TAC 10.613\(f\) and \(h\)](#). TAA has an affordable housing lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease

addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.

9. **Written Policies and Procedures / Tenant Selection Criteria:** Written policies and procedures requirements are at [10 TAC §10.802](#).
10. **Violence Against Women Act of 2013 (VAWA):** The property is required to provide all prospective tenants the VAWA forms 5380 and 5382 at the time of application, at the time they are approved, at the time of denial, and at the time the household is given a notice to vacate or non-renewal. Forms are available at the Forms link above.
11. **Tenant Rights and Resources Guide:** In accordance with [10 TAC §10.613\(l\)](#), you must customize the Guide for your property and post a laminated copy in a common area of the leasing office. Development must also 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 guide includes:
  - a. Information about Fair Housing and tenant choice; and
  - b. Information regarding common amenities, unit amenities, and services.

Additionally, a representative of each household must receive a copy of the 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 signed acknowledgment must be maintained in the tenant file.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
4753 DUNCANVILLE ROAD LLC	§	TEXAS DEPARTMENT OF
WITH RESPECT TO SOLAIRE	§	HOUSING AND COMMUNITY
(BOND MF011 / CMTS 2562)	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 13<sup>th</sup> day of June, 2024, 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 **4753 DUNCANVILLE ROAD 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. Asmara Affordable Housing, Inc. (Prior Owner) acquired multiple properties in 1996 using proceeds from NHP Foundation – Asmara Project Series 1996A Bonds. The bonds were refinanced in 2003 using NHP Foundation – Asmara Project Series 2003 Bonds to refund Series 1996, and to finance capital improvements and necessary repairs to nine projects in Texas, including Solaire (Bond MF011 /CMTS 2562), formerly known as Heritage Square (Property).

2. Prior Owner signed an Amended and Restated Regulatory and Land Use Restriction Agreement (LURA) dated as of December 1, 2003, and filed of record at Document Number 200302687761 of the Official Public Records of Real Property of Dallas County, Texas, as amended by that first amendment dated April 1, 2013, and filed of record at Document Number 201300132550.
3. Respondent purchased the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof, via an Assignment, Assumption, and Consent Agreement dated as of December 13, 2017, and filed in the Records at Document Number 201700350453, thereby binding Respondent to the terms of the LURA.
4. Respondent is further bound to the terms of the LURA in accordance with Section 11 thereof.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

6. Property has a history of violations and previously signed an Agreed Final Order on November 24, 2020, agreeing to pay a \$2,500.00 administrative penalty. All noncompliance was resolved prior to signing.
7. The Department conducted an on-site monitoring review on January 19, 2023, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. TDHCA compliance monitors found violations of the LURA and TDHCA rules. The monitors sent notifications of noncompliance, setting a corrective action deadline of May 11, 2023. Respondent submitted partial corrective documentation on May 17, 2023, and a cure deadline of February 22, 2024, was set to submit final corrective documentation. The following violation was not resolved before the extended corrective action deadline, and was referred for an administrative penalty:
  - a. Respondent failed provide Tenant Income Certification and associated documentation for unit 713, a violation of 10 TAC §10.612 (Tenant File Requirements) and Sections 2(b) and 4(c) of the LURA, which require Bond developments with less than 100% of units set aside for low income households under 60% to collect data to annually recertify each household. The affected household later vacated the unit, and the violation will remain unresolved until Respondent submits a full tenant file for a new qualified household in this unit.

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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.

8. The following violation remains outstanding at the time of this order:
  - a. Tenant income certification 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 Chapter 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 §10.612 and Sections 2(b) and 4(c) of the LURA in 2023, by failing to provide the annual recertification for unit 713.
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. An administrative penalty of \$100.00 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 \$100.00.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$100.00 administrative penalty by check payable to the "Texas Department of Housing and Community Affairs" on or before July 15, 2024, or at least ten business days before a planned Property sale closing, whichever is first.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit complete documentation of the corrections to TDHCA on or before July 15, 2024, or at least ten business days before a planned Property sale closing, whichever is first.

**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: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, Respondent must send an email to Ysella Kaseman at [ysella.kaseman@tdhca.texas.gov](mailto:ysella.kaseman@tdhca.texas.gov) to inform her that the documentation is ready for review. 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 may not sell the Property until the TDHCA Asset Management Division issues written approval.

**IT IS FURTHER ORDERED** that the TDHCA Asset Management Division may not issue written approval to sell the Property until the TDHCA Compliance Division has reviewed all corrective documentation submitted in response to this Order, and any administrative penalty due under this Order is paid.

**IT IS FURTHER ORDERED** that the TDHCA Compliance Division must have at least ten business days to review corrective documentation prior to any planned Property sale closing. The date that corrections are submitted to TDHCA and the date of an approved closing are excluded from that calculation.

**IT IS FURTHER ORDERED** that for purposes of determining compliance with this Order, the TDHCA Compliance Division will review one set of corrective documentation, after Respondent notifies TDHCA that the corrective documentation is ready for review.

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



Approved by the Governing Board of TDHCA on \_\_\_\_\_, 2024.

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

Name: Leo Vasquez

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 13<sup>th</sup> day of June, 2024, personally appeared Leo Vasquez, 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 13<sup>th</sup> day of June, 2024, 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, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Alan Stalcup, known to me or proven to me through circle one: personally known / driver’s license / passport 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 Alan Stalcup, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
- 2. I hold the office of Sole Member and Manager for GVA Pro LLC, the Manager of the Sole Member 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. The Taxpayer ID for Respondent is 802796046.
- 4. The mailing address for Respondent is \_\_\_\_\_.
- 5. 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:**

**4753 DUNCANVILLE ROAD LLC**, a Texas limited liability company

**THE GROVE PORTFOLIO LLC**, a Texas limited liability company, its Sole Member

**GVA PRO LLC**, a Texas liability company, its Manager

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

Name: Alan Stalcup

Title: Sole Member & Manager

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
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 Chapter 10 that are referenced in this 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. Refer to the following link for copies of forms that are referenced below:  
<https://www.tdhca.texas.gov/compliance-forms>
3. Technical support and training presentations are available at:  
Presentations: <https://www.tdhca.texas.gov/compliance-program-training-presentations>  
Technical support guide: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/24-TechSupport-AvoidAdminPenaltyRefs.pdf>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<https://www.tdhca.texas.gov/sites/default/files/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. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

#### **Instructions:**

1. **Failure to provide annual recertification:**
  - a. Unit 713 – This 50% AMI household initially occupied the unit on December 27, 2021. The file contained an Annual Eligibility Certification form instead of a full annual recertification, which is not acceptable for the BOND funding at this development. The affected household later moved out. To correct the noncompliance, Respondent must occupy this unit with a new qualified household at or below 50% AMI, and submit a full tenant file, including
    - i. *Tenant application;*
    - ii. *Verifications of all sources of income and assets;*
    - iii. *Verification of student status;*
    - iv. *Tenant income certification;*
    - v. *Lease and lease addenda; and*
    - vi. *Tenant Rights and Resources Guide Acknowledgment*

*Remember that items i-iv above must be dated within 120 days of one another.*

## Exhibit 2

### **Tenant File Guidelines**

The following technical support does not represent a complete list of all file requirements and is intended only as basic technical support. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for Income Determination Training in order to get a full overview of the process. Forms discussed below are available at: <https://www.tdhca.texas.gov/compliance-forms>.

A suggested tenant file checklist is available at this link: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/Suggested-File-Checklist.docx>.

*\*Important Note\* The application, verifications, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.*

1. **Intake Application:** 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, and student status. 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.” Applications must be signed and dated 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. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all 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:** 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. **Income Verification for Households with Section 8 Certificates:** If you use this form, you do not need to verify income further, but you do need to collect all other components of the tenant file. The Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification, signs this form. Since the housing authority performed the necessary verifications. The form must include the following information: a certification date from the housing authority that is within 120 days of that effective date, either at initial move-in or at recertification, number of household members and the gross annual income before any adjustments. This form must also be dated within 120 days of the application and Income Certification that you collect. If the housing authority certification is outside of that period, you must verify income yourself.
  - b. **First hand verifications:** Paystubs or payroll printouts 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 (*at least two months' (60 days) worth of check stubs for MFDL<sup>2</sup> programs is required*);

- c. **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. If received by email, ensure the email address is was received from is evidenced and from the employer;
  - d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) are acceptable for social security and/or unemployment 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;
  - e. **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. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - f. **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:** Regardless of their balances, applicants must report all assets, including assets such as checking or savings accounts. 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. **Under \$50,000 Asset Certification Form (HTC, Exchange, TCAP, THTF only):** If the total cash value of the assets owned by members of the household is less than \$50,000, as reported on the Intake Application, the TDHCA Under \$50,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
  - b. **First hand verifications**, such as bank statements to verify a checking account. If using this method, the most current statement will be needed for both checking and savings accounts. MFDL programs require two months of source documentation.
  - c. **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

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<sup>2</sup> *Multifamily Direct Loan Programs include HOME, National Housing Trust Fund, TCAP, TCAP RF, and NSP.*

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, If received by email, ensure the email address it was received from is evidenced and from the financial institution.

- d. Note: HOME, National Housing Trust Fund, TCAP, TCAP RF, NSP, and Bond developments must fully verify assets at initial occupancy, using method b or c above.*
5. **Verify Student Status:** Must screen for student status; can be collected on the Annual Eligibility Certification, the Certification of Student Eligibility Form, or the income Certification Form. If the household indicates they are students, there are two forms that *must* be used: the Certification of Student Eligibility form must be completed by the household, and the Student Verification form is used to verify and document their student status.
  - a. **With the changes from HOTMA, student income from financial assistance must be evaluated for inclusion/exclusion. A detailed training on this topic is available online: <https://www.tdhca.texas.gov/compliance-program-training-presentations>.**
6. **Verify Special Needs:** This form is generally optional, but is a great way to screen households for special needs. It is required if there is a Special Needs occupancy requirement under your LURA, unless there is another form of special needs verification in the file.
7. **Tenant Income Certification Form:** 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 <https://www.tdhca.texas.gov/income-and-rent-limits>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
8. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <https://www.tdhca.texas.gov/income-and-rent-limits>. Generally speaking, when determining the rent for MFDL programs, you must ensure that the tenant-paid rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limit set by TDHCA. For HTC, BOND, TCEP and TCAP programs, the tenant-paid rent, plus the utility allowance, plus any mandatory fees, must be below the maximum limit set by TDHCA. [10 TAC §10.613\(a\)](#) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, [10 TAC §10.613\(e\)](#) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per [10 TAC 10.613\(f\) and \(h\)](#). TAA has an affordable housing lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease

addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.

9. **Written Policies and Procedures / Tenant Selection Criteria:** Written policies and procedures requirements are at [10 TAC §10.802](#).
10. **Violence Against Women Act of 2013 (VAWA):** The property is required to provide all prospective tenants the VAWA forms 5380 and 5382 at the time of application, at the time they are approved, at the time of denial, and at the time the household is given a notice to vacate or non-renewal. Forms are available at the Forms link above.
11. **Tenant Rights and Resources Guide:** In accordance with [10 TAC §10.613\(l\)](#), you must customize the Guide for your property and post a laminated copy in a common area of the leasing office. Development must also 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 guide includes:
  - a. Information about Fair Housing and tenant choice; and
  - b. Information regarding common amenities, unit amenities, and services.

Additionally, a representative of each household must receive a copy of the 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 signed acknowledgment must be maintained in the tenant file.





# Texas Department of Housing and Community Affairs

## Governing Board

### Board Action Request

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**File #:** 622

**Agenda Date:** 6/13/2024

**Agenda #:** 9.

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Presentation, discussion, and possible action on an order proposing amendments to 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.6, Program Regulations and Requirements, and directing its publication for public comment 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**, the current rule relating to the Section 811 Project Rental Assistance (811 PRA) Program, is in need of revisions to ensure the rule accurately reflects current Department processes that have been updated over time; and

**WHEREAS**, such proposed amendments will be published in the *Texas Register* for public comment from June 28, 2024, to July 28, 2024, and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed action, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connections, as they may deem necessary to effectuate the forgoing, including the preparation and requested revisions to the subchapter specific preambles.

#### **BACKGROUND**

Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, and community development programs, including the low-income housing tax credit program. As it relates to Department programs, Chapter 8 governs the Section 811 PRA Program.

Currently subsection (g)(2) of 10 TAC §8.6, relating to Tenant Selection Plans, indicates that "Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with §10.8 of this chapter, to the Department for approval." This is no longer the current practice. Rather the Tenant Selection Plan is reviewed, but not approved, by staff. The amendment to the rule provides for this clarification.

Additionally, revisions have been made to the inspection standard being used. The National Standards for the Physical Inspection of Real Estate (NSPIRE) is the new Housing and Urban Development (HUD) physical inspection standard protocol designed to reduce health and safety

hazards in a home. NSPIRE was recently integrated into the Department's Compliance rules and replaces the Uniform Physical Condition Standards (UPCS) previously used by the Department.

Behind the preamble for the proposed rule action is the rule shown in its blackline form reflecting the amendment proposed to the rule.

Upon Board approval, the proposed section of the rule will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted from June 28, 2024, to July 28, 2024. After consideration for public comment, the amendment will be brought before the Board for final approval and subsequently published in the *Texas Register* for adoption.

Attachment A: Preamble, including required analysis, for proposed amendments to 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.6, Program Regulations and Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes amending 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.6, Program Regulations and Requirements. The amendments will ensure the rule accurately reflects current Department processes that have been updated over time.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, processes associated with the 811 PRA Program.
2. The proposed amendment to the rule will not require a change in the number of employees of the Department;
3. The proposed amendment to the rule will not require additional future legislative appropriations;
4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed amendment to the rule will not create a new regulation, but merely revises a regulation to reference a new inspection protocol;
6. The proposed amendment to the rule will not repeal an existing regulation;
7. The proposed amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of what inspection method may be used and what the cut-off score would be for the NSPIRE inspection. There will not be any economic cost to any individual required to comply with the amendment.

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

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from June 28, 2024 to July 28, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs to [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us) <<mailto:brooke.boston@tdhca.state.tx.us>>. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local (Central) time, July 28, 2024.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amendment affects no other code, article, or statute.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amendment affects no other code, article, or statute.

#### §8.6, Program Regulations and Requirements

(a) Participation in the 811 PRA Program is encouraged and may be incentivized through the Department's Rules and NOFAs. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

(1) H 2012-06, Enterprise Income Verification (EIV) System;

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing;

(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents, as revised by: FHEO-2023-01, Notice to Public Regarding FHEO Enforcement Authority and Procedures: Violence Against Women Act 2022 (VAWA);

(7) H 2022-01, Carbon Monoxide Alarms or Detectors in U.S. Housing and Urban Development (HUD)-Assisted Housing;

(8) H 2023-10, Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA); ~~and~~

~~(79)~~ H 2013-24, Section 811 Project Rental Assistance (PRA) Occupancy Interim Notice.

(e) Use Agreements. The Owner must execute the Use Agreement at the execution of the RAC and comply with the following:

(1) Use Agreement must be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to the Department within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) The Department will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) TRACS & EIV, Reporting, Tenant Certifications and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate methods to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) EIV Policies and Procedures. Upon the execution of a RAC, the Owner must submit a copy of the property's EIV Policies and Procedures to the Department for review. If deficiencies are identified, the Owner will be required to correct and resubmit to the Department until all deficiencies have been properly corrected.

(3) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by the Department, but is still required to satisfy the Program Requirements.

(4) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(5) Compliance Reviews. The Department's Compliance Division will conduct a monitoring review in conjunction with the review of any other Department administered housing program layered with the Development. If the Development is layered with Housing Tax Credits and has exceeded the 15-year Federal Compliance Period, monitoring reviews of the Program will still be conducted at least every three years.

(6) The Department will review the [Property's Tenant Selection Plan and Criteria, as defined by and in accordance with §10.802 of this chapter.](#)

(g) Tenant Selection and Screening.

(1) Target Population. The Department will screen Eligible Applicants for compliance with the Department's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for the Department's Program. The Target Population may be revised, with HUD approval.

~~(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with §10.8 of this chapter, to the Department for approval.~~

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from the Department and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and the Department in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and the Department in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income, Assets, and Deductions. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System per HUD Handbook 4350.3 and HUD Notices. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. Use of the EIV system as third party verification is not acceptable for the Housing Tax Credit or Multifamily Direct Loan Program.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by the Department, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by the Department, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. The Department will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. The Department will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) The Department will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the Development, the Department may begin a RAC amendment to reduce the number of Assisted Units. An Owner who has an amended, executed RAC must continue to notify the Department of units that become vacant that are committed under the Agreement.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of the Department. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. The Department will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to the Department 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the Department approved Utility Allowance used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify the Department if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although the Department has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in §10.406 of this title (relating to Ownership Transfers (§2306.6713)).

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. The Department and its service partners are responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, the Department may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify the Department of renewals of leases with Eligible Families and any changes to the terms of the lease.

(5) Development Policies. Upon the execution of the RAC, an Owner is required to submit a copy of the Development Policies (House Rules) to the Department for review. If deficiencies are noted, the Development will be required to correct and resubmit to the Department until all deficiencies have been properly corrected. The Owner is required to send a copy of amendments to the House Rules to the Department before implementing changes.

(k) Rent.

(1) Tenant Rent Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3 and HUD Notices, and is responsible for collecting the Tenant Rent payment.

(2) Utility Reimbursement. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment no later than the 5th day of each month, beginning 30 days after initial move in.

(3) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent, in accordance with HUD Handbook 4350.3.

(4) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If a Unit at the Development has a Department enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum Department enforced rent restriction for that Unit, not to exceed the 60% Area Median Family Income limit.

(B) If there is no existing Department enforced rent restriction on the Unit, or the existing Department enforced rent restriction is higher than FMR, the Department will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with the Department, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by the Department.

(D) After the signing of the original RAC, upon request from the Owner to the Department, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(I) Vacancy; Household Changes; Transfers; Eviction.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify the Department of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of a newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify the Department no later than 180 days before the Eligible Multifamily Property will be available for initial move-in. Failure to reserve the agreed upon number of Assisted Units for Eligible Families will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for Debarment.

(4) Vacancy. Upon execution of the RAC, the Owner must notify the Department of any vacancy of an Assisted Unit at the Eligible Multifamily Property as soon as possible, not to exceed seven calendar days from when the Owner becomes aware of the eligible Unit availability. Once the Department acknowledges receipt of the notice, the Department will notify the Owner within three business days if the Unit is acceptable and submit a referral. If the qualifying Eligible Tenant vacates the Assisted Unit, the Department will determine if the remaining family member(s) is eligible for continued assistance from the Program.

(5) Vacancy Payment. The Department may provide vacancy payments that cannot exceed 80% of the Contract Rent for up to 60 days from the effective date of the RAC. After the 60 days, the Owner may lease the Assisted Unit to a non-Eligible Tenant. Developments without an executed RAC are not eligible for vacancy payments.



(6) Household Changes. Owner will notify the Department of any changes in family composition in an Assisted Unit within three business days. If the change results in the Assisted Unit being smaller or larger than is appropriate for the Eligible Family size, the Owner must refer to the Department's written policies regarding family size, unit transfers and waitlist management. If the Department discovers the Eligible Family is ineligible for the size of the Assisted Unit, the Owner will be notified but Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.

(7) Transfers. Owner must notify the Department if the Eligible Family requests a transfer to another Assisted Unit within the Development. The Department will determine if the Eligible Family qualifies for the unit transfer, if the new Unit is eligible as an Assisted Unit and then notify the Owner. If the Department determines the Eligible Family is ineligible for the size of the Assisted Unit, the Department will notify the Owner and Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.

(8) Notice to Vacate and Nonrenewal. Owners are required to notify the Department at least three calendar days prior to issuing a Notice to Vacate or a Notice of Non-Renewal to the Eligible Family. Notices must be compliance with HUD Handbook 4350.3 8-13(B)(2) and HUD Notices. A copy of the applicable Notice must be submitted via email to 811info@tdhca.state.tx.us.

(A) Owner is required to notify the Department within seven calendar days of when the Development is notified that the Eligible Family will vacate or in the event that the Eligible Family vacates without notice, upon discovery that the Assisted Unit is vacant. Notification of vacancy must be submitted to 811info@tdhca.state.tx.us.

(B) Upon move out, Owner must submit a move out disposition to the Department to ensure proper processing of the security deposit per HUD Handbook 4350.3 6-18.

(m) Construction Standards, Inspections, Repair and Maintenance, and Accessibility.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to National Standards for the Physical Standards of Real Estate (NSPIRE) ~~Uniform Physical Conditions Standards (UPCS)~~ which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and Department requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property meets or exceeds the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is required to train all property management staff engaging with Eligible Families on the requirements of the Program. Owner training must include, but is not limited to the HUD Handbook 4350.3 and the Department's webpage at <https://www.tdhca.state.tx.us/section-811-pra/index.htm>.

(o) Reporting Requirements. Owner shall submit to the Department such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by the Department. Owner shall provide the Department with all reports necessary for the Department's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with §11.305 of this title (relating to complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Equal Opportunity, Fair Housing, Nondiscrimination, and Equal Access.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by the Department in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under §1.24 of this title (relating to Protected Health Information), Chapter 181 of the Texas Health

and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164).

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the Department and the use of negotiated rulemaking procedures for the adoption of Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and the Owner, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage the Department in an ADR procedure, the Owner may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR policy, see the Department's Alternative Dispute Resolution and Negotiated Rulemaking at §1.17 of this title (relating to Alternative Dispute Resolution).

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #:** 624

**Agenda Date:** 6/13/2024

**Agenda #:** 10.

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Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411; an order proposing new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411; and directing their publication for public comment in the *Texas Register*

#### **RECOMMENDED ACTION**

**WHEREAS**, the current rule relating to the guidance that must be followed uniformly by recipients of federal and state funds, at 10 TAC Chapter 1, Subchapter D, is in need of revisions, and such revision is being proposed through the repeal of the current rule and a simultaneous new rule to be proposed in its place;

**WHEREAS**, the needed revisions include changes to reflect changes to federal regulations, make minor procedural revisions, remove the prior process for the Executive Award Review and Advisory Committee (EARAC), add clarification that this rule does not apply to specific multifamily processes nor to vendors except as specifically outlined, and make other applicable changes as further described in this item; and

**WHEREAS**, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

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

#### **BACKGROUND**

10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411, has been identified by staff as needing revisions. Staff is recommending taking all sections out for public comment so that the public may give feedback even on sections with no proposed revisions. Most of the sections of this rule were last adopted or amended in 2021. Changes are summarized:

- §1.401. Effective Date and Definitions: Removes the definition for the Executive Award Review and Advisory Committee (EARAC); updates citations in the definition for Subrecipient; and revises the definition for Equipment to bring it into alignment with new federal changes to 2 CFR Part 200.

- §1.402. Cost Principles and Administrative Requirements: clarifies that the policies a Subrecipient puts in place to serve as controls on separation of duties must be not only adopted, but continued for the term of the contract. Clarified that certain CSBG subrecipients do not have to follow TXMGS.
- §1.403. Single Audit Requirements: Revises the amount of funds handled by the Subrecipient that would trigger the requirement for a Single Audit from \$750,000 to \$1 million to bring this policy into consistency with new federal changes to 2 CFR Part 200; and updates references to the previous EARAC process.
- §1.404. Purchase and Procurement Standards: Clarifies the request process for a Subrecipient to procure a vehicle.
- §1.405. Bonding Requirements: Adds the HOME-ARP program to the programs to which this section is applicable.
- §1.406. Fidelity Bond Requirements: Updates the amount of fidelity bond coverage from \$10,000 to 5% of the contract amount.
- §1.407. Inventory Report: Adjusts the amount of supplies that must be reported in the inventory from \$5,000 to \$10,000 to comply with new federal changes to 2 CFR Part 200.
- §1.408. Travel: clarifies that the policies a Subrecipient puts in place for travel not only be adopted, but continued for the term of the contract.
- §1.409. Records Retention: Adds the HOME-ARP program to the programs to which this section is applicable.
- §1.410. Determination of Alien Status for Program Beneficiaries: Clarifies that this section does apply to vendors procured by the Department for services, if those services involve qualification of eligibility. Added LIHWAP to programs that must follow this subsection.
- §1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code: clarifies the process for denials, and specifies 'calendar' days.

This rule will be released for public comment and returned to the Board for final adoption.

**Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State



Funds, including §1.401 through §1.411. The purpose of the proposed repeal is to eliminate the outdated rule and replace it simultaneously with a new more germane rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed 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. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: how state and federal requirements are applied to recipients of Department funds.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will 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 repeal will not expand, limit, or repeal an existing regulation.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the 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 the 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 or 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 would be in effect there would 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. Wilkinson 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 changed sections would be an updated and more germane rule. There will not be 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. Wilkinson 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 28, 2024 to July 29, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, July 29, 2024.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeal affects no other code, article, or statute.

#### Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

§1.401. Effective Date and Definitions

§1.402. Cost Principles and Administrative Requirements

§1.403. Single Audit Requirements

§1.404. Purchase and Procurement Standards

§1.405. Bonding Requirements

§1.406. Fidelity Bond Requirements

§1.407. Inventory Report

§1.408. Travel

§1.409. Records Retention

§1.410. Determination of Alien Status for Program Beneficiaries

§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code

#### **Attachment 2: Preamble, including required analysis, for proposed new §1.21, Action by Department if Outstanding Balances Exist**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §1.401 through §1.411. The purpose of the new section is to reflect changes to federal regulations, make minor procedural revisions, remove the prior process for the Executive Award Review and Advisory Committee (EARAC), add clarification of when this rule is applicable to vendors, and make other applicable changes.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being 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. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relates to updates to existing requirements for recipients of Department funds.
2. The new sections do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new sections do not require additional future legislative appropriations.
4. The new sections 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 sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new sections will not negatively or positively affect the 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 the new sections and determined that they 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 new sections do not contemplate or 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 new sections as to their possible effects on local economies and has determined that for the first five years the new sections would be in effect there would 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. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections would be a more current and germane rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 28, 2024 to July 29, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, July 29, 2024.

STATUTORY AUTHORITY. The new sections are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

## 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

### ~~§1.401 General Statement~~Effective Date and Definitions

(a) Revisions to this Subchapter reflect updates to 2 CFR Part 180 and 2 CFR Part 200, and are generally effective for Contracts executed on or after October 1, 2024. Previous versions of these rules as memorialized in Contracts will continue to be effective, unless the Contract is amended to add additional funds on or after October 1, 2024, and that amendment specifically incorporates some or all of the provisions in the rule, to the extent federally allowed.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this title that govern the program associated with the request, or assigned by federal or state law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this part.

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

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$10,000 (except in the case of Contracts subject to TXGMS or UGMS, in which case \$5,000).

~~(4) Executive Award Review and Advisory Committee (EARAC) -- the Committee established in Tex. Gov't Code chapter 2306, that recommends the award or allocation of any Department funds or resources.~~

~~(45) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:~~

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;

- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney; or
- (x) a registered nurse.

(~~56~~) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(~~67~~) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(~~78~~) Subrecipient--Includes an entity receiving or applying for federal or state funds from the Department under Chapters 6, 7, ~~or 20~~, 23, 24, 25 or 26 as identified by Contract or in this subchapter. Except as otherwise noted in this subchapter or by Contract, the definition does not include Applicants/Owners who have applied for and/or received funds under a program administered by the Multifamily Finance Division, except for CHDO Operating funds, a grant made to a unit of government or nonprofit organization, or Affiliate, or TCAP-RF grants or loans when made to a unit of government or nonprofit organization or Affiliate. Except as otherwise noted in this subchapter or by Contract, this definition does not include vendors having been procured by the Department for goods or services. A Subrecipient may also be referred to as Administrator.

(~~89~~) Supplies--means tangible personal property other than "Equipment" in this section.

(~~910~~) Texas Grant Management Standards (TxGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 regarding Uniform Grant and Contract Management to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, regarding Administration of Block Grants, subjects subrecipients of federal block grants (as defined therein) to TxGMS.

(~~1011~~) Uniform Grant Management Standards (UGMS)--the standardized set of financial management procedures used by the Department in Contracts that began before January 1, 2022.

#### **§1.402 Cost Principles and Administrative Requirements**

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth as applicable in TxGMS or UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. A Subrecipient that is administering a housing Program under Chapters 24 or 26 of this Title, may receive a fixed amount of administrative funds. Private Nonprofit Subrecipients of Emergency Solutions Grant (ESG), HOME Investments Partnership Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Low Income Household Water and Wastewater Program (LIHWAP), Community Service Block Grant (CSBG) discretionary awards to non-eligible entities, and Department of Energy Weatherization Assistance Program (DOE WAP) do not have to comply with TxGMS unless otherwise required by Notice of Funding Availability (NOFA) or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) of this subsection that might result in a release of funds without appropriate controls:

- (1) Requisition authorization;
- (2) Encumbrance into software;
- (3) Check creation and/or automated payment disbursement;
- (4) Authorized signature/electronic signature; and
- (5) Distribution of paper check.

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for and continue to be implemented through the term of the Contract.

(d) Subrecipient will sign a Contract with the applicable Assurances in Appendix 6 of TxGMS as required by and in the form and substance acceptable to the Department's Legal Division.

### **§1.403 Single Audit Requirements**

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have applied for or received Direct Loan Funds, grants or 811 PRA funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government, nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) A Subrecipient may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) A Subrecipient or Affiliate must confirm that it is contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) A Subrecipient is required to submit a Single Audit Certification form within two (2) months after the end of its fiscal year indicating the amount they expended in Federal and State funds during the fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$1,000,000 or more (or in the case of entities subject to TXGMS or UGMS of \$750,000 or more) in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$1,000,000 or more (or in the case of entities subject to TXMGS or UGMS of \$750,000 or more) with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 calendar days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal

year. If a Single Audit is required but not under 2 CFR Part 200, subpart F, the report must be submitted to the Department the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of its respective fiscal year. If the deadline is on a Saturday, Sunday, federal holiday (for a Single Audit required to be submitted to the Federal Audit Clearinghouse), or a state holiday (for a Single Audit required to be submitted to the Department), the deadline is the next business day.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter for audit findings pertaining to the Federal award provided to the Subrecipient from the Department. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21, Action by Department if Outstanding Balances Exist.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to the Executive Director during EARAC through the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five business days of the Department's management decision letter.

(j) If the Subrecipient disagrees with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient does not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts, or refrain from executing a new Contract for any Board awarded contracts, until the Single Audit is received. In addition, the Department may elect not to renew an entity in accordance with §1.411 of this Chapter (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code), or not amend or enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subsection (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to the Executive Director EARAC.

#### **§1.404 Purchase and Procurement Standards**

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200, UGMS, and TxGMS, as applicable.



(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to the items in paragraphs (1) to (9) of this subsection, must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program:

(1) rationale for the type of procurement,

(2) cost or price analysis,

(3) procurement package,

(4) advertising,

(5) responses,

(6) selection process,

(7) contractor selection or rejection,

(8) certification of conflict of interest requirements being satisfied, and

(9) evidence that the awardee is not an excluded entity in the System for Award Management (SAM).

(d) In accordance with 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR Part 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department. Subrecipient must present written justification for the needed vehicle. If approved such approval will be provided via written correspondence from the Department. Procurement procedures must include provisions for full free and open competition and a comparison of the costs associated with leasing versus buying a vehicle. Any vehicle purchased without approval may result in disallowed costs.

(g) For procurement transactions not subject to UGMS or TxGMS, the Department has adopted a \$10,000 micropurchase and \$250,000 simplified acquisition threshold. For procurement transactions subject to UGMS or TxGMS, Subrecipient must follow a \$3,000 micropurchase threshold and a \$250,000 Texas

Acquisition Threshold (which is currently tied to the federal simplified acquisition threshold). If the federal simplified acquisition threshold changes, as a result of 2 CFR §200.88, or if it is temporarily raised because of a federal disaster declaration, the Department will publish the new amount on its website.

#### **§1.405 Bonding Requirements**

(a) The requirements described in this subsection relate to construction or facility improvements in DOE WAP, HOME, HOME-ARP, CDBG, NSP, HHSP, EH Fund, TCAP-RF, and ESG Subrecipients, or other fund source required by state or federal law or regulation to have bonding for construction or facility improvements.

(1) For construction contracts exceeding \$100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of \$100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that upon acceptance of the bid, the bidder will, ~~upon acceptance of his bid~~, execute such contractual documents as may be required within the time specified. A bid bond in the form of any of the documents described in this paragraph may be accepted as a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A unit of government must comply with the bond requirements contained in Texas statutes, including but not limited to Tex. Gov't Code ch. 2253 and Tex. Local Gov't Code §252.044, §262.032, or §392.0525, as applicable.

#### **§1.406 Fidelity Bond Requirements**

The Department is required to assure that fiscal control and accounting procedures for federally funded entities will be established to assure the proper disbursement and accounting for the federal funds paid to the state. In compliance with that assurance the Department requires program Subrecipients to maintain adequate fidelity bond coverage. A fidelity bond is a bond indemnifying the Subrecipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more of its employees, officers, or other persons holding a position of trust.

(1) In administering Contracts, Subrecipients shall observe their regular requirements and practices with respect to bonding and insurance. In addition, the Department may impose bonding and insurance requirements by Contract.

(2) If a Subrecipient is a non-governmental organization, the Department requires an adequate fidelity bond. If the amount of the fidelity bond is not prescribed in the contract, the fidelity bond must be for a minimum of 5% of the Contract amount. ~~\$10,000 or an amount equal to the contract if less than \$10,000.~~

The bond must be obtained from a company holding a certificate of authority to issue such bonds in the State of Texas.

(3) The fidelity bond coverage must include all persons authorized to sign or counter-sign checks or to disburse sizable amounts of cash. Persons who handle only petty cash (amounts of less than \$250) need not be bonded, nor is it necessary to bond officials who are authorized to sign payment vouchers, but are not authorized to sign or counter-sign checks or to disburse cash.

(4) The Subrecipient must receive an assurance letter from the bonding company or agency stating the type of bond, the amount and period of coverage, the positions covered, and the annual cost of the bond. Compliance must be continuously maintained thereafter. A copy of the actual policy shall remain on file with the Subrecipient and shall be subject to monitoring by the Department.

(5) Subrecipients are responsible for filing claims against the fidelity bond when a covered loss is discovered.

(6) The Department may take any one or more of the actions described in Chapter 2, of this Part, relating to ~~to titled~~ "Enforcement" in association with issues identified as part of filing claims against the fidelity bond.

#### **§1.407 Inventory Report**

(a) The Department requires the submission of an inventory report for all Contracts to be submitted to the Department, no later than 45 calendar days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract Term.

(c) Aggregate Supplies of over \$10,000 (except in the case of Contracts subject to TXGMS or UGMS, in which case this limit is \$5,000), must be reported to the Department at the end of the Contract Term using federal form SF-428, which is a standard form to collect information related to tangible personal property or other form required by the federal fund source.

(d) For certain public facility activities funded by the Community Development Block Grant, inventory requirements will be those required by HUD for real property, as further identified in the Contract.

#### **§1.408 Travel**

The governing body of each Subrecipient must adopt and implement for the term of the Contract travel policies that adhere to 2 CFR Part 200, for cost allowability. The Subrecipient must follow either the federal travel regulations or State of Texas travel rules and regulations found on the Comptroller of Public Accounts website at [www.cpa.state.tx.us](http://www.cpa.state.tx.us), as applicable.

#### **§1.409 Records Retention**

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have Direct Loan or HOME-ARP Funds or grants, or 811 PRA assistance. The Department requires Subrecipient organizations, and any entities who perform services and assistance on their behalf, to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient

headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five years starting from the date the household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

#### **§1.410 Determination of Alien Status for Program Beneficiaries**

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(2) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(3) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) or (c).

(4) State--The State of Texas or the Department, as indicated by context.

(5) Subrecipient--An entity that receives federal or state funds passed through the Department. The definition does apply to a vendor having been procured by the Department to determine eligibility for federal or state funds and as otherwise reflected in the Contract.

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

(c) Applicability for Federal Funds.

(1) The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further described in this rule.

(d) Applicability for State Funds. The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization or acting on behalf of a Public Organization to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d), a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Home Energy Assistance Program, Low Income Household Water and Wastewater Program, and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. For existing Subrecipients, an election made under this subsection does not need to be restated annually, but will continue from the election made in the prior year unless the Subrecipient notifies the Department otherwise in writing before the deadline. For new Subrecipients, if the election must be made with the Application or if there is no Application before Contract execution. If the existing Subrecipient does not notify the Department of the election in writing by the deadline but refuses to abide by its election the Subrecipient will not be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by the Subrecipient to select an option by the deadline is good cause for nonrenewal or termination of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(i) The Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.

(ii) Upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department's access to such system.

(C) The Subrecipient may voluntarily elect to procure an eligible qualified organization to perform such verifications on their behalf, subject to Department approval.

(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

(ii) Upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.

(g) The Department may further describe a Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the Subrecipient. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

(h) A Subrecipient must establish that an individual is a U.S. Citizen, U.S. National, or Qualified Alien using the documents deemed acceptable by the Department, and which have been published on the Department's website. This information may be updated by the Department from time to time, and highly encourages Subrecipients or other concerned parties to contact the Department if revisions are suggested.

#### **§1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code**

(a) Purpose. The purpose of this section is to inform compliance with Tex. Gov't Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov't Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov't Code Chapter 2105 are those funded by the Community Services Block Grant (CSBG) funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program (LIHEAP) funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant (CDBG) Program. If additional block grant funds that would be subject to Tex. Gov't Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or chapters of this title or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov't Code §2105.058, Subrecipients that receive more than \$5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints, for the preceding three year period, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.

(e) Requests for Reconsideration. Subrecipient must establish written procedures for the handling of denials of service when the denial involves a household inquiring or applying for services/assistance. This procedure must include, at a minimum:

(1) A written denial of assistance notice being provided to the affected person within 10 calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such

process is in accordance with the written policy. This notification shall include written notice of the right of a hearing or secondary review of income documentation, as applicable, the timeframe the affected person has to respond to the decision, and specific reasons for the denial of assistance. The Subrecipient may adopt a policy limiting the time period during which a request for a hearing will be accepted and the format for the request, but the Subrecipient must provide the affected person with at least 10 calendar days to request a hearing or secondary review.

(2) If requested by the affected person, Subrecipient shall hold a private, recorded hearing (unless otherwise required by law) either virtually, by phone, or in person in an accessible location within 15 calendar days after the Subrecipient received the hearing request from the affected person and must provide the affected person notice in writing of the time/location of the hearing at least seven calendar days before the hearing.

(3) The hearing shall allow time for a statement by the Subrecipient's staff with knowledge of the case.

(4) The hearing shall allow the affected person at least equal time, if requested, to present relevant information contesting the decision.

(5) If a denial is based solely on income eligibility, the provisions described in paragraphs (2) - (4) of this subsection do not apply, however the affected person may request a secondary review of income eligibility based on initial documentation provided at the time of the original request for assistance. Such a secondary review must include an analysis of the initial calculation based on the documentation received with the initial request for services and will be performed by an individual other than the person who performed the initial determination. If the secondary review upholds the denial based on income eligibility documents provided at the initial request, the affected person must be notified in writing.

(6) If the affected person is not satisfied with the Subrecipient's determination at a hearing or as concluded based on a secondary income eligibility review, the affected person may request a subsequent review of the decision by the Department if the affected person requests a further review in writing within 10 calendar days of notification of an adverse decision. If applicable, Subrecipient's should hold funds aside in the amount needed to provide the services requested by the affected person until the Department completes its decision.

(7) Affected persons, after having followed the steps in paragraphs (1) through (6) of this subsection, who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(8) The hearing under subsection (e)(7) of this section shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13 of this title (relating to Contested Case Hearing Procedures).

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) Consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) Lack of compliance with 10 TAC §1.403 (relating to Single Audit Requirements);

(C) Statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, (relating to Enforcement), and have resulted in a final order confirming such violation(s);

(D) Disallowed costs in excess of \$10,000 that have not been timely repaid;

(E) Failure by Subrecipient to select an option as provided for in §1.410 of this title (relating to Determination of Alien Status for Program Beneficiaries) by the deadline;

(F) The ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) A failure to address an identified material lack of cost efficiency of programs;

(H) A material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) Providing services that are adequately addressed by other programs in that area;

(J) The extent to which clients and program recipients are involved in the Subrecipient's decision making;

(K) Providing services in a manner that unlawfully discriminates on the basis of protected class status; or

(L) Providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §2105.203 and §2105.301, the Department will send a Subrecipient a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th calendar day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001 if the Subrecipient is alleging that the reduction is not based on good cause as identified in subsection (f)(1) of this section or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §2105.251 and §2105.252, the Department will send a Subrecipient a written statement specifying the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 of this title (relating to Termination and Reduction of Funding for CSBG Eligible Entities).





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 626

**Agenda Date:** 6/13/2024

**Agenda #:** 11.

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Presentation, discussion, and possible action on an order adopting the repeal and new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program, and directing its publication 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**, staff recommends the simultaneous adoption of the repeal and new 10 TAC Chapter 26, Subchapter B, Amy Young Barrier Removal Program, to clarify program administration requirements and update terminology;

**WHEREAS**, the repeal and replacement of 10 TAC Chapter 26, Subchapter B, Amy Young Barrier Removal Program was published in the *Texas Register* for public comment from March 29, 2024 through May 2, 2024, and public comment was received, staff has considered the comment, and is recommending to the Board adoption of the proposed repeal and replacement without changes in response to the public comment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the repeal and proposed new 10 TAC Chapter 26, Subchapter B, Amy Young Barrier Removal Program, with the preamble presented to this meeting, are hereby adopted and approved for publication in the *Texas Register*; and

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

**BACKGROUND**

The purpose of repealing 10 TAC Chapter 26, Texas Housing Trust Rule, Subchapter B, Amy Young Barrier Removal Program and proposing a new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Removal Program is to further clarify program administration, update terminology and promote alignment with the Single Family Umbrella Rule.

The proposed rules were approved for publication for public comment by the Board at its

meeting of March 7, 2023. Public comment for Subchapter B, Amy Young Barrier Removal Program was received and is included as Attachment C to this item. Staff received one comment from Phyllis McIntyre of Guadalupe County, Texas. Staff has summarized the comment, and the summary as well as the staff's response is provided in the preambles. Staff does not recommend changes in response to the public comment.

**Attachment A: Preamble, including required analysis, adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program. 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 proposed rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect,

1. The repeal does not create or eliminate a government program, but relates to making changes to an existing activity;
2. The repeal does not require a change in the number of employees of the Department;
3. The repeal does not require additional future legislative appropriations;
4. The repeal does not result in an increase or a decrease in fees paid to the Department;
5. The repeal will repeal an existing regulation;
6. The repeal will not increase or decrease the number of individuals subject to the rule's applicability; and
7. The repeal will not negatively or positively affect the state's economy.

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.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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 would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson 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 chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also 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 COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 29, 2024, and May 2, 2024. No comment was received.

The Board adopted the final order adopting the repeal on June 13, 2024.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed chapter affects no other code, article, or statute.

## **10 TAC Chapter 26, Texas Housing Trust Fund Rule**

### **SUBCHAPTER B            AMY YOUNG BARRIER REMOVAL PROGRAM**

§26.20	Amy Young Barrier Removal Program Purpose
§26.21	Amy Young Barrier Removal Program Definitions
§26.22	Amy Young Barrier Removal Program Geographic Dispersion
§26.23	Amy Young Barrier Removal Program Administrative Requirements
§26.24	Amy Young Barrier Removal Program Reservation System Requirements
§26.25	Amy Young Barrier Removal Program Household Eligibility Requirements
§26.26	Amy Young Barrier Removal Program Property Eligibility Requirements
§26.27	Amy Young Barrier Removal Program Construction Requirements
§26.28	Amy Young Barrier Removal Program Project Completion Requirements

**Attachment B: Preamble, including required analysis, adopting the new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program**

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program. The purpose of the proposed new chapter is to implement a more germane rule and better align administration to state requirements.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to making changes to an existing activity;
2. The new rule does not require a change in the number of employees of the Department;
3. The new rule does not require additional future legislative appropriations;
4. The new rule does not result in an increase or a decrease in fees paid to the Department;
5. The new rule does not create a new regulation;
6. The new rule will not repeal an existing regulation;
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The new rule will not negatively or positively affect the state's economy.

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 rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

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.

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 there would be no economic

effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rule.

**FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between March 29, 2024, and May 2, 2024. The Department received comment from Phyllis McIntyre, a resident of Guadalupe County.

**COMMENT SUMMARY:** Commenter expressed concern about challenges to navigating the Department's website. Specifically noted was the Help for Texans website. Commenter suggested that residents have the ability to apply for funds directly to the Department as opposed to working through an Administrator.

**STAFF RESPONSE:** Staff appreciates the comment and recognizes the challenges associated with navigating the Department website. However, staff feels these challenges have been mitigated with the recent launch of a more streamlined, user-friendly Department website.

Staff acknowledges that the network of Administrators for the Amy Young Barrier Removal Program funds does not cover all areas of the state, and actively reaches out to units of local government when a constituent residing in an area that is not represented contacts TDHCA; however, the Department is not able to effectively administer program funds directly, and our planning documents require that funds are distributed through local Administrators that are able to provide oversight of the local program activities.

No changes are recommended in response to this comment.

The Board adopted the final order adopting the repeal on June 13, 2024.

**STATUTORY AUTHORITY.** The new subchapter is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new chapter affects no other code, article, or statute.

## **SUBCHAPTER B AMY YOUNG BARRIER REMOVAL PROGRAM**

### **RULE §26.20 Amy Young Barrier Removal Program Purpose**

The Amy Young Barrier Removal Program (the Program or AYBRP) provides one-time grants in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grant limits per household will be identified in the Notice of Funding Availability (NOFA). Grants are for home modifications that increase accessibility and eliminate substandard conditions.

### **§26.21 Amy Young Barrier Removal Program Definitions**

The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this title (relating to Texas Housing Trust Fund Rule).

(1) Administrative Fee--Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.

(2) Hard Costs--Site-specific costs incurred during construction, including, but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.

(3) Household Assistance Contract--A written agreement between the Department and Administrator that memorializes the term of the commitment of funds for a specific activity.

(4) Low-Income--Household income calculated in accordance with the Program Manual that does not exceed the greater of 80% of the Area Median Family Income or 80% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

(5) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.

(6) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(7) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs.

### **§26.22 Amy Young Barrier Removal Program Geographic Dispersion**

(a) The process to promote geographic dispersion of program funds is as described in this subsection:

(1) For a published period not less than 30 days and in accordance with the NOFA, each state region will be allocated funding amounts for its rural and urban subregions. During this initial period, these funds may be reserved only for Households located in these rural and urban subregions;

(2) After the initial release of funds under paragraph (1) of this subsection, each state region will combine any remaining funds from its rural and urban subregions into one regional balance for a second published

period not to exceed 90 calendar days. During this second period, these funds may be reserved only for Households located in that state region; and

(3) After no more than 180 calendar days following the initial release date, any funds remaining across all state regions will collapse into one statewide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from Texas HTF loan repayments, interest earnings, deobligations, and/or other Texas HTF funds in excess of those funds required under Rider 8 or the Department's appropriation made under the General Appropriations Act may be reprogrammed at the discretion of the Department.

### **§26.23 Amy Young Barrier Removal Program Administrative Requirements**

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities; and Public Housing Authorities. An eligible participant may be further limited by NOFA.

(b) The Department will produce an Application to satisfy the requirements for an eligible participant to apply to become an AYBR Administrator. The application will be available on the Department's website. Applications to access the Reservation System will include, at a minimum, criteria listed in paragraphs (1)-(7) of this subsection.

(1) A Nonprofit Organization must submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective throughout the term of the RSP Agreement to access the Reservation System.

(2) A private Nonprofit Organization must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the State of Texas.

(3) The Applicant must demonstrate at least two years of capacity and experience in housing rehabilitation in Texas. The Applicant will be required to provide a summary of experience that must describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It must also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must provide evidence of adherence to applicable financial accountability standards, demonstrated by an audited financial statement by a Certified Public Accountant for the most recent fiscal year. For a Nonprofit Organizations that does not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the Application and that certifies that the procedures used by the organization conform to the requirements in 10 TAC §1.402 (relating to Cost Principles and Administrative Requirements), and that the organization has adopted generally accepted accounting procedures that conform to Governmental Accounting Standards Board (GASB) or the Financial Accounting Standards Board (FASB), as applicable.



(5) The Applicant must submit a resolution from the Applicant's direct governing body that authorizes the submission of the Application and is signed and dated within the six months preceding the date of application submission. The resolution must include the name and title of the individual authorized to execute an RSP Agreement.

6) The Applicant's history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter A, §1.302 and §1.303, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and Executive Director Review, respectively). Access to funds may be subject to terms and conditions.

(7) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant's AYBR Program activities. The Applicant must provide a summary of the consultant or other organization's experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

#### **§26.24 Amy Young Barrier Removal Program Reservation System Requirements**

(a) Terms of Agreement. The term of an RSP Agreement will not exceed the lesser of 36 months, or the term limitation defined in the NOFA. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limit on Number of Reservations. The limitation on the number of Reservations will be established in the NOFA.

(c) Administrator must remain in good standing with the Department and the state of Texas. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

(d) Reservations will be processed in the order submitted on the Reservation System. Submission of a Reservation consisting of support documentation on behalf of a Household does not guarantee funding.

(e) Reservations may be submitted in stages, and shall be processed through each stage as outlined in the Program Manual. All stages must be completed on or before the expiration of the Household Assistance Contract.

(f) Administrator must submit a substantially complete request for each stage of the Reservation as outlined in the Program Manual. Administrators must upload all required information and verification documentation in the Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests shall not constitute a Reservation of Funds.

(g) If a Household is determined to be eligible for assistance from the Department, the Department will issue a Household Assistance Contract reflecting the maximum award amount permitted under the NOFA in Project Costs and an Administrative Fee equal to 10% of the combined Hard and Soft costs in the Contract System on behalf of the Household, funding permitting. The term of the Household Assistance Contract may not exceed 12 months unless amended in accordance with this Subchapter.

(h) Amendments to Household Assistance Contracts may be considered by the Department provided the approval does not conflict with the state regulations governing use of these funds, or impact obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that

(A) extends the term of a Household Assistance by not more than three months,

(B) extends the draw period by not more than three months after the expiration of the Household Assistance Contract; or

(C) increases Project funds within the limitations set forth in this Chapter.

(i) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Assistance contract by more than 12 months.

#### **§26.25 Amy Young Barrier Removal Program Household Eligibility Requirements**

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household must be qualified as Low-Income.

(c) The assisted Household's liquid assets shall not exceed \$25,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds, or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the net cash value calculated utilizing the appraisal district's market value for any real property that is not a principal residence. Funds in tax deferred accounts for retirement or education savings, including but not limited to Individual Retirement Accounts, 401(k)s, 529 plans, and whole life insurance policies are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

#### **§26.26 Amy Young Barrier Removal Program Property Eligibility Requirements**

(a) Owner-occupied homes are eligible for Program assistance. In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department. If the property is family-owned and the owner of record is deceased or not a Household member, the Department may deem the property renter-occupied unless satisfactory documentation is provided to the Department that confirms otherwise.

(b) Certain rental units are eligible for Program assistance and must meet the following requirements:

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the Program intake application and household income certification.

(2) The owner of record for the property shall provide a statement allowing accessibility modifications to be made to the property.

(c) The following rental properties are ineligible for Program assistance:

(1) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(2) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973);

(3) Rental units that have substandard and unsafe conditions identified in the initial inspection. Program funds may not be used to correct substandard or unsafe conditions in rental units, but may be used for accessibility modifications only after the substandard and unsafe conditions have been corrected at the property owner's expense; or

(4) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

#### **§26.27 Amy Young Barrier Removal Program Construction Requirements**

(a) Inspections.

(1) Initial inspection arranged by the Administrator is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

(2) Final inspection arranged by the Administrator is required and must verify, assess, and document that all construction activities have been repaired, replaced, and/or installed in a professional manner consistent with all applicable building codes and Program requirements, and as required in the Work Write-Up as described in subsection (e) of this section.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995. The Department may allow Manufactured Housing Units older than January 1, 1995, to receive only exterior accessibility modifications (i.e., ramps, handrails, concrete flatwork) as long as the Administrator can verify that the unit itself will be free of hazardous and unsafe conditions.

(c) Construction standards.

(1) Administrator must follow all applicable sections of local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.

(2) Accessibility modifications shall be made with consideration to 2010 American Disability Act (ADA) Standards, but may vary from the ADA Standards in order to meet specific accessibility needs of the household as requested and agreed to by the assisted household.

(3) Administrators must adhere to Chapter 21 of this title, (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities).

(4) Administrators and subcontractors must honor a twelve-month warranty on all completed items in their scope of work.

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the Single-Family Housing as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty, damaged or absent heating and cooling systems; faulty or damaged plumbing systems, including sanitary sewer systems; faulty, damaged or absent smoke, fire and carbon monoxide detection/alarm systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) If the work write-up addresses any of the following line items, the percentage of Project Hard Costs devoted to eliminating substandard, unsafe conditions may only exceed 25% by the amount of the following line item's cost: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire, and carbon monoxide detection/alarm systems. The combination of these line items plus the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the Single-Family Housing Unit must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrator selects for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. An Administrator seeking a change order must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

#### **§26.28 Amy Young Barrier Removal Program Project Completion Requirements**

(a) The Administrator must complete all construction activities prior to the expiration of the Household Assistance Contract and the Administrator must submit the Project and Administrative Draw Request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department not more than 60 calendar days after expiration of the Household Assistance Contract.

(b) The Administrator must submit evidence with the final Draw that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and

of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(c) The Administrator must provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(d) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative Draw Request per Department instructions. Interim Draws may not be permitted. The Department reserves the right to delay Draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household and the Administrator and its subcontractors.

## Public comment

Phyllis McIntyre <phyllismcintyre90@yahoo.com>

Wed 4/17/2024 10:57 AM

To: Erin Mikulenska <Erin.Mikulenska@tdhca.texas.gov>

You don't often get email from phyllismcintyre90@yahoo.com. [Learn why this is important](#)

Yes I'm writing because I have been looking for help for home repairs here in Guadalupe County and can't seem to find any. I think the programs should be open to individuals to apply for. Cause in certain county's they don't apply for them and them people are left out in the cold. Also tge information provided on the website doesn't give enough information when you try to find help for the Help for Texans page. Then when you call them half of them say they don't participate. So something else needs to be done to help the residents.

[Yahoo Mail: Search, Organize, Conquer](#)



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 623

**Agenda Date:** 6/13/2024

**Agenda #:** 12.

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Report on TDHCA One-Time or Temporary Allocations - Pandemic Response and Other Initiatives

**BACKGROUND**



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**TDHCA One-Time or Temporary Allocations – Pandemic Response and Other Initiatives  
Report for June 13, 2024**

This report reflects one-time or temporary federally awarded allocations of funds, in addition to those funds focused specifically on the programs TDHCA has targeted to assist with Texas’ response to COVID-19. Programs reflected include those that were reprogramming of existing funds and those awarded through the administration of federal bills. All completed programs are reported at the end of the report.

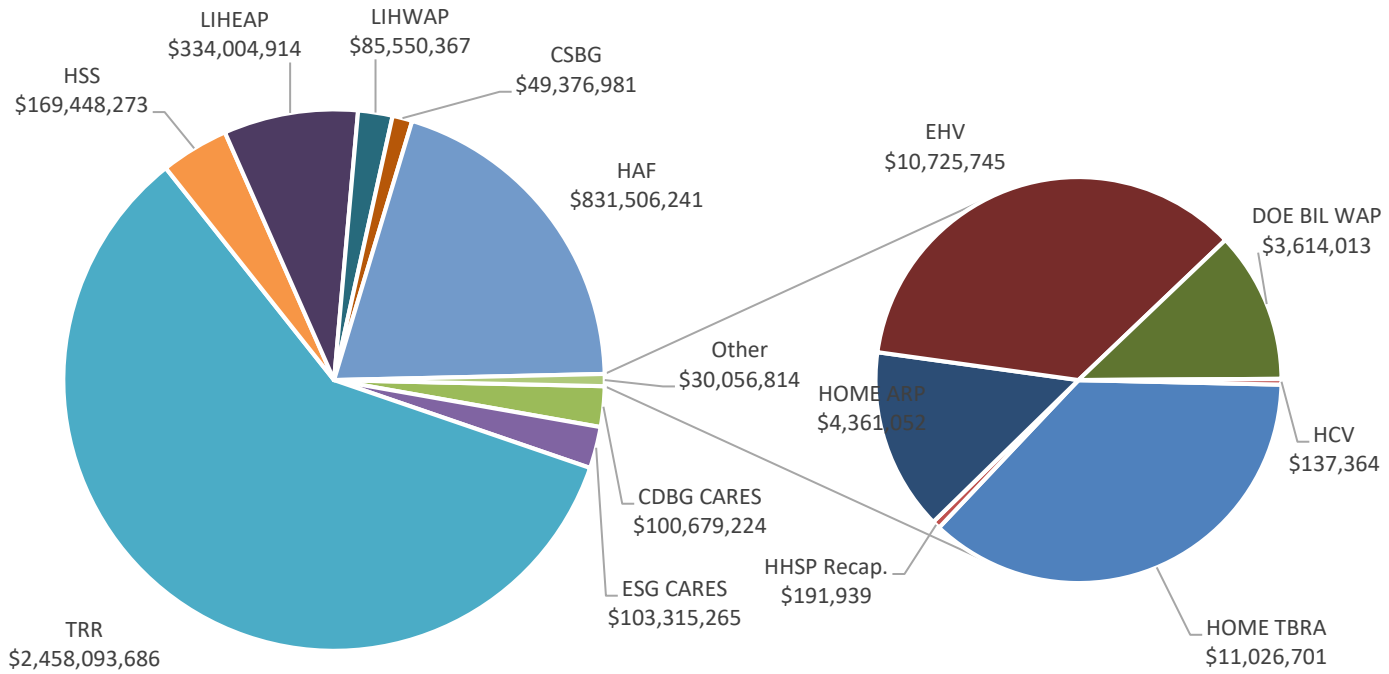
**PERFORMANCE TO DATE ACROSS ALL OPEN AND CLOSED PROGRAMS**

<b>Cumulative Performance to Date Across All Programs Reported</b>			
<b>Total of All Funding</b>	<b>Total Funds Obligated<sup>1,2</sup></b>	<b>Total Funds Spent<sup>1</sup></b>	<b>Total Served to Date<sup>3,4,5,6</sup></b>
<b>\$4,629,321,498</b>	<b>\$4,395,820,437 (94.96%)</b>	<b>\$4,162,031,765 (90%)</b>	<b>504,591 households 4,738,412 persons 280 units committed</b>

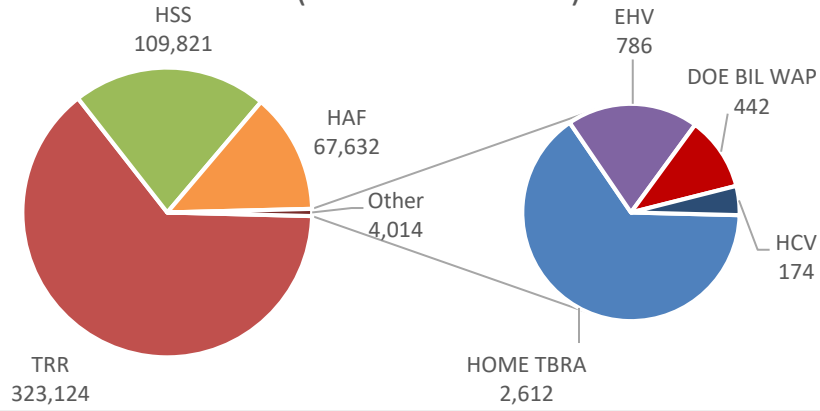
*1. May include administrative funds obligated and expended. 2. For TRR and HAF, funds are only considered 'Obligated' when they are expended. 3. Based on reporting requirements, some programs report households and some report persons. Persons reported above do not comprise the members of the households reported, but are separate persons assisted. 4. For comparability purposes, if the average Texas household size of 2.83 is applied to the number of households served and converted to an estimate of individuals, that estimate would be 1,427,993; when combined with the 4,738,412 of individuals reported that would result in an estimated 6,166,405 individuals assisted with these programs. 5. An additional 687,553 meals have been served through the HSS Program that are not otherwise reflected in either the count of households or persons served. 6. Units committed are from either HOME-ARP or ERA Multifamily development funds.*



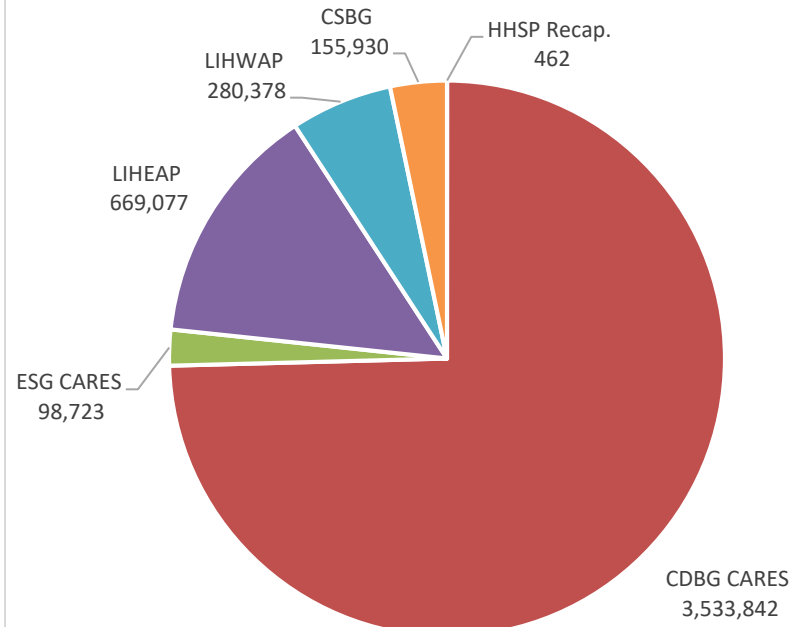
### TDHCA COVID-19 Programs Funds Expended (inc. TRR and HAF)



### TDHCA COVID-19 Programs: Households Served (inc. TRR and HAF)



### TDHCA COVID-19 Programs: Persons Served



## OPEN PROGRAMS

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>CDBG CARES – Phases I, II and III</b>	<p>Board approved general use of the funds for CDBG Phase I in April 2020 and Plan Amendments in October 2020, January 2021, and July 2021 (all approved). HUD agreement executed November 2020.</p> <p>Funds must be expended by November 3, 2026</p> <p>90-day closeout period</p>	<p>Completed Activities: rental assistance in 42 cities/counties; mortgage payment assistance in all 254 counties; legal services for persons with disabilities; assistance for providers of persons with disabilities; and food expenses. Pending remaining activity: community resiliency program (CRP). <i>See Also Attached Report.</i></p> <p><i>Geography:</i> Varies by activity type. <i>Income Eligibility:</i> For persons at or below 80% of AMI or Area Benefit for locations where at least 51% of residents are at or below 80% of AMI</p>	<p><i>See Attached Report.</i></p> <p>In April 2023 HUD removed the requirement that 80% of funds must be expended by November 3, 2023. Program is on target to expend all funds by the November 2026 deadline.</p>	<p>8 positions filled.</p> <p>All FTEs are Art. IX</p> <p>Up to 7% admin and TA budget (\$9,484,238)</p>	<p>3,533,842 Persons**</p>	<p>1<sup>st</sup> allocation: \$40,000,886 2<sup>nd</sup> Allocation: \$63,546,200 3<sup>rd</sup> Allocation: \$38,299,172</p> <p>Total: \$141,846,258</p> <p>\$141,829,845* 99.99%</p> <p>\$100,679,224* 70.98%</p>	<p>* Figure includes TDHCA admin funds. ** CRP activities are for area benefit and therefore individual households assisted is not required to be captured.</p>
<b>ESG CARES – Phase 1 &amp; 2</b>	<ul style="list-style-type: none"> <li>ESG1 awards made July 23, 2020 and ESG2 awards made January 14, 2021</li> <li>Deadline to expend 80% by March 31, 2022 was removed by HUD; new benchmark for June 2022 has been met</li> <li>Met September 30, 2023 ESG2 expenditure deadline</li> <li>Expend reallocated ESG3 funds received March 2023 (\$5,854,004) by June 30, 2024</li> </ul>	<ul style="list-style-type: none"> <li>ESG1: Existing subs were offered funds. ESG Coordinators decided via local process for their CoC; in three areas without ESG Coordinators awards offered to CoC awardees (also used for Legal/ HMIS)</li> <li>ESG2: Funding provided for Homelessness Prevention, Rapid Rehousing, HMIS, Street Outreach &amp; Emergency Shelter</li> <li><i>Geography:</i> Locations of all funded grantees</li> <li><i>Income Eligibility:</i> 50% AMI for homeless prevention</li> </ul>	<ul style="list-style-type: none"> <li>160 contracts executed: 13 active, 147 closed</li> <li>Deobligated ESG3 funds reallocated to Subrecipients with a planned strategy for expenditure prior to the June 30, 2024 deadline</li> </ul>	<p>1 Art. IX FTE remaining</p> <p>Up to 5 % admin(\$5,187,681)</p>	<p>98,723 persons</p>	<p>\$103,646,620</p> <p>\$103,646,620.42* 100%</p> <p>\$103,315,265.53 * 99.68%</p>	<p>*Figure includes TDHCA admin funds.</p>

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<p align="center"><b>Texas Rent Relief (TRR) Program (Funded with ERA1 and ERA2)</b></p>	<p>The program dedicates funds through Treasury specifically for rental and utility assistance.</p> <p>The first allocation (Consolidated Appropriations Act) is ERA1. The second allocation (American Rescue Plan Act, Section 3201) is ERA2.</p> <p>ERA1: All direct assistance was obligated by program deadline of December 29, 2022. Final report was submitted to Treasury in April, 2023.</p> <p>ERA2: Required to obligate all funds by September 30, 2025.</p>	<p>Program provided up to 18 months of rental and utility assistance including arrears. Households could reapply every 3 months. Established a 10% set-aside for eviction diversion; households facing eviction were prioritized for processing.</p> <p>A portion of ERA funds are for Housing Stability Services (see following row). \$11.5M of ERA2 funds were designated by the Board for other affordable rental housing which is being administered by TDHCA's Multifamily Direct Loans (MFDL) program.</p> <p>Treasury has provided periodic updated FAQs as informal guidance.</p> <p><u>Treasury Reallocation:</u> TRR received \$299.1M in reallocated funds from the Treasury and local/county programs in Texas.</p> <p><u>Geography:</u> Statewide. <u>Income Eligibility:</u> For households at or &lt;80% AMI.</p>	<p>Program closing announcement made July 7, 2023. Final payments to approved households made as of October 6, 2023.</p> <p>Now that all direct assistance funds have been distributed, TRR staff will continue working on reconciliation, audit, reporting, and closeout.</p> <p>The Board has approved the first two ERA awards for affordable housing, which are administered by the MFDL program. \$1.55M has been obligated for Freedom's Path at Waco, and an additional \$4.3M is in the process of being contracted and closed for Inn Town Lofts in Lubbock.</p>	<p>TRR Positions filled include Director, 8 staff positions, and 1 part-time temporary staff position. Staffing also includes a separate team for the Housing Stability Services activity (see below).</p> <p>All FTES are Art. IX</p> <p><i>Admin Allowed (All ERA):</i> 10% ERA1 15% ERA2 \$330,898,385</p>	<p align="center">323,124 households served*</p>	<p><u>Total ERA Budget:</u> \$2,689,725,564</p> <p><u>TRR Direct Assistance Expended*:</u> \$2,221,318,459</p> <p><u>TRR Admin:</u> Total Available: \$243,561,484 Obligated: \$243,561,484 100% Expended**: \$236,775,227 97.21%</p> <p><u>Other ERA:</u> HSS: \$213,345,621 (see row below) MFDL: \$11,500,000</p>	<p>* Per internal report 05/14/24. Subject to some payment adjustments as staff continues to work on reconciliation and closeout.</p> <p>** Per internal report as of 05/14/24. Expended admin funds are a subset of obligated admin funds.</p>

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>Housing Stability Services (HSS) Program (funded by ERA1 and 2)</b>	<p>These funds are a subset of the ERA funds in the row above. A portion of the funds from ERA1 and ERA2 are authorized for housing stability.</p> <p>ERA1: All program funds were expended by the December 29, 2022, deadline and the final report was submitted to Treasury on April 27, 2023.</p> <p>ERA2: Must expend funds by September 30, 2025</p>	<p>Program provides funds to local communities or nonprofits for them to provide eligible Texans with a variety of services that help household maintain or obtain stable housing including legal services, outreach services, shelter services, community services, and services offered at permanent supportive housing properties.</p> <p><i>Geography:</i> Available where Subrecipients are located. <i>Income Eligibility:</i> For households at or below 80% AMI.</p> <p>Any ERA1 and ERA2 funds reallocated by Treasury (as noted by TRR above) and allocated to HSS will be reflected in this row.</p>	<p><u>ERA1:</u> 28 Subrecipient contracts completed and closed.</p> <p><u>ERA2:</u> 47 contracts executed with Subrecipients (6 of the 47 contracts are closed as of 3/31/24); MOU with TVC executed for SFY 2023-24.</p> <p>18 Subrecipients were awarded both ERA1 and ERA2 contracts.</p> <p>Program is on target to expend all funds by the deadline.</p>	<p>3 Art. IX FTEs plus support of 2 staff at TVC</p> <p>ERA1: \$798,506</p> <p>ERA2: \$2,873,446</p>	<p><u>ERA 1</u> 583,247 meals served</p> <p><u>ERA 1</u> 43,051 households</p> <p><u>ERA 2</u> 104,306 meals served</p> <p><u>ERA 2</u> 66,770 households</p>	<p>Total* \$213,345,621</p> <p><u>HSS ERA1</u> Obligated and Expended \$63,295,298 <b>100%</b></p> <p><u>HSS ERA2</u> Obligated: \$150,050,332 <b>100%</b></p> <p>Expended*: \$106,152,975 70.74%</p>	<p>*figure includes TDHCA Admin funds</p>

**AMERICAN RESCUE PLAN (ARPA) – Public Law 117-2**

<b>HOME ARP Program</b>	<p>Section 3205 of the American Rescue Plan. Dedicates funds through HUD allowing flexible uses that can include typical HOME activities as well as homeless services and non-congregate shelter</p> <p>Must expend funds by September 30, 2030</p>	<p>Funds are programmed for development of rental housing, development of non-congregate shelter, and operating costs/capacity building for eligible nonprofit organizations.</p> <p>The previous waiver from the Governor relating to limits on using the funds in rural areas allowed the funds to assist homeless persons in urban and rural areas.</p> <p><i>Geography:</i> Statewide for rental, and focused on high needs areas for non-congregate shelter. <i>Households Eligibility:</i> (See Other Notes)</p>	<p>Awarded \$57.6 M in rental development. Awarded \$3.2M in nonprofit capacity building/operating. Non-congregate shelter Invitation to Apply pending for approx. \$56M.</p> <p>Funds obligated reflect executed contracts.</p>	<p>6 Art. IX FTEs</p> <p>10% for admin/ planning</p> <p>\$13,296,915</p>	<p>280 rental units obligated</p>	<p>*\$119,672,232</p> <p>\$46,175,816 39%</p> <p>\$4,361,052 3.64%</p>	<p>*Excludes admin.</p> <p>Eligibility: homeless, at risk of homelessness, those fleeing Domestic Violence, populations with housing instability</p>
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Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>Homeowner Assistance Fund (HAF)</b>	<p>Passed as section 3206 of the American Rescue Plan, dedicates funds through Treasury specifically for preventing mortgage delinquencies, defaults, foreclosures, loss of utilities and displacement.</p> <p>Must expend funds by September 30, 2026</p>	<p>The HAF Program avoids displacement through giving assistance payments up to \$65,000 per qualified household for: 1) Mortgage payments and mortgage reinstatement assistance including up to three months of full monthly payment assistance to qualified homeowners; 2) payments to resolve delinquent property taxes, including past due property taxes, insurance premiums, condo and homeowner association fees, and cooperative maintenance or common charges; and 3) up to \$10,000 in utility payment assistance (within the \$65,000 cap).</p> <p>Treasury approved the HAF Plan on January 28, 2022. Subsequent plan and budget amendments have been submitted and approval received.</p> <p><i>Geography:</i> Statewide <i>Income Eligibility:</i> Household income at or below greater of 100% AMI or 100% of national median income.</p>	<p>The program became available statewide on March 2, 2022. Closure of the program to new applications occurred October 10, 2023.</p> <p>Some refunds continue to be received, therefore limited applications in the system that were approved pending any available funds are being funded as possible. HAF staff will continue working on reconciliation, audit, reporting, and closeout.</p>	<p>11 Art. IX 10.31 FTEs</p> <p>Up to 11.11% (\$93,609,688) for admin</p> <p>Reduction in some program staff began in December 2023.</p> <p>HAF Subrecipient staff merged with HAF Team in April 2024.</p>	<p>58,500 hholds</p>	<p>Total HAF Budget: \$842,214,006</p> <p><u>HAF Direct Assistance Expended:</u> \$739,089,977* 99.97%</p> <p><u>HAF Admin:</u> Total Available: \$86,939,000 Expended: \$76,641,475 88.16%</p> <p><u>Other HAF Expended:</u> Subrecipients: \$15,774,789 (see row below)</p>	<p>*Total Available for Direct Assistance is \$739,277,577</p> <p>\$9.9B nationally.</p>
<b>HAF Subrecipient Activities</b>	<p>Program was originally funded for \$30.5 million. \$14.5 million has been returned to be used for HAF assistance to households, leaving current funding at \$15.9 million.</p> <p>Must expend funds by September 30, 2026.</p>	<p>Program provides funds to local communities or nonprofits for them to provide one or more of three eligible types of assistance: 1) serve as an Intake Center to assist households in applying for HAF funds, 2) provide Housing Counseling Services, and/or 3) provide Legal Services related to Homeownership.</p> <p><i>Geography:</i> Available where Subrecipients are located. <i>Income Eligibility:</i> Household income at or below greater of 100% AMI or 100% of national median income.</p>	<p>Final contract close out will be complete by June 30, 2024.</p>	<p>With the departure of the HAF Subrecipient Director in April 2024, the remaining HAF Subrecipient staff merged with the HAF Team.</p>	<p><u>Unduplicated Hholds Served:</u> 9,132</p> <p><u>Outreach Events</u> 1,676</p>	<p>Total \$15,997,429</p> <p>Obligated: 15,932,433 99.59%</p> <p>Expended: \$15,774,789 98.61%</p>	<p>Served: <u>Intake</u> 4,479 <u>Legal Services</u> 1,418 <u>Housing Counsel</u> 3,235 Forecl. Prevent* 242 (intake) 164 (legal and housing) *potential overlap</p>

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<p align="center"><b>Emergency Housing Vouchers (EHV)</b></p>	<p>Passed as Section 3202 of the American Rescue Plan, dedicates vouchers through HUD for emergency rental assistance.</p> <p>EHV appropriation will be available for obligation until September 30, 2030, and will be cancelled September 30, 2035. This indicates that any funds not spent by this time will no longer be available and will be returned to Treasury.</p>	<p>TDHCA was allocated 798 vouchers by HUD. The award includes funds for the vouchers (\$7,933,560) plus funds to provide services (\$2,793,000) and funds for admin (\$763,788). Vouchers are for households who are: (1) homeless, (2) at risk of homelessness, (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or (4) recently homeless. TDHCA was able to maximize the use of waivers, assisting households that normally would not be offered a voucher.</p> <p>HUD awarded supplemental Housing Assistance Payment (HAP) funds. Due to the surge in lease-ups and an increase in cost-per-unit, there has been an escalation in average subsidy. An amendment or supplement notice from HUD is anticipated.</p> <p><i>Geography:</i> Balance of State Continuum of Care counties underserved by an EHV-awarded PHA, Heart of Texas Homeless Coalition service area and Tarrant County Homeless Coalition (TCHC) service areas.</p> <p><i>Income Eligibility:</i> Not to exceed 50% AMI</p>	<p>CoC partner contracts are in final stages.</p> <p>Vouchers Issued: 953 Vouchers on the Street: 28 Housed: 786 Vouchers Declined after issuance: 89</p> <p>Note that with rental assistance programs, funds expend fairly slowly as rent for the eligible household is paid monthly.</p>	<p>Program being administered by Section 8 area.</p> <p>4 new Art. IX positions created using EHV/CSBG administrative funds. One position is currently vacant.</p>	<p>786 of 798 Housed 98.49%</p>	<p>Total \$11,490,348</p> <p>Rent Payments Avail: \$7,933,560</p> <p>HAP Obligated: \$9,795,616 123.37%</p> <p>HAP Expended: \$8,663,481 123.63%</p> <p>Service Contracts Avail: \$2,793,000</p> <p>Obligated: \$2,793,000 100%</p> <p>Expended: \$2,062,264.94 73.84%</p>	<p>\$5 billion allocated nationally.</p> <p>\$3,500 per unit service fee included, separate from rental assistance payment. The fee total is not tied to each voucher, but is a combined total of funds for services.</p>

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>LIHEAP IJA*</b>	<p>Passed as Section 501 of the Infrastructure Investment and Jobs Act (PL 117-58), dedicates funds through HHS for home energy costs.</p> <p>Must expend funds by: September 30, 2026</p>	<p>Funds nationally to be released in annual increments of \$100 million each year for the next 5 years. These funds will be made available to each state as part of its annual LIHEAP allocation; the Department therefore will handle these as part of our annual allocation.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 150% of poverty</p>	<p>On March 1, 2022, flexibilities were granted. The statewide provider has been the recipient of these funds to date. That provider closed its portal on September 15, 2023. Note that the funds will only become available annually, therefore expenditure will be reflected slowly over 5 Years.</p> <p>To date, three annual allocations have been received in the amounts of \$7,532,384 and \$9,627,413 and \$8,394,348</p>	FTEs noted under CARES LIHEAP will be utilized for both allocations.	20,461 persons	<p><u>Estimated 5-Year Total*</u>: \$37,661,920</p> <p><u>Received by TDHCA:</u> \$25,554,145</p> <p><u>Obligated:</u> \$25,554,145 Of Rcvd: 100% Of 5-Year: 68%</p> <p><u>Expended:</u> \$16,065,707 Of Rcvd: 62.87% Of 5-Year: 42.66%</p>	\$500 million nationally
<b>BIL WAP</b> (Bipartisan Infrastructure Law Weatherization Assistance Program)	<p>Passed as Section 40551 of the Infrastructure Investment and Jobs Act (Public Law 117-58), dedicates funds through Department of Energy for home weatherization.</p> <p>DOE strongly recommends activities be completed within 5 years of receipt of the funds.</p>	<p>Single family and multifamily weatherization of units. Additional restrictions added to the program through the bill beyond typical DOE WAP include Davis-Bacon, Buy American, NEPA, etc. In addition, DOE has applied several Administration priorities, including a focus on workforce development and Diversity in delivering funds.</p> <p>Because this award amount is more than 20 times the typical annual DOE award, Board granted authority in December 2021 to procure a statewide DOE WAP vendor to augment the work of the network.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 200% of poverty</p>	<p>In September 2022 DOE directed TDHCA to proceed with release of its 5-Year Plan for public comment. Staff had obtained Board authority to do so in May 2022. The Plan has now been approved.</p> <p>Statewide subrecipient Request for Applications has been released. Awards are being made at this June 2024 Board meeting. Network subrecipient contracts for the first half of funds are now executed.</p>	4 Current FTE's \$11,349,839 6.55% Admin	442 units	<p>\$173,162,598*</p> <p><u>Obligated:</u> \$30,183,967 17.43%</p> <p><u>Expended:</u> \$ 3,614,013 2.09%</p>	<p>*\$142,944,233 for Program and \$30,218,365 for Training and TA</p> <p>15% of grant made available initially As of March 23, 2023 50% of the grant is available</p>



Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
<b>LIHEAP (23CR) Supplemental Funding</b>	<p>Passed as an additional contribution to the 2023 LIHEAP allocation through the <i>Continuing Appropriations Act (CR), 2023</i> (Public Law 117-180), dedicates funds through HHS for home energy costs.</p> <p>Must expend funds by: September 30, 2024</p>	<p>Funds nationally of an additional \$1 billion added to the annual 2023 allocation.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 150% of poverty</p>	<p>On March 1, 2022, flexibilities were granted. A statewide provider to provide LIHEAP was selected in May 2022 and made funds available in July 2022. That statewide provider has been used for these funds as well. That provider closed its portal on September 15, 2023.</p>	<p>FTEs noted under CARES LIHEAP, and regular non-temporary LIHEAP, will be utilized.</p>	<p>193,639 persons</p>	<p>Total \$84,732,886</p> <p>\$82,190,900 97%</p> <p>\$77,451,844 91.41%</p>	<p>\$1 billion nationally</p>
<b>LIHEAP (23CR) Supplemental Disaster Funding</b>	<p>Passed as an additional contribution to the 2023 LIHEAP allocation through the <i>Continuing Appropriations Act (CR), 2023</i> (Public Law 117-180), dedicates funds through HHS for home energy costs.</p> <p>Must expend funds by: September 30, 2024</p>	<p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 150% of poverty</p>	<p>On March 1, 2022, flexibilities were granted. A statewide provider to provide LIHEAP was selected in May 2022 and made funds available in July 2022. That statewide provider has been used for these funds as well. That provider closed its portal on September 15, 2023. Now seeking several subrecipients to expend the funds remaining - refunds and unused funds.</p>	<p>FTEs noted under CARES LIHEAP, and regular non-temporary LIHEAP, will be utilized.</p>	<p>79,701 persons</p>	<p>Total \$55,322,964</p> <p>55,322,964 100%</p> <p>\$44,530,529 80.96%</p>	<p>\$1 billion nationally</p>

**CLOSED /COMPLETED PROGRAMS**

<b>Program</b>	<b>Timelines / Contract Periods</b>	<b>Activities Performed</b>	<b>Notes on Program Completion</b>	<b>Staffing Admin Funds</b>	<b>Total Served</b>	<b>Total Program Funding Obligated (%) Drawn (%)</b>
<b>EARLY REPROGRAMMING OF EXISTING TDHCA PROGRAM FUNDS</b>						
<b>HOME Program Tenant Based Rental Assistance (TBRA) for COVID-19 DR</b>	NA: Reservation Agreements	Program provided 3-6 months of rental assistance through existing or new HOME subrecipients. All necessary waivers were authorized by the OOG and HUD.  <i>Geography:</i> Was available where subrecipients applied. 23 administrators covered 120 counties <i>Income Eligibility:</i> Households at or below 80% AMFI	<b>COMPLETED</b>  100% expended  (* Total Program Funding was first authorized up to \$11,290,076. Ultimately 97.7% of that (\$11,026,701) was obligated and utilized.)	No added TDHCA staffing  No added admin funds	2,612 households	\$11,026,701*  \$11,026,701 <b>100%</b>  \$11,026,701 <b>100%</b>
<b>Reprogram 2019 and 2020 CSBG Discretionary and Admin. Funds</b>	<ul style="list-style-type: none"> <li>Board approval March 2020</li> <li>Recipients contracts were effective March 26, 2020</li> <li>Expenditure Deadline was August 31, 2020</li> </ul>	Used the existing network of 38 Community Action Agencies to provide direct client assistance to low income households economically impacted by COVID-19.  <i>Geography:</i> Available statewide (excluding CWCCP and CSI) <i>Income Eligibility:</i> 200% poverty (normally is 125%)	<b>COMPLETED</b>  100% expended	No added TDHCA staffing  No added admin funds	9,468 persons	\$1,434,352  1,434,352 <b>100%</b>  \$1,434,352 <b>100%</b>
<b>Recaptured 2018/2019 HHSP</b>	<ul style="list-style-type: none"> <li>Board approval March 2020</li> <li>2018 had to be spent by August 31, 2020; 2019 had to be spent by December 31, 2020</li> </ul>	Allowed the 9 subrecipients to perform HHSP eligible activities in addressing homelessness and those at risk of homelessness.  <i>Geography:</i> Available 9 largest metro areas <i>Income Eligibility:</i> Generally 30% AMFI if applicable	<b>COMPLETED</b>  100% expended	No added TDHCA staffing  No added admin funds	462 persons	\$191,939.53  \$191,939.53 <b>100%</b>  \$191,939.53 <b>100%</b>

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Drawn (%)
<b>CARES ACT FUNDS</b>						
<b>LIHEAP CARES</b>	<ul style="list-style-type: none"> <li>Board approved April 2020</li> <li>Expend deadline was Sept. 30, 2021</li> <li>45 day closeout period</li> </ul>	99% to CEAP subs for households affected by COVID-19; 1% for state admin (no weatherization).  <i>Geography:</i> Available statewide <i>Income Eligibility:</i> 150% of poverty	<b>COMPLETED</b>  (An estimated \$29,676,554 was not expended by subrecipients by the deadline. Unused funds were returned to HHS.)	1 Art. IX FTE for CEAP TA/capacity (1 Filled)  1% admin (\$892,670)	181,215 persons	\$94,023,896 \$93,483,658 99% \$63,898,418 68% <b>FINAL</b>
<b>Housing Choice Voucher Program Admin</b>	Expend deadline was Dec. 31, 2021  <ul style="list-style-type: none"> <li>1<sup>st</sup> Award: \$117,268</li> <li>2<sup>nd</sup> Award: \$140,871</li> </ul>	<ul style="list-style-type: none"> <li>Software upgrades with Housing Pro to allow more efficient remote interface</li> <li>Landlord incentive payments</li> <li>Ordered 3 tablets for inspections</li> <li>October 2020 Board approved use of funds for retention payments to existing owners to ensure their ongoing participation in the program</li> </ul>	<b>COMPLETED</b>  (\$174,439 of admin was returned to HUD. Funds were not allowed to be used for direct household assistance nor were there higher admin expenses.)	No added TDHCA staffing.	142 Land-lord renewals  17 new landlords added	\$258,139 \$83,700 32.42% \$83,700 32.42% <b>FINAL</b>
<b>Housing Choice Voucher Program MVP</b>	Had to issue vouchers by December 31, 2021.  Orig. Allocation: \$105,034*	15 additional MVP vouchers consistent with our award of MVP, which for TDHCA is for Project Access households.  Received award from HUD. Issued the 15 vouchers on May 22, 2020. All 15 were leased.	<b>COMPLETED</b>  100% of vouchers utilized  (Effective Dec. 31, 2021, the funding authority for the 15 housed families was rolled into TDHCA's regular yearly HAP authority.)	No added TDHCA staffing.  No added admin funds.	15 families	\$110,302 <u>HAP Paid*</u> \$53,664 48.65% <b>FINAL</b>

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Drawn (%)
<b>CSBG CARES</b>	<ul style="list-style-type: none"> <li>Board approved April 2020</li> <li>Must expend 90% by August 31, 2022</li> <li>45 day closeout period</li> </ul>	<p>90% went to 40 CAAs using regular CSBG formula for households affected by COVID-19; 2% (\$949,120) to Texas Homeless Network (THN); 7% for an eviction diversion pilot program; 1% for state admin.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 200% of poverty</p>	<p><b>COMPLETED</b></p> <p>(*Expenditure was not 100% because of refunds received after program close-out.)</p>	<p>1 Art. IX FTE for CSBG reporting</p> <p>1% admin (\$474,560)</p>	<p>146,462 persons</p>	<p>\$48,102,282</p> <p>\$48,102,282 <b>100%</b></p> <p>\$47,942,629 99.67% <b>FINAL*</b></p>
<b>Low-Income Household Water Assistance Program (LIHWAP1)</b>	<p>HHS approved TDHCA's LIHWAP Plan on October 22, 2021</p> <p>Must obligate and expend funds by: March 31, 2024. This is an extension from the original deadline of September 30, 2023.</p>	<p>Program provided funds to assist low-income households by providing funds to owners/operators of public water and treatment systems to reduce arrearages charged. Funds are directed through the LIHEAP network of subs and a statewide program operated that started in July 2022 by a web-based vendor called Texas Utility Help.</p> <p><i>Geography:</i> Statewide <i>Income Eligibility:</i> 150% federal poverty level</p>	<p><b>COMPLETED</b></p> <p>(*Significant refunds have been received, which made it a challenge for subrecipients to keep funds fully expended. Refunds have continued to come in after the federal program deadline.)</p>	<p>3 Art. IX FTEs</p> <p>Admin 15%</p> <p>Any FTEs will be Art. IX</p>	<p>183,687 persons</p>	<p>\$51,801,876</p> <p>\$47,557,420 91.81%</p> <p>\$47,557,420 91.81% <b>FINAL*</b></p>
<b>LIHWAP2</b>	<p>Passed as Section 2912 of the American Rescue Plan, dedicates funds through HHS for home water costs</p> <p>Must obligate and expend funds by: March 31, 2024. This is an extension from the original deadline of September 30, 2023</p>	<p>See LIHWAP1 above. This allocation of funds was directed to the statewide provider.</p> <p>Executed agreement for funds on April 22, 2021. HHS approved TDHCA's LIHWAP Plan on October 22, 2021.</p> <p><i>Geography:</i> Statewide <i>Income Eligibility:</i> TBD</p>	<p><b>COMPLETED</b></p> <p>(*Significant refunds have been received, which made it a challenge for the vendor to keep funds fully expended. Refunds have continued to come in after the federal program deadline.)</p>	<p>No additional FTEs other than those noted in LIHWAP1.</p> <p>Admin: currently 14.43%</p>	<p>96,691 Persons</p>	<p>\$40,597,082</p> <p>\$40,597,082 100%</p> <p>\$37,992,947 93.41% <b>FINAL*</b></p>

Program	Timelines / Contract Periods	Planned Activities	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Drawn (%)
<b>AMERICAN RESCUE PLAN (ARPA) – Public Law 117-2</b>						
<b>LIHEAP ARP</b>	<p>Passed as Section 2911 of the American Rescue Plan, dedicates funds through HHS for home energy costs.</p> <p>Must expend funds by: September 30, 2023</p>	<p>99% of funds were programmed in April 2021 to CEAP subs using a modified formula; 1% for state admin. A statewide provider to provide CEAP ARP was selected in May 2022 and made funds available in July 2022; that provider closed its portal on September 15, 2023.</p> <p><i>Geography:</i> Available statewide <i>Income Eligibility:</i> 150% of federal poverty level</p>	<p style="text-align: center;"><b>COMPLETED</b></p> <p>(While all funds were initially expended, refunds received by the program after close out were returned to HHS.)</p>	<p>FTEs noted under CARES LIHEAP were utilized for both allocations</p> <p>.13% admin \$181,532</p>	<p>194,061 persons</p>	<p>\$134,407,308</p> <p>\$134,407,308 <b>100%</b></p> <p>\$132,058,416 98.25% <b>FINAL*</b></p>

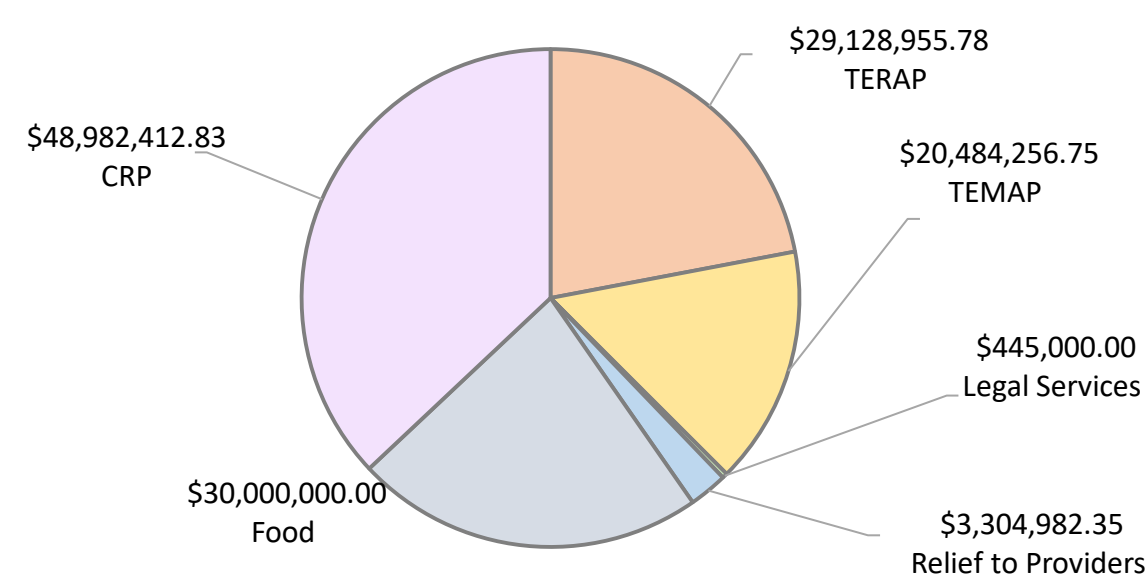


# Texas Department of Housing and Community Affairs

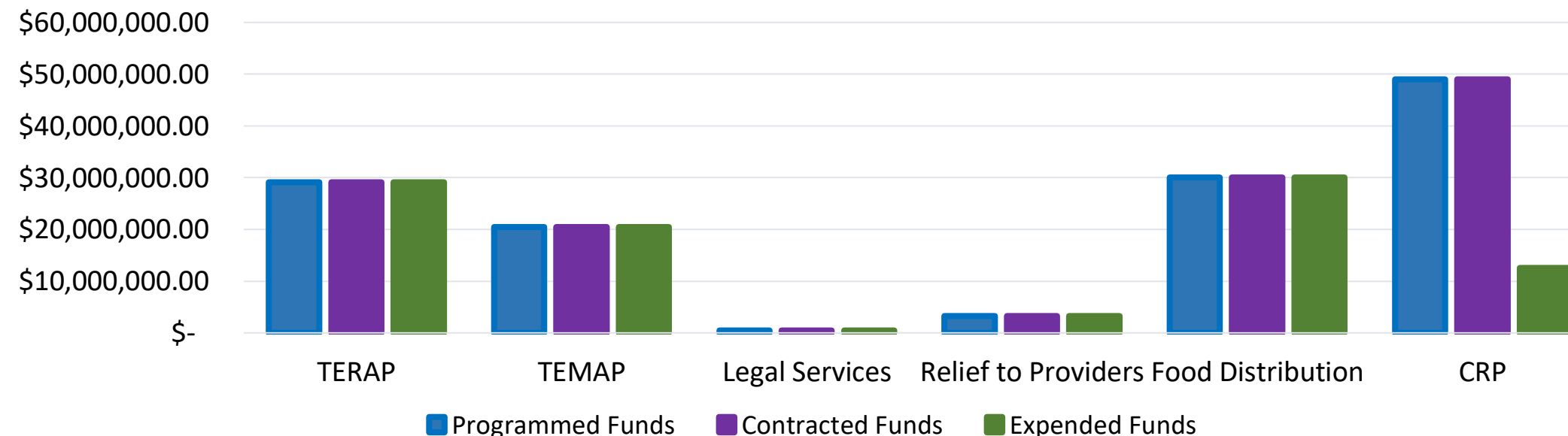
## CDBG CARES (Coronavirus Aid, Relief, and Economic Security) Act Programs

Texas Emergency Rental Assistance Program (TERAP)	Texas Emergency Mortgage Assistance Program (TEMAP)	Legal Services to Persons with Disabilities	Relief to Service Providers for Persons with Disabilities	Food Distribution	Community Resiliency Program
<b>COMPLETED</b> Rental assistance (up to six months, including arrears) to income-eligible households impacted by COVID-19 to help provide housing stability during the pandemic. Funds can also be used for eviction diversion, which provides rental assistance to tenants who have been sued for eviction. TERAP was initially funded for \$33,981,073.89, however small amounts of funds have been unused or deobligated*.	<b>COMPLETED</b> Mortgage assistance (up to six months, including arrears) to income-eligible homeowners who have been economically impacted by COVID-19 to help provide housing stability during the pandemic.	<b>COMPLETED</b> Legal services assistance for persons with disabilities to obtain or retain housing as a result of COVID-19. Legal services include legal advice and legal representation by licensed attorneys in good standing with the State Bar of Texas.	<b>COMPLETED</b> Assistance to help providers continue serving residential persons with disabilities during the pandemic by reimbursing for allowable expenses undertaken to prevent, prepare for, or respond to COVID-19. Assistance was initially programmed for \$5,000,000, but \$1,695,017.65 was unused and deobligated by the administrator*.	<b>COMPLETED</b> Assistance to eligible food bank providers that have been economically impacted by COVID-19. Funds will be utilized to reimburse food banks for bulk food purchases to be distributed statewide.	Assistance to low- and moderate-income persons, and rural and small metro communities, to create, expand or enhance public facilities that provide medical care, social services, and/or emergency housing to prevent the transmission of COVID-19 and allow for adequate social distancing or remote access.
<b>Start Date:</b> January 15, 2021 <b>Persons Assisted:</b> 16,606	<b>Start Date:</b> June 15, 2021 <b>Persons Assisted to Date:</b> 11,777	<b>Start Date:</b> April 1, 2021 <b>Persons Assisted:</b> 750	<b>Start Date:</b> April 15, 2021 <b>Persons Assisted:</b> 3,592 <b>Providers Assisted:</b> 50	<b>Start Date:</b> October 1, 2021 <b>Persons Assisted:</b> 3,501,117	<b>Start Date:</b> May 2022
<b>Program Administrators:</b> 42 entitlement city and county governments throughout Texas	<b>Program Administrators:</b> 48 cities, counties and other local and regional service providers	<b>Program Administrator:</b> Disability Rights Texas	<b>Program Administrator:</b> My Health My Resources of Tarrant County	<b>Program Administrator:</b> Feeding Texas, a network of 21 member food banks	<b>Program Administrators:</b> 18 Non-Entitlement Communities throughout Texas
<b>Service Area:</b> 42 entitlement cities and counties	<b>Service area:</b> Statewide - All 254 counties in Texas	<b>Service area:</b> Statewide - All 254 counties in Texas	<b>Service area:</b> Statewide - All 254 counties in Texas	<b>Service area:</b> Statewide - All 254 counties in Texas	<b>Service Area:</b> 18 Non-Entitlement communities in Texas
<b>Programmed Funds:</b> \$29,128,955.78	<b>Programmed Funds:</b> \$20,484,256.75	<b>Programmed Funds:</b> \$445,000.00	<b>Programmed Funds:</b> \$3,304,982.35	<b>Programmed Funds:</b> \$30,000,000.00	<b>Programmed Funds:</b> \$48,982,412.83
<b>Contracted Funds:</b> \$29,128,955.78	<b>Contracted Funds:</b> \$20,484,256.75	<b>Contracted Funds:</b> \$445,000.00	<b>Contracted Funds:</b> \$3,304,982.35	<b>Contracted Funds:</b> \$30,000,000.00	<b>Contracted Funds:</b> \$48,982,412.83
<b>Expended Funds:</b> \$29,128,955.78	<b>Expended Funds:</b> \$20,484,256.75	<b>Expended Funds:</b> \$445,000.00	<b>Expended Funds:</b> \$3,304,982.35	<b>Expended Funds:</b> \$30,000,000.00	<b>Expended Funds:</b> \$12,593,991.60

CDBG CARES Funds by Program



CDBG CARES Program Funds by Status



\* In the case of funds unused by administrators or deobligated, funds will be reprogrammed and used for awards under the Community Resiliency Program or another existing program.



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 628

**Agenda Date:** 6/13/2024

**Agenda #:** 13.

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Media Analysis and Outreach Report, April 2024

**Report follows this page.**





## TDHCA Outreach and Media Analysis, April 2024

A compilation of TDHCA media analysis designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public, and outreach activities, such as trainings and webinars. The following is an analysis of print, online and broadcast news, and social media reporting for the time period of April 1-30, 2024 (news articles that specifically mentioned TDHCA along with Department programs).

Total number of articles referencing TDHCA: 19

Breakdown by Medium:<sup>1</sup>

- Print: 2 (Editorials/Columnists = 0)
- Broadcast:6
- Trade, Government or Internet-Based Publications: 11

Figure 1 News Tone

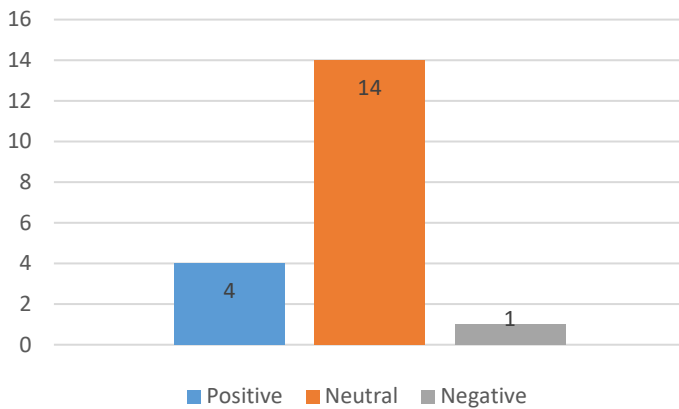
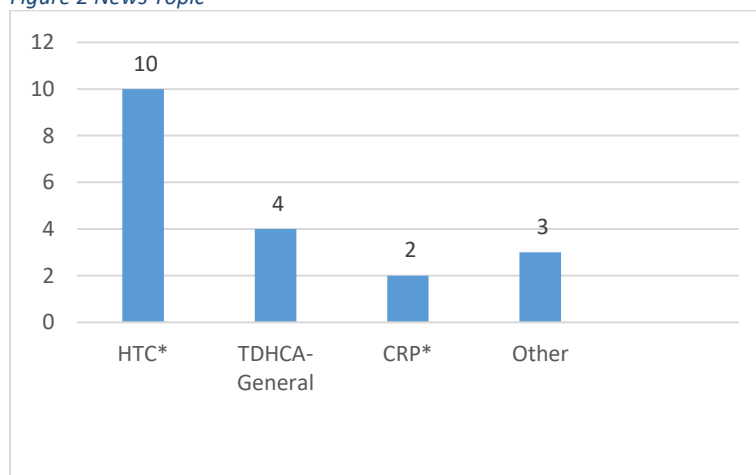


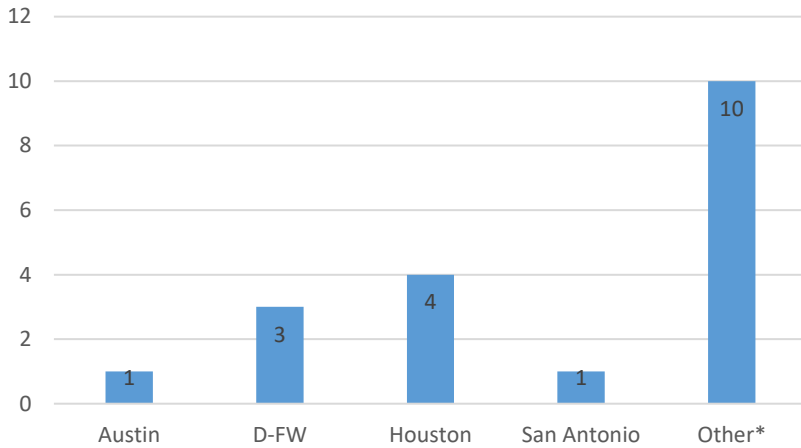
Figure 2 News Topic<sup>2</sup>



<sup>1</sup> Broadcast numbers may represent times in which TDHCA was referenced on a television or radio station's website, rather than in a broadcast segment. <sup>2</sup> News Topics: Programs include Housing Tax Credit, Community Resiliency Program.



Figure 3 Media Market



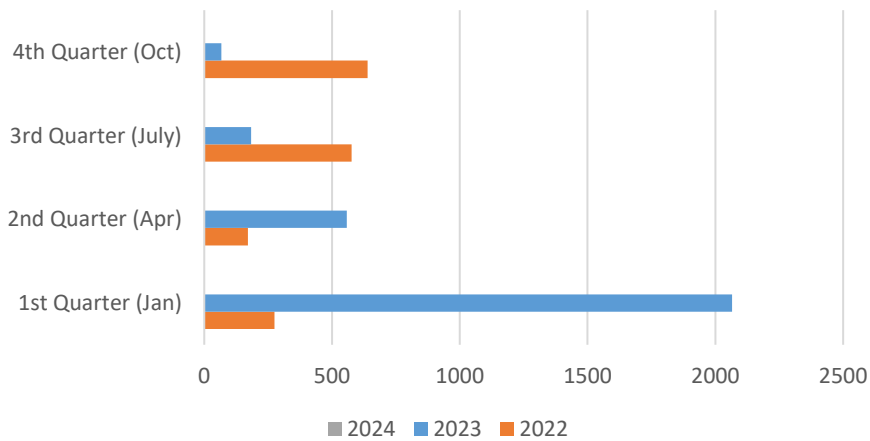
**Summary:**

Reporting on activities by the news media totaled 19 references in April 2024. TDHCA’s Housing Tax Credit Programs dominated the news cycle.

For comparison purposes, news mentions during the month were significantly lower than April 2023 (234 total). The Texas Rent Relief Program dominated the news cycle in 2023 with the reopening of the online portal in March. Many news articles mentioned TRR as a resource or an example of the type of assistance needed to help address rising eviction numbers both in Texas and/or nationally.


The following table illustrates the number of news mentions during each month or quarter of 2024 compared to 2023 and 2022. Starting the second quarter of 2024 (April-June), news mentions are tracking much lower compared to the number of mentions of the second quarter in 2023 (558 total) and 2022 (171 total).

TDHCA News Trends




**Social media:**

Through April 2024, TDHCA has 3,584 followers to its X (formerly known as Twitter) account and more than 7,300 fans to its Facebook page. TDHCA’s YouTube channel had 6,058 views in April. The following is a summary analysis of TDHCA’s efforts to inform stakeholders and the public on federal and state resources, initiatives, and programs.

					
Month/Yr	Posts	Clicks	Engagements	Shared posts	Reactions
January 2024	13	19	27	3	20
February 2024	50	0	29	3	23
March 2024	51	7	14	3	11
April 2024	67	8	5	2	75

\* Clicks = number of times an individual clicked on a link provided in a post. Engagements = any action a person takes on our post

					
Month/Yr	Tweets	Clicks	Engagements	Retweets	Liked posts
January 2024	15	8	14	5	7
February 2024	52	12	15	2	10
March 2024	52	3	14	1	9
April 2024	67	1	14	2	11

\* Clicks = number of times an individual clicked on a link provided in a post. Engagements = any action a person takes on our post
























Month	Views	Watch time (hours)	Avg. view duration	Impressions	Impressions click-through rate
January 2024	9,988	909.4	5:27	14.9%	8,076
February 2024	7,234	572.3	4:44	14.8%	5,849
March 2024	6,725	486.7	4:20	13.4%	5,594
April 2024	6,058	500.4	4:57	16.0%	5,047





**Understanding the YouTube Analytics**

- **Views:** number of times your videos were viewed
- **Watch Time:** total number of hours your videos were watched by viewers
- **Average View Duration:** total watch time of your video divided by the total number of video plays, including replays. This metric measures your video’s ability to engage viewers. The higher the view duration, the more engaging the videos.
- **Average Pct Viewed:** the percent of each video the average viewer watched. It measures your video’s ability to hold viewers’ attention for its entirety. YouTube generally rewards videos that can hold people’s attention with higher search and recommendation rankings.

- **Unique viewers:** the estimated number of individuals who watch your videos over a certain period of time. It helps determine the size of our audience.

Top 25 videos for April 2024

Content	Views ↓	Watch time (hours)	Average view duration	Average percentage viewed	Unique viewers
<input type="checkbox"/> <b>Total</b>	<b>6,058</b>	<b>500.4</b>	<b>4:57</b>	<b>16.0%</b>	<b>5,047</b>
<input type="checkbox"/>  Help for Texans (English)	3,018 49.8%	84.1 16.8%	1:40	49.2%	2,805 55.6%
<input type="checkbox"/>  Texas Homebuyer Program introduction	900 14.9%	11.2 2.2%	0:44	86.1%	873 17.3%
<input type="checkbox"/>  Help For Texans tutorial	508 8.4%	14.8 3.0%	1:44	51.5%	484 9.6%
<input type="checkbox"/>  How to apply: Texas Homeowners Assistance Fund	142 2.3%	1.7 0.3%	0:43	54.0%	124 2.5%
<input type="checkbox"/>  Income Determination Training Webinar - Jan. 4, 2024	140 2.3%	67.6 13.5%	28:57	8.4%	75 1.5%
<input type="checkbox"/>  Updated HOTMA Training - Oct. 13, 2023	96 1.6%	35.2 7.0%	21:59	13.8%	86 1.7%
<input type="checkbox"/>  Students: Eligibility and Income	92 1.5%	48.5 9.7%	31:38	18.6%	61 1.2%
<input type="checkbox"/>  Frequently Asked Questions about Utility Allowances	72 1.2%	5.1 1.0%	4:13	6.6%	66 1.3%
<input type="checkbox"/>  Supportive Services, LURA discussion webinar	63 1.0%	18.3 3.7%	17:27	19.1%	40 0.8%
<input type="checkbox"/>  Let's Talk About Forms	59 1.0%	15.6 3.1%	15:54	17.2%	44 0.9%
<input type="checkbox"/>  HOTMA Training - Sept. 8, 2023	58 1.0%	29.3 5.9%	30:19	19.0%	48 1.0%
<input type="checkbox"/>  Fair Housing Special Topics: How to Create an Affirmat...	52 0.9%	8.8 1.8%	10:12	14.2%	35 0.7%
<input type="checkbox"/>  Fair Housing 101: The Basics of Fair Housing in Texas	48 0.8%	9.3 1.9%	11:39	11.1%	30 0.6%
<input type="checkbox"/>  Utility Allowance Training - July 6, 2023	43 0.7%	8.6 1.7%	11:59	12.1%	33 0.7%
<input type="checkbox"/>  Multifamily Compliance: Online Reporting, USR and AO...	42 0.7%	6.0 1.2%	8:33	7.2%	25 0.5%
<input type="checkbox"/>  CMTS Training and FAQs	41 0.7%	6.6 1.3%	9:38	13.8%	23 0.5%
<input type="checkbox"/>  TXHAF Housing Counseling	38 0.6%	0.4 0.1%	0:37	75.8%	33 0.7%
<input type="checkbox"/>  Fair Housing in Texas	36 0.6%	0.9 0.2%	1:31	48.8%	23 0.5%
<input type="checkbox"/>  Accessing Texas Department of Aging and Disability S...	36 0.6%	2.2 0.4%	3:39	51.5%	29 0.6%
<input type="checkbox"/>  811 PRA: Written Policies and Procedures training	33 0.5%	15.7 3.1%	28:34	23.8%	26 0.5%
<input type="checkbox"/>  TDHCA Freddie Mac Lender Training	30 0.5%	4.0 0.8%	8:05	14.4%	56 1.1%

<input type="checkbox"/>	 1:25:24	Adjusted Income Webinar - Jan. 12, 2024	30	0.5%	11.5	2.3%	23:00	26.9%	21	0.4%
<input type="checkbox"/>	 5:18:57	TDHCA Training: Section 811 Project Rental Assistanc...	27	0.5%	3.2	0.6%	7:05	2.2%	24	0.5%
<input type="checkbox"/>	 0:45	TXHAF Legal Counseling	27	0.5%	0.2	0.0%	0:27	62.0%	22	0.4%
<input type="checkbox"/>	 2:59:26	HOTMA Office Hours	26	0.4%	32.7	6.5%	1:15:33	42.1%	17	0.3%

### TDHCA Outreach April 2024

A compilation of outreach activities such as meetings, trainings and webinars.

Department	Meeting Date	Meeting Title	Attendees (includes organizer)
Housing Resource Center	Apr. 15	Fair Housing Month Overview Webinar	314
Housing Resource Center	Apr. 16	AI Public Hearing, Austin	3
Community Affairs/CEAP	Apr. 17	Virtual Training Session, TACAA	10
SF and Homeless Program	Apr. 18	Roundtable, Self Help Centers and Interested Nonprofit Orgs	25
Housing Resource Center	Apr. 18	AI Public Hearing, virtual	8
Housing Resource Center	Apr. 22	Fair Housing Month, Reasonable Accommodations Webinar	267
Community Affairs/WAP	Apr. 23	Virtual Training Session, 3 agencies	10
Housing Resource Center	Apr. 23	AI Public Hearing, Brownsville	6
Community Affairs/CSBG	Apr. 25	Onsite Training Session, CA Corp	15
Community Affairs/CSBG	Apr. 26	Onsite Training Session, CA Corp	15
Housing Resource Center	Apr. 29	Fair Housing Month, Assistance Animals Webinar	273



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #:** 642

**Agenda Date:** 6/13/2024

**Agenda #:** 14.

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Quarterly report relating to staff-issued Determination Notices for 2023 and 2024 Non-competitive 4% Housing Tax Credit applications

#### **BACKGROUND**

The 4% Housing Tax Credit (HTC) applications are reviewed by program, underwriting, and compliance staff within an approximately 90-day period, and Determination Notices are issued once all reviews are complete and the underwriting report is posted to the Department's website. Applications are submitted at the beginning of each month and are then slated for a Determination Notice to be issued approximately 90 days later, which generally coincides with the Board meeting calendar, in order to provide internal and external expectations regarding the Determination Notice issuance date.

The 4% HTC applications listed in Exhibit A include those where the Determination Notice was issued administratively by staff. From March through May 2024, staff has administratively issued eight Determination Notices. This represents 1,684 total units and \$17,059,371 in annual 4% Housing Tax Credits.

#### **2023 Application Log Summary**

The 2023 Private Activity Bond (PAB) program had an annual ceiling amount of \$3.6 billion, and as of January 17, 2024, eligible requests totaled approximately \$7.5 billion, with much of the requests coming from multifamily issuers. The 2023 4% HTC Application Log is included as Exhibit B and highlights 4% activity for the 2023 program year. There are seven applications that have been approved, and have had Determination Notices issued, but have yet to close. Those approved applications represent total issuances of approximately \$20 million in 4% Housing Tax Credits. The closing of those applications will mark the end of the 2023 program year.

Moreover, the log reflects the 44 applications that have closed on their respective bond allocations. Those projects that have closed represent 9,281 units, and over \$99 million in 4% Housing Tax Credits. Altogether, when considering what has closed, and been approved, the total number of units is 10,892. Additionally, assuming all of the approved projects close, \$119 million in 4% Housing Tax Credits will have been issued throughout the 2023 program year.

Finally, the log reflects those applications that were submitted to TDHCA, but subsequently withdrawn. This represented a total of 8,726 units. The reasoning behind these withdrawals were varied, but most commonly involved feasibility and timing concerns.

### **2024 Application Log Summary**

The 2024 PAB program has an annual ceiling amount of approximately \$3.8 billion, and as of May 20, 2024, eligible requests total approximately \$5.7 billion, with much of the requests coming from multifamily issuers that participated in the 2024 PAB Lottery. The 2024 4% HTC Application Log is included as Exhibit C, and reflects those applications that have been submitted to TDHCA from December 2023 through May 2024 in conjunction with the issuance of bond reservations from the Bond Review Board.

Currently, there are 43 applications under review for a total of 9,245 units, and \$105M in requested 4% Housing Tax Credits. Additionally, reflected on the log are ten applications that have been approved, and have had Determination Notices issued, but have yet to close. Those approved applications represent total issuances of more than \$23M in 4% Housing Tax Credits. When considering what has been approved, and is currently under review, the total number of units is 11,493.

Also reflected on the log are four pre-applications that were submitted to TDHCA and added to the Department's waiting list for a bond reservation during the 2024 program year.

Finally, the log reflects those applications that were submitted to TDHCA, but subsequently withdrawn. This represented a total of 1,435 units. The reasoning behind these withdrawals were varied, but most commonly involved feasibility and timing concerns.



**Exhibit A**  
**4% Housing Tax Credit Recommended Applications**

Application #	Development Information	Notice Issue Date	Units	Recommended HTC Amount	Bond Issuer & Priority Designation	PPR Category and Conditions
24422	River Point Apartments 1173 Benedict Drive City: San Angelo County: Tom Green Acquisition/Rehabilitation Target Population: General	May 9, 2024	204	\$1,551,100	THF PFC Priority 1A	Previously Approved
24436	Huntington Place Senior Living G SWQ Edgefield Drive & Cedar Drive City: Garland County: Dallas New Construction Target Population: Elderly	May 13, 2024	204	\$2,102,482	Garland HFC Priority 2	Category 2
24410	Yale Village 5673 Yale Street City: Houston County: Harris Acquisition/Rehabilitation Target Population: General	May 15, 2024	250	\$2,497,506	Houston HFC Priority 1A	Category 1
24403	Woodland Hills 19100 Woodland Hills City: Houston County: Harris New Construction Target Population: General	May 15, 2024	366	\$3,711,314	HHA Fountainview PFC Priority 2	Category 2
24412	Palladium San Antonio 4770 Military Drive W City: San Antonio County: Bexar New Construction Target Population: General	May 14, 2024	288	\$3,169,722	San Antonio HT PFC Priority 2	Category 1
24441	NHH Avenue C 7501 Harrisburg City: Houston County: Harris New Construction Target Population: Elderly	May 17, 2024	120	\$1,734,273	Harris County HFC Priority 1A	Category 1
24431	Union Park 4622 S Hackberry City: San Antonio County: Bexar Acquisition/Rehabilitation Target Population: General	May 17, 2024	100	\$844,631	Las Varas PFC Priority 1A	Category 1
24424	Union Pines 1707 Pleasanton Road City: San Antonio County: Bexar Acquisition/Rehabilitation Target Population: General	May 24, 2024	152	\$1,448,343	Las Varas PFC Priority 1A	Category 1
Totals for Recommended Applications			<b>1,684</b>	<b>\$17,059,371</b>		



EXHIBIT B

4% (Non-Competitive) Housing Tax Credit Program  
2023 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Construction Type	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
23434	03465; 22461	Park at Humble	Houston	Acq/Rehab	11/10/2022	Closed	216	216	\$ 35,000,000	\$1,793,340	\$ 1,788,376
23407		Summerdale Apartments	Houston	NC	4/13/2023	Closed	272	272	\$ 38,000,000	\$3,272,427	\$ 3,270,300
23601		Palladium McKinney	McKinney	NC	5/11/2023	Closed	172	172	\$ 40,000,000	\$2,010,236	\$ 2,010,236
23414		NHH Berry	Houston	NC	5/11/2023	Closed	220	220	\$ 25,000,000	\$2,295,985	\$ 2,295,985
23412		Ellison Apartments	San Antonio	NC	5/11/2023	Closed	308	308	\$ 43,000,000	\$3,376,807	\$ 3,286,582
23604	04486	The Worthington	Fort Worth	Acq/Rehab	5/11/2023	Closed	248	248	\$ 30,860,000	\$1,925,101	\$ 1,925,101
23605		The Rhett	Austin	NC	5/11/2023	Closed	215	215	\$ 35,000,000	\$2,234,515	\$ 2,234,515
23607	02029	North Grand Villas	Amarillo	Acq/Rehab	5/11/2023	Closed	144	144	\$ 12,500,000	\$990,398	\$ 990,398
23401		Northhill Manor	Fort Worth	Acq/Rehab	3/9/2023	Closed	101	100	\$ 20,000,000	\$1,194,935	\$ 1,190,037
23425		The Rebekah	Austin	Acq/Rehab	6/15/2023	Closed	224	224	\$ 45,000,000	\$3,227,287	\$ 3,227,229
23423		Cairn Point	Austin	NC	5/11/2023	Closed	150	150	\$ 20,000,000	\$1,481,293	\$ 1,481,293
23610		The Crossing at Clear Creek	Dallas	NC	6/15/2023	Closed	264	264	\$ 50,000,000	\$4,221,814	\$ 4,221,814
23609		The Terrace at Highland Hills	Dallas	NC	6/15/2023	Closed	300	300	\$ 50,000,000	\$4,639,833	\$ 4,639,833
23432		Oaks of Bandera	Bandera	Acq/Rehab	6/15/2023	Closed	76	76	\$ 25,000,000	\$379,939	\$ 379,939
23433		Trails at River Road	Boerne	Acq/Rehab	6/15/2023	Closed	107	107	\$ 25,000,000	\$394,581	\$ 394,581
23424	03136	Tigoni Villas	San Antonio	Acq/Rehab	6/15/2023	Closed	140	140	\$ 20,000,000	\$946,702	\$ 938,335
23426	94067	Canterbury Crossing	Abilene	Acq/Rehab	5/11/2023	Closed	304	304	\$ 25,000,000	\$1,887,825	\$ 1,885,891
23430		Hillside Village	Longview	Acq/Rehab	6/15/2023	Closed	100	100	\$ 11,000,000	\$712,947	\$ 706,949
23418		NHH Gray	Houston	NC	6/15/2023	Closed	135	135	\$ 25,000,000	\$1,901,513	\$ 1,901,513
23420	03410	Rosemont at Ash Creek	Dallas	Acq/Rehab	6/15/2023	Closed	280	280	\$ 45,000,000	\$3,225,713	\$ 3,207,846
23440		Palladium Crestway	San Antonio	NC	6/15/2023	Closed	271	271	\$ 43,000,000	\$2,822,661	\$ 2,822,661
23437	060426	Costa Almadena	San Antonio	Acq/Rehab	7/6/2023	Closed	176	176	\$ 25,000,000	\$1,719,783	\$ 1,716,333
23427		Kensington	Austin	Acq/Rehab	5/11/2023	Closed	136	136	\$ 20,000,000	\$1,379,222	\$ 1,376,372
23443		The Preserve at Mustang Creek	Round Rock	NC	6/15/2023	Closed	252	252	\$ 50,000,000	\$2,562,616	\$ 2,562,616
23413		Culebra Road Apartments	San Antonio	NC	4/13/2023	Closed	199	199	\$ 28,500,000	\$1,929,113	\$ 1,929,113
23438		Juniper Creek	Austin	NC	5/11/2023	Closed	110	110	\$ 26,000,000	\$1,671,395	\$ 1,671,395
23408		Sandy Creek	Bryan	Acq/Rehab	6/15/2023	Closed	140	140	\$ 20,000,000	\$917,170	\$ 912,780
23428	01088	Eden Court/Place	Seguin	Acq/Rehab	5/11/2023	Closed	110	110	\$ 16,000,000	\$1,245,490	\$ 1,245,490
23446		Seabrook Square	Austin	NC	6/15/2023	Closed	204	204	\$ 50,000,000	\$3,636,873	\$ 3,636,614
23445		1518 Apartments	Schertz	NC	7/6/2023	Closed	300	300	\$ 44,000,000	\$3,651,980	\$ 3,651,980
23421		The Positano	Dallas	Acq/Rehab	7/6/2023	Closed	232	232	\$ 35,000,000	\$2,414,020	\$ 2,412,546
23444		Tobias Place	Fort Worth	NC	7/6/2023	Closed	288	288	\$ 40,000,000	\$3,780,582	\$ 3,780,582
23454		Brookside Gardens	Houston	Acq/Rehab	7/6/2023	Closed	240	240	\$ 37,500,000	\$1,982,305	\$ 1,969,889
23457	04088/22421	South Plains Apartments	Lubbock	Acq/Rehab	9/7/2023	Closed	244	243	\$ 29,000,000	\$1,780,818	\$ 1,780,408
23606	12623/06062	Aspen Park	Houston	Acq/Rehab	6/15/2023	Closed	256	256	\$ 24,000,000	\$1,868,091	\$ 1,868,091
23452		Daffan Flats	Austin	NC	7/6/2023	Closed	247	247	\$ 45,000,000	\$3,645,093	\$ 3,645,093
23459		Santiago Estates	Austin	NC	9/7/2023	Closed	300	300	\$ 60,000,000	\$3,170,681	\$ 3,170,681
23462		Norman Commons	Austin	NC	9/7/2023	Closed	156	156	\$ 38,000,000	\$3,173,204	\$ 3,173,204
23472		Wellington Park	Houston	Acq/Rehab	11/9/2023	Closed	244	244	\$ 25,000,000	\$1,416,823	\$ 1,416,823
23461		Estates at Ferguson	Dallas	NC	10/12/2023	Closed	164	164	\$ 25,000,000	\$1,827,768	\$ 1,817,502
23442		Oakwood Trails	Spring	NC	5/11/2023	Closed	203	203	\$ 26,000,000	\$2,393,859	\$ 2,376,329
23479		Creedmoor Farms	Creedmoor	NC	1/11/2024	Closed	300	300	\$ 38,800,000	\$3,565,502	\$ 3,565,502
23480	22470	Astoria Park	Amarillo	Acq/Rehab	2/8/2024	Closed	164	164	\$ 20,000,000	\$857,503	\$ 857,503
23481		Landing on Orem	Houston	NC	2/8/2024	Closed	369	369	\$ 50,000,000	\$3,864,362	\$ 3,864,027
							<b>9281</b>	<b>9279</b>	<b>\$ 1,436,160,000</b>	<b>\$99,400,105</b>	<b>\$ 99,200,287</b>
23460		Bissonnet Apartments	Houston	NC	9/7/2023	Approved	264	264	\$ 40,000,000	\$3,513,940	\$ 3,513,940
23475	04222	The Mondello	Dallas	Acq/Rehab	12/7/2023	Approved	150	150	\$ 35,000,000	\$1,640,877	\$ 1,631,417
23477		Blue Ridge Apartments	Austin	NC	12/7/2023	Approved	321	321	\$ 50,000,000	\$3,540,996	\$ 3,540,996
23473		Kingswood	Austin	NC	12/7/2023	Approved	328	328	\$ 50,000,000	\$4,989,178	\$ 4,939,549
23482	22481	The Cesera	Garland	Acq/Rehab	1/11/2024	Approved	204	204	\$ 35,000,000	\$2,206,821	\$ 2,188,091
23436	02421	Summit at Bennington	Houston	Acq/Rehab	6/15/2023	Approved	248	248	\$ 33,500,000	\$2,361,742	\$ 2,361,742
23416		Remnant at Greenwood	McKinney	onstruction & Re	5/11/2023	Approved	96	96	\$ 30,000,000	\$1,716,210	\$ 1,716,210
							<b>1611</b>	<b>1611</b>	<b>\$ 273,500,000</b>	<b>\$19,969,764</b>	<b>\$ 19,891,945</b>
<b>TOTAL</b>							<b>10,892</b>	<b>10,890</b>	<b>\$ 1,709,660,000</b>	<b>\$119,369,869</b>	<b>\$ 119,092,232</b>
23608		The Ridge at Loop 12	Dallas	NC	TBD	Pre-Application	300	285	TBD	\$4,010,920	\$ -
23612		Airport Commerce	Austin	NC	TBD	Pre-Application	164	164	TBD	\$2,147,608	\$ -
23613		Walnut Springs	Seguin	NC	TBD	Pre-Application	182	182	TBD	\$2,609,742	\$ -
23614		The Legacy at Five Mile	Dallas	NC	TBD	Pre-Application	240	240	TBD	\$3,683,515	\$ -
23615		Blue Ridge Apartments	Austin	NC	TBD	Pre-Application	363	363	TBD	\$3,115,741	\$ -
23616		Gulfway Manor	Corpus Christi	Acq/Rehab	TBD	Pre-Application	151	151	TBD	\$1,855,105	\$ -
23618		Palladium E Lancaster	Fort Worth	NC	TBD	Pre-Application	243	243	TBD	\$2,809,281	\$ -
							<b>1,643</b>	<b>1,628</b>	<b>-</b>	<b>20,231,912</b>	<b>-</b>
23603		West Houston Senior Living	Houston	NC	4/13/2023	Withdrawn	72	72	\$ 10,000,000	\$396,539	\$ -



23409		Blanco Basin	San Marcos	NC	5/11/2023	Withdrawn	200	200	\$	35,000,000	\$2,227,889	\$	-
23600		The Reserves	Seagoville	NC	5/11/2023	Withdrawn	240	240	\$	27,000,000	\$2,380,017	\$	-
23439		Oak Hill Lofts	Austin	NC	5/11/2023	Withdrawn	82	82	\$	14,500,000	\$715,058	\$	-
23429		85 Ennis	Ennis	NC	6/15/2023	Withdrawn	252	252	\$	40,000,000	\$3,440,588	\$	-
23441		Legacy Senior Residences SA	San Antonio	NC	6/15/2023	Withdrawn	180	180	\$	50,000,000	\$1,880,426	\$	-
23419		Rosemont at Meadow Lane	Dallas	Acq/Rehab	5/11/2023	Withdrawn	264	264	\$	45,000,000	\$2,483,864	\$	-
23450		Highpoint Village II	Wichita Falls	Acq/Rehab	6/15/2023	Withdrawn	144	144	\$	35,000,000	\$1,685,188	\$	-
23400		The Life at Brighton Estates	Houston	Acq/Rehab	5/11/2023	Withdrawn	248	248	\$	40,000,000	\$2,164,519	\$	-
23422	02479	Rosemont of Lancaster	Lancaster	Acq/Rehab	6/15/2023	Withdrawn	280	280	\$	45,000,000	\$2,656,819	\$	-
23448		Country Park	Wichita Falls	Acq/Rehab	6/15/2023	Withdrawn	168	168	\$	35,000,000	\$1,415,101	\$	-
23449		Highpoint Village I	Wichita Falls	Acq/Rehab	6/15/2023	Withdrawn	50	50	\$	35,000,000	\$548,269	\$	-
23404		Juniper Landing	Texas City	NC	4/13/2023	Withdrawn	228	228	\$	35,000,000	\$2,546,051	\$	2,546,051
23415	04412	Chisholm Trail	Houston	Acq/Rehab	4/13/2023	Withdrawn	228	228	\$	34,000,000	\$2,359,856	\$	-
23403		Cattlemen Square	San Antonio	NC	4/13/2023	Withdrawn	138	138	\$	38,000,000	\$1,672,703	\$	-
23402		Legacy Senior Residences	Midland	NC	5/11/2023	Withdrawn	201	201	\$	45,000,000	\$1,489,446	\$	-
23410		Winston/Roselawn	San Antonio	Acq/Rehab	5/11/2023	Withdrawn	208	208	\$	25,000,000	\$2,028,686	\$	-
23411		Pecan Manor/Spanish Spur	San Antonio	Acq/Rehab	5/11/2023	Withdrawn	256	256	\$	25,000,000	\$2,303,933	\$	-
23435		PDV Mariposa	Fredericksburg	NC	6/15/2023	Withdrawn	120	120	\$	20,000,000	\$1,405,790	\$	-
23406		Robinhood Terrace	Brownsville	NC	6/15/2023	Withdrawn	236	236	\$	30,000,000	\$2,611,466	\$	-
23445		The Ella	Lubbock	Acq/Rehab	6/15/2023	Withdrawn	152	152	\$	25,000,000	\$1,580,580	\$	-
23431		Bernicia Place	Houston	NC	10/12/2023	Withdrawn	120	120	\$	50,000,000	\$1,862,687	\$	-
23447		The Reserve at Anna	Anna	NC	7/6/2023	Withdrawn	199	199	\$	32,000,000	\$1,810,439	\$	-
23468		Palladium Carver Living	Mesquite	NC	10/12/2023	Withdrawn	300	300	\$	37,000,000	\$3,305,049	\$	-
23456		Palladium San Antonio	San Antonio	NC	9/7/2023	Withdrawn	288	288	\$	43,000,000	\$2,931,580	\$	-
23458		Whisper Hills	San Marcos	NC	9/7/2023	Withdrawn	267	267	\$	40,000,000	\$2,578,545	\$	-
23467		Westwood Plaza	San Antonio	Acq/Rehab	10/12/2023	Withdrawn	306	306	\$	30,000,000	\$2,718,951	\$	-
23405		Progreso Heights	Progreso	NC	6/15/2023	Withdrawn	120	120	\$	14,000,000	\$1,007,705	\$	-
23464		The Katy	Elgin	NC	12/7/2023	Withdrawn	150	150	\$	35,000,000	\$2,390,628	\$	-
23478		Rock Island Riverfront	Dallas	NC	12/7/2023	Withdrawn	173	140	\$	45,000,000	\$2,096,700	\$	-
23469		Palladium E Lancaster	Fort Worth	NC	10/12/2023	Withdrawn	243	243	\$	35,000,000	\$2,734,388	\$	-
23465		The Life at Westland Estates	Fort Worth	NC	11/9/2023	Withdrawn	192	192	\$	26,500,000	\$1,933,868	\$	-
23453		The Life at Forest View	Clute	Acq/Rehab	9/7/2023	Withdrawn	520	520	\$	55,200,000	\$3,371,088	\$	3,173,204
23466	01101, 03451	The Life at Timber Ridge	Houston	Acq/Rehab	12/7/2023	Withdrawn	316	316	\$	55,200,000	\$2,793,979	\$	-
23611		Palladium Old FM 471 W	San Antonio ETJ	NC	10/12/2023	Withdrawn	321	321	\$	37,850,000	\$3,412,252	\$	-
23471		The Life at Beverly Palms	Pasadena	Acq/Rehab	11/9/2023	Withdrawn	308	308	\$	48,000,000	\$2,576,177	\$	-
23476		EMLI at Mesa Gardens	Houston	NC	12/7/2023	Withdrawn	300	300	\$	35,000,000	\$3,033,482	\$	-
23474		Kangle Southern Gardens	Houston	NC	12/7/2023	Withdrawn	180	145	\$	30,000,000	\$1,314,630	\$	-
23417		Taylor RAD	Taylor	Acq/Rehab	1/11/2024	Withdrawn	46	46	\$	15,000,000	\$1,010,035	\$	-
23441		Legacy Senior Residences SA	San Antonio	NC	1/11/2024	Withdrawn	180	180	\$	50,000,000	\$1,981,088	\$	-
23470		Northside Village	Georgetown	NC	11/9/2023	Withdrawn	250	250	\$	50,000,000	\$4,817,515	\$	4,817,515
							<b>8726</b>	<b>8658</b>					



EXHIBIT C

4% (Non-Competitive) Housing Tax Credit Program  
2024 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Construction Type	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
24410	02019	Yale Village	Houston	Acq/Rehab	4/11/2024	Approved	250	250	\$ 35,000,000	\$2,526,067	\$ 2,497,506
24422	060189	River Point	San Angelo	Acq/Rehab	4/11/2024	Approved	204	204	\$ 35,000,000	\$1,560,573	\$ 1,551,100
24436		Huntington Place Senior Living	Garland	NC	5/9/2024	Approved	204	204	\$ 30,000,000	\$2,102,482	\$ 2,102,482
24403		Woodland Hills	Houston	NC	5/9/2024	Approved	366	366	\$ 45,000,000	\$3,711,314	\$ 3,711,314
24431	02093	Union Park	San Antonio	Acq/Rehab	4/11/2024	Approved	100	100	\$ 22,000,000	\$844,631	\$ 844,631
24412	23456	Palladium San Antonio	San Antonio	NC	4/11/2024	Approved	288	288	\$ 43,000,000	\$3,169,722	\$ 3,169,722
24441		NHH Avenue C	Houston	NC	5/9/2024	Approved	120	120	\$ 22,000,000	\$1,734,273	\$ 1,734,273
24601	23618	Palladium E Lancaster	Fort Worth	NC	5/9/2024	Approved	243	243	\$ 40,000,000	\$2,947,381	\$ 2,947,381
24424		Union Pines	San Antonio	Acq/Rehab	4/11/2024	Approved	152	152	\$ 30,000,000	\$1,448,343	\$ 1,448,343
24600	23611	Palladium Old FM 471 W	San Antonio ETJ	NC	5/9/2024	Approved	321	321	\$ 37,850,000	\$3,511,258	\$ 3,511,258
							<b>2,248</b>	<b>2,248</b>	<b>\$ 339,850,000</b>	<b>\$23,556,044</b>	<b>\$ 23,518,010</b>
24423	23402	Legacy Senior Residences Midland	Midland	NC	4/11/2024	Active	201	201	\$ 45,000,000	\$1,607,756	\$ -
24426		Bay Terrace	Baytown	Acq/Rehab	4/11/2024	Active	130	130	\$ 22,500,000	\$940,292	\$ -
24408		Belle Oaks	Belton	Acq/Rehab	4/11/2024	Active	200	200	\$ 25,000,000	\$1,351,171	\$ -
24429		Escuela Nueva	Austin	NC	6/13/2024	Active	114	114	\$ 35,000,000	\$2,341,976	\$ -
24406	96001	Meadowbrook Plaza	Houston	Acq/Rehab	4/11/2024	Active	220	220	\$ 19,750,000	\$1,516,255	\$ -
24435	04412	Chisholm Trail	Houston	Acq/Rehab	5/9/2024	Active	228	228	\$ 40,000,000	\$2,125,586	\$ -
24407	00007T	Village at Baytown	Baytown	Acq/Rehab	5/9/2024	Active	210	210	\$ 45,000,000	\$2,123,997	\$ -
24409		The Meridian	Fort Worth	Acq/Rehab	5/9/2024	Active	280	280	\$ 39,000,000	\$2,553,206	\$ -
24443		Wooded Lake	Mesquite	NC	6/13/2024	Active	288	288	\$ 45,000,000	\$3,272,551	\$ -
24445	23458	Aureus at Whisper Hills	San Marcos	NC	5/9/2024	Active	267	267	\$ 40,000,000	\$3,098,851	\$ -
24413		Travis Park	Austin	Acq/Rehab	5/9/2024	Active	199	199	\$ 60,000,000	\$4,415,970	\$ -
24400		Centerpoint Commons	San Marcos	NC	5/9/2024	Active	363	363	\$ 50,000,000	\$4,236,702	\$ -
24414	02414	Eagle's Landing	Austin	Acq/Rehab	5/9/2024	Active	240	240	\$ 45,000,000	\$2,984,364	\$ -
24448		Cordova	Houston	NC	5/9/2024	Active	283	283	\$ 38,000,000	\$2,898,554	\$ -
24442	23468	Palladium Carver Living	Mesquite	NC	5/9/2024	Active	288	288	\$ 37,000,000	\$3,319,755	\$ -
24602	23616	Gulfway Manor	Corpus Christi	Acq/Rehab	4/11/2024	Active	151	151	\$ 29,000,000	\$2,216,818	\$ -
24447		Brooks Family Apartments	San Antonio	NC	5/9/2024	Active	338	338	\$ 50,000,000	\$3,665,934	\$ -
24417		Village at Collinwood	Austin	Acq/Rehab	5/9/2024	Active	174	174	\$ 24,800,000	\$1,558,293	\$ -
24450		The Tidwell	Houston	NC	5/9/2024	Active	99	99	\$ 20,000,000	\$1,129,197	\$ -
24439	03401	West Virginia Apts	Dallas	Acq/Rehab	5/9/2024	Active	204	204	\$ 32,000,000	\$1,872,663	\$ -
24444	23441	Legacy Senior Residences SA	San Antonio	NC	5/9/2024	Active	180	180	\$ 50,000,000	\$2,038,313	\$ -
24454		Burleson Studios	Austin	NC	6/13/2024	Active	100	100	\$ 21,600,000	\$1,240,371	\$ -
24455		Brooks Senior Apartments	San Antonio	NC	6/13/2024	Active	239	239	\$ 35,000,000	\$2,448,466	\$ -
24457		Solano Apartments	Webster	Acq/Rehab	6/13/2024	Active	260	260	\$ 29,000,000	\$2,156,640	\$ -
24452		Liberty Hill Apartments	Liberty Hill	NC	6/13/2024	Active	324	324	\$ 64,819,515	\$4,484,984	\$ -
24433		Silver Village	Lubbock	Acq/Rehab	6/13/2024	Active	100	100	\$ 15,000,000	\$804,955	\$ -
24456		Residences at Pearsall Park	San Antonio	NC	6/13/2024	Active	238	238	\$ 35,000,000	\$2,501,937	\$ -
24434		Independence Village	Amarillo	Acq/Rehab	6/13/2024	Active	150	150	\$ 25,000,000	\$1,304,782	\$ -
24464		Manor Apartments	Austin	NC	7/25/2024	Active	181	179	\$ 30,000,000	\$2,728,849	\$ -
24415	03001	Heritage Point Senior	Austin	Acq/Rehab	7/11/2024	Active	240	240	\$ 29,300,000	\$1,931,068	\$ -
24467	95157	Pleasant Hill Village	Houston	Acq/Rehab	7/11/2024	Active	165	165	\$ 20,000,000	\$1,086,464	\$ -
24466	538613	Brittons Place	Houston	Acq/Rehab	7/11/2024	Active	48	48	\$ 20,000,000	\$422,916	\$ -
24405		The Springs	San Marcos	NC	7/11/2024	Active	304	304	\$ 50,000,000	\$3,357,834	\$ -
24460		Willow Creek Manor	Houston	NC	7/25/2024	Active	264	264	\$ 38,000,000	\$3,450,194	\$ -
24465		Grocer Lofts	San Antonio	NC	7/25/2024	Active	48	48	\$ 20,000,000	\$664,127	\$ -
24458		Sunset Ridge	Austin	NC	9/5/2024	Active	222	222	\$ 34,600,000	\$2,307,696	\$ -
24462		Sunset Valley	Wichita Falls	Acq/Rehab	7/25/2024	Active	132	132	\$ 13,200,420	\$901,605	\$ -
24606	23613	Walnut Springs	Seguin	NC	9/5/2024	Active	177	177	\$ 35,000,000	\$2,421,961	\$ -
24607	23608	The Ridge at Loop 12	Dallas	NC	9/5/2024	Active	300	300	\$ 50,000,000	\$4,196,118	\$ -
24470		Tower Road	Manor	NC	9/5/2024	Active	324	324	\$ 64,819,515	\$4,629,063	\$ -
24451		Sage at Franklin Park	Austin	NC	9/5/2024	Active	276	276	\$ 14,819,515	\$5,875,194	\$ -
24461	23406	Robinhood Terrace	Brownsville	NC	7/25/2024	Active	236	236	\$ 30,000,000	\$2,262,133	\$ -
24473		Hill View Heights	San Antonio	NC	9/5/2024	Active	260	260	\$ 38,000,000	\$3,207,050	\$ -
							<b>9,245</b>	<b>9,243</b>	<b>\$ 1,505,208,965</b>	<b>\$105,652,611</b>	<b>\$ -</b>
<b>TOTAL</b>							<b>11,493</b>	<b>11,491</b>	<b>\$ 1,845,058,965</b>	<b>\$129,208,655</b>	<b>\$ 23,518,010</b>
24603	04213	Morningstar Square	Texas City	Acq/Rehab		Pre-Application	136	136	TBD	TBD	\$ -
24604		The Legacy on Kiest	Dallas	NC		Pre-Application	180	180	TBD	\$2,599,026	\$ -
24605		The Preserve at Dominion Park	Houston	NC		Pre-Application	134	134	\$ 20,000,000	\$2,183,742	\$ -
24608		Airport Commerce Multifamily Apartm	Austin	NC		Pre-Application	164	164	\$ 27,500,000	\$1,724,818	\$ -
							<b>614</b>	<b>614</b>	<b>-</b>	<b>-</b>	<b>\$ -</b>
24432		Legacy at Spring	Spring	NC		Withdrawn	200	200	\$ 22,700,000	\$1,891,501	\$ -
24428		Marshall Lofts	Marshall	NC	5/9/2024	Withdrawn	156	156	\$ 20,000,000	\$996,578	\$ -
24425		Trinity East Village	Houston	NC	4/11/2024	Withdrawn	72	72	\$ 15,000,000	\$3,117,722	\$ -
24411		Royal Crest	Dallas	Acq/Rehab	5/9/2024	Withdrawn	167	167	\$ 30,000,000	\$1,874,721	\$ -
24420	01, 03456, 23	The Life at Timber Ridge	Houston	Acq/Rehab	4/11/2024	Withdrawn	316	316	\$ 55,200,000	\$2,870,759	\$ -
24419	01485	The Life at Clearwood	Houston	Acq/Rehab	5/9/2024	Withdrawn	276	276	\$ 50,000,000	\$2,738,632	\$ -
24418	04405 ; 2340C	The Life at Brighton Estates	Houston	Acq/Rehab	5/9/2024	Withdrawn	248	248	\$ 30,000,000	\$2,178,973	\$ -
							<b>1435</b>	<b>1435</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 627

**Agenda Date:** 6/13/2024

**Agenda #:** 15.

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Executive Director's Report

**ORAL PRESENTATION**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 635

**Agenda Date:** 6/13/2024

**Agenda #:** 16.

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Report on the Meeting of the Internal Audit and Finance Committee

**BACKGROUND**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 644

**Agenda Date:** 6/13/2024

**Agenda #:** 17.

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Presentation, discussion, and possible action on the SFY 2025 Housing Finance Division Budget

**RECOMMENDED ACTION**

**WHEREAS**, the Governing Board of the Texas Department of Housing and Community Affairs (“the Department” or “TDHCA”) is required to approve a SFY 2025 Housing Finance Division Budget; and

**WHEREAS**, the Department is required to submit the budget to the Office of the Governor (OOG) and the Legislative Budget Board (LBB);

**NOW, therefore, it is hereby**

**RESOLVED**, that the SFY 2025 Housing Finance Division Budget, in the form presented to this meeting, is hereby approved; and

**FURTHER RESOLVED**, that upon approval by the TDHCA Governing Board, the Department will submit the budget to the OOG and the LBB.

**BACKGROUND**

In accordance with Tex. Gov’t Code §2306.113, the Department shall create a separate annual budget for the Housing Finance Division to certify the housing program fee revenue that supports the Department. While at the time the statute was created such a division existed, the duties associated with the Housing Finance Division have been spread among multiple divisions in the agency as reorganizations to improve efficiency have occurred. This budget is a subset of the whole operating budget and shows the Housing Finance revenues also known as Appropriated Receipts that support the operating budget.

This SFY 2025 Housing Finance Division Budget, which the Board is being asked to approve, is \$22,141,505. The Housing Finance Budget complies with the provisions of the General Appropriations Act (GAA).

In addition, in accordance with Tex. Gov’t Code §§2306.117 and 2306.118, the Department incurs operational and nonoperational expenses in carrying out the functions of the Housing Finance Division. These types of expenses may be paid only from revenues or funds provided under this Chapter. The revenue and funds of the Department received by or payable through the programs and functions of the Housing Finance Division, other than funds necessary for the operation of the Housing Finance Division and appropriated funds, shall be administered outside the treasury with the Texas Treasury Safekeeping Trust Company.

## Housing Finance Budget Appropriated Receipts

September 1, 2024 thru August 31, 2025

Budget Categories	Program			Bond Finance	Programs	Capital Budget	Payroll Related Costs	Total
	Executive Administration	Agency Administration	Controls and Oversight					
Salaries	1,978,421	3,915,119	7,149,293	670,279	672,347			14,385,459
Payroll Related Costs	-	-	-	-	-		3,452,510	3,452,510
Travel In-State	51,530	9,910	252,569	3,000	12,065			329,074
Travel Out-of-State	30,030	6,916	58,879	10,000	4,056			109,881
Professional Fees	152,075	109,814	476,294	602	9,274	731,135		1,479,193
Materials/Supplies	19,176	65,466	94,531	4,631	10,382			194,186
Repairs/Maintenance	28,325	111,575	196,117	35,389	9,658	252,732		633,796
Printing and Reproduction	3,229	3,660	10,937	-	1,550			19,376
Rental/Lease	8,395	18,908	29,721	839	2,703			60,565
Membership Dues	50,213	2,687	7,102	-	-			60,002
Staff Development	18,678	42,812	61,536	6,250	2,246			131,522
Insurance/Employee Bonds	42,487	134,225	177,527	14,444	13,851			382,534
Employee Tuition	-	2,439	2,500	-	-			4,939
Advertising	1,500	2,500	-	-	-			4,000
Freight/Delivery	1,857	7,708	18,166	850	250			28,831
Temporary Help	110,693	19,727	63,683	51,343	8,782			254,229
Furniture/Equipment	6,650	7,285	10,242	600	1,043	173,738		199,559
Communications/Utilities	44,276	66,982	242,628	5,036	26,670			385,592
Capital Outlay	-	-	-	-	-	-		-
State Office of Risk Management	2,178	12,082	10,368	632	999			26,259
<b>Total</b>	<b>2,549,713</b>	<b>4,539,815</b>	<b>8,862,091</b>	<b>803,894</b>	<b>775,877</b>	<b>1,157,605</b>	<b>3,452,510</b>	<b>22,141,505</b>

### Method of Finance:

Single Family Bond Administration Fees	2,293,076
Multifamily Bond Administration Fees	1,051,928
Compliance Fees	3,879,734
Housing Tax Credit Fees	4,384,800
Asset Management Fees	598,733
<b>Subtotal:</b>	<b>12,208,273</b>
Central Support Single Family Bond Administration Fees	704,791
Central Support Multifamily Bond Administration Fees	857,838
Central Support Compliance Fees	4,536,196
Central Support Housing Tax Credit Fees	3,211,975
Central Support Asset Management Fees	622,430
<b>Subtotal:</b>	<b>9,933,231</b>
<b>Total, Method of Finance</b>	<b>22,141,505</b>



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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File #: 645

Agenda Date: 6/13/2024

Agenda #: 18.

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Presentation, discussion, and possible action on the SFY 2025 Operating Budget

**RECOMMENDED ACTION**

**WHEREAS**, the Governing Board of the Texas Department of Housing and Community Affairs (“the Department” or “TDHCA”) is required to approve a SFY 2025 Operating Budget;

**WHEREAS**, the Department is required to submit the budget to the Office of the Governor (OOG) and the Legislative Budget Board (LBB); and

**WHEREAS**, the Department is required to establish the salary of the Executive Director;

**NOW, therefore, it is hereby**

**RESOLVED**, that the SFY 2025 Operating Budget, in the form presented to this meeting, is hereby approved;

**RESOLVED**, that the Board approves a salary for the Executive Director up to and including the amount budgeted for the position in Article VII of the 2024-2025 General Appropriations Act (GAA); and

**FURTHER RESOLVED**, that upon approval by the TDHCA Governing Board, the Department will submit the budget to the OOG and the LBB.

**BACKGROUND**

In accordance with Tex. Gov’t Code §2306.112 *et seq.*, TDHCA is charged with preparing an operating budget for Board adoption on or before September 1 of each fiscal year. The budget includes operational expenses distributed among the Department’s divisions. It does not include federal or state program funds that pass through to subrecipients except for administrative funds used by the Department associated with those federal or state funds that are retained and reflected in the budget. This budget anticipates maximizing all federal administrative resources. In addition, in accordance with internal auditing standards and the Board’s internal audit charter, the budget includes the Internal Audit Division’s annual operating budget.

This SFY 2025 Internal Operating Budget, which the Board is being asked to approve, corresponds to the first year of the biennial General Appropriations Act (GAA) passed by the 88<sup>th</sup> Texas Legislature which appropriated \$606,739,647. In total, this budget provides for administrative expenditures and associated revenues of \$50,951,277 or a \$52,616,679 (50.8%) decrease from the prior year’s budget. Of the total net decrease, \$50,837,501 is associated with temporary federal funding and a \$4,071,099 decrease in Capital Budget projects, offset by a \$2,291,921 increase associated with the Department’s core programs.

The budget reflects 399 Full Time Equivalent (FTEs). Of the total FTEs, 270 FTEs are TDHCA CAP FTEs, 64 are related to the Manufactured Housing Division, and 65 are Article IX (Temporary) FTEs associated with COVID-19 stimulus federal funds.

Additionally, the Housing Finance Division budget, which is funded with fees generated from the Department's Bond, Housing Tax Credit, Asset Management, and Compliance activities, decreased by \$1,757,845 or 7.4%. This decrease is primarily attributed to a \$2,533,695 reduction in funding for the Capital Budget offset by an increase of \$775,550 for a 5% across the board salary increase budgeted in the GAA.

For a complete explanation of the aforementioned budget categories and details, please see the accompanying Comparison Report.



**TEXAS DEPT. OF HOUSING AND COMMUNITY AFFAIRS**  
SFY 2025 Operating Budget  
Comparison Report  
June 13, 2024

This Comparison Report provides an explanation of some of the changes to cost categories which have a variance greater than \$25,000 and 10%.

In total, this SFY 2025 Operating Budget is \$50,951,277 or a \$52,616,679 (50.8%) decrease over the prior year budget.

COVID-19 stimulus federal funding and other initiatives associated with the CARES Act, Emergency Rental Assistance (ERA), the American Rescue Plan Act (ARPA), and the Bipartisan Infrastructure Law (BIL) account for \$50,837,501 of the decrease, and Capital Budget accounts for \$4,071,099 of the decrease. The decrease is offset by an increase of \$2,291,921 or 7.3% related to the Department's core programs.

Please refer to the Comparison by Expense Object schedule on Page 4.

1. **Salaries/Wages and Payroll Related Costs.** These two line items represent 71.5% of the total operating budget.

The budget reflects 399 FTEs, a decrease of 23 FTEs over the previous year. Of the total FTEs, 270 CAP FTEs are associated with the Department, 64 CAP FTEs are associated with the Manufactured Housing portion of the agency, and 65 are associated with temporary federal funding.

The Salaries and Wages line item decreased by \$1,597,431 or 5.2%.

Salaries related to temporary programs decreased \$3,244,604 or 34.2% as a result of attrition of staff from Texas Rent Relief (TRR) and Homeowners Assistance Fund (HAF), net of a \$213,198 increase related to the 5% across the board pay increase for state employees included in the biennial General Appropriations Act (GAA) passed by the 88<sup>th</sup> Texas Legislature.

Salaries related to the Department's core programs increased \$1,647,173 or 7.7%. \$130,300 of increase is due to an increase of two FTEs related to monitoring of Public Facilities Corporations appropriated through Senate Bill 2071 passed by the 88<sup>th</sup> Texas Legislature. Additionally, \$1,145,098 of the increase is due to the 5% across the board pay increase for state employees included in the biennial General Appropriations Act (GAA) passed by the 88<sup>th</sup> Texas Legislature.

Payroll related costs related to the Department's core programs increased \$395,322. The increase in payroll related costs is proportional to the increase in salaries.

2. **\*Professional Fees.** Professional Fees decreased by \$50,003,362 or 84.6%. This is primarily related to the conclusion of two outsourcing contracts to assist in the administration and oversight of the Texas Rent Relief (TRR) program and the Homeowner Assistance Fund (HAF) program.
3. **Repairs and Maintenance.** Repairs and Maintenance decreased by \$131,304 or 12.0%. This is largely due to a reduction in costs from the second year of the biennium of capital budget projects.
4. **Temporary Help.** Temporary Help decreased \$184,040 or 25.8%. This variance is largely due to a decrease in need for temporary help related to the TRR, CDBG, ERAH Stabilization, and HOME ARP programs.
5. **\*Furniture and Equipment.** Included in this category is the Legislature's approval of the Department's Hardware and Software Replacements project for SFY24 and SFY25 as it relates to non-capital expenses such as update and replacement of end-user computers and operational software upgrades, including the replacement of desktop computers and laptops that will be six years old or older and software updates. The benefits of these planned purchases include increased security, better performance for end-user computers, and the ability to provide continued support for TDHCA's enterprise systems, such as the Central Database, CAPPs Financials, MITAS Accounting/Loan Servicing, and the Manufactured Housing System.

This line item decreased \$110,400 or 25.6%, due to an anticipated decrease in capital expenditures for items such as computers and printers, the majority of which occur in the first year of the biennium.

6. **Communication and Utilities.** Communication and Utilities increased \$36,287 or 6.9%. This category is also included in the Department's Hardware and Software Replacement project as it relates to direct capital expenses such as server hardware upgrades and network equipment enhancements, to ensure systems remain supported by vendors and security and reliability remain at high levels.

*\*The Department's Capital Projects are included in Professional Fees, Repairs/Maintenance, Furniture and Equipment and Capital Outlay. These projects include hardware and software replacements, Java upgrade, Community Affairs Statewide System, Low Income Housing Tax Credit application, ongoing CAPPs financials license fees, Office 365, and the Disaster recovery services through the data center services performed by the Department of Information Resources.*

## Methods of Finance

The SFY 2025 Budget includes the following sources:

### General Revenue

State appropriated funds including Housing Trust Fund, Housing and Health Services Coordinating Council, and Homeless Housing and Services Program.

Earned Federal Funds - Federal funds appropriated for indirect costs associated with administering federal funds.

### Federal Funds

Federal Funds-(Non-Housing and Economic Recovery Act (HERA)) - Core federal programs such as Community Services Block Grant (CSBG), Emergency Solutions Grant (ESG), HOME, U.S. Dept. of Energy (DOE), Section 8 Housing, Section 811 PRA Program, Low Income Home Energy Assistance Program (LIHEAP), and National Housing Trust Fund.

Neighborhood Stabilization Program - Federally appropriated funds specifically designated for HERA-NSP.

Federal Funds – (CARES Act, CRBRA, & ARPA) - Supplemental stimulus funding in response to the Coronavirus pandemic for core federal programs such as CSBG, ESG, Section 8, LIHEAP. In addition, it reflects new funding for the Community Development Block Grant (CDBG), ERA, HAF, BIL WAP, and the Low Income Household Water Assistance Program (LIHWAP).

### Appropriated Receipts - Housing Finance (HF):

Bond Admin Fees - Appropriated receipts associated with our Single Family and Multifamily bond programs such as application fees, issuance fees, and administration fees.

Low Income Housing Tax Credit Fees - Appropriated receipts associated with our housing tax credit program such as application fees and commitment fees.

Compliance Fees - Fees assessed to multifamily developers for the purpose of ensuring long-term compliance.

Asset Oversight Fees - Fees assessed to Tax Credit Assistance Program (TCAP) and Exchange property owners for the purpose of safeguarding the Department's financial interest in their properties.

Migrant Labor Housing Fees – Fees assessed for the purpose of inspections of migrant housing facilities.

**Appropriated Receipts (MH)** - Manufactured Housing Division fees generated through inspecting, licensing, and titling activities.

**Interagency Contracts** - Contract with the Texas Department of Agriculture for the Office of Colonia Initiatives (OCI) Self-Help Center's operation and administration; and a contract with the Texas Health and Human Services Commission (HHSC) for the Money Follows the Person program.

**Comparison by Expense Object**

	2024 Budget (a)	2025 Budget (b)	Variance (b-a)	Percentage Change
Salaries and Wages	\$ 30,990,280	\$ 29,392,850	\$ (1,597,431)	-5.2%
Payroll Related Costs	7,437,667	7,054,284	(383,383)	-5.2%
Travel In-State	647,875	637,395	(10,480)	-1.6%
Travel Out-of-State	267,930	277,380	9,450	3.5%
*Professional Fees	59,082,124	9,078,762	(50,003,362)	-84.6%
Material and Supplies	329,885	317,746	(12,139)	-3.7%
*Repairs/Maintenance	1,093,864	962,560	(131,304)	-12.0%
Printing and Reproduction	42,697	29,447	(13,250)	-31.0%
Rentals and Leases	126,551	104,637	(21,913)	-17.3%
Membership Fees	150,099	157,249	7,150	4.8%
Staff Development	258,400	243,900	(14,500)	-5.6%
Insurance/Employee Bonds	734,083	694,045	(40,038)	-5.5%
Employee Tuition	9,500	11,500	2,000	21.1%
Advertising	517,500	507,000	(10,500)	-2.0%
Freight/Delivery	33,000	37,825	4,825	14.6%
Temporary Help	713,109	529,069	(184,040)	-25.8%
*Furniture and Equipment	431,200	320,800	(110,400)	-25.6%
Communication and Utilities	523,278	559,565	36,287	6.9%
*Capital Outlay	143,280	-	(143,280)	-100.0%
State Office of Risk Management	35,630	35,263	(367)	-1.0%
<b>Total Department</b>	<b>103,567,953</b>	<b>\$ 50,951,277</b>	<b>\$ (52,616,679)</b>	<b>-50.8%</b>

\* Budget categories that include Capital Budget items

FTE's	422	399	(23.00)	-5.5%
Method of Finance:				
GR-General Revenue	\$ 482,429	\$ 669,584	\$ 187,155	38.8%
GR-Earned Federal Funds	2,633,016	3,107,218	474,203	18.0%
Federal Funds-Non-HERA	11,109,343	10,376,429	(732,915)	-6.6%
Federal Funds-Neighborhood Stabilization Program (HERA)	79,216	33,102	(46,114)	-58.2%
Federal Funds-CARES Act	1,676,959	1,421,775	(255,184)	-15.2%
Federal Funds-CRBRA	8,413,339	1,899,059	(6,514,281)	-77.4%
Federal Funds-ARPA	51,529,724	7,270,360	(44,259,364)	-85.9%
Federal Funds-DOE BIL	2,756,806	3,109,919	353,113	12.8%
Appropriated Receipts - Housing Finance	23,899,350	22,141,505	(1,757,845)	-7.4%
Appropriated Receipts - Migrant Labor Housing	139,927	129,237	(10,690)	-7.6%
Appropriated Receipts - Manufact. Housing	512,015	511,207	(808)	-0.2%
Interagency Contracts	335,827	281,881	(53,946)	-16.1%
<b>Total, Method of Finance</b>	<b>\$ 103,567,953</b>	<b>\$ 50,951,277</b>	<b>\$ (52,616,679)</b>	<b>-50.8%</b>

Note: Appropriated Receipts - Housing Finance include Bond Administration Fees, Housing Tax Credit Fees, Asset Management Fees and Compliance Fees.

Note: Due to rounding, numbers presented throughout this and other documents may not add up precisely to the totals provided and

Comparison by Expense Object												
	2024	2024	2024	2024	2025	2025	2025	2025	Base Variance	Percentage Change	Temp Variance	Percentage Change
	Budget	Capital Budget	Temporary Funds	Base Budget	Budget	Capital Budget	Temporary Funds	Base Budget				
			(a)	(b)			(c)	(d)	(d)-(b)		(c)-(a)	
Salaries and Wages	\$ 30,990,280		\$ 9,480,502	\$ 21,509,778	\$ 29,392,850		\$ 6,235,898	\$ 23,156,952	\$ 1,647,173	7.7%	\$ (3,244,604)	-34.2%
Payroll Related Costs	7,437,667		2,275,321	5,162,347	7,054,284		1,496,616	5,557,668	395,322	7.7%	(778,705)	-34.2%
Travel In-State	647,875		124,917	522,958	637,395		87,828	549,567	26,609	5.1%	(37,089)	-29.7%
Travel Out-of-State	267,930		72,048	195,882	277,380		69,580	207,800	11,919	6.1%	(2,469)	-3.4%
*Professional Fees	59,082,124	6,319,714	51,386,693	1,375,717	9,078,762	2,570,375	5,031,849	1,476,538	100,821	7.3%	(46,354,844)	-90.2%
Material and Supplies	329,885		84,849	245,036	317,746		48,192	269,554	24,518	10.0%	(36,657)	-43.2%
*Repairs/Maintenance	1,093,864	446,255	125,474	522,135	962,560	347,375	95,562	519,623	(2,512)	-0.5%	(29,912)	-23.8%
Printing and Reproduction	42,697		15,577	27,120	29,447		2,775	26,672	(448)	-1.7%	(12,802)	-82.2%
Rentals and Leases	126,551		38,059	88,492	104,637		24,382	80,256	(8,237)	-9.3%	(13,677)	-35.9%
Membership Fees	150,099		39,131	110,968	157,249		36,474	120,775	9,807	8.8%	(2,657)	-6.8%
Staff Development	258,400		70,801	187,599	243,900		43,913	199,987	12,388	6.6%	(26,888)	-38.0%
Insurance/Employee Bonds	734,083		149,479	584,604	694,042		88,370	605,673	21,069	3.6%	(61,110)	-40.9%
Employee Tuition	9,500		2,500	7,000	11,500		2,500	9,000	2,000	28.6%	-	0.0%
Advertising	517,500		506,577	10,923	507,000		500,000	7,000	(3,923)	-35.9%	(6,577)	-1.3%
Freight/Delivery	33,000		7,800	25,200	37,825		4,120	33,705	8,505	33.7%	(3,680)	-47.2%
Temporary Help	713,109		334,634	378,474	529,069		151,451	377,618	(856)	-0.2%	(183,183)	-54.7%
*Furniture and Equipment	431,200	318,400	57,352	55,448	320,800	238,800	26,829	55,171	(277)	-0.5%	(30,523)	-53.2%
Communication and Utilities	523,278	-	69,574	453,704	559,565		57,430	502,135	48,431	10.7%	(12,144)	-17.5%
*Capital Outlay	143,280	143,280	-	-	-	-	-	-	-	n/a	-	n/a
State Office of Risk Management	35,630		158	35,473	35,263		180	35,083	(390)	-1.1%	22	14.3%
<b>Total Department</b>	<b>\$ 103,567,953</b>	<b>\$ 7,227,649</b>	<b>\$ 64,841,445</b>	<b>\$ 31,498,859</b>	<b>\$ 50,951,274</b>	<b>\$ 3,156,550</b>	<b>\$ 14,003,947</b>	<b>\$ 33,790,777</b>	<b>\$ 2,291,921</b>	<b>7.3%</b>	<b>\$ (50,837,501)</b>	<b>-78.4%</b>

Method of Finance:												
General Revenue:	2024	2024	2024	2024	2025	2025	2025	2025	Base Variance	Percentage change	Temp Variance	Percentage Change
	Budget	Capital Budget	Temporary Funding	Base Budget	Budget	Capital Budget	Temporary Funding	Base Budget				
			(a)	(b)			(c)	(d)	(d)-(b)		(c)-(a)	
GR-General Revenue	\$ 482,429		\$ -	\$ 482,429	\$ 669,584		\$ 669,584	\$ 669,584	\$ 187,155	38.8%	\$ -	n/a
GR-Earned Federal Funds	\$ 2,633,016		\$ 464,616	\$ 2,168,400	\$ 3,107,218		\$ 2,804,385	\$ 2,804,385	\$ 635,985	29.3%	\$ (161,782)	-34.8%
Federal Funds-Non-HERA	\$ 11,109,343	3,536,649	\$ -	\$ 7,572,694	\$ 10,376,429	1,998,945	\$ 302,834	\$ 8,377,484	\$ 804,789	10.6%	\$ -	n/a
Federal Funds-Neighborhood Stabilization Program (HERA)	\$ 79,216		\$ -	\$ 79,216	\$ 33,102		\$ 33,102	\$ 33,102	(46,114)	-58.2%	\$ -	n/a
Federal Funds-CARES Act	\$ 1,676,959		\$ 1,676,959	\$ -	\$ 1,421,775		\$ 1,421,775	\$ -	\$ -	n/a	\$ (255,184)	-15.2%
Federal Funds-CRBRA	\$ 8,413,339		\$ 8,413,339	\$ -	\$ 1,899,059		\$ 1,899,059	\$ -	\$ -	n/a	\$ (6,514,281)	-77.4%
Federal Funds-ARPA	\$ 51,529,724		\$ 51,529,724	\$ -	\$ 7,270,360		\$ 7,270,360	\$ -	\$ -	n/a	\$ (44,259,364)	-85.9%
Federal Funds-DOE BIL	\$ 2,756,806		\$ 2,756,806	\$ -	\$ 3,109,919		\$ 3,109,919	\$ -	\$ -	n/a	\$ 353,113	12.8%
Appropriated Receipts - Housing Finance	\$ 23,899,350	3,691,000	\$ -	\$ 20,208,350	\$ 22,141,505	1,157,605	\$ 20,983,900	\$ 20,983,900	775,550	3.8%	\$ -	n/a
Appropriated Receipts - Migrant Labor Housing	\$ 139,927		\$ -	\$ 139,927	\$ 129,237		\$ 129,237	\$ 129,237	(10,690)	-7.6%	\$ -	n/a
Appropriated Receipts - Manufact. Housing	\$ 512,015		\$ -	\$ 512,015	\$ 511,204		\$ 511,204	\$ 511,204	(811)	-0.2%	\$ -	n/a
Interagency Contracts	\$ 335,827		\$ -	\$ 335,827	\$ 281,881		\$ 281,881	\$ 281,881	(53,946)	-16.1%	\$ -	n/a
<b>Total, Method of Finance</b>	<b>\$ 103,567,953</b>	<b>\$ 7,227,649</b>	<b>\$ 64,841,445</b>	<b>\$ 31,498,859</b>	<b>\$ 50,951,274</b>	<b>\$ 3,156,550</b>	<b>\$ 14,003,947</b>	<b>\$ 33,790,777</b>	<b>\$ 2,291,921</b>	<b>7.3%</b>	<b>\$ (50,837,501)</b>	<b>-78.4%</b>



**FISCAL YEAR 2025**  
**OPERATING BUDGET**  
*(September 1, 2024 through August 31, 2025)*

**June 13, 2024**

*Prepared by the Financial Administration Division*

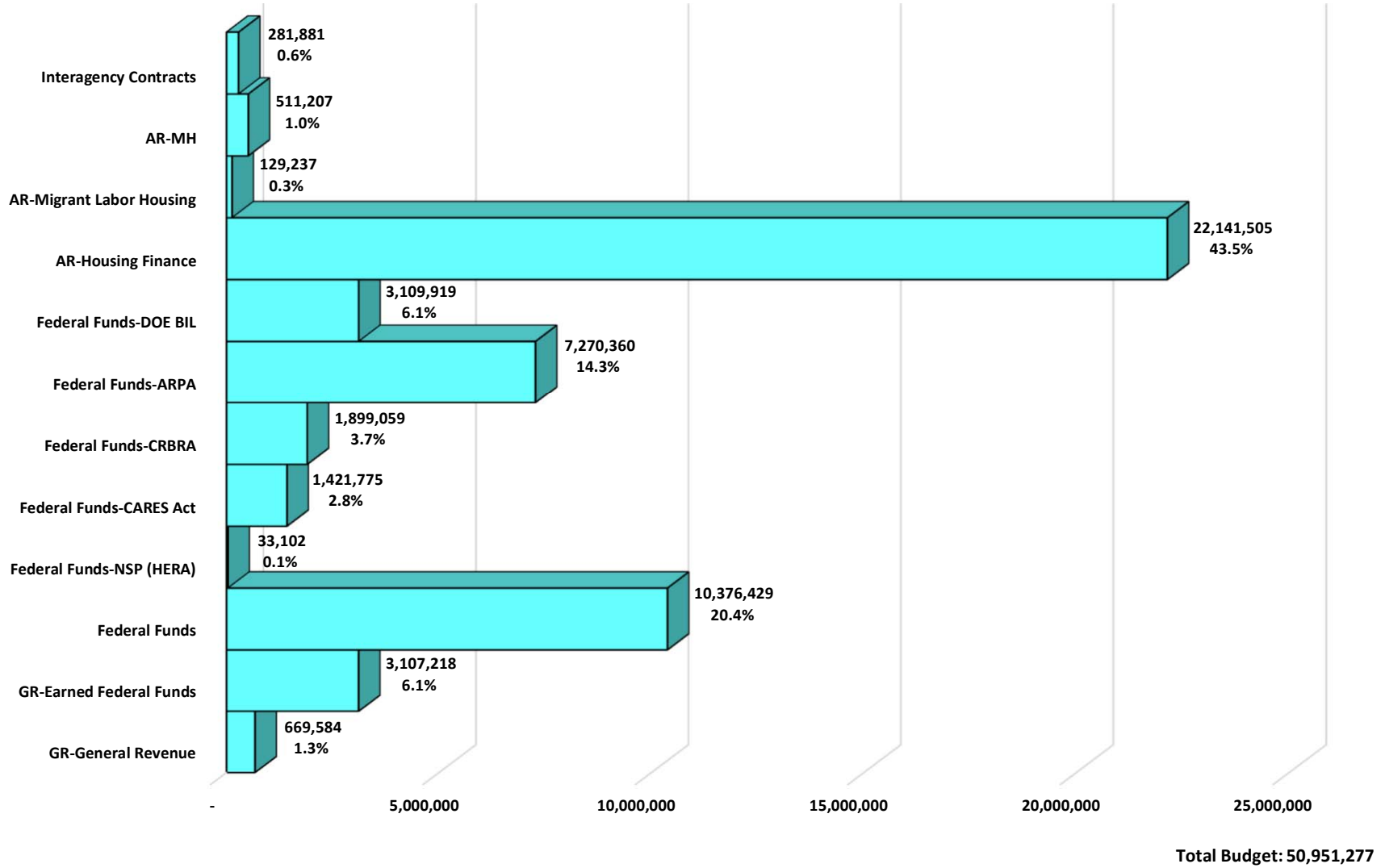
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS SFY-2025 OPERATING BUDGET**

**T A B L E O F C O N T E N T S**

Method of Finance Chart..... 1  
Agency Wide - By Method of Finance ..... 2

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## Texas Department of Housing and Community Affairs SFY 2025 Method of Finance





**Agency Wide - By Method of Finance**

September 1, 2024 thru August 31, 2025

Budget Categories	General						Appropriated Receipts	Interagency Contract	MH		Total
	Revenue	Federal Funds	CARES Act	CRBRA	ARPA	BIL WAP			Appropriated Receipts	Interagency Contract	
Salaries	2,710,926	5,642,671	1,067,442	1,347,877	2,265,676	1,393,659	14,385,459	177,512	401,628	29,392,850	
Payroll Related Costs	650,622	1,354,241	256,186	323,490	543,762	334,478	3,452,510	42,603	96,391	7,054,284	
Travel In-State	23,781	194,712	15,000	2,713	8,633	61,483	329,074	2,000	-	637,395	
Travel Out-of-State	4,281	93,638	9,000	1,506	13,082	45,991	109,881	-	-	277,380	
Professional Fees	118,801	2,398,029	5,000	160,015	4,345,048	516,774	1,479,193	55,903	-	9,078,762	
Materials/Supplies	64,814	39,875	4,116	2,548	2,221	8,986	194,186	1,000	-	317,746	
Repairs/Maintenance	106,513	164,305	13,492	6,705	11,566	26,183	633,796	-	-	962,560	
Printing and Reproduction	2,908	4,388	-	-	51	2,724	19,376	-	-	29,447	
Rental/Lease	15,567	10,929	705	412	66	16,392	60,565	-	-	104,637	
Membership Dues	1,700	59,074	5,500	500	250	30,224	60,002	-	-	157,249	
Staff Development	14,710	54,754	10,000	7,492	12,066	13,355	131,522	-	-	243,900	
Insurance/Employee Bonds	111,027	104,530	16,849	20,791	20,905	21,384	382,534	2,838	13,188	694,045	
Employee Tuition	2,061	2,000	2,500	-	-	-	4,939	-	-	11,500	
Advertising	-	3,000	-	-	-	500,000	4,000	-	-	507,000	
Freight/Delivery	2,161	2,714	500	1,100	1,520	1,000	28,831	-	-	37,825	
Temporary Help	26,056	108,528	-	9,032	30,106	101,118	254,229	-	-	529,069	
Furniture/Equipment	2,015	92,398	-	587	6,769	19,473	199,559	-	-	320,800	
Communications/Utilities	40,293	78,750	15,373	14,275	8,586	16,696	385,592	-	-	559,565	
Capital Outlay	-	-	-	-	-	-	-	-	-	-	
State Office of Risk Management	7,803	996	113	15	52	-	26,259	25	-	35,263	
<b>Total</b>	<b>3,906,039</b>	<b>10,409,530</b>	<b>1,421,775</b>	<b>1,899,060</b>	<b>7,270,362</b>	<b>3,109,919</b>	<b>22,141,505</b>	<b>281,881</b>	<b>511,207</b>	<b>50,951,277</b>	
Budget by Method of Finance, 2024	3,255,371	11,188,558	1,676,959	8,413,340	51,529,726	2,756,806	23,899,350	335,827	512,015	103,567,954	
Variance from 2024	650,668	(779,028)	(255,184)	(6,514,281)	(44,259,364)	353,113	(1,757,845)	(53,946)	(810)	(52,616,677)	



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 24-020

**Agenda Date:** 6/13/2024

**Agenda #:** 19.

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Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Gulfway Manor Apartments) Series 2024 Resolution No. 24-020, and a Determination Notice of Housing Tax Credits

**RECOMMENDED ACTION**

**WHEREAS**, an application for Gulfway Manor Apartments requesting 4% Housing Tax Credits, sponsored by Vitus Group, LLC was submitted to the Department on January 30, 2024;

**WHEREAS**, the application was previously induced by the Board on October 26, 2023, with a requested bond amount of \$29,000,000;

**WHEREAS**, a Certificate of Reservation was issued in the amount of \$29,000,000 on June 6, 2024, with a bond delivery deadline of December 3, 2024; and

**WHEREAS**, staff recommends approval of the issuance of Multifamily Housing Revenue Bonds for Gulfway Manor Apartments (Series 2024), and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of tax-exempt Multifamily Housing Revenue Bonds (Gulfway Manor Apartments) Series 2024 in an amount not to exceed \$29,000,000, Resolution No. 24-020, is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$2,215,055 in 4% Housing Tax Credits for Gulfway Manor Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, and subject to any compliance conditions as reflected in Exhibit A-1, is hereby approved in the form presented at this meeting 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.

### **BACKGROUND**

*General Information:* The Bonds will be issued in accordance with Tex. Gov't Code §2306.353 *et seq.*, which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. Tex. Gov't Code §2306.472 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.

*Development Information:* The Development is located at 1750 Treyway Lane in Corpus Christi, Nueces County, and proposes the acquisition and rehabilitation of 151 units that will continue to serve the general population. Gulfway Manor was originally constructed in 1971 and was rehabilitated in 2007 utilizing 4% Housing Tax Credits with the Cameron County Housing Finance Corporation as the bond issuer. An ownership transfer was requested and approved in 2021, which transferred ownership of the development to two of the principals included in the proposed ownership structure, as illustrated in Exhibit A herein. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not require any restrictions regarding the Area Median Family Income (AMFI). Of the 151 units, 77 units are proposed to be rent- and income-restricted at 50% of AMFI and the remaining 74 units will be rent- and income-restricted at 60% of AMFI. All of the units are covered by a Section 8 Housing Assistance Payment contract, which is expected to be transferred to the new owner and renewed for a 20-year term.

*Organizational Structure and Previous Participation:* The Borrower is Gulfway Housing Partners, LP, and includes the entities and principals as illustrated in Exhibit A. Worth noting is an Agreed Final Order was approved at the Board meeting of March 7, 2024, which required the payment of an administrative penalty due to violations of Compliance requirements involving four developments controlled by Vitus Development IV, LLC and Vitus Group, LLC. Staff can confirm that payment of the administrative penalty has been received. The applicant's portfolio is considered a Category 3 and the previous participation conditions noted in Exhibit A-1 are recommended by staff.

*Tax Equity and Fiscal Responsibility Act (TEFRA) Public Hearing/Public Comment:* On March 18, 2022, the IRS released Revenue Procedure 2022-20, which permanently allows TEFRA hearings for qualified activity bonds to be held telephonically. Staff conducted a telephonic hearing, in accordance with IRS guidance, for the proposed development on March 6, 2024. Representatives from the Department and the Developer were present, and no public comment was made. A copy of the hearing transcript is included herein. The Department has not received any letters of support or opposition for the development.

### Summary of Financial Structure

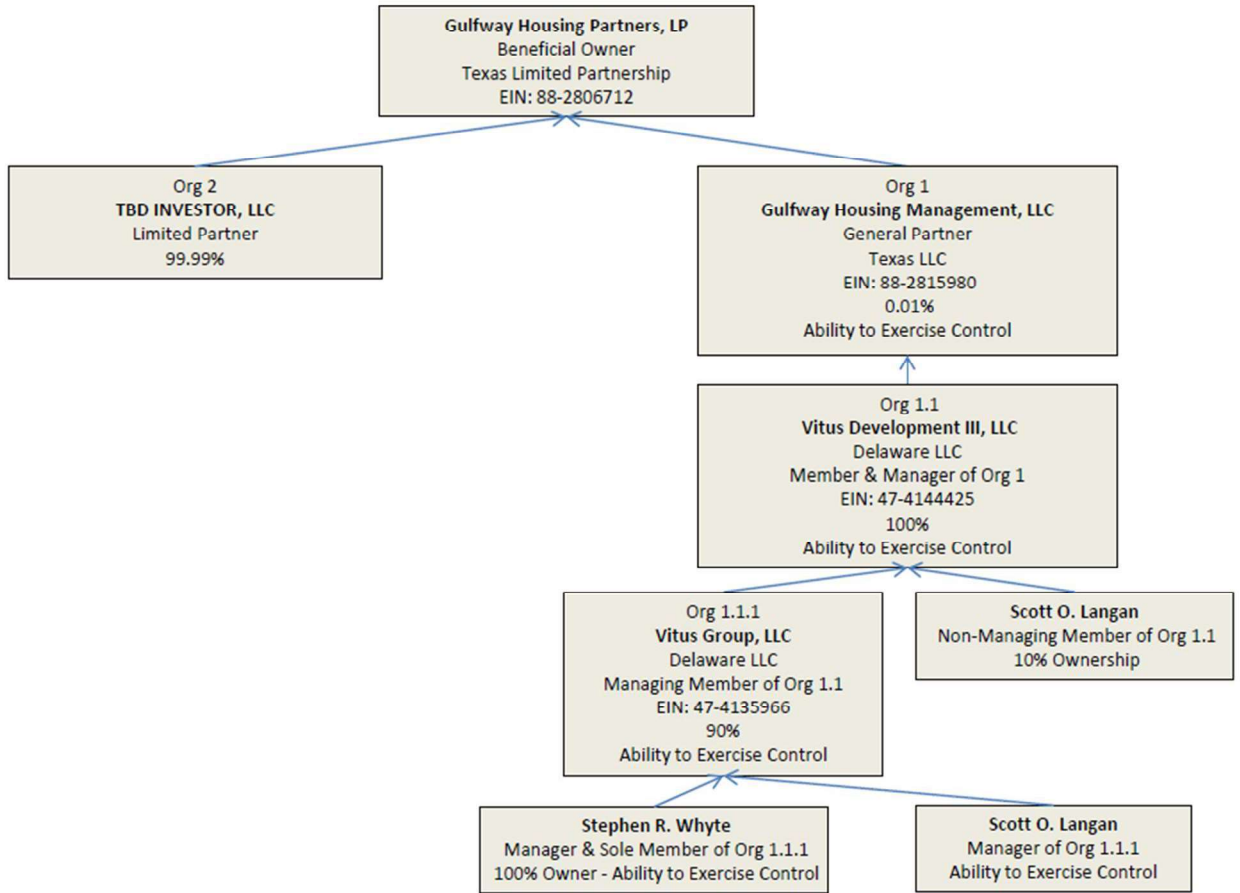
This transaction involves a Federal Housing Administration (FHA) Section 221(d)(4) loan originated by Merchants Capital and underwritten by Colliers Securities LLC. Under the proposed structure, TDHCA will issue short-term tax-exempt, fixed-rate bonds in an amount not to exceed \$29,000,000 that will be initially publically offered. As bond proceeds are drawn down, the proceeds from the FHA loan will be simultaneously drawn and placed in the Collateral Fund such that the bonds will be fully cash-collateralized throughout the construction period.

The bond mortgage will be subordinate in lien position to the FHA mortgage, but as previously indicated, the bond proceeds will also be cash collateralized as long as the bonds are outstanding. The bonds will remain outstanding through the rehabilitation, estimated to be between 12-14 months, and upon completion, will then be redeemed in full using the funds on deposit in the Collateral Fund.

The bonds will carry an interest rate not to exceed 8.00% and an initial mandatory tender date of August 1, 2026, at which time the bonds can be redeemed or remarketed until the final maturity date of February 1, 2029. Upon redemption of the bonds, the FHA mortgage loan, currently estimated to be \$23,810,000 will remain and carry an interest rate of approximately 6.25% with a 40-year term and amortization.

In addition to the \$23,810,000 tax-exempt bond loan, Bridgeway Bank will provide an equity bridge loan during the construction period in the approximate amount of \$10,000,000. The bridge loan will be interest only and will have a term of 24 months, with an option for a six-month extension. The underwritten interest rate used was 7.50%. A surplus cash loan in the amount of \$3,000,000 will be provided by the sponsor, Gulfway Housing Management, LLC. The interest rate will be fixed at 4.79%, with a 40-year term, and amortization based on cash flow. Income from operations in the approximate amount of \$878,429 will be provided as a source during the construction and permanent periods. Also included in the capital stack are Solar Tax Credits that have been requested from Raymond James and are expected to provide equity in the amount of \$712,000.

# EXHIBIT A



**Exhibit A-1**

**Previous Participation Results**

Development Name	Application Number	Category	PPR Conditions
Gulfway Manor	24602	3	1. The Applicant or the management company contracted by the Applicant 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 upon request.
			2. Owner agrees to establish an email distribution group in CMTS (or other Department required system), to be kept in place until no later than <b>December 31, 2025</b> , and include agreed upon employee positions and/or designated Applicant members.
			3. Owner is required to ensure that agreed upon persons attend and/or review the trainings listed in subparagraphs (A), (B) and (C) of this paragraph and provide TDHCA with certification of attendance or completion no later than <b>September 1, 2024</b> .
			(A) Housing Tax Credit Training sponsored by the Texas Apartment Association; (B) Income Determination Training conducted by TDHCA staff; (C) Review one or more of the TDHCA Compliance Training Presentation webinars: <ul style="list-style-type: none"> <li>• 2022 Monitoring Reviews Beginning to End Training</li> <li>• 2023 CMTS Training and Frequently Asked Questions</li> </ul>

## RESOLUTION NO. 24-020

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (GULFWAY MANOR) SERIES 2024; 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 (including notes), 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 Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), for the purpose of providing funds in connection with the financing of 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 Gulfway Housing Partners, LP, a Texas limited partnership (the "Borrower"), in connection with the cost of 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, very low

and extremely low income, and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by a resolution adopted on September 7, 2023, and as supplemented by a resolution adopted on October 26, 2023, declared its intent to issue its revenue bonds or notes to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and;

WHEREAS, it is anticipated that the Department and the Borrower 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 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 "Borrower 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 Borrower Note and the obligations of the Borrower under the Loan Agreement will be secured by a Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the "Security Instrument") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Indenture, the Borrower Note and the Security Instrument will be assigned to the Trustee pursuant to an Assignment of Deed of Trust Documents (the "Assignment") from the Department to the Trustee; and

WHEREAS, the Borrower will obtain a first lien mortgage loan from Merchants Capital Corp. (the "HUD Lender"), and pursuant to a Disbursement Agreement, or other similar agreement (the "Funding Agreement") among the HUD Lender, the Trustee and the Borrower, the HUD Lender will deposit from time to time the proceeds of the first-lien mortgage loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and

WHEREAS, the HUD Lender has agreed to permit the Loan and to allow the lien of the Security Instrument in accordance with the terms of a Subordination Agreement (the "Subordination Agreement") among the HUD Lender, the Department, and the Borrower; and

WHEREAS, the Borrower may also deposit, or cause to be deposited, other certain Preference Proof Moneys (as defined in the Indenture) from time to time with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and



WHEREAS, with respect to the Bonds, 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 Nueces County, Texas; and

WHEREAS, in order to assure compliance with Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, the Board has determined that the Department, the Trustee and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement"), in connection with the Bonds, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Bonds as exempt from gross income for federal income tax purposes; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an official statement (the "Official Statement") and to authorize the Authorized Representatives (as defined herein) to deem the Official Statement "final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final official statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Purchase Agreement") with Colliers Securities LLC (the "Underwriter") and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Subordination Agreement, the Assignment, the Tax Exemption Agreement, the Official Statement and the Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Security Instrument and the Borrower 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 Security Instrument and the Borrower 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, and Chapter 1371, Texas Government Code, 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 Underwriter.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Authorized Representatives (as defined herein) of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Indenture and the Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the initial interest rate set forth in the Purchase Agreement in accordance with the provisions of the Indenture; provided that in no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Bonds shall not exceed 8%; (ii) the aggregate principal amount of the Bonds and any bond premium attributable thereto shall not exceed \$29,000,000; (iii) the final maturity of the Bonds shall occur not later than February 1, 2029; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Purchase Agreement shall not exceed 110% of 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 are each 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 the Regulatory Agreement,

and to deliver the Regulatory Agreement to the parties thereto and to cause the Regulatory Agreement to be filed of record in the real property records of Nueces 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 Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Purchase Agreement is hereby approved, that the form and substance of the Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Purchase Agreement and to deliver the Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Purchase Agreement, as appropriate.

Section 1.8 Approval, Execution and Delivery of the Subordination Agreement. That the form and substance of the Subordination Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Subordination Agreement, and to deliver the Subordination Agreement to the parties thereto.

Section 1.9 Acceptance of the Borrower Note and the Security Instrument. That the form and substance of the Borrower Note and the Security Instrument are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Note to the order of the Trustee without recourse.

Section 1.10 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Trustee.

Section 1.11 Approval, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Authorized Representatives are hereby severally authorized to deem the Official Statement "final" for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Purchase Agreement and as may be approved by the Executive Director of the Department and the Department's counsel.

Section 1.12 [Reserved].

Section 1.13 [Reserved].

Section 1.14 [Reserved].

Section 1.15 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 1.16 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 ("Bond Counsel"), 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 1.17 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 B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Borrower Note
- Exhibit F - Security Instrument
- Exhibit G - Assignment
- Exhibit H - Purchase Agreement
- Exhibit I - Official Statement
- Exhibit J - Tax Exemption Agreement
- Exhibit K - Subordination Agreement

Section 1.18 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 of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Bonds 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 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 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department's consultants in seeking a rating from Moody's Ratings, and its successors and assigns, is approved, ratified and confirmed hereby.

Section 2.5 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 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Colliers Securities LLC, or any other party identified in the Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive 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 Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive 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, very low and extremely 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 Regulatory Agreement and the Tax Exemption Agreement, will supply well-planned and well-designed housing for individuals or families of low, very low, or extremely 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 Regulatory Agreement and the Tax Exemption

Agreement, which require, among other things, that the Development be occupied by individuals and families of low, very low, and extremely low income and families of moderate income, and

(ii) that the issuance of the Bonds in connection with the financing of 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, very low, and extremely low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing 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, very low, and extremely 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, in accordance with Section 2306.226 of the Act, 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 the Bonds 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 Section 2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

PASSED AND APPROVED this 13<sup>th</sup> day of June, 2024.



**EXHIBIT A**

**Description of Development**

Borrower: Gulfway Housing Partners, LP, a Texas limited partnership

Development: The Development is a 151-unit affordable, multifamily housing development known as Gulfway Manor Apartments, located at 1750 Treyway Lane, Corpus Christi, Nueces County, TX 78412. The unit mix will consist of:

20	one-bedroom/one-bath units
51	two-bedroom/one-bath units
60	three-bedroom/two-bath units
20	four-bedroom/two-bath units
<hr/>	
151	Total Units



## Final Transcript

### **TEXAS DEPT. OF HOUSING & COMMUNITY AFFAIRS: 4<sup>th</sup> Quarter 2023**

March 6, 2024/11:00 a.m. CST

#### **PRESENTATION**

Liz

Hello, this is Liz Cline with the Texas Department of Housing and Community Affairs. The purpose of this call is to conduct a public hearing with respect to the proposed Gulfway Manor multi-family development.

To give you an idea as to how we're going to proceed, there is a brief speech that I have to read for purposes of meeting the requirements of the Federal Code with respect to the public hearing. At the conclusion of the speech, I will unmute the lines and if there is anybody that would like to make public comment, that will be your opportunity to do so.

I will now begin with a brief speech.

Good morning, my name is Liz Cline. I would like to proceed with the public hearing. Let the record show that it is 11:03 a.m. Wednesday, March 6, 2024. We are conducting a public hearing on behalf of the Texas Department of Housing and Community Affairs with respect to an issue of Tax Exempt Multi-Family Revenue Bonds for a residential rental community. This hearing is required by the Internal Revenue Code.

The sole purpose of this hearing is to provide a reasonable opportunity for interested individuals to express their views regarding the development and the proposed bond issue. No decisions regarding the development will be made at this hearing. The department's board is scheduled to meet to consider the transaction on April 11, 2024.

**TEXAS DEPT. OF HOUSING & COMMUNITY AFFAIRS**

**Host: Liz Cline**

**March 6, 2024/11:00 a.m. CST**

**Page 2**

In addition to providing your comments at this hearing, the public is also invited to provide comment directly to the board at any of their meetings.

For Gulfway Manor, the bonds will be issued as tax exempt multi-family revenue bonds in the aggregate principal amount not to exceed \$29 million and taxable bonds, if necessary, in an amount to be determined and issued in one or more series by the Texas Department of Housing and Community Affairs. The issuer the proceeds of the bonds will be loaned to Gulfway Housing Partners, LP or a related person or affiliated entity thereof to finance a portion of the costs of acquiring, constructing and equipping a multi-family rental housing community described as follows: a 151-unit multi-family residential rental development to be located on approximately 9.54 acres of land located at or near 1750 Treyway Lane, Corpus Christi, Nueces County, Texas 78412. The proposed multi-family rental housing community will be initially owned and operated by the borrower or a related person or affiliate thereof.

At this point, I would now like to open the floor for public comment. I will unmute all the lines. So, if there are any individuals on the call who would like to make public comment, you may do so at this time.

Again, all of the lines are unmuted. So, if there are any individuals on the call who would like to make the public comment, you may do so at this time.

Let the record show that there are no individuals on the call who have expressed a desire to make public comment. Therefore, the meeting is now adjourned. The time is 11:06 a.m. Thank you.

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TRUST INDENTURE

Between

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Trustee

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Dated as of July 1, 2024

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Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024

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## TRUST INDENTURE

THIS TRUST INDENTURE (as amended, modified or supplemented from time to time, this “*Indenture*”) is entered into as of July 1, 2024, by and between the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (together with its successors and assigns, the “*Issuer*”), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association authorized to exercise corporate trust powers in the State of Texas, and authorized to accept and execute trusts of the character herein set out, as Trustee (together with its successors and assigns, the “*Trustee*”).

### RECITALS

*Certain of the terms and words used in these Recitals, and in the following Granting Clauses and Agreements, are defined in Section 1.01 of this Indenture.*

WHEREAS, by virtue of the authority of the laws of the State of Texas (the “*State*”), and particularly the provisions of Chapter 2306, Texas Government Code, as amended (the “*Act*”), the Issuer is authorized to make loans to finance the cost of a “*development*” (as defined in the Act) and to issue bonds, notes or other evidences of indebtedness from time to time for such purposes; and

WHEREAS, the Issuer has, pursuant to the Act, Chapter 1371, Texas Government Code, as amended and this Indenture, determined to issue and sell its Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 in the original aggregate principal amount of \$[27,500,000] (the “*Bonds*”), for the purpose of financing the cost of the acquisition, rehabilitation, and equipping of a multifamily rental housing development, consisting of approximately 151 units and related personal property and equipment, and located in Nueces County, Texas (the “*Project*”), all pursuant to this Indenture and the Loan Agreement dated as of July 1, 2024, (as amended, modified or supplemented from time to time, the “*Bond Loan Agreement*”), between the Issuer and Gulfway Housing Partners, LP, a limited partnership duly organized and existing under the laws of the State of Texas (together with its permitted successors and assigns, the “*Borrower*”); and

WHEREAS, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Costs of the Project by the issuance of the Bonds, all as hereinafter provided; and

WHEREAS, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, in order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer, the Borrower and the Trustee have entered into the Tax Exemption Agreement and the Regulatory Agreement, each of which sets forth various certifications, representations, and covenants relating to the Federal Tax Status of the Bonds; and

WHEREAS, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

Accordingly, the Issuer and the Trustee agree as follows for the benefit of each other and for the benefit of the Holders of the Bonds:

#### **GRANTING CLAUSES AND AGREEMENTS**

NOW, THEREFORE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of any or all of the Bonds issued and sold by the Issuer from time to time under this Indenture by those who shall hold the same from time to time, and of the sum of one dollar, lawful money of the United States of America, duly paid to the Issuer by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds and the payment and performance of all other of the obligations of the Issuer, the Issuer does hereby grant, bargain, sell, convey, pledge and assign, without recourse, unto the Trustee and unto its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the "*Trust Estate*"):

(a) All right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of this Indenture and the Bond Loan Agreement (other than the Reserved Rights of the Issuer), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate;

(b) All right, title and interest of the Issuer in and to the Note (other than the Reserved Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof;

(c) Any fund or account created under this Indenture except for the Cost of Issuance Fund, the Expense Fund and the Rebate Fund;

(d) All right, title and interest of the Issuer in and to, and remedies under, the Bond Loan Agreement and the Bond Mortgage (other than the Reserved Rights of the Issuer); and

(e) All funds, moneys and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Reserved Rights of the Issuer, including all amounts paid or collected by the

Issuer in connection therewith, all amounts on deposit in the Cost of Issuance Fund and the Expense Fund and all amounts on deposit in the Rebate Fund, which amounts on deposit in the Rebate Fund shall be held for the sole benefit of the United States of America;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in trust forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds.

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Collateral Fund as required under Article IV hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the obligations of the Issuer to be kept, performed and observed by it, the Rebate Requirement shall be paid in full 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 final payment, as further provided in Section 9.01 hereof, and the termination of the Bond Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

AND IT IS EXPRESSLY DECLARED that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all such property, moneys, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective Holders from time to time of the Bonds, or any part thereof, as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

Section 1.01. **Definitions.** Certain terms used in this Indenture are defined in the Bond Loan Agreement and when and if used herein, such terms shall have the meanings given to them by the Bond Loan Agreement unless the context clearly indicates otherwise. In addition, when used in this Indenture, the following terms shall have the meanings given to them in this Section 1.01 unless the context clearly indicates otherwise:

“*Account*” means an account within any Fund created pursuant to Article IV hereof.

“*Act*” has the meaning assigned in the Recitals hereto.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For

purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Assumption Agreement*” has the meaning set forth in Section 6.01(k)(iii) of the Bond Loan Agreement.

“*Authorized Officer*” means the Chair or Vice Chair of the Board, the Executive Director of the Issuer, the Director of Financial Administration of the Issuer, the Director of Bond Finance of the Issuer, the Director of Multifamily Bonds of the Issuer, and the Secretary or the Assistant Secretary to the Board.

“*Board*” means the Governing Board of the Issuer.

“*Bond*” or “*Bonds*” means the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 issued, authenticated and delivered under this Indenture, which are identified as such in Section 2.01(a) hereof.

“*Bond Counsel*” means nationally recognized bond counsel selected by the Issuer and initially means Bracewell LLP.

“*Bond Documents*” means, with respect to the Bonds, the Bonds, this Indenture, the Bond Loan Agreement, the Bond Mortgage, the Note, the Bond Purchase Agreement, the Regulatory Agreement, the Continuing Disclosure Agreement, the Tax Exemption Agreement, the Funding Agreement and any and all documents executed in connection with the Bonds.

“*Bond Fund*” means the Bond Fund created in Section 4.01 of this Indenture.

“*Bond Loan*” means the mortgage loan in the principal amount of \$[27,500,000] made by the Issuer to the Borrower evidenced by the Note, described in the Bond Loan Agreement and made in connection with the issuance of the Bonds.

“*Bond Loan Agreement*” or “*Agreement*” means the Loan Agreement, dated of even date with this Indenture, between the Issuer and the Borrower, and any and all amendments or supplements thereto, pursuant to which the Bond Loan is being made to the Borrower.

“*Bond Mortgage*” means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing, dated of even date with this Indenture, from the Borrower to [\_\_\_\_\_] for the benefit of the Trustee and the Issuer, and as the same may be amended, supplemented or restated.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement, dated [PRICING DATE], among the Issuer, the Borrower and the Underwriter.

“*Bond Registrar*” has the meaning assigned to it in Section 2.01(f) hereof.

“*Bondholder*” or “*Holder of the Bonds*” or “*Holder*” or “*Owner of the Bonds*” or “*Owner*” when used with respect to any Bond, means the Person or Persons in whose name such Bond is registered as the owner thereof on the books of the Issuer maintained at the Trust Office of the Trustee for that purpose.

“*Book Entry Form*” or “*Book Entry System*” means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“*Borrower*” means Gulfway Housing Partners, LP, a limited partnership duly organized and existing in the State of Texas, and its successors and assigns.

“*Borrower Documents*” means the Bond Loan Agreement, the Bond Mortgage, the Note, the Tax Exemption Agreement, the Regulatory Agreement, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Bond Loan evidenced by the Bond Loan Agreement.

“*Borrower Obligations*” means the obligations of the Borrower under the Bond Loan Agreement, the Note and the other Borrower Documents to (a) pay the principal of, and interest on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Bond Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer and the Trustee, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Bond Loan Agreement, the Note, the Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“*Borrower Representative*” means a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by one of its officers, which certificate may designate an alternate or alternates. The initial Borrower Representative is [\_\_\_\_\_].

“*Bridge Lender*” means Bridgewater Bank, and its successors and assigns.

“*Bridge Loan*” means the equity bridge loan to the Borrower relating to the Project from Bridge Lender in the maximum principal amount of \$[10,000,000].

“*Business Day*” or “*business day*” means a day, other than a Saturday or Sunday, on which (a) banks located in New York, New York or in the city in which the Trust Office of the Trustee is located, are not required or authorized by law or executive order to close for business and (b) the New York Stock Exchange is not closed.

“*Capitalized Interest Account*” means the Account by that name created in the Bond Fund pursuant to Section 4.01(a).

“*Capitalized Interest Deposit*” means the deposit of \$[ ] from Preference Proof Moneys to the Capitalized Interest Account of the Bond Fund on the Closing Date, as provided in Section 4.02 hereof.

“*Cash Flow Projection*” means a cash flow projection prepared by an Independent firm of certified public accountants, a financial advisory firm, a law firm or other Independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing, to the satisfaction of the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Preference Proof Moneys delivered to the Trustee by or on behalf of the Borrower to pay principal of and interest on the Bonds when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed optional redemption of the Bonds, as provided in Section 3.01(c) hereof, (iii) the release of Preference Proof Moneys from the Capitalized Interest Account of the Bond Fund, as provided in Section 4.05 hereof; and (iv) the purchase, sale or exchange of Permitted Investments as provided in Section 7.01 hereof.

“*Closing Date*” means the date of delivery of the Bonds in exchange for the purchase price thereof.

“*Closing Memorandum*” means the closing memorandum prepared by the Underwriter and executed by the Borrower and/or the Issuer in connection with the issuance of the Bonds.

“*Code*” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“*Collateral Fund*” means the Collateral Fund created pursuant to Section 4.01(e) of this Indenture.

“*Completion Certificate*” means a certificate submitted by the Borrower Representative to the Issuer and the Trustee as provided in Section 3.05 of the Bond Loan Agreement.

“*Completion Date*” means the date upon which the Completion Certificate is delivered by the Borrower to the Issuer and the Trustee, which shall be no later than the Mandatory Tender Date.

“*Comptroller*” means the Comptroller of Public Accounts of the State of Texas.

“*Construction Contract*” means that certain construction contract executed between the Contractor and the Borrower relating to the construction of the Project, as that contract may be amended from time to time.

“*Construction Draw Date*” means the date on which a disbursement from the Project Fund shall be made solely to pay Costs of the Project.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement, dated of even date with this Indenture, between the Borrower and the Dissemination Agent.

“*Contractor*” means the entity identified as the general contractor under the Construction Contract.

“*Controlling HUD and GNMA Requirements*” means the National Housing Act and any applicable HUD or GNMA regulations, and related HUD or GNMA administrative requirements and prohibitions, including “Program Obligations” as defined in the HUD Regulatory Agreement.

“*Costs of Issuance*” means all fees, costs and expenses incurred in connection with the issuance of the Bonds and the extension of the Bond Loan that are payable from amounts deposited in the Cost of Issuance Fund.

“*Cost of Issuance Deposit*” means the deposit to the Cost of Issuance Fund on the Closing Date in the amount designated in the Closing Memorandum, as provided in Section 4.04(a) hereof

“*Cost of Issuance Fund*” means the Cost of Issuance Fund created pursuant to Section 4.01(f) hereof.

“*Costs of the Project*” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“*Dissemination Agent*” means U.S. Bank Trust Company, National Association, a national banking association and its permitted successors and assigns as Dissemination Agent under the Continuing Disclosure Agreement.

“*Dissemination Agent Fee*” means the fee payable to U.S. Bank Trust Company, National Association, in its capacity as Dissemination Agent pursuant to the Continuing Disclosure Agreement.

“*Documents*” means and shall include (without limitation), with respect to the Bonds, this Indenture, the Bond Documents, the Borrower Documents, and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, to evidence or secure the Bonds and the Borrower Obligations, or any part thereof, or in connection therewith, and any and all supplements thereto.

“*Equity Investor*” means Raymond James Tax Credit Fund XX L.L.C., a Florida limited liability company, and its permitted successors and assigns in its capacity as the Equity Investor of the Borrower.

“*Event of Default*” or “*Default*” means, when used in this Indenture, those events of default or defaults specified in Section 10.01 hereof and, when used in the Bond Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

“*Expense Fund*” means the fund by that name created and established pursuant to Section 4.01(d) of this Indenture.

“*Favorable Opinion of Bond Counsel*” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the Federal Tax Status of the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“*Federal Tax Status*” means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond during any period during which it is held by a “substantial user” of the Project or “related person” to such a substantial user within the meaning of Section 147(a) of the Code).

“*FHA*” means the Federal Housing Administration of HUD or any successor entity and any authorized representatives or agents thereof, including the Secretary of HUD, the Federal Housing Commissioner and their representatives or agents.

“*Fund*” means any fund created pursuant to Article IV hereof.

“*Funding Agreement*” means the [Disbursement Agreement] dated as of July 1, 2024, by and between the Lender and the Borrower, and acknowledged by the Issuer and the Trustee, as amended, supplemented or restated from time to time.

“*General Partner*” means Gulfway Housing Management, LLC, a Texas limited liability company, as the Borrower’s general partner.

“*GNMA*” means the Government National Mortgage Association.

“*Government Obligations*” means non-callable, non-redeemable direct obligations issued by the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America, including, when available, SLGS.

“*Governmental Authority*” means any federal, State or local governmental or quasi-governmental entity, including, without limitation, any agency, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity.

“*Governmental Requirements*” means all laws, ordinances, orders, rules or regulations of all Governmental Authorities applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.



“*Hazardous Materials*” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“*PCBS*”) and compounds containing them; lead and lead based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above ground storage tanks, whether empty or containing any substance; any substance the presence of which at the Project is prohibited by any federal, state or local authority; any substance that requires special handling under any Hazardous Materials Law; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law, but does not include any such substance that is a customary and ordinary household, cleaning, office, swimming pool or landscape maintenance product used on the Project by the Borrower or any tenant or agent of the Borrower, or customary construction materials used during the course of construction and equipping of the Project by the Borrower or the Contractor, provided such use is in accordance with applicable hazardous material laws.

“*Hazardous Materials Law*” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Project. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs, including laws of the State.

“*Highest Rating Category*” means, with respect to a Permitted Investment, that the Permitted Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below Aaa or Aaa/VMIG-1 if rated by Moody’s or A-1+ or AA+ if rated by S&P.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*HUD Regulatory Agreement*” means the Regulatory Agreement for Multifamily Projects between the Borrower and HUD, as amended or supplemented from time to time.

“*Indenture*” means this Trust Indenture dated as of July 1, 2024, between the Issuer and the Trustee, and any and all Supplements hereto, authorizing the issuance of the Bonds.

“*Independent*” means a Person that has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner, member or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, partner, member, officer or employee of any partner or member of the Borrower or any Affiliate of the Borrower.

“*Initial Bond*” means the initial Bond registered by the Comptroller and subsequently canceled and replaced by a definitive Bond pursuant to this Indenture.

“*Interest Payment Date*” means each February 1 and August 1, beginning February 1, 2025.

“*Issuer*” means the Texas Department of Housing and Community Affairs, a public and official agency of the State, and its successors and assigns.

“*Issuer Documents*” means the Bond Loan Agreement, this Indenture, the Regulatory Agreement, the Bond Purchase Agreement, the Tax Exemption Agreement and any and all documents, agreements or instruments executed by the Issuer in connection with the Bond Loan evidenced by the Bond Loan Agreement.

“*Issuer Indemnified Party*” or “*Issuer Indemnified Parties*” has the meaning set forth in Section 6.02 of the Bond Loan Agreement.

“*Issuer Administration Fee*” means the fee payable annually in advance to the Issuer on each July 1, in the amount of 0.10% per annum of the aggregate principal amount of Bonds Outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Issuer Administration Fee for the period from the Closing Date to [June 30, 2026]. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after [July 1, 2026].

“*Issuer Compliance Fee*” means the fee payable annually in advance to the Issuer on each July 1, in the amount of \$25 per Unit (as defined in the Regulatory Agreement) in the Project, for the duration of the State Restrictive Period (as defined in the Regulatory Agreement). The first annual Issuer Compliance Fee shall be paid on the Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after [July 1], 2027. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

“*Issuer’s Fees*” means, collectively, the Issuer Administration Fee and the Issuer Compliance Fee.

“*Lender*” means Merchants Capital Corp., an Indiana banking corporation, and its successors and assigns.

“*Lender Borrower Note*” means the Note (Multistate) dated as of July 1, 2024, from the Borrower to the Lender to evidence its indebtedness under the Lender Loan and endorsed by HUD.

“*Lender Collateral Deposit*” shall have the meaning given to such term in Section 4.03 hereof.

“*Lender Loan*” means the loan made by the Lender to the Borrower in the original principal amount not to exceed \$[24,710,000], as evidenced by the Lender Borrower Note and secured by the Lender Mortgage.

“*Lender Loan Documents*” means the documents related to the Lender Loan, including the Lender Borrower Note, the Lender Mortgage, the HUD Regulatory Agreement and any and all other documents, agreements, or instruments which evidence or secure the indebtedness evidenced by the Lender Loan.

“*Lender Mortgage*” means the first-lien priority Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (Texas) dated July 1, 2024, from Borrower for the benefit of the Lender to secure the repayment of the Lender Borrower Note.

“*Mandatory Tender Date*” means (i) August 1, 2026, and (ii) if the Bonds are remarketed pursuant to Article III for a period that does not extend to the Maturity Date, the day immediately following such period.

“*Maturity Date*” means August, 1, 2028.

“*Maximum Rate*” shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Bonds under State law pursuant to Chapter 1204 of the Texas Government Code.

“*Moody’s*” means Moody’s Ratings, a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “*Moody’s*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“*Note*” means the Promissory Note, dated the Closing Date, from the Borrower to the Issuer in substantially the form attached as Exhibit B to the Bond Loan Agreement, and any amendments, supplements or modifications thereto, which Note has been assigned by the Issuer to the Trustee.

“*Notice Address*” means, unless otherwise designated pursuant to Section 13.06 hereof:

(a) As to the Issuer:

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711  
Attention: Director of Multifamily Bonds  
Telephone: (512) 475-3344  
E-mail: [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)

(b) As to the Borrower:

Gulfway Housing Partners, LP  
2607 2<sup>nd</sup> Avenue N.  
Seattle, WA 98101  
Attention: Samantha Cullen  
Telephone: (206) 832-1326  
E-mail: [Samantha.cullen@vitus.com](mailto:Samantha.cullen@vitus.com)

With a copy to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attention: Joshua Noah  
Telephone: (612) 604-6599  
E-mail: jnoah@winthrop.com

(c) As to the Rating Agency:

Moody's Ratings  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Attention: Public Finance Group – Housing Team  
E-mail: Housing@moodys.com

(d) As to the Trustee:

U.S. Bank Trust Company, National Association  
111 E Fillmore Avenue  
St. Paul, MN 55107-2292  
Attention: Corporate Trust  
E-mail: martha.earley@usbank.com

(e) As to the Equity Investor:

Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Affordable Housing Investments, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf, President  
Email: steve.kropf@raymondjames.com

With a copy to:

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: Nathan A. Bernard  
Email: nbernard@nixonpeabody.com

(f) As to the Lender:

Merchants Capital Corp.

410 Monon Boulevard, 5<sup>th</sup> Floor  
Carmel, IN 46032  
Attn: Matt Kaercher  
Phone: (317) 342-4723  
Email: mkaercher@merchantscapital.com

(g) As to Remarketing Agent:

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, Minnesota 55402-4108  
Attn: Public Finance  
Telephone: (612) 376-4000  
Facsimile: (612) 673-0584  
Email: Frank.Hogan@colliers.com

“*Official Statement*” means the Official Statement dated [PRICING DATE], relating to the Bonds.

“*Opinion of Counsel*” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer with experience in the matters to be covered in the opinion.

“*Optional Redemption Date*” means any date the Bonds are redeemed pursuant to Section 3.01(a) hereof.

“*Organizational Documents*” means the Amended and Restated Limited Partnership Agreement dated as of July 1, as the foregoing may be amended, modified, supplemented or restated from time to time.

“*Outstanding*,” “*outstanding*” or “*Bonds Outstanding*” when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under this Indenture, except:

(a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;

(b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee or other escrow agent in accordance with Article IX; or

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

“*Paying Agent*” means the Trustee in its capacity as paying agent for the Bonds.

“*Permitted Investments*” means (i) Government Obligations, and (ii) shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that Rating Category), including mutual funds of the Trustee or its Affiliates or for which the Trustee or an Affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that

are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consist primarily of Government Obligations. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories, and the Trustee shall have no responsibility to monitor the ratings of Permitted Investments upon or after the initial purchase of such Permitted Investments.

“*Person*” shall include an individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

“*Plans and Specifications*” means the plans and specifications and/or the scope of work for the Project, together with such amendments thereto as are made from time to time in accordance with Section 5.07 of the Bond Loan Agreement.

“*Preference Proof Moneys*” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds plus any additional amount paid by the Underwriter to the Trustee in excess of the offering price (or in the case of a remarketing, by the Remarketing Agent in excess of the reoffering price) of the Bonds, (iii) proceeds of a Lender Collateral Deposit, (iv) proceeds of the Bridge Loan deposited with the Trustee on behalf of the Borrower, or (v) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code. “*Preference Proof Moneys*” shall also include investment earnings derived from any of the foregoing.

“*Project*” means the multifamily rental housing development known as Gulfway Manor Apartments, which will consist of approximately 151 apartment units and related facilities located in Nueces County, Texas.

“*Project Fund*” means the Project Fund created in Section 4.01(b) hereof.

“*Purchase in Lieu of Redemption Date*” means the date set forth in Section 3.02 of this Indenture.

“*Qualified Project Costs*” has the meaning assigned to such term in the Tax Exemption Agreement.

“*Qualified Project Period*” has the meaning assigned to such term in the Regulatory Agreement.

“*Rating Agency*” means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

“*Rating Category*” means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Permitted Investment.

“*Rating Confirmation*” means a letter of confirmation from the Rating Agency to the effect that the proposed action would not result in a withdrawal, suspension or downgrade of the rating then in effect on the Bonds.

“*Rebate Analyst*” has the meaning assigned to such term in the Tax Exemption Agreement.

“*Rebate Analyst Fee*” means the fee payable by the Borrower to the Rebate Analyst upon delivery of its report in accordance with the Tax Exemption Agreement.

“*Rebate Fund*” means the Rebate Fund created in Section 4.01(c) hereof.

“*Rebate Requirement*” means the amount, if any, which is to be paid to the United States of America pursuant to Section 148(f) of the Code and Section 5.01 hereof or to reduce the yield on investments to the yield on the Bonds pursuant to Section 148 of the Code.

“*Record Date*” means the 15th day of the month preceding the date on which interest is due and payable.

“*Regulations*” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“*Regulatory Agreement*” means the Regulatory and Land Use Restriction Agreement dated of even date with this Indenture, among the Issuer, the Trustee and the Borrower, and any and all amendments or supplements thereto.

“*Remarketing Agent*” means initially Colliers Securities LLC, and any successor Remarketing Agent that may be appointed by the Borrower.

“*Remarketing Agreement*” means the Remarketing Agreement, dated as of even date with this Indenture, between the Borrower and the Remarketing Agent.

“*Remarketing Notice Parties*” means the Borrower, the Issuer, the Trustee, the Remarketing Agent, the Equity Investor and the Rating Agency.

“*Remarketing Rate*” means the interest rate or rates established pursuant to Section 3.05(b) hereof and borne by the Bonds then Outstanding from and including a Mandatory Tender Date to but not including the next Mandatory Tender Date or the Maturity Date, as applicable.

“*Representation Letter*” means the Blanket Letter of Representations from the Issuer to DTC, or any similar Letter of Representations at the time in use by DTC.

“*Requisition*” means (a) the request signed by the Borrower Representative to make a disbursement from the Project Fund on a Construction Draw Date in the manner provided pursuant to Section 6.02 hereof or (b) the request signed by the Borrower Representative to make a disbursement from the Cost of Issuance Fund in the manner provided pursuant to Section 4.04(b) hereof.

“*Reserved Rights of the Issuer*” and “*Reserved Rights*” means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to Section 4.03 of the Bond Loan Agreement, including the Issuer’s Fees; (c) all rights of the Issuer to receive any Rebate Amount (as defined in the Tax Exemption Agreement) required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to make determinations and grant approvals or consent hereunder and under the Bond Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Bond Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, or the Bond Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, this Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Bond Mortgage or the Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of this Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, Bond Mortgage and the Note; (h) any and all limitations of the Issuer’s liability and the Issuer’s disclaimers of warranties set forth in this Indenture, the Regulatory Agreement, the Tax Exemption Agreement or the Bond Loan Agreement, and the Issuer’s right to inspect and audit the books, records and permits of the Borrower and the Project; and (i) any and all rights under the Bond Loan Agreement and the Regulatory Agreement required for the Issuer to enforce or to comply with Section 2306.186 of the Texas Government Code.

“*Resolution*” means the resolution adopted by the Issuer on [June 13], 2024, duly authorizing and directing the issuance, sale and delivery of the Bonds.

“*Responsible Officer*” means, when used with respect to the Trustee, any vice president, assistant vice president, senior associate, associate or other officer of the Trustee within the Trust Office (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

“*Revenues*” means, all payments paid or payable to the Trustee in accordance with the Bond Loan Agreement, the Bond Loan and the Note and all investment earnings derived or to be derived on any moneys or investments held by the Trustee hereunder, but excluding (a) amounts paid as fees, reimbursement for expenses or for indemnification of any Issuer Indemnified Party and the Trustee, (b) amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer and (c) any Rebate Requirement.

“*S&P*” means S&P Global Ratings, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating



agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“*Securities Depository*” means The Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

“*SLGS*” means Time Deposit Treasury Securities –State and Local Government Series.

“*Special Funds*” means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein, all as created in Section 4.01 of this Indenture.

“*State*” means the State of Texas.

“*Supplement*” or “*Supplements*” means any and all extensions, renewals, modifications, amendments, supplements and substitutions to this Indenture.

“*Tax Exemption Agreement*” means the Tax Exemption Certificate and Agreement dated of even date with this Indenture, among the Issuer, the Borrower and the Trustee, and any and all amendments or supplements thereto.

“*Trust Estate*” has the meaning given such term in the Granting Clauses of this Indenture.

“*Trust Office*” means the corporate trust office of the Trustee located at the address set forth in Article I hereof or such other office designated by the Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the Trustee.

“*Trustee*” means U.S. Bank Trust Company, National Association, a national banking association, duly organized and existing under the laws of the United States of America, and authorized to exercise corporate trust powers in the State, having a corporate trust office in St. Paul, Minnesota, and its successor or successors in the trust created by this Indenture.

“*Trustee’s Fee*” means the ongoing compensation and expenses payable to the Trustee as follows: (a) the acceptance fee of the Trustee of \$[\_\_\_\_\_] payable on the Closing Date; (b) the annual administration fees and expenses of the Trustee, as Trustee, Registrar, Dissemination Agent and Paying Agent of \$[\_\_\_\_\_] for the ordinary services of the Trustee rendered under this Indenture during each twelve-month period, payable annually in advance beginning on the Closing Date and thereafter on each anniversary of the Closing Date; (c) the reasonable fees and charges of the Trustee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under this Indenture as and when the same become due, including reasonable counsel fees (including in-house counsel fees and fees prior to litigation, at trial, in insolvency proceedings or for appellate proceedings); *provided, further*, that the Trustee shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Trustee shall have been made; (d) for purposes of the Bond Loan Agreement, indemnification of the Trustee by the Borrower; and (e) the annual Dissemination Agent Fee under the Continuing Disclosure Agreement of \$[\_\_\_\_\_] , payable annually in advance on the Closing Date and thereafter on each anniversary of the Closing Date.

“Trustee Indemnified Party” or “Trustee Indemnified Parties” has the meaning set forth in Section 6.02 of the Bond Loan Agreement.

“Underwriter” means Colliers Securities LLC.

Section 1.02. **Rules of Construction.** The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Indenture in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections, and other subdivisions of this Indenture.

The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code and applicable income tax regulations shall include any successor provisions of law or regulations, to the extent the same shall apply to the Bonds.

Any reference to a Bond or to the Bonds shall include each portion in the minimum authorized denomination of any registered bond having a denomination greater than the minimum authorized denomination.

## ARTICLE II

### CREATION OF BONDS; DETAILS OF THE BONDS

#### Section 2.01. **Authorization and Terms of Bonds.**

(a) *Authorization of Bonds.* The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$[27,500,000] which shall be designated the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024” to be issued as hereinafter provided.

(b) *Registered Form; Numbering.* The Bonds shall be issuable only as fully registered Bonds in authorized denominations, substantially in the form, appropriately completed, attached hereto as *Exhibit A* and made a part hereof. The Bonds shall be lettered “R” and shall be numbered separately from “1” consecutively upward, except for the Initial Bond, which shall be numbered I-1.

(c) *Date, Denominations, Interest Rate and Maturity.* The Bonds shall be dated July 1, 2024, shall be issued in denominations of \$5,000 each or integral multiples of \$1,000 thereafter,

shall bear interest from the Closing Date to the initial Mandatory Tender Date at the rate of [INTEREST RATE]% per annum and thereafter at the Remarketing Rate or Rates determined as provided in Section 3.05(b) hereof, payable semiannually on each Interest Payment Date, and shall mature on the Maturity Date.

The Issuer intends to conform strictly to the usury laws applicable to this Indenture and the Bonds and all agreements made in the Bonds, this Indenture and the Bond Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto including Chapter 1204 of the Texas Government Code and other applicable laws of the State. If, from any circumstances whatsoever, the fulfillment of any provision of the Bonds, this Indenture or the other Bond Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Holders shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Holders, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. In no event shall the interest on the Bonds exceed the Maximum Rate. This paragraph shall control every other provision of the Bonds, this Indenture and all other Bond Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Issuer intends and agrees that (i) interest shall be computed upon the assumption that payments under the Bond Loan Agreement and other Bond Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Bonds.

(d) *Book Entry Form.* Initially, the Bonds shall be in Book Entry Form by issuing a single bond in the amount of \$[27,500,000], registered in the name of Cede & Co., as nominee for DTC. In the event DTC discontinues its service with respect to the Bonds and the Book Entry System is terminated, replacement Bonds shall be issued in authorized denominations.

(e) *Dates from Which Interest Payable.* The Bonds shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated, unless authenticated on an Interest Payment Date, in which case it shall bear interest from such Interest Payment Date, or, unless authenticated prior to the first Interest Payment Date, in which case it shall bear interest from the Closing Date; *provided, however,* if at the time of authentication of any Bond, the Issuer is in default with respect to the payment of interest thereon, such Bond shall bear interest from the date to which interest shall have been paid. Interest payable on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months.

(f) *Medium and Place of Payment.* Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any

other monies made available to the Issuer for such purpose. Principal of the Bonds shall be payable at Trust Office of the Trustee upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered Owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to the registered Owners of the Bonds by check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as Bond Registrar (the “*Bond Registrar*”), or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the domestic bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date. Notwithstanding anything herein to the contrary, for so long as the Bonds are held under the Book Entry System as described in Section 2.11 hereof, the Bonds issued under this Indenture are subject to the procedures of the Securities Depository.

(g) *Form of Bonds.* The definitive Bonds, which may be printed, typewritten, photocopied, or otherwise reproduced, including the Trustee’s certificate of authentication to be endorsed thereon, shall be substantially in the form as set forth in *Exhibit A* attached hereto with such appropriate variations, omissions and insertions as permitted or required by this Indenture.

The Initial Bond, which shall be numbered I-1 and registered by the Comptroller, shall be identical to the form of Bond attached as *Exhibit A* attached hereto, except that (a) the first paragraph immediately following the bond caption shall be omitted, (b) the Initial Bond shall be payable to the Underwriter, and (c) the CUSIP number may be omitted.

The provisions of *Exhibit A* attached hereto may be rearranged or re-ordered for purposes of the Initial Bond.

(h) *Payments or Actions to be taken on Saturdays, Sundays and Holidays.* In any case where the date of any action required hereunder to be taken or the date of maturity of interest on or principal of the Bonds, shall not be a Business Day, then payment of interest or principal or the taking of such action need not be made or taken on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date such action was to be taken.

Section 2.02. **Source of Payment of Bonds.** The Issuer covenants that it will promptly pay the principal of and the interest on the Bonds only out of (a) the Revenues pledged for the payment thereof under this Indenture, (b) the amounts held in any Fund or Account created under this Indenture, other than amounts held in the Cost of Issuance Fund, the Rebate Fund or the Expense Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.03. **Execution of Bonds.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chair or Vice Chair of the Issuer, and the seal of the Issuer or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by

the manual or facsimile signature of an authorized officer of the Issuer. In case any authorized officer of the Issuer whose signature or a facsimile of whose signature shall appear on any of the Bonds shall cease to be an authorized officer of the Issuer before the delivery of such Bonds, such signature or such facsimile signature thereof shall nevertheless be valid and sufficient for all purposes, the same as if such authorized officer of the Issuer had remained in office until delivery. Any Bond may be signed on behalf of the Issuer by such authorized officers as are at the time of execution of such Bond proper officers of the Issuer, even though at the date of such Bond, such authorized officer was not such officer. Furthermore, it shall not be necessary that the same authorized officer of the Issuer sign all of the Bonds that may be issued hereunder at any one time or from time to time.

Section 2.04. **Certificate of Authentication.** Except for the Initial Bond, only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the form of the Bond herein provided and duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. Except for the Initial Bond, no Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder. At the time of authentication of any Bond, the Trustee shall insert therein the date from which interest on such Bond shall be payable as provided in Section 2.01(e) hereof.

Section 2.05. **Authentication and Delivery of Bonds.** Upon the execution and delivery hereof, the Issuer shall execute the Initial Bond and register the same with the Comptroller. Upon payment on the Closing Date of the purchase price of the Bonds and satisfaction of the conditions in this Section 2.05, the Trustee shall cancel the Initial Bond and authenticate the definitive Bonds and deliver them to the purchaser or purchasers as may be directed by the Issuer as provided in this Section 2.05. Prior to the authentication by the Trustee of the Bonds, there shall have been filed with the Trustee (all of which may be provided in an electronic format):

- (a) A copy, certified by an authorized officer of the Issuer, of the Resolution adopted by the Issuer relating to the Bonds, authorizing the execution, delivery and performance of this Indenture and the Bond Loan Agreement;
- (b) The Initial Bond registered by the Comptroller;
- (c) A fully executed counterpart of this Indenture;
- (d) A fully executed counterpart of the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Continuing Disclosure Agreement and the original, fully executed Note;
- (e) A copy of the completed Internal Revenue Service Form 8038 to be filed by or on behalf of the Issuer with the Internal Revenue Service pursuant to Section 149(e) of the Code;

*provided*, that the Trustee is not responsible for filing the Form 8038 with the Internal Revenue Service;

(f) An opinion of Bond Counsel to the effect that, under existing law, the interest on the Bonds is excludable from gross income for federal income tax purposes under section 103 of the Code (except with respect to the interest on any Bond for any period during which such Bond is held by a “substantial user” of the Project or a “related person” of such a “substantial user,” as those terms are defined for purposes of section 147(a) of the Code);

(g) An opinion or opinions of counsel to the Issuer addressed to the Issuer and the Trustee to the effect that the Bonds and the documents specifically identified in the definition of Issuer Documents have been duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors’ rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;

(h) An Opinion of Counsel for the Borrower to the effect that the documents specifically identified in the definition of Borrower Documents have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower, enforceable in accordance with their respective terms subject to customary qualifications and exceptions;

(i) An opinion of the Attorney General of the State of Texas approving the Bonds;

(j) A request and authorization signed by an authorized officer of the Issuer authorizing the Trustee to authenticate and to deliver the Bonds to the purchaser or purchasers therein identified upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization;

(k) Written evidence from the Rating Agency confirming that the Bonds have been assigned a rating of “Aaa/VMIG-1”;

(l) The Capitalized Interest Deposit, if applicable, and Cost of Issuance Deposit, for deposit to the Capitalized Interest Account of the Bond Fund and the Cost of Issuance Fund, respectively; and

(m) Copies of all initial financing statements to be filed by the Borrower upon issuance of the Bonds, provided, that the Trustee is not responsible for filing the initial financing statements.

The proceeds from the sale of the Bonds shall be paid over directly to the Trustee and deposited to the credit of the Project Fund, as provided in Article VI hereof.

Section 2.06. **Temporary Bonds.** Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, typewritten or photocopied Bonds in temporary form, substantially of the tenor of the Bonds herein described, and with appropriate omissions, variations and insertions. Such Bond or

Bonds in temporary form shall be delivered in denominations authorized by this Indenture, may be numbered using the prefix "T" before any number thereon as authorized by this Indenture, and may bear a legend thereon setting forth the terms for the exchange thereof for Bonds in definitive form. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit of this Indenture. The Issuer shall, without unreasonable delay (unless the Holders of the Bonds issued in temporary form agree otherwise), prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond in a definitive authorized form in authorized denominations, of the same maturity or maturities, bearing the same interest rate or rates and for the same aggregate principal amount as the Bond in temporary form surrendered. Such exchange shall be made by the Issuer at the Borrower's expense and without making any charge to the Holders of the Bonds therefor.

Section 2.07. **Mutilated, Lost, Stolen or Destroyed Bonds**. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Trustee may, with the consent of the Holder, provide to the Holder a typewritten (or similarly reproduced) Bond certificate in lieu of a printed Bond certificate. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their expenses and reasonable fees, if any, in connection with the preparation, execution and authentication of a replacement Bond.

Section 2.08. **Registration, Negotiability, Transfer and Exchange of Bonds**. All of the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Issuer shall maintain and keep at the Trust Office of the Trustee, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer. Transfers are subject to the requirements of the Securities Depository for so long as the Bonds are held under the Book-Entry Form System as described in Section 2.11 hereof. Neither the Trustee nor any agent will have any responsibility or liability for any actions taken or not taken by the Securities Depository.

Each Bond shall be transferable only upon the books of the Issuer maintained for such purpose by the Trustee, at the written request of the registered Owner thereof or his attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of any Bond, the Issuer shall issue, and the Trustee shall authenticate, in the name of the transferee, in authorized denominations, a new Bond or Bonds without coupons of the same aggregate principal amount, series, maturity and interest rate as the surrendered Bond.

The Issuer and the Trustee shall deem and treat the Person in whose name any Outstanding registered Bond shall be registered upon the books of the Issuer as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the Person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Indenture to the contrary, any expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge) shall be paid by the Borrower as required by the Bond Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an Interest Payment Date.

Section 2.09. **Limited Obligation.** THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE BOND LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES. The foregoing statement of limitation shall appear on the face of each Bond.



Section 2.10. **Cancellation and Destruction of Bonds.** All Bonds that have been surrendered for payment, cancellation or for registration of transfer or exchange pursuant to Section 2.08 hereof shall be cancelled and destroyed by the Trustee and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer and, upon written request therefor, to the Borrower. Any Bonds so cancelled may be retained by the Trustee for such period of time as the Trustee may determine and shall be destroyed by the Trustee at the end of such period. Any Bond so cancelled shall thereafter no longer be considered Outstanding for any purpose of this Indenture or the Bond Loan Agreement.

Section 2.11. **Book Entry System.**

(a) (i) Except as provided in subparagraph (iii) of this Section 2.11(a), the registered owner of all of the Bonds shall be, and the Bonds shall be registered in the name of, Cede & Co. (“Cede”), as nominee of The Depository Trust Company (“DTC”). Payment of semi-annual interest for any Bonds shall be made by transfer of same day funds to the account of Cede on the Interest Payment Date at the address indicated for Cede in the registration books of the Issuer kept by the Trustee.

(ii) The Bonds shall be initially issued in the form of a separate single fully registered bond in the amount of each separately stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the registry books of the Issuer kept by the Trustee in the name of Cede, as nominee of DTC. With respect to Bonds registered in the registry books kept by the Trustee in the name of Cede, as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any participant of DTC (a “Participant”) or to any Person for whom a Participant acquires an interest in the Bonds (a “Beneficial Owner”). Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner or any other person, other than DTC, of any notice with respect to the Bonds, (iii) the payment to any Participant, any Beneficial Owner or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds, or (iv) any actions taken or not taken by DTC. The Issuer and the Trustee may treat as and deem DTC to be the absolute owner of each Bond for the purpose of payment of the principal of and interest on such Bond, and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Payments of principal may be made without requiring the surrender of the Bonds, and the Issuer and Trustee shall not be liable for the failure of DTC or any successor thereto to properly indicate on the Bonds the payment of such principal. No Person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal of and interest on the Bonds pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word “Cede” in this Indenture shall refer to such new nominee of DTC.

(iii) (A) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository), Bond certificates will be delivered as described in this Indenture.

(B) The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that: (i) DTC is unable to discharge its responsibilities with respect to the Bonds or (ii) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. In the event that no substitute securities depository is found by the Issuer, or restricted registration is no longer in effect, Bond certificates will be delivered as described in this Indenture.

(C) Upon the termination of the services of DTC with respect to the Bonds pursuant to subparagraph (a)(iii)(B) of this Section 2.11, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subparagraph (a)(iii)(A) or subparagraph (a)(iii)(B) of this Section 2.11 after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC, but may be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

(b) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the applicable Representation Letter of the Issuer addressed to DTC.

(c) In connection with any notice or other communication to be provided to Bondholders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by the Bondholders, the Issuer or the Trustee, as the case may be, shall establish a special record date for such consent or other action and give DTC notice of such special record date not less than fifteen (15) calendar days in advance of such special record date to the extent possible.

Section 2.12. **Non-Presentation of Bonds.** Subject to the provisions of Section 11.20 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds,

without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

### ARTICLE III

#### REDEMPTION OF BONDS

##### Section 3.01. **Redemption of Bonds.**

(a) The Bonds are not subject to optional redemption prior to the initial Mandatory Tender Date. From and after the initial Mandatory Tender Date, the Bonds are subject to optional redemption prior to maturity from Preference Proof Moneys, at the direction of a Borrower Representative (with delivery of a Cash Flow Projection, if required pursuant to Section 3.01(c) below), in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium, to the date fixed for redemption, on any Business Day that is on or after the date that is halfway between the most recent Mandatory Tender Date and the next Mandatory Tender Date or the Maturity Date, as applicable (provided the Bonds may not be redeemed prior to the date the Borrower has provided notice to the Trustee that the Project has been placed in service).

(b) Other than as set forth in Section 3.01(a) above, the Bonds are not subject to redemption prior to the Maturity Date.

(c) If, to pay the redemption price, the Trustee is required to sell or otherwise dispose of Permitted Investments shown in the most recent Cash Flow Projection delivered to the Rating Agency before the maturity or mandatory tender date of such Permitted Investments, then a new Cash Flow Projection shall be provided to the Trustee (with a copy to the Rating Agency) with the direction described in Section 3.01(a) above, and the Trustee shall utilize the amounts and take the actions set forth in such Cash Flow Projection to pay the redemption price of the Bonds called for redemption.

(d) In the event of a redemption in part, the particular Bonds to be redeemed shall be selected by the Trustee by lot in such manner as the Trustee shall deem fair and appropriate, provided that if a Book Entry System is then in effect, the Securities Depository shall select the interests of the beneficial owners of the Bonds to be redeemed.

##### Section 3.02. **Purchase in Lieu of Redemption.**

(a) Any Bonds called for optional redemption under Section 3.01(a) of this Indenture may be purchased by the Borrower or by any other party designated in writing by the Borrower, on the date upon which such Bonds were to have been redeemed (the "Purchase in Lieu of Redemption Date"), at a purchase price equal to the redemption price thereof. The Borrower shall give 5 days advance written notice before the designated Purchase in Lieu of Redemption Date to the Trustee for which an election to purchase pursuant to this Section 3.02 is being made. Bonds

to be purchased pursuant to this Section 3.02 which are not delivered to the Trustee on the Purchase in Lieu of Redemption Date shall be deemed to have been so purchased, and the purchaser of such Bonds shall be the Owner of such Bonds for all purposes under this Indenture, and interest accruing on such Bonds on and after the Purchase in Lieu of Redemption Date shall be payable solely to the purchaser of the Bonds or any assignee(s) of its interest in such Bonds.

(b) The purchase of Bonds in accordance with this Section 3.02 is not intended, and shall not be deemed to constitute, a redemption of such Bonds nor an extinguishment of the debt evidenced thereby.

(c) The notice provided for in Section 3.03 hereof shall be given by the Trustee regardless of whether the Borrower intends to purchase the Bonds in lieu of redemption; however, the notice may include a statement(s) that the Bonds may be purchased in lieu of redemption, and related information as may be required or necessary to comply with the requirements and policies of DTC.

**Section 3.03. Notices of Redemption.**

(a) All or a portion of the Bonds shall be called for optional redemption pursuant to Section 3.01 hereof by the Trustee as herein provided upon receipt by the Trustee and the Issuer, at least 30 days prior to the redemption date (unless a shorter notice shall be satisfactory to the Trustee), of written notice of a Borrower Representative specifying the principal amount of the Bonds to be called for redemption and the redemption date. In the case of every redemption, the Trustee shall cause notice of such redemption to be given by mailing by first class mail postage prepaid a copy of the redemption notice to the Bondholders designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration records, in each case not more than 30 nor less than 20 days prior to the redemption date, provided, however, that failure to receive such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. Notwithstanding anything contained herein to the contrary, so long as the Bonds are in Book Entry Form, notice of redemption will be given by the Trustee only to DTC or its successor. Redemption is conditioned upon the Trustee having sufficient moneys on deposit in the Special Funds, on or prior to the redemption date, to redeem all of the Bonds called for redemption, and if the Trustee does not have sufficient funds for this purpose, no Bonds shall be redeemed. The Trustee shall furnish the Borrower, the Equity Investor, the Issuer, the Remarketing Agent and the Rating Agency with a copy of each notice of redemption given with respect to any optional redemption under Section 3.01 hereof, as soon as practicable after the delivery of notice to the Bondholders. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to provide any such notice to the Borrower, the Equity Investor, the Issuer, the Remarketing Agent and the Rating Agency, and any such failure shall not affect the validity of actions which are the subject of such notice.

(b) Each notice of redemption shall specify the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon will cease to accrue. Each notice of redemption may also state that the redemption is conditioned on receipt of sufficient Preference Proof Moneys for such redemption by the Trustee on or prior to the

redemption date; if sufficient moneys are not so received, the redemption of the Bonds for which notice was given shall not be made, and the Trustee promptly shall give notice of cancellation of such redemption in substantially the same manner as the original notice of redemption. If less than all the Outstanding Bonds are to be redeemed, the notice of redemption shall specify the numbers of the Bonds or portions thereof to be redeemed.

Section 3.04. **Mandatory Tender.**

(a) The Bonds are subject to mandatory tender in whole and not in part on each Mandatory Tender Date and shall be purchased at a price equal to 100% of the principal amount of such Bonds, plus accrued interest, if any, to such Mandatory Tender Date, and without premium. No later than 10:00 a.m., New York City time, on a Mandatory Tender Date, the Holders shall deliver the Bonds to the Trustee. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 1:30 p.m. New York City time on such Mandatory Tender Date, in the following priority: (i) amounts representing proceeds of remarketed Bonds received pursuant to Section 3.07(c) hereof, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund and the Project Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Bond Fund (including the Capitalized Interest Account therein) to pay the accrued interest, if any, on Bonds tendered for purchase, and (iv) any other Preference Proof Moneys available or made available for such purpose at the direction of the Borrower.

(b) If the conditions set forth in Section 3.06 hereof are not satisfied and/or the Trustee shall not have received remarketing proceeds on a Mandatory Tender Date equal to the principal amount of the Bonds Outstanding on such date, the Bonds shall be purchased in whole on such Mandatory Tender Date using amounts on deposit in the Collateral Fund, the Project Fund and the Bond Fund, and, immediately following such purchase, the Bonds shall be deemed redeemed on such Mandatory Tender Date and cancelled by the Trustee.

(c) Not less than 30 days before a Mandatory Tender Date, the Trustee shall give written notice of mandatory tender and remarketing to the Holders by first class mail, postage prepaid, at their respective addresses as they appear on registration books kept by the Trustee as Bond Registrar. Trustee shall also provide such notice to the Borrower and Equity Investor at the notice addresses herein. The notice shall state the Mandatory Tender Date and that:

(1) all Outstanding Bonds are subject to mandatory tender for purchase on such Mandatory Tender Date and must be tendered for purchase on such Mandatory Tender Date;

(2) all Outstanding Bonds will be purchased on such Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to such Mandatory Tender Date;

(3) Holders will not have the right to elect to retain their Bonds and any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after such Mandatory Tender Date; and

(4) the address of the office of the Trustee at which Holders should deliver their

Bonds for purchase on such Mandatory Tender Date.

If notice is given as stated in this section, failure of any Holder to receive such notice, or any defect in the notice, shall not affect the remarketing or the validity of the proceedings for the remarketing of the Bonds.

**Section 3.05. Duties of Remarketing Agent.**

The Remarketing Agent shall do the following in connection with the remarketing of the Bonds:

(a) If directed in writing by the Borrower, not less than ten (10) days before a Mandatory Tender Date, the Remarketing Agent shall offer for sale and use its best efforts to sell Bonds on such Mandatory Tender Date at a price equal to 100% of the principal amount of such Bonds plus accrued interest, if any.

(b) Establishment of Interest Rate In Connection With Remarketing of Bonds.

(1) *Establishment of Interest Rate.* From and after a Mandatory Tender Date until the next Mandatory Tender Date or the Maturity Date, as applicable, the Bonds shall bear interest at the Remarketing Rate determined pursuant to this subsection. Any Remarketing Rate determined by the Remarketing Agent and taking effect pursuant to this Indenture for a remarketing period established pursuant to Section 3.05(b)(2) below shall be conclusive and binding for the purposes of this Indenture upon the Trustee, the Issuer, the Borrower, and the Holders.

(2) *Determination of Remarketing Rate.* The Remarketing Agent shall determine the Remarketing Rate no later than five (5) Business Days prior to the applicable Mandatory Tender Date. The Remarketing Rate shall be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds on such Mandatory Tender Date at par for the period which shall begin on the Mandatory Tender Date and end on a subsequent Mandatory Tender Date or the Maturity Date, as applicable, as determined by the Remarketing Agent in consultation with the Borrower, in all cases not to exceed the Maximum Rate.

(3) *Notice.* Immediately upon determining the Remarketing Rate, the Remarketing Agent shall give notice to the other Remarketing Notice Parties. In no event shall the Remarketing Agent give its notice later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate.

**Section 3.06. Conditions Precedent to Remarketing of Bonds and Notice.**

(a) *Conditions Precedent to Remarketing of Bonds.* The remarketing of the Bonds on a Mandatory Tender Date is subject to the satisfaction of each of the following conditions precedent on or before such Mandatory Tender Date:

(1) The Trustee has received written notice from the Remarketing Agent that

all of the Bonds have been remarketed and that the proceeds from the remarketing are expected to be available to the Trustee on such Mandatory Tender Date and deposited into the Bond Fund in an amount equal to the principal amount of the Bonds.

(2) The Trustee has received written notice from the Remarketing Agent that the Remarketing Agent has received a Rating Confirmation to the effect that the then-current rating assigned to the Bonds will continue to be effective on such Mandatory Tender Date.

(3) The Trustee has received a Favorable Opinion of Bond Counsel.

(4) The Trustee has received an amount necessary to cover negative arbitrage, if any, in connection with remarketed Bonds as determined by the Remarketing Agent, through the next Mandatory Tender Date or the Maturity Date, as applicable.

(b) *Notice of Satisfaction of Conditions Precedent.* If the conditions set out in subsection (a) are satisfied, the Trustee shall immediately give notice to the other Remarketing Notice Parties stating that (i) all conditions precedent to the remarketing of the Bonds have been satisfied and (ii) the remarketing and settlement of the Bonds is expected to occur on the applicable Mandatory Tender Date.

#### Section 3.07. **Remarketing of Bonds.**

(a) *Delivery of Bonds by Holder for Purchase.* Each Holder must deliver its Bonds to the Trustee for purchase not later than 10:00 a.m., New York City time, on each Mandatory Tender Date. Bonds received by the Trustee shall be held by the Trustee in trust for the tendering Holders pending receipt of funds for the payment of such Bonds.

(b) *Untendered Bond.* Any Bond that is not tendered on a Mandatory Tender Date (an “*Untendered Bond*”) will be deemed to have been tendered to the Trustee as of such Mandatory Tender Date, and, from and after such Mandatory Tender Date shall cease to bear interest and no longer will be considered to be outstanding. In the event of a failure by owners to deliver Bonds on a Mandatory Tender Date, such Holders will not be entitled to any payment (including any interest to accrue from and after such Mandatory Tender Date) other than the purchase price for such Untendered Bond, and any Untendered Bond will no longer be entitled to the benefits of this Indenture, except for the purpose of payment of the purchase price for such Untendered Bond.

(c) *Delivery of Purchase Price of Remarketed Bonds.* The Remarketing Agent shall give notice to the Remarketing Notice Parties no fewer than five (5) Business Days prior to the applicable Mandatory Tender Date specifying the principal amount and denominations of such Bonds, if any, for which it has found purchasers. The Remarketing Agent shall deliver to the Trustee, no later than 10:00 a.m., New York City time, on the applicable Mandatory Tender Date, in immediately available funds, remarketing proceeds to the extent the Bonds have been successfully remarketed. Upon remarketing, the Bonds shall remain in Book Entry Form. Moneys deposited with the Trustee for the purchase of Bonds shall be held in trust in the Bond Fund and shall be paid to the tendering Holder upon presentation of its Bonds at the designated office of the Trustee.

(d) *Notice of Remarketing to Holders of Untendered Bonds.* The Trustee shall promptly give notice by registered or certified first class mail, postage prepaid, to each Holder of Bonds whose Bonds are deemed to have been purchased stating that interest on such Bonds ceased to accrue on the date of purchase and that moneys representing the purchase price of such Bonds are available against delivery of such Bonds at the designated office of the Trustee.

**Section 3.08. Concerning the Remarketing Agent.**

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall provide to the Trustee its designated office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower and the Trustee. In addition, the Remarketing Agent will agree particularly to:

- (a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee, the Borrower and the Equity Investor at all reasonable times; and
- (b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co- Remarketing Agent it appoints.

**Section 3.09. Qualification of Remarketing Agent.**

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' written notice of such resignation to the Issuer, the Borrower, the Equity Investor and the Trustee. The Remarketing Agent may be removed at any time by the Borrower, with prior written notice to the Issuer and the Trustee, with at least 30 days' notice of such removal to the Remarketing Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its



successor. Upon the resignation or removal of the Remarketing Agent, the Borrower, on behalf of the Issuer, shall promptly appoint a successor Remarketing Agent, and shall provide notice to the Trustee and the Issuer of such appointment.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to mail any such notice to the Rating Agency, and any such failure shall not affect the validity of actions which are the subject of such notice.

If a successor Remarketing Agent is not appointed by the Borrower and acting as Remarketing Agent at least ten (10) Business Days before a Mandatory Tender Date, the Bonds will not be remarketed and will be paid on such Mandatory Tender Date

## ARTICLE IV

### REVENUES AND FUNDS

Section 4.01. **Creation of Funds.** The following trust funds are hereby created by the Issuer and ordered established and held separately with the Trustee to be used for the purposes as hereinafter provided in this Indenture:

(a) *Bond Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Bond Fund” (herein referred to as the “*Bond Fund*”), and within the Bond Fund, a “Capitalized Interest Account,” which Fund shall be administered as provided in Sections 4.02 and 4.06 hereof.

(b) *Project Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Project Fund” (herein referred to as the “*Project Fund*”), which Fund shall be administered in accordance with the provisions of Section 6.02 hereof.

(c) *Rebate Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Rebate Fund” (herein referred to as the “*Rebate Fund*”), which Fund shall be administered in accordance with the provisions of Section 5.01 hereof. Moneys held in the Rebate Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(d) *Expense Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Expense Fund” (herein referred to as the “*Expense Fund*”), which Fund shall be administered in accordance with the provisions of Section 4.07 hereof. Moneys held in the Expense Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(e) *Collateral Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Collateral Fund” (herein

referred to as the “*Collateral Fund*”), which Fund shall be administered in accordance with the provisions of Section 4.03 hereof.

(f) *Cost of Issuance Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Cost of Issuance Fund” (herein referred to as the “*Cost of Issuance Fund*”), which Fund shall be administered in accordance with the provisions of Section 4.04 hereof. Moneys held in the Cost of Issuance Fund (other than amounts derived from the proceeds of the Bonds) are not held for the benefit of the Owners and are not part of the Trust Estate.

Section 4.02. **Deposits into the Bond Fund.** On the Closing Date, upon receipt of the Capitalized Interest Deposit, if any, in accordance with Section 4.02 of the Bond Loan Agreement, the Trustee shall deposit the Capitalized Interest Deposit to the Project Fund, and thereafter transfer or allocate to the Capitalized Interest Account of the Bond Fund the amounts set forth in the Closing Memorandum. All Revenues received by the Trustee, except for funds deposited in the Bond Fund (including the Capitalized Interest Account therein), the Project Fund or the Collateral Fund on the Closing Date and any investment earnings thereon, shall be deposited, first, to the credit of the Expense Fund to the extent any fees, costs, or expenses described in Section 4.07 hereof are due and payable, and then to the Bond Fund. In accordance with the last sentence of Section 11.04, for so long as the Bonds are outstanding hereunder, funds on deposit in the Project Fund, the Collateral Fund or the Bond Fund (including the Capitalized Interest Account therein) shall not be deposited in the Expense Fund or otherwise used to pay fees, costs or expenses described in Section 4.07 hereof.

In connection with the issuance of the Bonds, certain moneys may be deposited with the Trustee before the Closing Date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Trustee subject to the terms and conditions of this Indenture in addition to terms provided in such letter(s) of instruction.

Section 4.03. **Use of Moneys in Collateral Fund.** Upon receipt of (a) proceeds of the sale of a GNMA security from the Lender, (b) a draw on the Lender’s warehouse line of credit or (c) funds otherwise provided by the Lender or the Bridge Lender, as applicable (each, a “*Lender Collateral Deposit*”), the Trustee shall, in accordance with the Funding Agreement, deposit such amounts to the Collateral Fund. Together with amounts on deposit in the Project Fund and the Bond Fund (including the Capitalized Interest Account therein), amounts on deposit in the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds to but not including the next Mandatory Tender Date or the Maturity Date, as applicable. On each date on which principal of or interest on the Bonds is due, the Trustee shall transfer a sufficient amount of funds from the Collateral Fund for deposit to the Bond Fund to enable the Trustee to make such payments as and when due.

Section 4.04. **Use of Moneys in the Cost of Issuance Fund.**

(a) *Deposits into the Cost of Issuance Fund.* On or before the Closing Date, the Borrower shall deliver the Cost of Issuance Deposit to the Trustee. On the Closing Date, the Trustee shall deposit or transfer, as applicable, the Cost of Issuance Deposit into the Cost of Issuance Fund as designated in the Closing Memorandum.

(b) *Disbursements from the Cost of Issuance Fund.* Except as otherwise provided in this Section 4.04, the amounts deposited in the Cost of Issuance Fund shall be expended for Costs of Issuance and for no other purpose. The Borrower shall deliver to the Trustee the Requisition in the form attached hereto as *Exhibit C*, executed by the Borrower, specifying in detail the amount that constitutes Costs of Issuance to be paid or reserved to be paid under this Section 4.04, the respective firms or persons to whom such payments are to be made, and their respective payment instructions. The Trustee shall make the payments specified therein concurrently with or as soon as may be practicable after the delivery of the Bonds.

(c) *Disposition of Remaining Amounts.* Any moneys remaining in the Cost of Issuance Fund twelve (12) months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower upon the written instruction to the Trustee from the Borrower, in accordance with Section 4.06 hereof. Upon final disbursement, the Trustee shall close the Cost of Issuance Fund.

Section 4.05. **Use of Moneys on Deposit in the Bond Fund; Application of Loan Payments.** The funds on deposit in the Bond Fund shall be used by the Trustee to pay principal of and interest on the Bonds on each date a payment of principal or interest is due to be made, whether by maturity, redemption or scheduled Interest Payment Date.

In the event that amounts on deposit in the Bond Fund on any Interest Payment Date or Mandatory Tender Date or such other Bond payment date are insufficient to make the payment of principal of or interest on the Bonds when due, the Trustee shall transfer funds in the following order to the Bond Fund and use such funds, together with amounts then on deposit in the Bond Fund, to make such payments when due:

- (a) *first*, from amounts on deposit in the Capitalized Interest Account of the Bond Fund;
- (b) *second*, from amounts on deposit in the Collateral Fund; and
- (c) *third*, from amounts on deposit in the Project Fund.

So long as there are any Outstanding Bonds, payments due under the Note and the Bond Loan Agreement shall be deemed made by the Trustee's transfer of funds on each Interest Payment Date from the Capitalized Interest Account of the Bond Fund or from the Collateral Fund to the Bond Fund, in an amount necessary to pay the interest on and principal (if any) of the Bonds.

Promptly following receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to take the actions and release from the Capitalized Interest Account the amount of Preference Proof Moneys set forth in such Cash Flow Projection to or at the written direction of the Borrower.

Section 4.06. **Payment to Borrower of Excess Moneys.** Subject to the provisions of Section 13.10 hereof, any amounts remaining in the Cost of Issuance Fund after the payment in full of all Costs of Issuance shall be paid (upon written direction from the Borrower to the Trustee) to the Borrower in accordance with Section 4.04 hereof, and any amounts remaining in the Collateral Fund or the Bond Fund (except for amounts then held by the Trustee in the Bond Fund

for payment of principal of, or interest on, any of the Bonds) after payment in full of the principal of and interest on the Bonds, payment of any and all fees and expenses due in accordance with this Indenture and the Bond Loan Agreement, and payment of all other costs associated with the discharge of the Bonds and receipt of the final rebate arbitrage report and payment of any rebate amount (if any), shall, upon written instruction to the Trustee from the Borrower (with a copy to the Issuer), be paid to the Borrower upon the expiration or sooner termination of the term of the Bond Loan Agreement.

Section 4.07. **Expense Fund.** The Trustee shall deposit amounts received from the Borrower for the purpose of paying Trustee's Fees, the Issuer's Fees, the Rebate Analyst Fee and any other fees and expenses required under the Bond Loan Agreement into the Expense Fund. The Trustee shall pay such amounts to the proper persons on the dates and in the amounts due. Amounts on deposit in the Expense Fund shall be withdrawn or maintained, as appropriate by the Trustee to pay (i) to the Issuer, the Issuer's Fees, (ii) to the Trustee, the Trustee's Fee, (iii) to the Rebate Analyst, the Rebate Analyst Fee, (iv) upon receipt, to the Trustee, any amounts due to the Trustee which have not been paid, other than amounts paid in accordance with clause (ii) hereof and (v) upon receipt, to the Issuer, the Issuer's Fees due and unpaid, other than amounts paid in accordance with clause (i) above.

Section 4.08. **Allocation and Reallocation of Permitted Investments Deposited to the Collateral Fund and the Project Fund.** On the Closing Date, the Trustee shall allocate ownership of the Permitted Investments acquired pursuant to Section 7.01 hereof and deposited for the benefit of the Project Fund and the Collateral Fund as follows: the Trustee shall (i) allocate to the Capitalized Interest Account the portion of the Permitted Investments set forth in the Closing Memorandum, (ii) allocate such portion of the remaining Permitted Investments to the Collateral Fund a percentage of such Permitted Investments equal to the amount of Preference Proof Moneys presented to the Trustee for deposit to the Collateral Fund on the Closing Date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the "*Initial Collateral Fund Percentage*"), and (iii) allocate the remainder (i.e., 100% minus the Initial Collateral Fund Percentage) of such Permitted Investments to the Project Fund. On each subsequent month when additional Preference Proof Moneys are presented to the Trustee for deposit to the Collateral Fund (each, a "*Subsequent Allocation Date*"), the dollar amount of such Preference Proof Moneys shall be added to all prior Preference Proof Moneys so deposited, and the percentage of such Permitted Investments allocated to the Collateral Fund shall be adjusted to that percentage equal to the aggregate Preference Proof Moneys so deposited through such date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the "*Collateral Fund Percentage*") and the remainder (i.e., 100% minus the Collateral Fund Percentage, referred to as the "*Project Fund Percentage*") shall be allocated to the Project Fund. On each Subsequent Allocation Date, the Trustee shall be deemed to have liquidated that portion of the Permitted Investments allocated to the Project Fund and purchased equivalent Permitted Investments to be allocated to the Collateral Fund.

## ARTICLE V

### REBATE FUND

Section 5.01. **Rebate Fund.** The Rebate Fund is created for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Issuer or the Holders of the Bonds. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. The Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under this Indenture. Notwithstanding the foregoing, with respect to the Rebate Fund the Trustee is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

## ARTICLE VI

### CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 6.01. **Custody and Application of Project Fund.** The proceeds received by the Trustee for such purpose upon the issuance and sale of the Bonds shall be deposited in the Project Fund in the amount set forth in the Closing Memorandum.

Section 6.02. **Procedure for Making Disbursements from Project Fund.** Disbursements from the Project Fund shall be made upon the receipt by the Trustee of the following and shall be used solely to pay Costs of the Project incurred in connection with the acquisition and construction of the Project: (1) a request or requests therefor executed by the Borrower, in the form of a Requisition in substantially the form attached as Exhibit B hereto, (2) if applicable, a request by the Lender accompanied by its approved FHA draw and (3) an amount equal to the requested disbursement has been received by the Trustee and deposited to the Collateral Fund in accordance with this Indenture. Together with amounts on deposit in the Project Fund and any other Preference Proof Moneys on deposit in the Capitalized Interest Account of the Bond Fund, amounts on deposit in the Bond Fund and the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable.

Each Lender Loan Requisition shall be made in accordance with the Lender Loan Documents and FHA/HUD requirements. Upon approval of a Requisition by the Lender or the Bridge Lender, as applicable (each an “*Approved Advance*”), and, if required, HUD, the Lender shall, in accordance with the Funding Agreement, deliver to the Trustee an amount equal to the Approved Advance to be held by the Trustee and to be deposited into the Collateral Fund, together with its request for a disbursement from the Project Fund in an amount equal to the Approved Advance, which disbursement shall be used by the Lender to provide for the payment of Costs of the Project. In the event that for any reason the Trustee is not prepared to promptly disburse funds from the Project Fund, the Trustee shall not deposit the amount of the Approved Advance in the Collateral Fund, shall so inform the Lender or the Bridge Lender, as applicable, and the Borrower

and shall return such deposit to the originating Lender in accordance with the written instructions of such Lender.

Notwithstanding any provision of the Bond Loan Agreement or any other provision of this Indenture to the contrary, the Trustee shall not disburse moneys from the Project Fund, other than to pay principal and/or interest payments on the Bonds in accordance with Section 4.05 hereof, unless and until the Trustee receives satisfactory evidence that a Lender Collateral Deposit or other Preference Proof Moneys in an amount equal to or greater than the requested disbursement amount has been deposited in the Collateral Fund. Prior to making any disbursement, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund, (ii) the Capitalized Interest Account of the Bond Fund, (iii) the Project Fund and (iv) the Bond Fund, will be sufficient to pay principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable. Upon satisfaction of the conditions precedent set forth in this Section 6.02, and notwithstanding anything in the Bond Documents to the contrary, once the Lender or the Bridge Lender, as applicable, deposits the Lender Collateral Deposit and upon satisfaction of the conditions set forth in the first paragraph of Section 6.02 hereof, the Trustee is irrevocably and unconditionally obligated to disburse an equal amount of moneys from the Project Fund in accordance with approved Requisitions. Upon such disbursement, the Lender Collateral Deposit is irrevocable and constitutes part of the Trust Estate.

All disbursements from the Project Fund will be made to or at the direction of the Lender, or shall be transferred to the Bond Fund.

The Trustee and the Issuer shall not in any event be responsible or liable to any Person for the disbursement of, or failure to disburse, moneys from the Project Fund, or any part thereof, and no contractor, subcontractor or material or equipment supplier shall have any right or claim against the Trustee or the Issuer under this Indenture.

Section 6.03. **Trustee May Rely on Requisitions and Certifications.** In making any such disbursement from the Project Fund, the Trustee may conclusively rely on any Requisition delivered to it pursuant to Section 6.02 hereof, and the Trustee shall be relieved of all liability with respect to making such payments in accordance with any such Requisition.

Section 6.04. **Completion of Project.** The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the filing with the Trustee and the Issuer of (a) the Completion Certificate pursuant to Section 3.05 of the Loan Agreement and (b) a certificate signed by the Borrower Representative stating that all obligations and Costs of the Project have been paid and discharged, except for Costs of the Project not then due and payable or then in dispute as provided in the Bond Loan Agreement. The Trustee may conclusively rely on such certificate. On such date, the Project Fund shall be closed and any funds remaining in the Project Fund shall be transferred by the Trustee without further direction to the bond fund to be used to pay principal on the Bonds. Additionally, the Borrower has agreed pursuant to Section 3.06 of the Bond Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Costs of the Project, the Borrower will complete the Project and pay the portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund.

## ARTICLE VII

### INVESTMENT OF FUNDS AND ACCOUNTS

Section 7.01. **Investment.** On the Closing Date, a portion of the moneys on deposit in the Project Fund in the amount, if any, set forth in the Closing Memorandum will be held by the Trustee uninvested until disbursed to the Borrower on the Closing Date in accordance with the Closing Memorandum. The balance of amounts on deposit in the Project Fund after any such disbursement shall be invested as set forth in the following paragraph.

In accordance with the Closing Memorandum, the Trustee is hereby directed to purchase, on the Closing Date, Permitted Investments maturing on or before the initial Mandatory Tender Date, with respect to the investment of certain amounts on deposit in the Special Funds, the principal and interest of which will be sufficient to pay principal and interest on the Bonds when due to the initial Mandatory Tender Date. All interest earned from the foregoing investments shall be deposited in the Bond Fund. Such funds shall remain on deposit, subject to reallocation pursuant to Section 4.08 hereof, until the initial Mandatory Tender Date or earlier Optional Redemption Date, on which date they will be withdrawn to make payment on the Bonds. If any investments in the Special Funds must be liquidated prior to the Maturity Date, such investments shall be liquidated hereunder. Anything to the contrary contained herein notwithstanding, earnings received by the Trustee with respect to Permitted Investments purchased hereunder shall be invested in money market funds described in clause (ii) of the definition of Permitted Investments.

At no time shall the Borrower direct that any funds constituting Gross Proceeds (as defined in the Tax Exemption Agreement) of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code, all as set forth in the Tax Exemption Agreement. Following the Closing Date, at the written direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Permitted Investments so long as the Trustee has received a Cash Flow Projection.

As long as no Event of Default shall have occurred and be continuing, the Borrower shall have the right to designate the investments to be sold and to otherwise direct the Trustee in writing in the sale or purchase of the investments made with the moneys in the Special Funds, provided that the Trustee shall be entitled to conclusively assume the absence of any such Event of Default unless it has notice thereof; if there has been an Event of Default, the Trustee shall have said right.

Except as otherwise specified herein, amounts on deposit in the Special Funds shall be invested at all times in Permitted Investments. The investments described in each of the above paragraphs shall be made by the Trustee pursuant to the written direction provided hereby and in accordance with the written direction of the Borrower to be provided on the Closing Date, which shall remain in effect until further written direction is provided by the Borrower. In the absence of investment instructions from the Borrower, the Trustee shall invest the moneys held in the Special Funds in the following investment: [\_\_\_\_\_].

Amounts, if any, on deposit in the Cost of Issuance Fund, until disbursed or returned to the Borrower pursuant to Section 4.04(c) hereof, shall be invested at the direction of the Borrower Representative. The Expense Fund shall be invested at the direction of the Borrower

Representative. In the absence of investment instructions from the Borrower, the Trustee shall not be responsible or liable for keeping the moneys held in the Cost of Issuance Fund or the Expense Fund hereunder fully invested in Permitted Investments.

Section 7.02. **Investment of Rebate Fund.** Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee as set forth in the Tax Exemption Agreement.

Section 7.03. **Accounting for Termination of Investments.** Subject to Section 7.01 hereof, in the event the moneys in the Special Funds have been invested in Permitted Investments and such Permitted Investments at any time and for any reason fail to satisfy the requirements of Section 7.01 hereof, the Trustee shall, at the written direction of the Borrower and with the written approval of the Rating Agency, terminate any such investments, and the proceeds of such termination shall be credited to the Collateral Fund, the Bond Fund (including the Capitalized Interest Account therein) or the Project Fund, as applicable.

Section 7.04. **Trustee's Own Bond or Investment Department.** The Trustee may make any and all investments permitted under Section 7.01 hereof through its own bond or investment department or that of any Affiliate and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Borrower hereby agree that confirmations of Permitted Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account hereunder if no activity occurred in such fund or account during such month. The Trustee shall provide such information as the Rating Agency may reasonably request to enable the Rating Agency to maintain the then-current rating assigned to the Bonds.

Section 7.05. **Moneys to be Held in Trust.** Subject to Section 4.08 hereof, all moneys required to be deposited with or paid to the Trustee for account of the Collateral Fund, the Bond Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture. The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss arising from investments made in accordance with this Section 7.05, or for any loss resulting from the redemption or sale of any such investments as authorized by this Indenture.

## ARTICLE VIII

### GENERAL COVENANTS

Section 8.01. **Payment of Bonds.** Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article VIII, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall be payable solely (a) from Revenues, which are specifically assigned to secure the payment of the Bonds in the manner and to the extent specified in this Indenture, (b) from the moneys held in the funds and accounts created under this Indenture, except for amounts held in the Rebate Fund, the Cost of



Issuance Fund and the Expense Fund and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

The Issuer covenants that it will cause to be paid, as provided herein, the principal of and interest on the Bonds from the Trust Estate at the place, on the date and in the manner provided herein and in the Bonds.

The Revenues due under the Note are to be remitted by the Borrower directly to the Trustee for the account of the Issuer and constitute a part of the Trust Estate and are subject to the lien and claim created by this Indenture. The moneys held by the Trustee in the Bond Fund (including the Capitalized Interest Account therein) and the Collateral Fund shall be used to make timely payment of the principal of and interest on the Bonds. Such amounts are to be sufficient in amount at all times to pay the principal of and interest on the Bonds to the Maturity Date. The entire amount of Revenues and the entire amount of moneys held in the Bond Fund (including the Capitalized Interest Account therein) and the Collateral Fund are assigned to secure the payment of the principal of and interest on the Bonds.

Section 8.02. **Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all applicable covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto, subject, however to the limitations set forth in Section 2.09 hereof. The Issuer covenants that it is duly authorized under the laws of the State to issue the Bonds, to enter into this Indenture and the Bond Loan Agreement and to assign the Revenues, and that, upon issuance, authentication, and delivery, the Bonds are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 8.03. **Maintenance of Existence; Compliance with Laws.** The Issuer will (i) maintain its corporate existence or assure the assumption of its obligations under this Indenture by any public body succeeding to its powers under the Act and (ii) comply with all valid material acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to this Indenture and the Bond Loan Agreement.

Section 8.04. **Enforcement of Borrower's Obligations.** So long as any of the Bonds are Outstanding, the Issuer will cooperate with the Trustee in enforcing the obligations of the Borrower to pay, or cause to be paid, all the payments and other costs and charges payable pursuant to the Bond Loan Agreement and the Note. NOTHING CONTAINED IN THIS SECTION 8.04 OR IN ANY OTHER SECTION OF THIS INDENTURE SHALL BE DEEMED TO MODIFY THE PROVISIONS OF THE ACT AND SECTION 2.09 HEREOF OR REQUIRE THAT THE ISSUER EXPEND ANY OF ITS OWN FUNDS OR ASSETS TO ENFORCE THE OBLIGATIONS OF THE BORROWER UNDER THE DOCUMENTS.

Section 8.05. **Further Assurances, Instruments and Actions.** The Issuer will from time to time execute and deliver such further instruments, conveyances, assignments and transfers and take such further actions as may be reasonable and as may be required to better assure, convey, grant, assign or confirm the Trust Estate and all other rights, revenues or funds pledged, assigned or intended to be so pledged or assigned hereunder for the benefit of the owners of the Bonds; provided, however, that no such instruments or actions shall pledge the credit or taxing power of

the State, the Issuer, or any other political subdivision of the State, or create or give rise to any monetary obligation or liability of the Issuer. The Issuer has no taxing power.

Section 8.06. **Priority of Pledge.** The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues, and will cooperate in causing to be discharged or satisfied any lien or charge on any part of the Trust Estate.

Section 8.07. **Books and Documents Open to Inspection.** The Trustee hereby covenants and agrees that all books and documents in its possession relating to the Bonds, the Project, and the moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a written request by the Issuer or the Borrower be open to inspection during the Trustee's regular business hours by such accountants or other agents as the Issuer, the Trustee or the Borrower may from time to time designate.

Section 8.08. **Borrower to Indemnify and Hold the Issuer and Trustee Harmless from Liability.** The Borrower has agreed to indemnify and hold the Issuer Indemnified Parties and the Trustee Indemnified Parties harmless from and against liability arising out of claims as defined and as provided in Section 6.02 of the Bond Loan Agreement.

Section 8.09. **Issuer Tax Covenants.** The Issuer represents, covenants and agree that it will:

(a) comply with all applicable requirements of the Code that are necessary to preserve the Federal Tax Status of the Bonds, as further set forth in the Tax Exemption Agreement; and

(b) not take any action inconsistent with its expectations stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

## ARTICLE IX

### DISCHARGE

Section 9.01. **Discharge of Lien.** If and when the Bonds secured hereby shall become due and payable in accordance with their terms as provided in this Indenture, or otherwise, and the whole amount of the principal and the interest so due and payable upon all of the Bonds, together with all other amounts payable hereunder by the Issuer and all fees and expenses of the Trustee and the Issuer, shall be paid, or provision shall have been made for the payment of the same, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon request of the Borrower, the Trustee shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing and after receipt of a rebate analyst report and, if necessary, funding for any rebate payment, any surplus in the Collateral Fund and all balances remaining in any other fund created under this Indenture and shall assign and transfer to the Borrower all other property

then held by the Trustee under this Indenture and shall execute such documents as may be reasonably required by the Borrower.

If and when the Trustee shall hold sufficient moneys hereunder, as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations, to provide for payment of the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other amounts (exclusive of amounts in the Cost of Issuance Fund, the Rebate Fund or the Expense Fund) payable or which may thereafter become payable hereunder by the Issuer, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this Section 9.01, the Trustee, on demand of the Borrower, shall deposit with or at the written direction of the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, any surplus in the Collateral Fund in excess of the amount sufficient to pay the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all Bonds together with all other amounts payable or which may thereafter become payable hereunder by the Issuer or the Borrower.

All Outstanding Bonds shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect described above if (a) there shall have been deposited with the Trustee (as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations) either (i) moneys in an amount which shall be sufficient, or (ii) Government Obligations which are not subject to redemption prior to maturity, the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal and interest due and to become due on such Bonds on the maturity date thereof, and (b) the Borrower shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, a notice to the Holders of such Bonds and the Rating Agency that the deposit required by (a) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with the provisions described in this Section and stating such maturity upon which moneys are to be available for the payment of the principal and interest on such Bonds.

Neither the securities nor moneys deposited with the Trustee pursuant to this Section 9.01 nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest, on such Bonds; *provided* that any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, may be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal and interest to become due on such Bonds on and prior to such maturity dates thereof, as the case may be, and interest earned from such reinvestment shall be invested in money market funds described in clause (ii) of the definition of Permitted Investments and be deposited into the Bond Fund.

The release of the obligations of the Issuer under this Section 9.01 shall be without prejudice to the right of the Trustee provided in Section 11.04 hereof to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and

other disbursements, including those of its attorneys, agents and employees, and shall not affect the obligations of the Borrower to make the payments required by the Bond Loan Agreement or the Note.

Notwithstanding the foregoing, any provisions of this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of money in trust, the rebate of money to the United States in accordance with Section 5.01 hereof and the Tax Exemption Agreement, and the rights and duties of the Trustee in connection with all of the foregoing, or which by their terms survive payment and discharge of the Bonds, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture.

Notwithstanding anything herein to the contrary, the purchase of Permitted Investments in accordance with Section 7.01 hereof, together with the Capitalized Interest Deposit, shall not cause a discharge of the Indenture under this Section 9.01.

## ARTICLE X

### DEFAULTS AND REMEDIES

Section 10.01. **Events of Default and Acceleration**. If any of the following events occur, it is hereby defined as and declared to be and constitute an “*Event of Default*”:

(a) any interest on any Bond is not paid on the date on which the same becomes due;  
or

(b) the principal of any Bond is not paid on the date on which the same becomes due, whether at the stated maturity thereof, by acceleration or otherwise; or

(c) a Default occurs under the Bond Loan Agreement; or

(d) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (a) or (b) of this Section 10.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of ninety (90) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; *provided, however*, that if such default be such that it is correctable but cannot be corrected within ninety (90) days, it shall not be an Event of Default if the Issuer or the Borrower is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Bond Loan or the Bonds.

If any Bond Loan payment required under the Bond Loan Agreement to avoid a default under (a) or (b) of this Section 10.01 shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under

such (a) or (b), the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower and the Equity Investor, which telephonic notice shall be confirmed by electronic, telegraphic or written notice to the Borrower and the Equity Investor. If any other default shall occur under the provisions of this Section 10.01, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Equity Investor, the Holders of the Bonds and the Rating Agency. A default or an Event of Default specified in (a) through (d) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a) or (b) of this Section 10.01 shall occur and be continuing, the Trustee, may, and upon written request of the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall, declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Borrower and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided in such notice, anything in this Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (c) or (d) of this Section 10.01 shall occur and be continuing, the Trustee, upon written request of the Holders of 100% in aggregate principal amount of the Bonds then Outstanding, shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Borrower and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

Anything herein to the contrary notwithstanding, the Equity Investor shall have the right, but not the obligation, to cure any default hereunder on the same terms provided to the Borrower.

Section 10.02. **Trustee to Enforce Rights of the Issuer.** Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Reserved Rights of the Issuer), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require, that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

Section 10.03. **Remedies.** Upon the happening of any Event of Default and in addition to and not in limitation of any rights and remedies under Section 10.01 hereof, then and in every such case the Trustee in its discretion may, and upon the written request of the Holders of a majority in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity, shall:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents including, but not limited to, foreclosing upon the security interest in or otherwise using funds on deposit in the Collateral Fund;

(b) bring suit upon the Bonds; or

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Notwithstanding anything contained herein to the contrary, upon the occurrence and continuance of an Event of Default, before taking any action which may subject the Trustee to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such action.

Section 10.04. **Termination of Proceedings.** In case any proceeding taken by the Trustee on account of any default or Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 10.05. **Right of Bondholders to Direct Proceedings.** No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within sixty (60) days after receipt of written notice and compliance with the foregoing terms and conditions, whereupon, the Holders of a majority in aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing contained in this Indenture shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed.

Section 10.06. **Remedies Vested in Trustee.** All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

Section 10.07. **Remedies Non-Exclusive and Cumulative.** No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 10.08. **Delays or Omissions by Trustee.** No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this Article X to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 10.09. **Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article X shall, after payment of all costs and expenses of the Trustee and the Issuer, be deposited in the Collateral Fund and all moneys so deposited in the Collateral Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

*First* – To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the direct order of the maturity of the installments of such interest and, if the amounts available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

*Second* – To the payment to the Persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Collateral Fund or otherwise held by the Trustee), with interest on such principal from the respective dates upon which the same became due and, if the amount available shall not be sufficient to pay in full the amount of principal, and the interest due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege; and

*Third* – To be held for the payment to the Persons entitled thereto as the same shall become due of the principal of and interest on the Bonds which may thereafter become due either at maturity and, if the amount available shall not be sufficient to pay in full Bonds

due on any particular date, together with interest then due and owing thereon, payment shall be made ratably according to the amount of principal due on such date to the persons entitled thereto without any discrimination or privilege; and

*Fourth* – The remainder, if any, shall be deposited in the Collateral Fund.

Whenever moneys are to be applied pursuant to the provisions of this Section 10.09, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts or principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 10.10. **Severability of Remedies.** It is the purpose and intention of this Article X to provide rights and remedies to the Trustee and the Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

Section 10.11. **No Interference or Impairment of Lender Loan.** Notwithstanding anything herein to the contrary, none of the Issuer, the Trustee nor any other Person shall:

(a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or

(b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the Reserved Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of this Indenture so long as it does not violate the Program Obligations (as defined in the HUD Regulatory Agreement).

Notwithstanding anything in this Indenture to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under this Indenture which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due under the Lender Loan Documents.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent



Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regards to the Project.

Promptly upon determining that an Event of Default under this Indenture has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

## ARTICLE XI

### CONCERNING THE TRUSTEE

Section 11.01. **Acceptance of Trusts.** The Trustee hereby accepts the trusts hereby created and agrees to perform and execute such trusts, but only upon the additional terms set forth in this Article XI, to all of which the Issuer agrees and the respective Holders of the Bonds agree upon and by their acceptance of delivery of any of the Bonds.

Section 11.02. **Trustee Not Responsible for Recitals, Statements and Representations.** Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee shall have no responsibility for any information in any Official Statement or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

The Trustee shall not be responsible or accountable for the use or application by the Borrower of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any paying agent.

Section 11.03. **Action by Trustee Through and in Reliance Upon Others.** The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to rely on the advice of counsel concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel shall be full and complete authorization and protection for any action taken or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, all of which shall

be paid by the Borrower. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust, except only for negligence or willful misconduct with respect to its responsibilities hereunder.

Except for fraud and willful misconduct, no personal recourse may be taken, directly or indirectly, against any officer, director, employee or agent of the Trustee with respect to the obligations of the Trustee under this Indenture or any certificate or other writing delivered in connection therewith. The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Trustee's officers, directors, agents and employees.

The Trustee's immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture shall survive the Trustee's resignation or removal and the final payment of the Bonds.

Section 11.04. **Fees and Expenses of Trustee.** The Trustee shall be entitled to payment and/or reimbursement of such fees as the Trustee and the Borrower shall agree upon, and to payment and/or reimbursement of reasonable fees, for its services rendered hereunder and as Dissemination Agent, and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law. For so long as the Bonds are outstanding hereunder, in no event will monies on deposit in the Project Fund, the Collateral Fund, and the Bond Fund (including the Capitalized Interest Account therein) be used for the payment and/or reimbursement of such Trustee fees.

Section 11.05. **Trustee's Obligations to Take or Have Notice of Default.** The Trustee shall not be required to take notice, or to be deemed to have notice, of any default under this Indenture other than an Event of Default under Section 10.01(a) or Section 10.01(b) hereof, unless a Responsible Officer of the Trustee is specifically notified in writing of such default by the Issuer or by the Holders of at least 25% in aggregate principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

Section 11.06. **Duties of Trustee.** (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers 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 such person's own affairs.

(a) Except during the continuance of an Event of Default,

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others and no implied covenants or obligations will be read into this Indenture against the Trustee, and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as

to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions to determine whether they conform to the requirements of this Indenture.

(b) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(1) This paragraph does not limit the effect of Section 11.03 hereof,

(2) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts,

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it in accordance with this Indenture and

(4) No provision of this Indenture or the Tax Exemption Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(c) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense, but the Trustee shall not require indemnity as a condition to making any payments on the Bonds specifically required pursuant to the terms of this Indenture.

(d) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Indenture and final payment of the Bonds.

(e) Except as otherwise provided in this Article XI, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing so to do by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such written notice or request from the Bondholders, or without such security or indemnity.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or

willful misconduct as described in Section 11.06(c) above. The Trustee shall have no duty to review or analyze any financial statements or other financial information delivered to the Trustee under this Indenture and the other Bond Documents and shall hold such financial statements and other financial information solely as a repository for the benefit of the Holders. The Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner. The Trustee shall not be responsible or liable for the environmental condition or any contamination of any property which secures the Bonds or for any diminution in value of any such property as a result of any contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant. The Trustee shall not be liable for any claims by or on behalf of the Holders or any other person or entity arising from contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant, and shall have no duty or obligation to assess the environmental condition of any such property or with respect to compliance of any such property under state or federal laws pertaining to the transport, storage, treatment or disposal of, hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits or licenses issued under such laws. The Trustee in performing its duties and exercising its rights under any of the other Bond Documents shall be entitled to all rights, protections and limitations of liability set forth in this Indenture, and the provisions of this Indenture relating to the rights, protections and limitations of liability of the Trustee shall be deemed to be set forth and included in the Bond Documents, *mutatis mutandis*, as if references to “*hereof*,” “*herein*,” “*this Indenture*” and the like set forth in this Indenture referred to the applicable Document.

(g) Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture which occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.

(h) The Trustee may conclusively rely upon and shall be fully protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, requisition, direction, opinion or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Owner of the Bonds shall be conclusive and binding upon all future owners of the same Bonds and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“*Instructions*”) given pursuant to this Indenture and delivered using Electronic Means (as defined below); *provided, however*, that Borrower, the Issuer or such other party giving such instruction (the “*Sender*”) shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (“*Authorized Officers*”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Sender whenever a person is to be added or deleted from the listing. If the Sender elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Borrower, the Issuer and any other Sender understand and agree that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such

Authorized Officer. Each Sender shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Sender and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Sender. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means by the Borrower to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower for use by the Borrower, the Issuer and the other parties who may give instructions to the Trustee under this Indenture; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. "*Electronic Means*" shall mean the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

(i) The Trustee shall not be liable or responsible for the failure of the Borrower to maintain insurance on the Project, nor shall it be responsible for any loss due to the insufficiency of such insurance or by reason of the failure of any insurer to pay the full amount of any loss against which it may have insured to the Issuer, the Borrower, the Trustee or any other Person.

(j) The Trustee may seek the approval of the Bondholders by any means it deems appropriate and not inconsistent with the terms of this Indenture in connection with the giving of any consent or taking of any action.

Section 11.07. **Trustee May Rely Upon Instruments.** The Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any indenture, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Documents, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements, and shall be protected and shall incur no liability in acting or proceeding in good faith in reliance thereon. The Trustee shall not be bound to recognize any Person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with the Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee.

Section 11.08. **Trustee May Own and Deal in Bonds and Deal With the Issuer and Borrower.** The Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee,

either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee hereunder.

Section 11.09. **Financial Liability of the Trustee.** No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except as may otherwise be provided in this Indenture, the Trustee will have the right to demand, in respect to the authentication of any Bonds or the release of any property, any showings, certificates, opinions (including Opinions of Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof or of the Bond Loan Agreement required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer or the Borrower to the authentication of any Bonds, or the release of any property.

In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 11.10. **Trustee May Construe Ambiguous or Inconsistent Provisions.** The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

Section 11.11. **Resignation of Trustee.** The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than sixty (60) days written notice to the Issuer specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, provided that such resignation shall not take effect unless and until a successor shall have been appointed unless the Trustee has not been paid its fees and expenses (in which case the resignation shall become effective on the date specified by the Trustee above).

Section 11.12. **Removal of Trustee.** The Trustee shall be removed by the Issuer or by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized (with the consent of the Issuer), excluding any Bonds held by or for the account of the Issuer, if so requested by an instrument or concurrent instruments in writing giving not less than sixty (60) days' written notice, filed with the Trustee and the Issuer. The Issuer may also remove the Trustee at any time by giving thirty (30) days' notice, except during the existence of any Event of Default as defined in Section 10.01 hereof, for cause or breach of trust or for acting or proceeding in violation of, or failing to act or proceed in accordance with any

provision of this Indenture with respect to the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed his name and address with the Issuer. Such removal of the Trustee in accordance with this Section 11.12 shall not be effective until a successor trustee shall have been appointed.

Section 11.13. **Appointment of Successor Trustee.** In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged 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, the Issuer (upon direction of the Borrower) covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section 11.13 within sixty (60) days after the Trustee shall have given to the Issuer written notice as provided in Section 11.11 hereof, within sixty (60) days after the Issuer or the Holders shall have given to the Trustee written notice as provided in Section 11.12 hereof, or at any time after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee or the Holder of any Bond 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, prescribe and appoint a successor Trustee.

Any Trustee appointed under the provisions of this Section 11.13 in succession to the Trustee shall be a bank or trust company or national banking association with trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such a bank or trust company or national bank association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 11.14. **Appointment of Successor Trustee by Court.** In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article XI prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within sixty (60) days after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee.

Section 11.15. **Acceptance of Trust by Successor Trustee.** Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the Rating Agency an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all

the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

Section 11.16. **Merger or Consolidation of Trustee With Another Person.** Any Person into which any Trustee hereunder may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 11.17. **Action of Trustee During Existence of an Event of Default.** Subject to Section 11.09 hereof, the Trustee shall, during the existence of an Event of Default known to the Trustee, exercise such of the rights and powers vested in it by this Indenture and use the same degree of skill and care in their exercise as a prudent person would use and exercise under the circumstances.

Section 11.18. **Notice of an Event of Default.** Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default known to a Responsible Officer of the Trustee, the Trustee shall within thirty (30) days give written notice thereof to the Issuer, to the Rating Agency, and to each Bondholder at its last address appearing upon the registration books of the Issuer kept by the Trustee unless such Event of Default shall have been cured before the giving of such notice. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to mail any such notice to the Rating Agency, and any such failure shall not affect the validity of actions which are the subject of such notice.

Section 11.19. **Trustee May Intervene.** In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of a majority in aggregate principal amount of Bonds then Outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

Section 11.20. **Unclaimed Moneys.** In case any moneys deposited with the Trustee for the payment of the principal of and interest on any Bond remains unclaimed for three (3) years after such principal or interest has been paid or has become due and payable, the Trustee shall disburse the moneys in accordance with Title 6 of the Texas Property Code. Thereupon, the Trustee and the Issuer shall be released from any further liability with respect to payment of such purchase price or principal, premium, or interest and the Holder shall be entitled (subject to any applicable statute of limitations) to look only to the Borrower as an unsecured creditor for the payment thereof. The Trustee shall comply with the reporting requirements of Chapter 74 of the Texas Property Code.

Section 11.21. **Appointment of Co-Trustee.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as a



trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Bond Loan Agreement, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 11.21 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Approval in writing from the Issuer shall be required prior to the appointment of the separate or co-trustee by the Trustee. All such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer at the expense of the Borrower. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law and so approved by the Issuer, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee.

Section 11.22. **Financing Statements.** Pursuant to Section 5.05 of the Bond Loan Agreement, the Borrower shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with the Texas Uniform Commercial Code to the extent any such security interest may be perfected by filing. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. The Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered to the Trustee. Unless the Trustee shall have been notified in writing by the Issuer or a Bondholder that the initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (i) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section 11.22 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder.

Section 11.23. **State Law Verifications.** The Trustee makes the following representation and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code (the “Government Code”), as heretofore amended, in entering into this Indenture. As used herein, “affiliate” means an entity that controls, is controlled by, or is under common control with the Trustee within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Indenture shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Indenture, notwithstanding anything in this Indenture to the contrary.

(a) The Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153, Government Code, or Section 2270.0201, Government Code. The foregoing representation excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(b) The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Indenture. As used in the foregoing verification, “*boycott Israel*” has the meaning provided in Section 2271.001, Government Code.

(c) The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Indenture. As used in the foregoing verification, “*discriminate against a firearm entity or firearm trade association*” has the meaning provided in Section 2274.001(3), Government Code.

(d) The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Indenture. As used in the foregoing verification, “*boycott energy companies*” has the meaning provided in Section 2276.001(1), Government Code.

The Trustee represents and verifies that it is aware of the Texas Office of the Attorney General’s (the “*Texas Attorney General*”) All Bond Counsel Letter, dated November 1, 2023, that is available on the website of the Texas Attorney General using the following link: ([https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC Letter-11-01-2023.pdf](https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Letter-11-01-2023.pdf)) and the Texas Attorney General’s supplemental All Bond Counsel Letter, dated November 16, 2023, that is available on the website of the Texas Attorney General using the following link: ([https://texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC Letter-11-06-2023.pdf](https://texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Letter-11-06-2023.pdf)). The Trustee represents and verifies that the Trustee has (i) on file a standing letter (“*Standing Letter*”) acceptable to the Texas Attorney General addressing the representations and verifications in this Section 11.23(a) through (d), and (ii) will, upon request of the Issuer or Bond Counsel on behalf of the Issuer, provide the Issuer and Bond Counsel with a copy of its Standing Letter. The Trustee further represents and verifies that its Standing Letter

remains in effect as of the date of this Indenture and that the Texas Attorney General has not notified the Trustee that a determination has been made that the Trustee boycotts energy companies or has a policy that discriminates against firearm entities or firearm trade associations under the laws of the State of Texas. Upon request of the Issuer or Bond Counsel on the Issuer's behalf, the Trustee shall provide additional written certifications to the Issuer and Bond Counsel (which may be by email) to the effect that the Texas Attorney General may continue to rely on the Standing Letter and the statutory representations and covenants contained in this Indenture through the Closing Date (the "*Bringdown Verification*"). The Issuer reserves the right, and the Trustee hereby expressly authorizes the Issuer, to provide such Bringdown Verifications to the Texas Attorney General.

## ARTICLE XII

### MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

Section 12.01. **Limitation on Amendments to this Indenture.** This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article XII and only by a written instrument executed by each of the parties hereto.

Section 12.02. **Amendments to Indenture and Bond Loan Agreement Not Requiring Consent of Bondholders.**

(a) The Issuer and the Trustee may, from time to time and at any time, without the consent of Bondholders, enter into Supplements or other agreements supplemental to this Indenture and the Bond Loan Agreement as follows:

(1) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;

(2) to cure any formal defect, omission or ambiguity in this Indenture or the Bond Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;

(3) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as heretofore in effect;

(4) to add to the covenants and agreements of the Issuer in this Indenture or the Bond Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Bond Loan Agreement as theretofore in effect;

(5) to add to the limitations and restrictions in this Indenture or the Bond Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Bond Loan Agreement as theretofore in effect;

(6) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds; or

(7) to modify, amend or supplement this Indenture or the Bond Loan Agreement in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the owners of the Bonds.

(b) Before the Issuer shall enter into any Supplement to this Indenture pursuant to this Section 12.02, there shall have been filed with the Trustee an opinion of Bond Counsel to the effect that such Supplement is authorized or permitted by this Indenture and complies with the terms hereof, and that upon adoption such Supplement will be valid and binding upon the Issuer in accordance with its terms. The opinion of Bond Counsel filed with the Trustee shall also include a Favorable Opinion of Bond Counsel. The Trustee may conclusively rely upon such opinion.

(c) The Trustee shall send written notice to the Rating Agency, the Borrower and the Equity Investor of any amendment to this Indenture or the Bond Loan Agreement. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to provide any such notice, and any such failure shall not affect the validity of actions which are the subject of such notice.

**Section 12.03. Amendments to Indenture Requiring Consent of Bondholders.**

(a) Subject to the terms and provisions contained in this Section 12.03 and not otherwise, the Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplement to this Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; provided, however, that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such Supplements. This Section 12.03 shall not limit or otherwise affect the ability of the Issuer to enter into Supplements to this Indenture without the consent of the Bondholders pursuant to Section 12.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any Supplement for any of the purposes of this Section 12.03, the Trustee shall cause written notice of the proposed Supplement to be given to all Holders of the Bonds; *provided, however*, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant

hereto. Such notice shall briefly set forth the nature of the proposed Supplement and shall state that a copy thereof is on file at the Trust Office of the Trustee for inspection by all Bondholders.

(c) No later than 120 days after the date of giving such notice, the Issuer and the Trustee may enter into such Supplement in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding (or 100% if required hereunder) and (ii) an opinion of Bond Counsel to the effect that (1) such Supplement is authorized or permitted by this Indenture and complies with the terms hereof, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms, and (2) the effectiveness of the Supplement will not affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(d) If the Holders of at least the percentage of Bonds required by this Section 12.03 shall have consented to and approved the Supplement as herein provided, no Holder of any Bond shall have any right to object to such Supplement, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any Supplement entered into pursuant to the provisions of this Section 12.03, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

Section 12.04. **Supplemental Indentures Part of Indenture.** Any Supplement entered into in accordance with the provisions of this Article XII shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplement as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

Section 12.05. **Required Consent.** Notwithstanding anything herein to the contrary, the Trustee shall not be required to enter into or consent to any Supplement or any amendment of any other Document that would materially adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein or therein, except to the extent necessary, as set forth in an opinion of Bond Counsel, to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 12.06. **Amendments to Documents Requiring Consent of Bondholders.** Except as provided in Section 12.02 hereof, the Issuer and the Trustee shall not consent to any amendment, change or modification of the Documents without the giving of notice and the written approval or consent of the Holders of the Bonds at the time Outstanding given and procured as provided in Section 12.03 hereof. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change, or modification to be given in the same manner as provided

by Section 12.03 hereof with respect to Supplements. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Trust Office of the Trustee for inspection by all Bondholders.

## ARTICLE XIII

### MISCELLANEOUS

Section 13.01. **The Issuer's Successors.** In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

Section 13.02. **Indenture for Benefit of the Issuer, Trustee and Bondholders.** Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, other than the Issuer, the Trustee, and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer, the Trustee and the Holders of the Bonds; provided that this Indenture shall also be for the benefit of the Borrower, and the Borrower shall be deemed to be a third-party beneficiary of and in connection with those matters in which the terms of this Indenture fairly construed are indicative that they are for the benefit of the Borrower.

Section 13.03. **Severability.** In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

Section 13.04. **Limitation of Liability of the Issuer and Its Officers, Employees and Agents.**

(a) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any such officer or employee of the Issuer or member of its governing body or any natural person executing the Bonds.

(b) No agreements or provisions contained in this Indenture nor any agreement, covenant, or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale, and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way except as may be payable from the payments by the Borrower under the

Bond Loan Agreement or the Note and the proceeds of the Bonds and the other amounts held as part of the Trust Estate under this Indenture. No failure of the Issuer to comply with any term, condition, covenant, or agreement herein or in any document executed by the Issuer in connection with the issuance and sale of the Bonds shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the payments by the Borrower under the Bond Loan Agreement or proceeds of the Bonds or the other amounts held as part of the Trust Estate under this Indenture. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein, provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer except as may be payable from the Trust Estate or from the proceeds of the Bonds or from the other amounts held as part of the Trust Estate under this Indenture.

(c) No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant, or agreement contained in this Indenture against any past, present or future officer, director, member, employee, or agent of the Issuer, or of any successor agency, as such, either directly or through the Issuer or any successor agency, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees, or agents, as such, is hereby expressly waived and released as a condition of, and consideration for, the execution of this Indenture and the issuance of such Bonds.

(d) Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services; and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses, and liability which may be incurred thereby.

(e) Neither the members of the governing body of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds are issued pursuant to the Act, and the Bonds shall so state on their face, and shall state that the Bonds shall not be a debt of the Issuer, or the State, or any political subdivision thereof; and none of the Issuer, the State or any political subdivision thereof shall be liable thereon; nor in any event shall such Bonds or obligations be payable out of any funds or properties other than those of the Issuer identified herein.

Section 13.05. **Governing Law**. The laws of the State shall govern the construction of this Indenture and of all Bonds issued hereunder. The parties hereby (i) irrevocably submit to the exclusive jurisdiction of any federal or state court sitting in the State, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party

Section 13.06. **Notices; Publication of Notice.**

(a) All notices, advice, certifications or other communications hereunder between the Issuer and the Trustee shall be sufficiently given and shall be deemed given when provided in writing and when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by electronic means (including, without limitation, e-mail and facsimile transmission) addressed to the appropriate Notice Address. The Issuer or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to persons other than the Issuer or the Trustee (such as, for example, notices to owners of Bonds) shall be governed by the other applicable provisions of this Indenture.

(b) Whenever the Issuer or the Trustee is required or permitted to give or publish notice of any event or occurrence under this Indenture, such notice shall be given or published in such manner and by such means as the Issuer or the Trustee, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Trustee, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to the Municipal Securities Rulemaking Board's EMMA System or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the Person entitled to receive the notice at such Person's address as shown on the records of the Issuer or the Trustee.

(c) The Trustee shall notify the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which a Responsible Officer of the Trustee has actual notice, (b) any change in the identity of the Trustee, (c) any amendments, modifications, supplements or changes to this Indenture, the Bond Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (d) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (e) any change or notification of proposed change of the Mandatory Tender Date, (f) any partial prepayment of the Bond Loan or the giving of notice of the call for redemption of any Bonds, (g) any defeasance or acceleration of the Bonds hereunder, (h) any change in the Remarketing Agent, or the Lender of which the Trustee has actual knowledge, (i) any sale of Permitted Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date, (j) the occurrence of any monetary or other material default under the Bond Loan of which the Trustee has actual notice or (k) any material change in the investment of funds subject to the lien of this Indenture. The Trustee shall not, however, be subject to any liability to any Holder or any party to the transaction by reason of its failure to provide any such notice, and any such failure shall not affect the validity of actions which are the subject of such notice.

(d)

Section 13.07. **Trustee as Paying Agent and Bond Registrar.** The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds.



Section 13.08. **Execution of Instruments by Bondholders and Proof of Ownership of Bonds.** Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be conclusively proved by the registration books kept under the provisions of Section 2.08 of this Indenture.

Nothing contained in this Section 13.08 shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Holder of any Bond shall bind every future Holder of the same Bond in respect of anything done by the Trustee pursuant to such request or consent.

Section 13.09. **Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

Section 13.10. **FHA Federal Laws and Requirements Control.** Notwithstanding anything in this Indenture or the Bond Loan Agreement to the contrary:

(a) The Borrower, the Trustee and the Issuer acknowledge that this Indenture, and any obligations of the Borrower hereunder, are subject and subordinate to the Lender Loan Documents. Notwithstanding any provision in this Indenture to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the Lender Mortgage) or (ii) any reserve or deposit made with the Lender or any other party as required by HUD in connection with the Lender Loan Documents, or (C) the Lender Collateral Deposit which has been deposited into the Collateral Fund by or at the direction of the Lender (collectively, “*Non-Project Sources*”). No claims or actions shall be made (or payable) under this Indenture against the Project, the proceeds of the Lender Borrower Note, or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Indenture and all other documents evidencing, implementing, or securing this Indenture (collectively, the “*Subordinate Bond Documents*”) are and shall be subordinated in all respects to the rights and obligations of the parties to and under the Lender Loan Documents. In the event of any conflict between the provisions of (i) this Indenture or the Subordinate Bond Documents and (ii) the provisions of the Lender Loan Documents or the Program Obligations (as defined in the

Lender Mortgage), GNMA statutory, regulatory or administrative requirements, the provisions of the Lender Loan Documents, the Program Obligations or the GNMA statutory, regulatory or administrative requirements, as applicable, shall control. The provisions of this Section 13.10 shall control over any inconsistent provisions in this Indenture or the Subordinate Bond Documents.

(b) Any subsequent amendment to this Indenture or the Bond Loan Agreement is subject to prior written approval of HUD (so long as the Project is subject to a mortgage insured or held by HUD). No amendment to this Indenture or the Bond Loan Agreement shall conflict with the provisions of the Program Obligations.

(c) The Bonds are not a debt of the United States of America, HUD, FHA, GNMA or any other agency or instrumentality of the federal government, and are not guaranteed by the full faith and credit of the United States or any agency or instrumentality thereof.

(d) There is no pledge hereunder or under the Bond Loan Agreement of the gross revenues or any of the assets of the Project.

(e) Neither a default under this Indenture nor under the Bond Loan Agreement shall constitute a default under the Lender Loan Documents related to the Project.

(f) Nothing contained herein or in the Bond Loan Agreement shall inhibit or impair the right of FHA to require or agree to any amendment, change or modification of any Lender Loan Documents related to the Project for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision contained therein, or in regard to matters or questions arising under said Lender Loan Documents so long as any such amendment, change or modification shall not adversely affect the payment terms of the Bonds.

(g) None of the Issuer, the Trustee, or any of the owners of the Bonds has or shall be entitled to assert any claim against the Project, any reserves or deposits required by HUD in connection with the Project, or the rents or deposits or other income of the Project.

(h) Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the Lender Loan Documents.

(i) Notwithstanding anything in this Indenture, the Bond Loan Agreement, the Note or the Bond Purchase Agreement to the contrary, in no event shall HUD have any claim to or lien upon the Trust Estate under this Indenture and funds held by the Trustee under this Indenture and pledged to secure the repayment of the Bonds. Further, nothing herein shall restrict the rights and obligations of the parties as they relate to the Bonds and the rights and obligations therein are not subordinated.

(j) In the event of an assignment or conveyance of the Lender Loan to the Federal Housing Commissioner, subsequent to the issuance of the Bonds, all money, other than Bond proceeds, remaining in all funds and accounts other than the Rebate Fund and any other funds remaining under the Indenture after payment or provision for payment in full of debt service on the Bonds and the fees and expenses of the Issuer, Trustee, and other such parties unrelated to the

Borrower (other than funds originally deposited by the Borrower or related parties on or before the date of issuance of the Bonds) shall be returned to the Lender.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name by its authorized officer, and the Trustee has caused this Indenture to be signed in its name by its duly authorized officer, all as of the day and year first above written.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS, as Issuer

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to Board

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

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

**EXHIBIT A**  
**FORM OF BOND**

No. R- \_\_\_\_\_ \$ \_\_\_\_\_

**UNITED STATES OF AMERICA**  
**STATE OF TEXAS**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(GULFWAY MANOR)**  
**SERIES 2024**

Unless this Bond is presented by an authorized representative of the Securities Depository (as defined in the Indenture) to the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of the Securities Depository (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of the depository), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

DATED DATE	INTEREST RATE	MATURITY DATE	CUSIP NUMBER
July 1, 2024	[INTEREST RATE]%	August 1, 2028	[CUSIP]

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

FOR VALUE RECEIVED, the Texas Department of Housing and Community Affairs (the “*Issuer*”), a public and official agency of the State of Texas (the “*State*”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of U.S. Bank Trust Company, National Association, a national banking association, as trustee, or its successor in trust (the “*Trustee*”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the initial delivery of the Bond until maturity, at the Interest Rate per annum identified above, or at the Remarketing Rate, as the case may be, payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed

by the Trustee to the registered owner hereof at his address as it appears on the registration books of the Issuer, or, upon the request of any registered holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered owner to the Trustee in writing, such interest to the maturity hereof being payable semi-annually on each February 1 and August 1, commencing February 1, 2025, in lawful money of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts.

THE BONDS OF WHICH THIS BOND IS A PART, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE BOND LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR, **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT, OR FUTURE MEMBERS OF THE GOVERNING BODY OF THE ISSUER OR ANY OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

This Bond is one of an issue of the \$[27,500,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), of like date and tenor, except as to number and denomination, issued under and pursuant to the laws of the State and in particular Chapter 2306, Texas Government Code, as amended (the “*Act*”), and a resolution of the Issuer adopted on [June 13], 2024, for the purpose of financing a portion of the costs of the acquisition, rehabilitation and equipping by Gulfway Housing Partners, LP, a Texas limited partnership (the “*Borrower*”), of a multifamily rental housing development consisting of approximately 151 units known as Gulfway Manor Apartments and located at 1750 Treyway Lane, Corpus Christi, Nueces County, TX 78412 (the “*Project*”). The proceeds of the Bonds are being loaned to the Borrower by the Issuer under a Loan Agreement dated as of July 1, 2024, between the Borrower and the Issuer (the “*Bond Loan Agreement*”) and evidenced by a Promissory Note dated the Closing Date from the Borrower to the Issuer (the “*Note*”).

The Bonds are issued under a Trust Indenture dated as of July 1, 2024 (the “*Indenture*”), between the Issuer and the Trustee, and, to the extent provided therein, are equally and ratably secured and entitled to the protection given by the Indenture. Pursuant to the Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Bond Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Bond Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund created pursuant to Section 4.01(b) of the Indenture, and from moneys deposited into the Collateral Fund created pursuant to Section 4.01(e) of the Indenture.

Reference is made to the Indenture, the Note and the Bond Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the holders of the Bonds and provisions for defeasance of such rights. Capitalized terms used herein have the same meaning as set forth in the Indenture. The terms and conditions set forth herein concerning payment and other rights and remedies of the owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Indenture.

This Bond is negotiable and is transferable, as provided in the Indenture, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Indenture. The Issuer and the Trustee may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or integral multiples of \$1,000 thereafter.



The Bonds are subject to mandatory tender in whole and not in part on each Mandatory Tender Date (as defined in the Indenture), and shall be purchased at a price equal to 100% of the principal amount of such Bonds, plus accrued interest, if any to the applicable Mandatory Tender Date, and without premium, as set forth in the Indenture.

The Bonds are subject to redemption prior to maturity as provided in the Indenture.

In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds then outstanding under the Indenture may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

The Holder of this Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. The Trustee shall treat the registered owner of this Bond as the Person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

In any case where the date of maturity of or an Interest Payment Date for this Bond shall not be a Business Day, then payment of interest or principal need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture unless either (1) the Certificate of Authentication hereon has been executed by the Trustee, or (2) the Comptroller's Registration Certificate hereon has been executed by an authorized representative of the Comptroller of Public Accounts of the State of Texas.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name under its official seal by the manual or facsimile signature of its Chair or Vice Chair and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Issuer

(SEAL)

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

Title: [Vice] Chair

ATTEST:

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

Title: Secretary

**[Initial Bond Only]**

**[FORM OF COMPTROLLER'S CERTIFICATE]**

COMPTROLLER'S REGISTRATION CERTIFICATE

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS  
STATE OF TEXAS

REGISTER NO. \_\_\_\_\_

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas and that this Bond has been registered by the Comptroller of the Public Accounts of the State of Texas.

WITNESS MY HAND AND SEAL OF OFFICE at Austin, Texas, this \_\_\_\_\_.

(COMPTROLLER'S SEAL)

Comptroller of Public Accounts  
of the State of Texas

**[Definitive Bonds Only]**

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the Indenture referred to in this Bond.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Date of Authentication: \_\_\_\_\_, 20\_\_\_\_

**FORM OF ASSIGNMENT**

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto  
(Please Print or Type Name and Address of Assignee): \_\_\_\_\_

\_\_\_\_\_  
(Social Security or Taxpayer Identification Number: \_\_\_\_\_  
\_\_\_\_\_) the within Bond and all rights thereunder, and hereby  
irrevocably constitutes and appoints \_\_\_\_\_

\_\_\_\_\_  
attorney to transfer the said Bond on the books of the within named issuer maintained by the  
Trustee for the registration thereof, with full power of substitution in the premises.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed.

Signature guaranteed by:

[Bank, Trust Company or Firm]

\_\_\_\_\_  
Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

**EXHIBIT B**  
**FORM OF REQUISITION**

BORROWER: GULFWAY HOUSING PARTNERS, LP

PROJECT: GULFWAY MANOR APARTMENTS

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$ \_\_\_\_\_

To: U.S. Bank Trust Company, National Association, as trustee

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Request for Payment attached to this Requisition:

AMOUNT	SOURCE	PAYABLE TO:
	[identify name of Account and Fund]	[Borrower's account number] [third party payment/wire instructions must be attached]

REQUISITION – CONTENTS AND ATTACHMENTS

Borrower's Representations and Warranties

Contractor's Application and Certification for Payment (AIA Form G 702)

Requisitions and Invoices Supporting Application

**REPRESENTATIONS AND WARRANTIES**

1. To the Borrower's knowledge, no changes have been made in the Plans and Specifications that require and have not received the prior approval of any Governmental Authority having jurisdiction over the Project or any other parties from whom such approval is required.
2. To the Borrower's knowledge, the construction and equipping of the Project has been performed in accordance with the Plans and Specifications.

3. Funding of this Requisition shall be in accordance with the terms and provisions of (i) the Loan Agreement dated as of July 1, 2024 (the “*Agreement*”), and (ii) the Trust Indenture dated as of July 1, 2024, with respect to the Bonds (the “*Indenture*”).
4. All monies requisitioned by the Borrower for acquisition and construction and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor or other contractor or supplier or other party entitled to payment and, to Borrower’s best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
5. All of the information submitted to the Trustee in connection with this Requisition is true and accurate as of the date of submission.
6. The representations and warranties set forth in the Documents are true and correct as of the date hereof with the same effect as if made on this date unless such representation or warranty relates to a specific time.
7. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default on the part of the Borrower under the terms of the Documents, (ii) except as previously disclosed by the Borrower to the Issuer, the Borrower has not received notice from or been informed by any Governmental Authority of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Project has not been constructed in accordance with all applicable requirements and (iii) the Documents are in full force and effect.
8. The Borrower represents and warrants that, following the disbursement by the Trustee of the aggregate amounts requested under these Requisitions, (i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance.
9. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Indenture or the Tax Exemption Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

BORROWER:

GULFWAY HOUSING PARTNERS, LP  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

Approved:

MERCHANTS CAPITAL CORP.

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

BRIDGEWATER BANK

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





**CONTRACTOR'S APPLICATION FOR PAYMENT**

## REQUISITIONS AND INVOICES

**EXHIBIT C**

**FORM OF REQUISITION  
(Costs of Issuance)**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024**

Dated: \_\_\_\_\_

Costs of Issuance Requisition No. \_\_\_\_

To: U.S. Bank Trust Company, National Association as trustee (the “*Trustee*”) under the Trust Indenture dated as of July 1, 2024, between the Texas Department of Housing and Community Affairs and the Trustee (the “*Indenture*”).

Terms used herein and not otherwise defined shall have the meanings given to such terms in the Indenture.

The undersigned, Borrower Representative of Gulfway Housing Partners, LP (the “*Borrower*”), hereby certifies to you that he/she is authorized and empowered to submit this Requisition to you and that attached hereto as Schedule “A” is a schedule of Costs of Issuance incurred in connection with the issuance of the above described Bonds, including the names and addresses of the payees and the specific amounts payable to each such payee, and that to the best of the undersigned’s information and belief, such amounts are true and correct.

This Requisition is being delivered to you in accordance with the referenced Indenture pursuant to which the Bonds were issued. You are hereby instructed to withdraw from the Cost of Issuance Fund created under the Indenture the amounts shown across from each payee listed on Schedule “A” hereto and pay such amounts to each such payee by wire transfer, check delivered by first class mail or by such other means as is acceptable to you and any such payee.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has signed this Requisition by and on behalf of the Borrower.

BORROWER:

GULFWAY HOUSING PARTNERS, LP  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

**SCHEDULE "A"**

**SCHEDULE OF COSTS OF ISSUANCE**

PAYEE	AMOUNT
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LOAN AGREEMENT

Between

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer

and

GULFWAY HOUSING PARTNERS, LP,  
as Borrower

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Dated as of July 1, 2024

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Relating to:

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024

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The interest of the Texas Department of Housing and Community Affairs (the “*Issuer*”) in this Loan Agreement has been assigned (except for “*Reserved Rights of the Issuer*” defined in the Indenture) pursuant to the Trust Indenture, dated as of the date hereof (the “*Indenture*”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the “*Trustee*”), and is subject to the security interest of the Trustee thereunder.

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- Exhibit A – Project Description
- Exhibit B – Form of Promissory Note
- Exhibit C – Form of Completion Certificate

## LOAN AGREEMENT

THIS LOAN AGREEMENT (“*Agreement*” or “*Bond Loan Agreement*”) is entered into as of [July 1], 2024, between the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (together with its successors and assigns, the “*Issuer*”), and GULFWAY HOUSING PARTNERS, LP, a Texas limited partnership (the “*Borrower*”).

### WITNESSETH:

WHEREAS, by virtue of the authority of the laws of the State of Texas (the “*State*”), and particularly the provisions of Chapter 2306, Texas Government Code, as amended (the “*Act*”), the Issuer is authorized to make loans to finance the cost of a “*development*” (as defined in the Act) and to issue bonds, notes or other evidences of indebtedness from time to time for such purposes; and

WHEREAS, the Borrower has requested the Issuer to issue its Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), the proceeds of which will be utilized to make a loan to the Borrower (the “*Bond Loan*”) to finance a portion of the costs of the acquisition, rehabilitation and equipping of an approximately 151-unit multifamily housing residential rental development known as Gulfway Manor Apartments and located in Nueces County, Texas (the “*Project*”); and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance the acquisition, rehabilitation and equipping of the Project and the payment of certain costs of issuance by issuing the Bonds, pursuant to a Trust Indenture dated as of July 1, 2024 (the “*Indenture*”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the “*Trustee*”); and

WHEREAS, the Bond Loan will be evidenced by this Agreement and a promissory note (the “*Note*”), from the Borrower to the Issuer in the form of *Exhibit B* hereto; and

WHEREAS, in order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer, the Borrower and the Trustee have entered into the Tax Exemption Agreement and the Regulatory Agreement, each of which sets forth various certifications, representations, and covenants relating to the Federal Tax Status of the Bonds; and

WHEREAS, the parties hereto, intending to be legally bound hereby, and for and in consideration of the premises and the mutual covenants hereinafter contained, do hereby covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. **Definitions.** All capitalized, undefined terms used herein shall have the same meanings ascribed thereto in the Indenture.

Section 1.02. **Uses of Phrases.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Bond,” “Bondholder,” “Holder,” “Owner” and “Person” shall include the plural as well as the singular number. Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific sections of the Code refer to such sections of the Code and all successor or replacement provisions thereto.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. **Representations, Covenants and Warranties of the Issuer.** The Issuer represents, covenants and warrants that:

(a) The Issuer is a public and official agency of the State. Under the provisions of the Act and the resolution adopted by the Issuer on [June 13], 2024, the Issuer is authorized to enter into the Issuer Documents and to carry out its obligations thereunder. By proper action of its governing body, the Issuer has been duly authorized to execute and deliver the Issuer Documents and to issue and sell the Bonds.

(b) The Issuer covenants that it will not pledge the amounts derived from this Agreement other than as contemplated by the Indenture.

(c) The Issuer hereby finds and determines that financing the Project by the issuance of the Bonds will further the public purposes of the Act.

(d) No member of the governing body of the Issuer, nor any other officer or employee of the Issuer, has any interest, financial, employment or otherwise, in the Borrower, the Project or in the transactions contemplated hereby.

(e) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, that (i) affects or questions the existence or the title to office of any member of the governing body of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any of the Issuer Documents, or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of any of the Issuer Documents or the Bonds; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Issuer Documents or the Bonds or to carry out the transactions contemplated by any of the Issuer Documents or the Bonds.

(f) The Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the sale of the Bonds, or as to the correctness, completeness or accuracy of such statements.

(g) The Issuer will not take any action inconsistent with its expectations stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

Section 2.02. **Representations, Covenants and Warranties of the Borrower.** The Borrower represents, covenants and warrants that:

(a) *Good Standing; Single Purpose Covenants.* The Borrower (i) is a limited partnership duly organized and existing in good standing under the laws of the State of Texas, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Agreement and the Tax Exemption Agreement and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Borrower's business and purpose shall consist solely of the ownership, rehabilitation, development, operation and management of the Project and such other lawful activities as are incidental, necessary or appropriate thereto. The Borrower shall not incur any indebtedness other than Project indebtedness and normal trade accounts payable in the ordinary course of the Borrower's business. The Borrower shall not assume or guaranty any other Person's indebtedness or obligations. The Borrower shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Borrower shall not institute or consent to any bankruptcy, insolvency or reorganization proceedings with respect to it, consent to the appointment of a receiver or similar official with respect to it, make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due. The Borrower shall: maintain books and records and bank accounts separate from those of any other Person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates on an arm's length basis and pursuant to enforceable agreements. The Borrower shall not commingle its assets or funds with those of any other Person.

(b) *Authority.* The Borrower has full power and authority to (i) execute and deliver the Documents to which it is a party and (ii) incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary corporate action. All consents or approvals of any public authority which are required as a condition to the validity of the Documents to which the Borrower is a party have been obtained.

(c) *Binding Agreements.* The Borrower Documents have been properly executed by a duly authorized signatory of Gulfway Housing Management, LLC, general partner of the Borrower (the "*General Partner*"), and constitute valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to

certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose.

(d) *Litigation.* There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened in writing against the Borrower before any court or administrative agency which, if determined adversely to the Borrower, will materially adversely affect the Borrower or the Project, or the authority of the Borrower to enter into or perform under the Borrower Documents or which in any way would adversely affect the validity or enforceability of the Bonds or the Documents.

(e) *Conflicts; Defaults.* There is (i) no provision of the Borrower's Organizational Documents, or resolutions of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower affecting any of the Borrower's property and (ii) to the Borrower's knowledge, no provision of law or order of court binding upon the Borrower or affecting any of the Borrower's property, in each case which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Borrower Documents and the other financing documents and regulatory agreements to be entered into at closing in connection with this transaction, or which would be in default or violated as a result of such execution, delivery or performance. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(f) *Title to Project, Liens and Encumbrances.* The Borrower is the fee simple owner of the Project, free and clear of all liens or encumbrances other than those encumbrances set forth on Schedule B of Title Proforma File No. [ ] issued by Chicago Title Insurance Company (the "*Permitted Encumbrances*"). There exist no liens, encumbrances or other charges against the Project (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances. The Borrower is the sole borrower under the Bond Loan.

(g) *Indenture.* The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

(h) *Events Affecting Tax Exemption.* The Borrower has not taken or permitted to be taken any action that would impair the Federal Tax Status of the Bonds, and the Borrower has never been advised that the interest is or will be subject to inclusion in gross income. As of the Closing Date, the Borrower is in compliance with all requirements contained in the Tax Exemption Agreement, and the representations set forth in the Tax Exemption Agreement pertaining to the Borrower and the Project are true and accurate in all material respects. Notwithstanding the above,

if the Borrower becomes aware of any situation, event or condition that would result in the interest on the Bonds being included in gross income for federal income tax purposes, the Borrower promptly shall give written notice thereof to the Issuer and the Trustee.

(i) *Compliance with Laws and Documents.* The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto with respect to multifamily rental housing and/or qualified residential rental facilities. The Borrower will use due diligence to cause the Project to be operated in accordance with the Act and all other applicable laws, rulings, regulations and ordinances of any applicable Governmental Authority and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be obtained all requisite approvals of the Issuer and of any applicable Governmental Authority or other federal and local governmental bodies required for the operation of the Project. The Project is located wholly within the boundaries of the Issuer's jurisdiction.

(j) Compliance by the Borrower with the provisions of the Bond Documents and the Borrower Documents will not involve, to the extent applicable, any prohibited transaction within the meaning of the Employee Retirement Income Security Act of 1974, as amended (sometimes referred to in this subparagraph 2.02(i) as "*ERISA*"), or Section 4975 of the Code. No "employee pension benefit plans", that are subject to Title IV of ERISA (sometimes referred to in this subparagraph 2.02(i) as "*Plans*"), maintained by the Borrower, nor any trust created thereunder, have incurred any "accumulated funding deficiency" as defined in Section 302 of ERISA, to the extent applicable and the present value of all benefits vested under all Plans, if any, did not exceed, as of the last annual valuation date, the value of the assets of the Plans allocable to such vested benefits.

(k) The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis that satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases that comply with all applicable laws.

(l) The Borrower shall, through the term of this Agreement and at no expense to the Issuer, promptly comply or cause compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the Americans with Disabilities Act, all federal, State and local environmental, health and safety laws, rules, regulations and orders applicable to or pertaining to the Project and Federal Worker Adjustment and Retraining Notification Act.

(m) *No Material Misstatements.* The representations and warranties of the Borrower contained in the Borrower Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance or delivery of the Bonds on the Closing Date), contain no material misstatement of fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Closing Date, are true, correct and complete in all material respects,

do not contain any untrue statement or misleading statement of material fact, and do not omit to state a material fact necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and assumptions contained in this Agreement and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the most accurate information available to the Borrower.

(n) The information used in the preparation of the financial statements of the Borrower, the Borrower Documents and any other written statement furnished by the Borrower to the Issuer (including the descriptions and information contained in the Official Statement relating to (i) the Borrower and the Project, (ii) the operations and financial and other affairs of the Borrower, (iii) the application by the Borrower of the proceeds to be received by it from the Bond Loan and (iv) the participation by the Borrower in the transactions contemplated in this Bond Loan Agreement and in the Official Statement, including, without limitation, the information relating to the Borrower in the Official Statement under the caption “Certain Bondholders’ Risks”), do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. There is no fact that the Borrower has not disclosed to the Issuer in writing that materially adversely affects or, so far as the Borrower can now foresee, will materially adversely affect the financial condition of the Borrower, the ability of the Borrower to own and operate the Project or the Borrower’s ability to make payments on the Note when and as the same become due and payable.

(o) *Interest of Member or Agent of the Issuer.* To the knowledge of the Borrower, no member of the governing body of the Issuer or other agent of the Issuer has been or is in any manner interested, directly or indirectly, in that person’s own name or in the name of any other Persons, in the loan of the Bond proceeds, the Bonds, the Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Documents. There (i) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Project or the Borrower and (ii) has been no assertion or exercise of jurisdiction over the Project or the Borrower by any court empowered to exercise bankruptcy powers.

(p) *Tax Returns.* The Borrower will timely file all tax returns for the Borrower, and pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties. No claims with respect to any taxes have been assessed upon the Borrower and remain unpaid.

(q) *No Reliance on the Issuer.* The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner, except to issue the Bonds.



(r) *Fees.* The Borrower shall pay all fees as provided under the Note and in this Agreement, when due and payable without demand pursuant to Section 4.03 hereof, which fees shall be paid to the Trustee for deposit in the Expense Fund.

(s) *Name of Borrower.* The Borrower filed its Certificate of Formation with the State of Texas under the name of Gulfway Housing Partners, LP.

(t) *Governmental Requirements.* To the Borrower's knowledge, no violation of any Governmental Requirement exists with respect to the Project, the Borrower, or any other asset of the Borrower, the Project conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, all necessary utilities are or will be available to the Project, and the Borrower has obtained or will obtain all requisite zoning approvals necessary with respect to the Project.

(u) *Condemnation.* No condemnation, eminent domain or similar proceeding is pending, or to the knowledge of the Borrower, threatened in writing, with respect to the Project or any portion thereof.

(v) *Governmental Approvals.* The Borrower has obtained, or will obtain and there are currently in full force and effect, or will be in full force and effect, all consents, and permits, licenses, accreditations, certifications and other approvals (governmental or otherwise) that:

(i) would constitute a condition precedent to, or the absence of which would materially adversely affect, the enforceability of and the performance by the Borrower of its obligations hereunder; and

(ii) are necessary for the acquisition, rehabilitation, equipping, financing and operation of the Project.

(w) *No Cease and Desist.* The Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering performance of its duties hereunder, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

(x) *No Intent of Sale of Project.* The Borrower intends to hold the Project for its own account and has no current plans to sell and has not entered into any agreement to sell any of the Project.

(y) *Notification of Default.* The Borrower agrees to immediately notify the Trustee and the Issuer in writing of any Default, or any event which with notice or the passage of time would constitute a Default.

(z) *Maintenance of Insurance.* The Borrower will promptly cause to be paid all premiums for insurance policies required to be maintained for the Project. The Borrower shall, at all times during the term of the Bond Loan, maintain at its sole cost and expense, for the mutual benefit of the Borrower, the Lender and the Trustee, all of the insurance specified in Section 6.10

of the Lender Disbursement Agreement, as required by Lender and the Issuer and applicable law, and in such amounts and with such maximum deductibles as the Lender and the Issuer may require, as those requirements may change.

(aa) *Lease or Use of Project.* The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project now in effect except for leases to residential tenants in compliance with the Regulatory Agreement.

(bb) *Non-Discrimination.* The Borrower has not and shall not discriminate on the basis of race, creed, religion, color, sex, marital status, age or national origin in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of Persons for the operation and management of the Project. The Borrower specifically agrees that the Borrower will not refuse to lease units in the Project to persons whose family includes minor dependents who will occupy such unit, unless such refusal is based upon factors not related to the presence of such minors in the family, which factors may include, but shall not be limited to, negative credit, rental history or potential overcrowding of a unit

(cc) *State Law Verifications.* The Borrower makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended. As used herein, “affiliate” means an entity that controls, is controlled by, or is under common control with the Borrower within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited, notwithstanding anything herein or therein to the contrary.

The Borrower represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153, Texas Government Code, or Section 2270.0201, Texas Government Code. The foregoing representation excludes the Borrower and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

For purposes of Chapter 2271, Texas Government Code, Chapter 2274, Texas Government Code, and Chapter 2276, Texas Government Code, the Borrower hereby represents that it does not have at least 10 full-time employees.

### ARTICLE III

#### REHABILITATION OF THE PROJECT; ISSUANCE OF THE BONDS

Section 3.01. **Agreement for Rehabilitation of the Project.** (a) The Borrower agrees to make or cause to be made all contracts and do all things necessary for the acquisition, rehabilitation and equipping of the Project. The Borrower further agrees that it will acquire and construct the Project in accordance with approved Plans and Specifications with all reasonable dispatch and use its best efforts to cause acquisition, rehabilitation and equipping of the Project to be completed by

the Completion Date, or as soon thereafter as may be practicable, delays caused by force majeure as defined in Section 7.01 hereof only excepted; but if for any reason such acquisition, rehabilitation and equipping is not completed by said Completion Date, there shall be no resulting liability on the part of the Borrower or the Issuer and no diminution in or postponement of the payments required in Section 4.02 hereof to be paid by the Borrower.

(b) The Borrower shall cause the Project to be maintained in good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) and shall not remove, demolish or materially alter the improvements to the Project (except for the performance of the construction or rehabilitation work comprising the Project or removal of aging or obsolete equipment or furnishings in the normal course of business). After completion of repairs, no structural or other material defect or damages to the Development will exist, whether latent or otherwise.

Section 3.02. **Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds.** In order to provide funds for the payment of the Qualified Project Costs, the Issuer, concurrently with the execution of this Agreement, will issue, sell and deliver the Bonds and deposit the proceeds thereof with the Trustee, which amounts shall be immediately deposited into the Project Fund.

Section 3.03. **Disbursements from the Project Fund.** In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Costs of the Project in the manner consistent with the Tax Exemption Agreement. The Trustee shall make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture as Exhibit B. The Borrower agrees that the moneys transferred by the Trustee from the Project Fund to any reserve fund required by the Lender Disbursement Agreement shall only be disbursed for Qualified Project Costs as permitted by the Tax Exemption Agreement.

Section 3.04. **Furnishing Documents to the Trustee.** The Borrower agrees to cause such Requisitions to be directed to the Trustee as may be necessary to effect payments out of the Project Fund in accordance with Section 3.03 hereof.

Section 3.05. **Establishment of Completion Date.** (a) The Borrower shall evidence completion of the Project and the actual date of completion to the Issuer and the Trustee by an executed Completion Certificate in the form attached hereto as *Exhibit C*, as promptly as practicable, but no more than thirty (30) days after the occurrence of events and conditions referred to in paragraphs (a), (b) and (d) of the Completion Certificate. The Completion Certificate shall be executed by the Borrower and shall state to the best information and belief of the Borrower, after due inquiry, that rehabilitation of the Project has been completed in material compliance with all applicable laws, regulations and agreements, and all costs of labor, services, materials and supplies used in the Project have been paid, all equipment necessary for the operation of the Project has been purchased, installed and paid for, is suitable and sufficient for its intended purposes, and is fully operable, all costs and expenses incurred in connection with the Project have been paid except for amounts not yet due and payable or being diligently contested in good faith by the Borrower, and the Project is suitable and sufficient for its intended purposes. The Trustee may conclusively rely on such Completion Certificate. The Borrower shall also attach to the

Completion Certificate a table of sources and uses showing the final allocation for all sources of funding for the Project.

(b) Notwithstanding anything contained in the Documents to the contrary, the Borrower shall not be able to prepay the Bond Loan and optionally redeem the Bonds unless and until the Project has been completed in accordance with the requirements of this Article III.

Section 3.06. **Borrower Required to Pay in Event Project Fund Insufficient.** In the event the moneys in the Project Fund available for payment of the Costs of the Project are not sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that, if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Costs of the Project pursuant to the provisions of this Section 3.06, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement. Notwithstanding the foregoing, the terms, conditions and covenants of this Section 3.06 do not in any way affect the ability of the Issuer to pursue its rights and remedies under the Documents.

Section 3.07. **Remarketing of Bonds.** The Borrower is hereby granted the right to request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.07 of the Indenture and, in consultation with the Remarketing Agent, designate the length of the remarketing period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.05 and 3.07 of the Indenture.

## ARTICLE IV

### LOAN PROVISIONS

Section 4.01. **Loan of Proceeds.** The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. Such proceeds shall be disbursed to or on behalf of the Borrower as provided in Section 3.03 hereof.

Section 4.02. **Amounts Payable.**

(a) On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered the Capitalized Interest Deposit, if any, to the Trustee for deposit to the Capitalized Interest Account of the Bond Fund.

(b) The Borrower hereby covenants and agrees to repay the Bond Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the Capitalized Interest Account of the Bond Fund and the Collateral Fund, will enable

the Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) and interest on the Bonds as provided in the Indenture. Deposits into the Bond Fund for payments by the Trustee of principal and interest on the Bonds from amounts in the Capitalized Interest Account of the Bond Fund or the Collateral Fund shall be credited against the Borrower's obligation to pay principal and interest on the Bond Loan.

(c) It is understood and agreed that all payments of principal and interest payable by the Borrower under subsection (b) of this Section 4.02 are assigned by the Issuer in accordance with the terms of the Indenture to the Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund and the Expense Fund). The Borrower consents to such assignment.

(d) In the event the Borrower should fail to make any of the payments required in this Section 4.02, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

Section 4.03. **Fees and Expenses.** The Borrower agrees to pay, when due, the Issuer's Fees, the Trustee's Fee and the Rebate Analyst Fee and any and all other costs or expenses at any time incurred by the Issuer, the Trustee, the Dissemination Agent or the Rebate Analyst (including the reasonable fees and expenses of their counsel actually incurred) in connection with the issuance, sale and delivery of the Bonds and the performance of their duties in connection with the transactions contemplated hereby, including, without limitation, all costs of recording and filing. Specifically, and without limiting the foregoing, the Borrower agrees to pay to and indemnify any Issuer Indemnified Party (as defined below), the Trustee or any payee designated by the Issuer, within thirty (30) days after receipt of request for payment thereof, all reasonable expenses of the Issuer and the Trustee actually incurred and related to the Project and the financing thereof that are not paid from the funds held under the Indenture, including, without limitation, reasonable legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds or in connection with questions or other matters arising under such documents.

The obligations of the Borrower under this Section 4.03 shall survive the termination of this Bond Loan Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents.

Section 4.04. **Obligations of the Borrower Unconditional.** The obligations of the Borrower to make the payments required under this Agreement, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Trustee or any other Person. Subject to termination as provided herein, the Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Agreement, (ii) will perform and observe all of its other agreements contained in this Agreement and the other Documents and (iii) will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction,

destruction of or damage to the Project, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied.

Section 4.05. **Lender Loan and Bridge Loan to the Borrower.** To provide and secure funds for the completion of the Project, and to provide for the delivery of a Lender Collateral Deposit and other Preference Proof Funds, the Borrower shall concurrently with the execution and delivery hereof, (a) obtain the Lender Loan from the Lender and enter into the Lender Mortgage and (b) obtain the Bridge Loan from the Bridge Lender. The Borrower will promptly take all necessary actions on its part to close the Lender Loan and the Bridge Loan and to satisfy all other terms and conditions of the Lender Loan and the Bridge Loan and the requirements of the Lender and Bridge Lender, as applicable.

Pursuant to the terms of the Funding Agreement, the Borrower shall cause the Lender and/or Bridge Lender, as applicable, to advance funds in an aggregate amount not to exceed [\$27,500,000] comprising one or more Lender Collateral Deposits or deposits of Bridge Loan proceeds, as applicable, to the Trustee for deposit into the Collateral Fund subject to Section 6.02 of the Indenture.

Section 4.06. **Optional Prepayment.** The Bond Loan is subject to optional prepayment by the Borrower according to the same terms and conditions as an optional redemption of Bonds set forth in Section 3.01 of the Indenture.

## ARTICLE V

### SPECIAL COVENANTS

Section 5.01. **No Warranty of Condition or Suitability by the Issuer.** The Borrower recognizes, acknowledges and agrees that the Issuer makes no warranty or representation, express or implied or otherwise, with respect to the development or the location, use, description, design, merchantability, condition, workmanship, or fitness, suitability or use for any particular purpose, condition or durability thereof. The Borrower further recognizes that the Issuer makes no representations or warranties of any kind as to the Borrower's title to the Project or ownership thereof or otherwise, it being agreed that all risks incident thereto are to be borne by the Borrower. In the event of any defect or deficiency of any nature in the Project or any fixture or other item constituting a portion thereof, whether patent or latent, the Issuer shall have no responsibility or liability with respect thereto. These provisions have been negotiated and are intended to be a complete exclusion and negation of any warranties or representations by the Issuer, express or implied, with respect to the Project or any fixture or other item constituting a portion thereof, whether arising pursuant to the Uniform Commercial Code of the State of Texas or another law now or hereafter in effect or otherwise.

Section 5.02. **Access to the Project.** The Borrower agrees that the Issuer, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project and the rehabilitation thereof at all reasonable times upon reasonable notice. The Issuer, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times and upon reasonable notice, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

Section 5.03. **Further Assurances and Corrective Instruments.** The Borrower agrees that it will, and will request the Issuer to, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

Section 5.04. **Issuer and Borrower Representatives.** Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by an authorized representative of the Issuer and for the Borrower by a Borrower Representative. The Trustee shall be authorized to act on any such approval or request pursuant to the Indenture.

Section 5.05. **Financing Statements.** The Borrower shall file, or shall cause to be filed, and shall deliver copies to the Trustee of, any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Indenture, in the manner prescribed in the Indenture. The Borrower shall pay all costs of filing such instruments and any fees and expenses (including reasonable attorneys' fees) associated therewith.

Section 5.06. **Allocation and Use of Proceeds to Eligible Costs.** Notwithstanding anything to the contrary set forth in any of the documents evidencing or securing the Bonds, all of the Bond proceeds shall, for federal income tax purposes, be (1) allocated on a pro rata basis to each building in the Project and the land on which it is located, and (2) used exclusively to pay costs of acquisition, rehabilitation and equipping of the Project which are includable in the aggregate basis of any building and the land on which the building is located ("*Eligible Costs*") in a manner such that each building satisfies the requirement of Section 42(h)(4)(B) of the Code. Accordingly, none of the proceeds of the Bonds will be deemed to have been used to pay any of the Costs of Issuance for the Bonds or to fund any fund or account other than the Project Fund or an account to be used to pay Eligible Costs.

Section 5.07. **Restriction on Plans and Specifications.** The Borrower will not cause, permit or suffer to exist any material deviations from the Plans and Specifications and will not approve or consent to any construction change directive without the prior approval of the Lender and the Equity Investor.

Section 5.08. **Requisitions.** (a) Beginning on the Closing Date, the Borrower may complete, execute and deliver to the Trustee a Requisition for disbursement of amounts on deposit in the Project Fund to the Borrower to pay Costs of the Project. The Trustee shall be authorized to conclusively rely on such Requisition. Each Requisition shall be signed on behalf of the

Borrower and shall be in the form set forth on Exhibit B to the Indenture. Each Requisition for amounts on deposit in the Project Fund shall state: (1) the number of the Requisition, (2) the amount to be disbursed and the sources of such disbursement, (3) that each obligation described therein is a Cost of the Project, has been properly incurred and has not been the basis for any previous disbursement and (4) that the expenditure of such disbursement when added to all previous disbursements will result in (i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance. The Borrower shall submit the Requisitions to the Trustee for payment. Approved Requisitions may be submitted to the Trustee by e-mail or fax.

(b) The amounts deposited into the Project Fund may be disbursed by the Trustee only in accordance with Section 6.02 of the Indenture, including delivery of a written Requisition of the Borrower satisfying the requirements of this Section 5.08 and Section 6.02 of the Indenture.

(c) On the Closing Date, the Borrower shall complete, execute and deliver to the Trustee a Requisition for disbursement of amounts on deposit in the Cost of Issuance Fund to pay Costs of Issuance. Each Requisition shall be signed on behalf of the Borrower and shall be in the form set forth on Exhibit C to the Indenture.

Section 5.09. **Covenant with Bondholders**. The Issuer and the Borrower agree that this Agreement is executed and delivered in part to induce the purchase by others of the Bonds and, accordingly, all covenants and agreements of the Issuer and the Borrower contained in this Agreement are hereby declared to be for the benefit of the Trustee and the Holders of the Bonds from time to time. Notwithstanding the foregoing, the Bondholder's rights to enforce this provision of this Agreement are governed by the terms of the Indenture.

Section 5.10. **Covenant to Provide Ongoing Disclosure**. The Borrower shall enter into a written undertaking for the benefit of the Holders to provide for the continuing disclosure of information about the Bonds, the Borrower and other matters as may be required to cause compliance with Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"). Failure of the Borrower to comply with the Rule shall not be a default under the Indenture, this Bond Loan Agreement or any of the other Bond Documents; *provided, however*, the Borrower acknowledges that the Issuer, the Trustee or any Bondholder shall be entitled to bring an action for specific performance to cause the Borrower to comply with the covenant set forth in this Section 5.10.

Section 5.11. **Borrower Receipt of Insurance or Condemnation Proceeds**. In the event the Borrower receives any proceeds of insurance or any condemnation awards with respect to the Project from a party other than the Trustee, the Borrower shall promptly upon receipt remit all such insurance proceeds or condemnation awards to the Lender for deposit and application in accordance with applicable Lender Loan Documents.

Section 5.12. **Reporting Requirements of the Borrower**. The Borrower will furnish to the Issuer and agencies of the State such periodic reports or statements as are required under the Act, if any, or as such agencies may otherwise reasonably require of the Issuer or the Borrower throughout the term of this Agreement.



Section 5.13. **Indenture**. The provisions of the Indenture concerning the Bonds and other matters therein are an integral part of the terms and conditions of the Bond Loan, and this Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

Section 5.14. **Financial Information**. The Borrower agrees that it will have the books and records of the Borrower audited annually by an independent certified public accountant as soon as practicable after the close of each fiscal year of the Borrower, and will furnish within 120 days after the end of each fiscal year to the Trustee, commencing in the fiscal year in which the Completion Certificate is delivered a copy of the audit report certified by such accountant and prepared in accordance with generally accepted accounting principles, which report shall include calculations of the availability of funds for distributions and disclose the amount of distributions to partners of the Borrower for the preceding year. The Borrower acknowledges that the Trustee shall have no obligations under this Section 5.14 other than to receive such statements and, if requested, to furnish such statements to Bondholders.

Section 5.15. **Tax Credit Requirement**. The Issuer, the Trustee and the Borrower each acknowledge that the Borrower intends to cause the Project to satisfy the requirements necessary for low-income housing tax credit (“*Tax Credit*”) pursuant to Section 42 of the Code. In the event that any of the restrictions described in this Agreement conflict with any Tax Credit requirements imposed by Section 42 of the Code, the Issuer, the Trustee and the Borrower each agree that the more restrictive requirements shall control. The provisions of this Section 5.15 are for the benefit of the Borrower and the Trustee shall not have any obligation to enforce this Section 5.15 nor shall it incur any liability to any Person, including without limitation, the Borrower and any other affiliate of the Borrower or the Holders of the Bonds for any failure to meet the requirements of this Section 5.15; and provided further, failure to comply with this Section 5.15 shall not constitute a default or Event of Default under this Agreement.

Section 5.16. **Brokers and Financial Advisors**. The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with this Bond Loan, other than those disclosed to the Issuer and the Lender and whose fees shall be paid by the Borrower pursuant to a separate agreement. The Borrower and the Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in a way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 5.16 shall survive the expiration and termination of this Agreement and the repayment of the Borrower Obligations.

Section 5.17. **Trial by Jury**. The Borrower hereby agrees not to elect a trial by jury of any issue triable of right by a jury and waives any right to trial by jury fully to the extent that any such right shall hereafter exist with regard to the Documents, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by the Borrower and is intended to encompass individually each instance and each

issue as to which the right to a trial by jury would otherwise accrue. The Trustee is hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver by the Borrower. This Section 5.17 in no way affects the right of the Issuer to elect a trial by jury.

Section 5.18. **Issuer, Trustee and Lender Not in Control; No Partnership.** None of the covenants or other provisions contain in this Bond Loan Agreement shall, or shall be deemed to, give the Issuer, the Trustee or the Lender the right or power to exercise control over the affairs or management of the Borrower, the power of the Issuer, the Trustee and the Lender being limited to the rights to exercise the remedies referred to in the Documents. The relationship between the Borrower and the Issuer, the Trustee, the Lender and the Bondholders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Documents is intended, nor shall be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Issuer, the Trustee, the Lender or any Bondholder or to create an equity interest in the Project in the Issuer, the Trustee, the Lender or any Bondholder. Neither the Issuer, the Trustee, the Lender nor any Bondholder undertakes or assumes any responsibility or duty to the Borrower or to any other Person with respect to the Project, except as expressly provided in the Documents; and notwithstanding any other provision of the Documents: (1) the Issuer, the Trustee and the Bondholders are not, and shall not be construed as, a partner, joint venture, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members or partners and the Issuer, the Trustee and the Bondholders do not intend to ever assume such status; (2) the Issuer, the Trustee and the Bondholders shall in no event be liable for any of the Borrower Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Issuer, the Trustee and the Bondholders shall not be deemed responsible for or a participant in any acts, omissions or decision to the Borrower or its stockholders, members or partners. The Issuer, the Trustee the Bondholders and the Borrower disclaim any intention to create a partnership, joint venture, agency or common interest in profits or income between the Issuer, the Trustee, the Bondholders and the Borrower or to create an equity an equity interest in the Project of the Issuer, the Trustee or the Bondholders, or any sharing of liabilities, losses, costs or expenses.

Section 5.19. **Regulatory Agreement.** In order to maintain the excludability of interest on the Bonds from gross income for federal income tax purposes and to assure compliance with the Act and other laws of the State, and certain additional requirements of the Issuer, the Borrower has, concurrently with or before the execution and delivery of the Bonds, executed and delivered and will cause to be recorded in the official records of Nueces County, Texas, the Regulatory Agreement. The Borrower covenants to observe and perform its obligations under the Regulatory Agreement and will cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws and the Regulatory Agreement. The Project, when constructed or rehabilitated, will meet the requirements of this Agreement and the Regulatory Agreement and any applicable requirements of the Act and the Code.

The Borrower covenants to file, or cause to be filed, of record the Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Regulatory Agreement will, subject to the terms of the Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such

restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, such restrictions.

Section 5.20. **Tax Matters.**

(a) *Representations and Covenants.* The Borrower represents, warrants and covenants as follows:

(i) The Borrower will not take any action or fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the Federal Tax Status of the Bonds. Without limiting the generality of the foregoing, the Borrower covenants that it will comply with the instructions and requirements of the Tax Exemption Agreement, which is incorporated herein as if set forth fully herein.

(ii) The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower's rebate requirement or yield reduction payments (both as may be required under the Tax Exemption Agreement) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Exemption Agreement. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Agreement.

(iii) Neither the Borrower nor any "related party," within the meaning of Section 1.150-1(b) of the Regulations, to the Borrower shall be permitted to purchase any Bonds in an amount related to the Bond Loan.

(b) *Continuing Compliance.* The requirements stated in this Section 5.20 will survive the defeasance *and* discharge of the Bonds for as long as such matters are relevant to the Federal Tax Status of the Bonds.

## ARTICLE VI

### RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING; INDEMNIFICATION

Section 6.01. **Restriction on Transfer.** (a) In the event the Borrower intends to sell, lease (except to the tenants who will occupy units in the Project), sublease or otherwise materially encumber the whole of or any part of the Project or sell, assign or otherwise, except as otherwise provided herein, transfer any interest in the Borrower (a "*transfer*"), it shall (i) apply to the Issuer for consent to transfer, *provided* that consent of the Issuer shall not be unreasonably withheld, conditioned or delayed with respect to any transfer which is subject to the approval of the Issuer pursuant to this Section 6.01 and (ii) comply with the provisions of the Regulatory Agreement restricting any such transfer.

(b) In addition, in connection with a proposed transfer, the Borrower and any transferee shall comply with all applicable provisions of the laws and regulations of the State in effect at that time regarding notice to tenants, and tenants' rights generally, including, specifically, the right of first refusal, or any successor legislation thereto. The transferee shall expressly assume the Borrower's duties and obligations under this Agreement and any other Documents to which the Borrower is a party in writing simultaneously with any approved transfer as set forth in this Section 6.01. The Borrower shall make available to the Trustee and the Issuer copies of any documents reflecting an amendment to interests in the Borrower or other organizational documents relating to the sale or other transfer of assets of the Borrower.

(c) Except as otherwise provided for herein, the Borrower will not, directly or indirectly, by operation of law or otherwise, sell, assign, grant a deed of trust, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and will not encumber, alienate, hypothecate, grant a security interest in or grant any other ownership or control interest whatsoever in the Project, in the leases or in the rents, issues and profits therefrom.

(d) Except as otherwise provided for herein, no interest in the Borrower and no ownership interest in the General Partner of the Borrower may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise.

(e) Notwithstanding anything to the contrary contained in the subsections above or otherwise in the Borrower Documents, each of the following transactions are hereby deemed to be expressly permitted hereunder and, except to the extent required under the Regulatory Agreement, shall not require any further consent of the Issuer, provided that notice is provided to the Issuer:

(i) Reserved.

(ii) The transfer by the Equity Investor of all or any portion of its interest in the Borrower;

(iii) The pledge and encumbrance of the interests in the Borrower of the Equity Investor to or for the benefit of any financial institution which enables the Equity Investor to make its capital contributions to the Borrower and any subsequent realization by any such lender upon the interests of the Equity Investor in the Borrower;

(iv) The removal and replacement of the General Partner pursuant to the terms of the Organizational Documents and the temporary replacement thereof with the Equity Investor or its affiliate;

(v) Issuance of interests in the Borrower to the Equity Investor equal to 99.99% of the profits, losses, credits, distributions and other interests in the Borrower;

The Borrower may amend the Organizational Documents to effect the transfers and removals permitted under this Section 6.01(e).

(f) The Borrower will not become a party to any merger or consolidation, or agree to effect any asset acquisition or stock acquisition.

(g) The Borrower will not convert the ownership of the Project into condominium or cooperative housing corporation form of ownership other than a limited equity cooperative that is a qualified cooperative housing corporation as defined in Section 143(k)(9) of the Code.

(h) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, or assignment for the benefit of creditors or similar proceedings.

(i) The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred without the prior written consent of the Issuer in its sole and absolute discretion.

(j) The Borrower will not take any action that would adversely affect the Federal Tax Status of the Bonds nor omit or fail to take any action required to maintain the Federal Tax Status of the Bonds.

(k) This Agreement may not be sold, transferred or otherwise disposed of by the Borrower without the prior written consent of the Issuer (which consent shall be within the reasonable discretion of the Issuer), subject to each of the following conditions:

(i) No such assignment will relieve the Borrower from primary liability for any of its obligations hereunder (unless the Issuer agrees in writing to release the Borrower) and in the event of any such assignment, the Borrower will continue to remain primarily liable for payment of its obligations hereunder and for performance and observance of the other covenants and agreements on its part herein provided.

(ii) No such assignment will, in the opinion of Bond Counsel (all such expenses related to such opinion shall be paid by the Borrower), adversely affect the Federal Tax Status of the Bonds.

(iii) The assignee will assume in writing the obligations of the Borrower hereunder and under the Regulatory Agreement to the extent of the interest assigned in a form acceptable to the Issuer (an "*Assumption Agreement*").

(iv) Prior to any such assignment, the Borrower will, furnish or cause to be furnished to the Issuer and the Trustee an executed original of the Assumption Agreement, which the Borrower shall cause to be recorded and filed, at its sole expense, in the real property records of Nueces County.

Section 6.02. **Indemnification by Borrower.**

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE ISSUER AND ITS GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "ISSUER INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES,

DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE OR FORM, BY OR ON BEHALF OF ANY PERSON ARISING IN ANY MANNER FROM THE TRANSACTION OF WHICH THIS BOND LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT OR THE OPERATION OF THE PROJECT DURING THE TERM OF THIS BOND LOAN AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS BOND LOAN AGREEMENT, OR (III) THE PROJECT OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, THE BORROWER SHALL DEFEND THE ISSUER INDEMNIFIED PARTIES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE ISSUER INDEMNIFIED PARTIES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS BOND LOAN AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF ISSUER INDEMNIFIED PARTIES IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS BOND LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE ISSUER INDEMNIFIED PARTIES BY THIS BOND LOAN AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE ISSUER INDEMNIFIED PARTIES BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS BOND LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS BOND LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF ANY OF THE ISSUER INDEMNIFIED PARTIES SHOULD INCUR ANY SUCH PECUNIARY LIABILITY WITH RESPECT TO EVENTS OCCURRING AFTER THE DATE HEREOF, THEN IN SUCH EVENT THE BORROWER SHALL INDEMNIFY AND HOLD SUCH ISSUER INDEMNIFIED PARTIES HARMLESS AGAINST ALL CLAIMS BY OR ON BEHALF OF ANY PERSON, ARISING OUT OF THE SAME, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR IN CONNECTION WITH ANY ACTION OR PROCEEDING

BROUGHT THEREON, AND UPON TIMELY NOTICE FROM THE ISSUER THE BORROWER SHALL DEFEND THE ISSUER INDEMNIFIED PARTIES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE ISSUER AND THE BORROWER SHALL PAY THE ISSUER EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE ISSUER; PROVIDED HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

NOTWITHSTANDING ANY PROVISION OF THIS BOND LOAN AGREEMENT TO THE CONTRARY, THE ISSUER INDEMNIFIED PARTIES SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM ANY SUCH PARTY'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM THE ISSUER'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.

(b) THE BORROWER (THE "INDEMNITOR") HEREBY AGREES TO RELEASE THE TRUSTEE AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (COLLECTIVELY, THE "TRUSTEE INDEMNIFIED PARTIES") FROM, AND COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE TRUSTEE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, LITIGATION AND COURT COSTS, COSTS INCURRED IN CONNECTION WITH ANY AUDIT BY THE INTERNAL REVENUE SERVICE, AMOUNTS PAID IN SETTLEMENT BY OR WITH THE APPROVAL OF THE BORROWER AND AMOUNTS PAID TO DISCHARGE JUDGMENTS), TAXES, CAUSES OF ACTION, SUITS, DEMANDS AND JUDGMENTS OF ANY NATURE, JOINT OR SEVERAL, BY OR ON BEHALF OF ANY PERSON ARISING OUT OF:

(i) THE APPROVAL OF FINANCING FOR THE PROJECT, OR THE MAKING OF THE BOND LOAN;

(ii) THE ISSUANCE AND SALE OR RESALE OF ANY BONDS OR ANY CERTIFICATIONS OR REPRESENTATIONS MADE BY ANY PERSON OTHER THAN THE PARTY SEEKING INDEMNIFICATION IN CONNECTION THEREWITH, INCLUDING, BUT NOT LIMITED TO, ANY (I) STATEMENT OR INFORMATION MADE BY THE BORROWER WITH RESPECT TO THE BORROWER OR THE PROJECT IN ANY OFFERING DOCUMENT OR MATERIALS REGARDING THE BONDS, THE PROJECT OR THE BORROWER OR IN THE TAX EXEMPTION AGREEMENT OR IN ANY OTHER CERTIFICATE EXECUTED BY THE BORROWER WHICH, AT THE TIME MADE, IS MISLEADING, UNTRUE OR INCORRECT IN ANY MATERIAL RESPECT; (II) UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF A MATERIAL FACT RELATING TO THE BORROWER OR THE PROJECT, WHICH IS MADE AS APPROVED BY THE BORROWER AND IS CONTAINED IN ANY OFFERING MATERIAL RELATING TO THE SALE OF THE BONDS, AS FROM TIME TO TIME AMENDED OR SUPPLEMENTED, OR ARISING OUT OF OR BASED UPON THE OMISSION OR

ALLEGED OMISSION TO STATE IN SUCH OFFERING MATERIAL A MATERIAL FACT RELATING TO THE BORROWER OR THE PROJECT REQUIRED TO BE STATED IN SUCH OFFERING MATERIAL OR NECESSARY IN ORDER TO MAKE THE STATEMENTS IN SUCH OFFERING MATERIAL NOT MISLEADING; OR (III) FAILURE TO PROPERLY REGISTER OR OTHERWISE QUALIFY THE SALE OF BONDS OR FAILURE TO COMPLY WITH ANY LICENSING OR OTHER LAW OR REGULATION WHICH WOULD AFFECT THE MANNER IN WHICH OR TO WHOM THE BONDS COULD BE SOLD;

(iii) THE INTERPRETATION, PERFORMANCE, ENFORCEMENT, BREACH, DEFAULT OR AMENDMENT OF THE BOND LOAN DOCUMENTS OR ANY OTHER DOCUMENTS RELATING TO THE PROJECT OR THE BONDS OR IN CONNECTION WITH ANY FEDERAL OR STATE TAX AUDIT, OR ANY QUESTIONS OR OTHER MATTERS ARISING UNDER SUCH DOCUMENTS;

(iv) THE BORROWER'S FAILURE TO COMPLY WITH ANY REQUIREMENT OF THIS BOND LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT OR THE REGULATORY AGREEMENT;

(v) THE CONDITION OF THE PROJECT (ENVIRONMENTAL OR OTHERWISE), INCLUDING ANY VIOLATION OF ANY LAW, ORDINANCE, COURT ORDER OR REGULATION AFFECTING THE PROJECT OR ANY PART OF IT;

(vi) ANY DAMAGE OR INJURY, ACTUAL OR CLAIMED, OF WHATSOEVER KIND, CAUSE OR CHARACTER TO THE PROJECT (INCLUDING LOSS OF USE OF THE PROJECT) OR PERSONS, OCCURRING OR ALLEGEDLY OCCURRING IN, ON OR ABOUT THE PROJECT OR ARISING OUT OF ANY ACTION OR INACTION OF THE BORROWER OR ANY OF ITS AGENTS, SERVANTS, EMPLOYEES OR LICENSEES, WHETHER OR NOT RELATED TO THE PROJECT, OR RESULTING FROM THE ACQUISITION, REHABILITATION, CONSTRUCTION, DESIGN, REPAIR, OPERATION, USE OR MANAGEMENT OF ALL OR ANY PART OF THE PROJECT;

(vii) ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THE OPERATION OF THE PROJECT, OR THE CONDITIONS, ENVIRONMENTAL OR OTHERWISE, OCCUPANCY, USE, POSSESSION, CONDUCT OR SUPERVISION OF WORK DONE IN OR ABOUT, OR FROM THE PLANNING, DESIGN, REHABILITATION, CONSTRUCTION, REPAIR OR EQUIPPING OF, THE PROJECT OR ANY PART OF IT, INCLUDING, BUT NOT LIMITED TO, THE AMERICANS WITH DISABILITIES ACT; AND

(viii) TO THE EXTENT NOT MENTIONED IN ANY OF THE PRECEDING SUBSECTIONS OF THIS SECTION 6.02, ANY CAUSE WHATSOEVER IN CONNECTION WITH TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT AND THE OTHER BOND LOAN DOCUMENTS OR OTHERWISE IN CONNECTION WITH THE PROJECT, THE BONDS OR THE EXECUTION OR AMENDMENT OF



ANY DOCUMENT RELATING TO THE BONDS OR THE PROJECT OR THE ACCEPTANCE OR ADMINISTRATION OF THE TRUSTS UNDER THE INDENTURE.

THIS INDEMNIFICATION SHALL EXTEND TO AND INCLUDE, WITHOUT LIMITATION, ALL REASONABLE COSTS, COUNSEL FEES, EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM, OR PROCEEDING BROUGHT WITH RESPECT TO SUCH CLAIM.

IF ANY CLAIM SHALL BE MADE OR ANY ACTION SHALL BE BROUGHT AGAINST THE TRUSTEE INDEMNIFIED PARTIES IN RESPECT OF WHICH INDEMNITY CAN BE SOUGHT AGAINST THE BORROWER PURSUANT TO THIS SECTION 6.02(B) OR OTHERWISE, THE TRUSTEE INDEMNIFIED PARTIES SHALL PROMPTLY NOTIFY THE BORROWER IN WRITING, AND THE BORROWER SHALL PROMPTLY ASSUME THE DEFENSE OF SUCH CLAIM OR ACTION, INCLUDING THE EMPLOYMENT OF COUNSEL CHOSEN BY THE BORROWER AND APPROVED BY THE ISSUER OR THE TRUSTEE, THE PAYMENT OF ALL EXPENSES AND THE RIGHT TO NEGOTIATE A SETTLEMENT WITH THE CONSENT AND APPROVAL OF THE ISSUER OR THE TRUSTEE; IF THE BORROWER SHALL HAVE FAILED TO ASSUME THE DEFENSE OF SUCH ACTION OR TO RETAIN COUNSEL REASONABLY SATISFACTORY TO THE ISSUER OR THE TRUSTEE WITHIN A REASONABLE TIME AFTER NOTICE OF THE COMMENCEMENT OF SUCH ACTION, THE BORROWER SHALL PAY THE REASONABLE FEES AND EXPENSES OF COUNSEL RETAINED BY THE TRUSTEE INDEMNIFIED PARTIES. IF THE TRUSTEE INDEMNIFIED PARTIES ARE ADVISED IN A WRITTEN OPINION OF COUNSEL THAT THERE MAY BE LEGAL DEFENSES AVAILABLE TO THE TRUSTEE INDEMNIFIED PARTIES WHICH ARE ADVERSE TO OR IN CONFLICT WITH THOSE AVAILABLE TO THE BORROWER OR THAT THE DEFENSE OF THE TRUSTEE INDEMNIFIED PARTIES SHOULD BE HANDLED BY SEPARATE COUNSEL, THE BORROWER SHALL NOT HAVE THE RIGHT TO ASSUME THE DEFENSE OF THE TRUSTEE INDEMNIFIED PARTIES, BUT SHALL BE RESPONSIBLE FOR THE REASONABLE FEES AND EXPENSES OF COUNSEL RETAINED BY THE TRUSTEE INDEMNIFIED PARTIES IN ASSUMING SUCH PARTY'S OWN DEFENSE. NOTWITHSTANDING THE FOREGOING, THE TRUSTEE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL WITH RESPECT TO ANY SUCH CLAIM OR IN ANY SUCH ACTION AND TO PARTICIPATE IN THE DEFENSE THEREOF, BUT THE TRUSTEE INDEMNIFIED PARTIES SHALL PAY THE FEES AND EXPENSES OF SUCH COUNSEL UNLESS THE EMPLOYMENT OF SUCH COUNSEL HAS BEEN SPECIFICALLY AUTHORIZED BY THE BORROWER OR UNLESS THE PROVISIONS OF THE IMMEDIATELY PRECEDING SENTENCE ARE APPLICABLE. THE BORROWER SHALL NOT BE LIABLE FOR ANY SETTLEMENT OF ANY SUCH ACTION EFFECTED WITHOUT THE CONSENT OF THE BORROWER, BUT IF SUCH CLAIM OR ACTION IS SETTLED WITH THE CONSENT OF THE BORROWER, OR IF THERE IS A FINAL JUDGMENT FOR THE PLAINTIFF IN ANY SUCH ACTION WITH OR WITHOUT CONSENT, THE BORROWER AGREES TO INDEMNIFY AND HOLD HARMLESS THE TRUSTEE INDEMNIFIED PARTIES FROM AND AGAINST ANY LOSS, LIABILITY OR EXPENSE BY REASON OF SUCH SETTLEMENT OR JUDGMENT.

THE BORROWER SHALL ALSO INDEMNIFY THE TRUSTEE INDEMNIFIED PARTIES FOR ALL REASONABLE COSTS AND EXPENSES, INCLUDING REASONABLE COUNSEL FEES, INCURRED IN: (I) ENFORCING ANY OBLIGATION OF THE BORROWER UNDER THIS AGREEMENT OR ANY RELATED AGREEMENT, (II) TAKING ANY ACTION REQUESTED BY THE BORROWER, (III) TAKING ANY ACTION REQUIRED BY THIS AGREEMENT OR ANY RELATED AGREEMENT, OR (IV) TAKING ANY ACTION CONSIDERED NECESSARY BY THE TRUSTEE INDEMNIFIED PARTIES AND WHICH IS AUTHORIZED BY THIS AGREEMENT OR ANY RELATED AGREEMENT. IF A TRUSTEE INDEMNIFIED PARTY TAKES ANY ACTION UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT EXECUTED IN CONNECTION HEREWITH FOR THE BENEFIT OF THE BORROWER, IT WILL DO SO IF AND ONLY IF (A) THE TRUSTEE INDEMNIFIED PARTIES ARE A NECESSARY PARTY TO ANY SUCH ACTION OR PROCEEDING, AND (B) THE TRUSTEE INDEMNIFIED PARTIES HAVE RECEIVED SPECIFIC WRITTEN DIRECTION FROM THE BORROWER, AS REQUIRED UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AS TO THE ACTION TO BE TAKEN BY THE TRUSTEE INDEMNIFIED PARTIES.

THIS INDEMNIFICATION SHALL NOT BE AFFECTED BY ANY INVESTIGATION BY OR ON BEHALF OF THE TRUSTEE INDEMNIFIED PARTIES OR BY ANY INFORMATION THE TRUSTEE INDEMNIFIED PARTIES MAY HAVE OR OBTAIN WITH RESPECT THEREOF. THIS INDEMNIFICATION SHALL EXTEND TO AND INCLUDE, WITHOUT LIMITATION, ALL REASONABLE COSTS, COUNSEL FEES, EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM, OR PROCEEDING BROUGHT WITH RESPECT TO SUCH CLAIM TO THE FULLEST EXTENT PERMITTED BY LAW, **INCLUDING IF AS THE RESULT OF THE NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY OF THE TRUSTEE INDEMNIFIED PARTIES**, UNLESS LIABILITY IS A RESULT OF BAD FAITH, WILLFUL MISCONDUCT OR FRAUD OR NEGLIGENCE ON THE PART OF THE TRUSTEE INDEMNIFIED PARTIES AND THEIR SUCCESSORS AND ASSIGNS. THE INDEMNIFICATION PROVIDED IN THIS ARTICLE VI IS IN ADDITION TO, AND NOT IN SUBSTITUTION OF, THE INDEMNIFICATION PROVISIONS IN OTHER DOCUMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THE MAKING OF THE BOND LOAN AND THE ISSUANCE OF THE BONDS.

(c) ALL AMOUNTS PAYABLE TO THE ISSUER UNDER THIS AGREEMENT SHALL BE DEEMED TO BE FEES AND EXPENSES PAYABLE TO THE ISSUER FOR THE PURPOSES OF THE PROVISIONS OF THIS AGREEMENT, AND OF THE INDENTURE DEALING WITH ASSIGNMENT OF THE ISSUER'S RIGHTS UNDER THIS AGREEMENT. THE ISSUER AND ITS MEMBERS, OFFICERS, AGENTS, EMPLOYEES AND THEIR SUCCESSORS AND ASSIGNS SHALL NOT BE LIABLE TO THE BORROWER FOR ANY REASON.

(d) ANY PROVISION OF THIS AGREEMENT OR ANY OTHER INSTRUMENT OR DOCUMENT EXECUTED AND DELIVERED IN CONNECTION THEREWITH TO THE CONTRARY NOTWITHSTANDING, THE ISSUER RETAINS THE RIGHT TO (I) ENFORCE ANY APPLICABLE FEDERAL OR STATE LAW OR REGULATION OR RESOLUTION OF THE ISSUER, AND (II) ENFORCE ANY RIGHTS ACCORDED TO THE ISSUER BY

FEDERAL OR STATE LAW OR REGULATION OF THE ISSUER, AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS AN EXPRESS OR IMPLIED WAIVER THEREOF. THE INDEMNIFICATIONS PROVIDED BY THE INDEMNITOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE SATISFACTION OF THE NOTE, AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

Section 6.03. **The Issuer to Grant Security Interest to Trustee**. The parties hereto agree that pursuant to the Indenture, the Issuer shall assign to the Trustee, in order to secure payment of the Bonds, all of the Issuer's right, title and interest in and to this Agreement and the Note, except for Reserved Rights of the Issuer. The Issuer retains the right to enforce any or all of the Reserved Rights and may take independent action to so enforce such Reserved Rights.

## ARTICLE VII

### DEFAULTS AND REMEDIES

Section 7.01. **Defaults Defined**. The following shall be "*Defaults*" under this Agreement and the term "*Default*" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) failure by the Borrower to pay any amount required to be paid under (i) subsection (b) of Section 4.02 or (ii) Section 4.03 hereof;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (a) of this Section 7.01 or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Regulatory Agreement or the Tax Exemption Agreement, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower by the Issuer or the Trustee; *provided*, with respect to any such failure covered by this subsection (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such sixty (60) day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby, as certified to the Issuer and Trustee by the Borrower;

(c) the dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for ninety (90) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due; or

(d) the occurrence and continuance of an Event of Default under the Indenture.

The provisions of subsection (b) of this Section 7.01 are subject to the following limitation: if by reason of force majeure it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained herein (other than its obligations contained in Article IV hereof), the Borrower shall not be deemed in Default during the continuance of such inability. Such force majeure event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; terrorism; landslides; earthquakes; fires; storms; droughts; floods; epidemics; pandemics; or explosions; not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement.

Section 7.02. **Remedies on Default.** A copy of any notice of default provided to Borrower under any of the Borrower Documents shall also be provided to the Equity Investor and the Lender. Whenever any Default referred to in Section 7.01 hereof shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, or the Issuer (in the event the Trustee fails to act), may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the Note, the Regulatory Agreement or any other Document in the event of default thereunder. Any amounts collected pursuant to action taken under this Section 7.02 shall be paid into the Collateral Fund.

Section 7.03. **No Remedy Exclusive.** Subject to Section 10.01 of the Indenture, no remedy herein conferred upon or reserved to the Issuer or 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 under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII. Such rights and remedies as are given to the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements herein contained.

Section 7.04. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.05. **Right to Cure.** Notwithstanding anything to the contrary herein or otherwise in the Borrower Documents, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform under any of the

Borrower Documents and, as a result, a default or event of default occurs or may occur thereunder, the Equity Investor shall have the right to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such default or event of default, provided such default or event of default is cured within any applicable cure period or grace period provided to the Borrower herein or otherwise in the Borrower Documents. Any cure of any event of default by the Equity Investor under the Borrower Documents shall be deemed a cure by Borrower thereunder.

Section 7.06. **No Interference or Impairment of Lender Loan.** Notwithstanding anything herein to the contrary, none of the Issuer, the Trustee nor any other Person shall:

(a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or

(b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the ability or rights of the Trustee to take any actions permitted under the Indenture or to affect the Reserved Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of this Agreement so long as it does not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Notwithstanding anything in this Agreement to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under this Agreement which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due under the Lender Loan Documents.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regards to the Project.

Promptly upon determining that an Event of Default of this Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall

have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

## ARTICLE VIII

### HAZARDOUS MATERIALS

Section 8.01. **Reserved.**

Section 8.02. **Compliance Regarding Hazardous Substances.** Borrower has complied, will comply, and will use commercially reasonable efforts to cause all tenants and any other Persons who may come upon the Project to comply, with all federal, state and local laws, regulations and ordinances governing or applicable to Hazardous Materials, including those requiring disclosures to prospective and actual buyers or tenants of all or any portion of the Project. The Borrower must comply with the reasonable recommendations of any qualified environmental engineer or other expert engaged by the Borrower, the Issuer or the Equity Investor with respect to the Project.

Section 8.03. **Notices Regarding Hazardous Substances.** The Borrower must promptly notify the Equity Investor and the Issuer in writing (i) if it has actual knowledge that there may be any Hazardous Materials in or around any part of the Project, any improvements constructed on the Project, or the soil, groundwater or soil vapor on or under the Project at a level of concentration that results in the Hazardous Materials being subject to regulation, control, removal or restriction by any governmental agency under any law, regulation or ordinance, or that the Borrower or the Project may be subject to any threatened or pending investigation by any governmental agency under any law, regulation or ordinance pertaining to any Hazardous Materials, and (ii) of any claim made or threatened in writing by any Person, other than a governmental agency, against the Borrower arising out of or resulting from any Hazardous Substance being present or released in, on or around any part of the Project, any improvements constructed on the Project or the soil, groundwater or soil vapor on or under the Project (any of the matters described in clauses (i) and (ii) above is a “*Hazardous Materials Claim*”).

Section 8.04. **Remedial Work.** The Borrower must promptly undertake any and all remedial work (“*Remedial Work*”) in response to Hazardous Materials Claims to the extent required by governmental agency or agencies involved, or to comply with the reasonable recommendations set forth in any written environmental assessment report prepared by an engineer retained by the Equity Investor or the Issuer, if such standard requires a higher degree of remediation, and in all events to minimize any impairment to Trustee’s security under the Bond Loan Documents. All Remedial Work must be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer; (ii) pursuant to a detailed written plan for the Remedial Work approved by all public or private agencies or Persons with a legal or contractual right to such approval; (iii) with insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and (iv) only following receipt of any required permits, licenses or approvals. The selection of the Remedial Work contractors and consulting environmental engineer, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to Remedial Work and the written plan for the

Remedial Work (and any changes thereto) is subject to the prior written approval of the Equity Investor and the Issuer, which approval may not be unreasonably withheld or delayed.

Section 8.05. **Indemnity Regarding Hazardous Substances.** THE INDEMNITOR INDEMNIFIES, DEFENDS AND HOLDS EACH OF THE ISSUER INDEMNIFIED PARTIES AND THE TRUSTEE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL COSTS DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM ANY HAZARDOUS MATERIALS BEING PRESENT OR RELEASED IN, ON OR AROUND ANY PART OF THE PROJECT, OR IN THE SOIL, GROUNDWATER OR SOIL VAPOR ON OR UNDER THE PROJECT (COLLECTIVELY, “INDEMNIFIED COSTS”), ARISING OUT OF OR AS A RESULT OF EVENTS PRIOR TO THE LATER OF THE FULL AND FINAL PAYMENT OF THE BONDS OR BEFORE THE DATE OF A TRANSFER OF THE PROJECT, AS APPLICABLE, INCLUDING:

(i) ANY CLAIM FOR SUCH INDEMNIFIED COSTS ASSERTED AGAINST ANY THE ISSUER INDEMNIFIED PARTY OR THE TRUSTEE BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY, INCLUDING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND ALL OF THE ENVIRONMENTAL REGULATORY AUTHORITIES OF THE STATE, AND INCLUDING ANY CLAIM THAT ANY INDEMNIFIED PARTY IS LIABLE FOR ANY SUCH INDEMNIFIED COSTS AS AN “OWNER” OR “OPERATOR” OF THE PROJECT UNDER ANY LAW RELATING TO HAZARDOUS MATERIALS; AND

(ii) ANY CLAIM FOR SUCH INDEMNIFIED COSTS ASSERTED AGAINST ANY THE ISSUER INDEMNIFIED PARTY BY ANY PERSON OTHER THAN A GOVERNMENTAL AGENCY, INCLUDING (I) ANY PERSON WHO MAY PURCHASE OR LEASE ALL OR ANY PORTION OF THE PROJECT FROM BORROWER, FROM ANY INDEMNIFIED PARTY OR FROM ANY OTHER PURCHASER OR LESSEE, (II) ANY PERSON WHO MAY AT ANY TIME HAVE ANY INTEREST IN ALL OR ANY PORTION OF THE PROJECT, (III) ANY PERSON WHO MAY AT ANY TIME BE RESPONSIBLE FOR ANY CLEANUP COSTS OR OTHER INDEMNIFIED PARTY RELATING TO THE PROJECT, AND (IV) ANY PERSON CLAIMING TO HAVE BEEN INJURED IN ANY WAY AS A RESULT OF EXPOSURE TO ANY HAZARDOUS MATERIALS; AND

(iii) ANY INDEMNIFIED COSTS INCURRED BY ANY THE ISSUER INDEMNIFIED PARTY IN THE EXERCISE BY THE ISSUER INDEMNIFIED PARTY OF ITS RIGHTS AND REMEDIES UNDER THIS BOND LOAN AGREEMENT; AND

(iv) ANY INDEMNIFIED COSTS INCURRED BY ANY THE ISSUER INDEMNIFIED PARTY AS A RESULT OF CURRENTLY EXISTING CONDITIONS IN, ON OR AROUND THE PROJECT, WHETHER KNOWN OR UNKNOWN BY THE INDEMNITOR OR THE ISSUER INDEMNIFIED PARTY AT THE TIME THIS BOND LOAN AGREEMENT IS EXECUTED, OR ATTRIBUTABLE TO THE ACTS OR OMISSIONS OF THE INDEMNITOR, ANY OF THE BORROWER’S TENANTS, OR ANY OTHER PERSON IN, ON OR AROUND THE PROJECT WITH THE CONSENT OR UNDER THE DIRECTION OF THE INDEMNITOR; AND

(v) ANY INDEMNIFIED COSTS INCURRED BY ANY INDEMNIFIED PARTY AS A RESULT OF THE DEPOSIT, STORAGE, DISPOSAL, BURIAL, DUMPING, INJECTING, SPILLING, LEAKING, OR OTHER PLACEMENT OR RELEASE IN ON OR FROM THE PROJECT OF HAZARDOUS MATERIALS OR THE VIOLATION OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW OR OFFICIAL INTERPRETATION THEREOF IN CONNECTION WITH THE PROJECT OR THE LAND ON WHICH IT IS LOCATED.

THE OBLIGATIONS OF THE INDEMNITOR UNDER THIS SECTION 8.05 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

Section 8.06. **Defense of Indemnified Parties.** UPON DEMAND BY ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY, THE INDEMNITOR MUST DEFEND ANY INVESTIGATION, ACTION OR PROCEEDING INVOLVING ANY INDEMNIFIED COSTS THAT IS BROUGHT OR COMMENCED AGAINST ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY, WHETHER ALONE OR TOGETHER WITH BORROWER OR ANY OTHER PERSON, ALL AT THE BORROWER'S OWN COST AND BY COUNSEL APPROVED BY THE INDEMNIFIED PARTY. IN THE ALTERNATIVE, ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY MAY ELECT TO CONDUCT ITS OWN DEFENSE AT THE BORROWER'S EXPENSE.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01. **Term of Agreement.** This Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Indenture shall have been fully paid or provision made for such payments, whichever is later, *provided*, that the provisions of Sections 5.20 and 6.02 and Article VIII hereof shall survive termination of this Agreement.

Section 9.02. **Notices; Publication of Notice.** (a) All notices, advice, certifications or other communications hereunder between the Issuer and the Borrower shall be sufficiently given and shall be deemed given when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by electronic means (including, without limitation, e-mail and facsimile transmission) addressed to the appropriate Notice Address. The Issuer, the Borrower or the Equity Investor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to Persons other than the Issuer, the Borrower or the Equity Investor (such as, for example, notices to owners of Bonds) shall be governed by the other applicable provisions of the Indenture.

(b) Whenever the Issuer or the Borrower is required or permitted to give or publish notice of any event or occurrence under this Agreement, such notice shall be given or published in such manner and by such means as the Issuer or the Borrower, as the case may be, shall determine



to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Borrower, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to the Municipal Securities Rulemaking Board's EMMA System or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the Person entitled to receive the notice at such Person's address as shown on the records of the Issuer or the Borrower.

Section 9.03. **Nonrecourse Liability of Borrower.** From and after the date of this Agreement, (i) the liability of the Borrower under this Agreement shall be limited to the Trust Estate, and such amounts as may be invested in accordance with Section 7.01 of the Indenture, and the Issuer and the Trustee shall look exclusively thereto or to such other security as may from time to time be given or have been given for payment of the Bonds, and any judgment rendered against the Borrower under this Agreement shall be limited to the Project and moneys derived from the operation of the Project, and any other security so given for satisfaction thereof; and (ii) no deficiency or other personal judgment shall be sought or rendered against the Borrower or its successors, transferees or assigns, in any action or proceeding arising out of this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; *provided, however,* that nothing herein shall limit the Issuer's or the Trustee's ability to exercise any right or remedy with respect to any property pledged or granted to the Issuer or to any trustee under this Agreement, or both, or to exercise any right against the Borrower, on account of any claim for fraud or deceit, and against any other Person on account of any claim for fraud or deceit. Notwithstanding anything herein to the contrary, nothing in this Section 9.03 shall limit the rights of indemnification against the Borrower pursuant to Sections 4.03, 6.02, 8.05 and 8.06 hereof. Furthermore, notwithstanding anything to the contrary, the Borrower shall be fully liable for: (1) amounts payable to the Issuer constituting Reserved Rights of the Issuer, (2) any amount due and owing as a result of any calculation or determination which may be required in connection with the Bonds for the purpose of complying with Section 148 of the Code (including rebate liability) or any applicable Treasury regulation, (3) payment of the Issuer's Fees, the Trustee's Fee and the Rebate Analyst's Fee and (4) the indemnification and the payment obligations to the Issuer Indemnified Parties under Sections 4.03, 6.02, 8.05 and 8.06 hereof.

The limit on the Borrower's liability set forth in this Section 9.03 shall not, however, be construed, and is not intended to in any way, constitute a release, in whole or in part, of the indebtedness evidenced by this Agreement or a release, in whole or in part, or an impairment of the security interest, or in case of any default or enforcing any other right of the Issuer under this Agreement or to alter, limit or affect the liability of any Person who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Agreement.

The provisions of this Section 9.03 shall survive the termination of this Agreement.

Section 9.04. **No Pecuniary Liability of the Issuer; Issuer May Rely.** (a) All obligations of the Issuer incurred under this Agreement, the Regulatory Agreement, the Tax Exemption Agreement and the Indenture shall be limited obligations of the Issuer, payable solely and only from Bond proceeds, Revenues and other amounts derived by the Issuer from the Trust Estate. NO GOVERNING BOARD MEMBER, OFFICER, AGENT, EMPLOYEE, OR ATTORNEY OF THE

ISSUER, INCLUDING ANY PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE ISSUER, SHALL BE LIABLE PERSONALLY UNDER THIS AGREEMENT OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THIS AGREEMENT OR ANY AMENDMENT TO THIS AGREEMENT, AGAINST ANY DIRECTOR, OFFICER, AGENT, EMPLOYEE, ATTORNEY OR MEMBER OF THE ISSUER, OR ANY SUCCESSOR WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS AGREEMENT AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

(b) It is expressly understood and agreed by the parties to this Agreement that:

(i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, any Bondholder or the Borrower as to the existence of a fact or state of affairs required under this Agreement to be noticed by the Issuer;

(ii) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Borrower or such other appropriate party; and

(iii) none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

(c) No provision, representation, covenant or agreement contained in this Agreement or in the Indenture, the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability (except to the extent of any loan repayments, revenues and receipts derived by the Issuer pursuant to this Agreement and other moneys held pursuant to the Indenture, other than in the Rebate Fund and the Expense Fund). No provision hereof shall be construed to impose a charge against the general credit of the Issuer, the State or any other political subdivision or public body of the State, or any personal or pecuniary liability upon any director, officer, agent or employee of the Issuer.

(d) All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the Issuer in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Agreement or in the Indenture. No provision, covenant or agreement contained in this Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall

constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Agreement or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any member of the governing body of the Issuer, its officers, counsel, financial advisor, or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the governing board, officers, counsel, financial advisors, or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, counsel, financial advisor, or agent, is, by the execution of the Bonds, this Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Agreement, and the Indenture, expressly waived and released.

Section 9.05. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders of Bonds and their respective successors and assigns.

Section 9.06. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.07. **Amounts Remaining in Funds.** It is agreed by the parties hereto that any amounts remaining on deposit under the Indenture upon expiration or earlier termination of this Agreement, as provided in this Agreement, shall be used to pay the fees and expenses of the Trustee and the Issuer in accordance with the Indenture and any balance thereafter shall be paid to the Borrower pursuant to the provisions of the Indenture.

Section 9.08. **Amendments, Changes and Modifications.** Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise herein expressly provided, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, in accordance with the provisions of the Indenture.

Section 9.09. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.10. **Applicable Law.** This Bond Loan Agreement shall be governed exclusively by and construed in accordance with the internal laws of the State of Texas without

regard to conflicts of laws principles, except to the extent that the laws of the United States of America may prevail.

Section 9.11. **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 9.12. **Conflict with HUD-Insured Loan and HUD Regulations; Supremacy of Senior Lender Mortgage and HUD Regulatory Agreement.**

(a) The provisions hereof are subordinate and subject to the Controlling HUD and GNMA Requirements and the Lender Mortgage, the Lender Borrower Note, the HUD Regulatory Agreement and the other Lender Loan Documents. In the event of any conflict between the provisions of this Agreement and the provisions of Controlling HUD and GNMA Requirements or the Lender Loan Documents, the Controlling HUD and GNMA Requirements or the Lender Loan Documents, as applicable, shall control. Any ambiguity or inconsistency will be resolved in favor of, and pursuant to, the Controlling HUD and GNMA Requirements and the terms of the Lender Loan Documents.

(b) Enforcement of this Agreement will not result in any claim against the Project, the undisbursed proceeds of the Lender's loan (the "*HUD-Insured Loan*"), any reserve or deposit required by HUD in connection with the HUD-Insured Loan or the rents or income from the Project (other than available Surplus Cash, as such term is defined in the HUD Regulatory Agreement or as otherwise permitted by HUD).

(c) The Borrower shall not be deemed to be in violation of this Agreement if it shall take (or refrain from taking) any actions required (or prohibited) by HUD pursuant to the Controlling HUD and GNMA Requirements or the Lender Loan Documents.

(d) Any funds held by the Lender in connection with the Project for or on behalf of the Borrower shall be maintained separate and apart from the funds established and held by the Trustee and the various escrows and funds, if any, under the Indenture.

(e) No amendment to this Agreement shall conflict with the provisions of the Controlling HUD and GNMA Requirements or the Lender Loan Documents.

(f) This Agreement shall not be construed to restrict or adversely affect the duties and obligations of the Lender under the contract of mortgage insurance between HUD and the Lender with respect to the Project.

(g) None of the Issuer, the Trustee or any owner of the Bonds has or shall be entitled to assert any claim against the Project, the undisbursed HUD-Insured Loan proceeds, any reserves or deposits required by HUD in connection with the HUD-Insured Loan or the rents or deposits or other income of the property other than "*Surplus Cash*" as defined in the HUD Regulatory Agreement.

(h) Nothing herein is intended to alter or conflict with the terms, conditions, and provisions of the HUD regulations, handbooks, administrative requirements, lender notices and

the Program Obligations (as defined in the HUD Regulatory Agreement) in effect at the time of HUD's endorsement of the Lender Borrower Note, or the documents required to be executed by the Borrower in connection with the endorsement of the Lender Borrower Note; and to the extent that they do so, the HUD regulations, administrative requirements, handbooks, lender notices, the Program Obligations and documents shall control and this Agreement shall be amended or deemed amended so as not to alter or conflict with the aforesaid regulations, documents, administrative requirements, handbooks, notices or Program Obligations. This Section 9.12 shall terminate and be void upon termination of HUD-Insured Loan.

(i) Notwithstanding anything in the Indenture, this Agreement, the Bond Loan Note or the Bond Purchase Agreement to the contrary, in no event shall HUD have any claim to or lien upon the Trust Estate under the Indenture and funds held by the Trustee under the Indenture and pledged to secure the repayment of the Bonds. Further, nothing herein shall restrict the rights and obligations of the parties as they relate to the Bonds and the rights and obligations therein are not subordinated.

(j) The Borrower and the Issuer acknowledge that this Agreement, and all the Borrower's obligations hereunder, are subject and subordinate to the Lender Loan Documents. Notwithstanding any provisions of this Agreement to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the Lender Mortgage), or (ii) any reserve or deposit made with the Lender or any other party as required by HUD in connection with the Lender Loan Documents, or (C) any proceeds of the Lender Borrower Note (collectively, "*Non-Project Sources*"). No claims or actions shall be made (or payable) under this Agreement against the Project, the proceeds of the HUD-Insured Loan, the Lender or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Agreement and all other documents evidencing, implementing, or securing this Agreement (collectively, the "*Subordinate Bond Documents*") are and shall be subordinated in all respects to the rights and obligations of the parties to and under the Lender Loan Documents. In the event of any conflict between the provisions of (i) this Agreement or the Subordinate Bond Documents and (ii) the provisions of the Lender Loan Documents or the Program Obligations (as defined in the HUD Regulatory Agreement), the provisions of the Lender Loan Documents or the Program Obligations shall control. The provisions of this Section 9.12 shall control over any inconsistent provisions in this Agreement or the Subordinate Bond Documents. This Agreement shall not be amended or modified without the prior written consent of HUD.

Section 9.13. **Third Party Beneficiary.** The parties hereto expressly recognize that the Trustee is a third party beneficiary to this Agreement and may enforce any right, remedy or claim conferred, given or granted it hereunder.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be executed in their respective official names and attested by their duly authorized officers, all as of the date first above written.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS, as Issuer

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to Board

GULFWAY HOUSING PARTNERS, LP, as Borrower

GULFWAY HOUSING PARTNERS, LP  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

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

Stephen R. Whyte, President

## **Exhibit A**

### **Project Description**

The Borrower plans to use the proceeds of the Bond Loan for the purpose of financing a portion of the costs of the acquisition, rehabilitation and equipping by the Borrower of an approximately 151-unit multifamily housing facility and related facilities known as Gulfway Manor Apartments and located at 1750 Treyway Lane, Corpus Christi, Nueces County, TX 78412.

## Exhibit B

### Form of Promissory Note

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

[\$27,500,000]

July \_\_, 2024

FOR VALUE RECEIVED, Gulfway Housing Partners, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “*Borrower*”), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the “*Issuer*”) the principal sum of [Twenty Seven Million and Five Hundred Thousand] Dollars, together with interest on the unpaid principal amount hereof, from the Closing Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds. All such payments of principal and interest shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office (initially, in St. Paul, Minnesota) of U.S. Bank Trust Company, National Association, a national banking association, or its successor (the “*Trustee*”) as trustee under the Indenture (as hereinafter defined).

The principal and interest shall be payable on the dates that principal and interest on the Bonds are payable, as provided in the Indenture and the Agreement.

This promissory note is the “*Note*” referred to in the Loan Agreement, dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Agreement*”), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Trust Indenture dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Indenture*”), between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note.



This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

As long as HUD is the insurer or holder of the Lender Borrower Note on FHA Project No. [115-36038], the following provisions (“HUD Provisions”) shall be in full force and effect (capitalized terms used in the following paragraphs (1)-(7), but not defined herein, shall have the meanings given to them in that certain Subordination Agreement dated as of July 1, 2024, among the Issuer, the Borrower and Merchants Capital Corp., as senior lender):

(1) any payments due under this Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than one percent (1%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Borrower cumulatively exceed one percent (1%) of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note;

(2) no prepayment of this Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources;

(3) after the endorsement to the trustee for the Bonds and pledge of this Note under the Bond Indenture, this Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except (1) with the prior written approval of HUD, or (2) if transferred to another state agency or wholly-owned corporation of a state entity pursuant to state legislative or executive action;

(4) *Intentionally omitted;*

(5) Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note;

(6) the terms and provisions of this Note are enforceable by HUD against Borrower and Lender and their successors and assigns, to the extent allowed by law. This Note may not be modified or amended without the written consent of HUD, except for modifications or amendments caused by changes in state or federal law which become automatically effective without the consent of the parties to this Note; and provided that any modification or amendment made without HUD’s written consent may cause the Bond Mortgage to be an unpermitted encumbrance; and

(7) in the event of any conflict between the terms of this Note and the HUD Provisions, the terms of the HUD Provisions shall control.

*[Signatures continue next page.]*

BORROWER:

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

ENDORSEMENT

Pay to the order of U.S. Bank Trust Company, National Association, a national banking association, without recourse, as Trustee under the Indenture referred to in the Note, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS

By: \_\_\_\_\_  
James B. "Beau" Eccles  
Secretary to Board

Dated: \_\_\_\_\_, 2024

**EXHIBIT C**

[\$27,500,000]

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024

**COMPLETION CERTIFICATE**

Pursuant to Section 3.05 of the Loan Agreement dated as of July 1, 2024 (the “**Bond Loan Agreement**”) between the Texas Department of Housing and Community Affairs (the “**Issuer**”) and Gulfway Housing Partners, LP, a Texas limited partnership (the “**Borrower**”) relating to the captioned Bonds, the undersigned Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings assigned or referenced in the Bond Loan Agreement or the Tax Exemption Agreement):

(a) The rehabilitation of the Project was substantially completed and available and suitable for use as multifamily housing on \_\_\_\_\_ (the “**Completion Date**”).

(b) The acquisition, rehabilitation, equipping and improvement of the Project and those other facilities have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar Governmental Requirements.

(c) The costs of the rehabilitation of the Project financed with the Bond Loan were \$ \_\_\_\_\_.

(d) The proceeds of the Bonds were used in accordance with Section 9 of the Tax Exemption Agreement, including the requirement that at least 95% of the proceeds of the Bonds be expended for Qualified Project Costs and no more than 2% of the proceeds of the Bonds be expended for Costs of Issuance. The Project will be operated in accordance with the terms of the Tax Exemption Agreement and the Regulatory Agreement.

(e) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

IN WITNESS WHEREOF, the Borrower Representative has set his or her hand as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Borrower Representative

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

REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer,

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION  
a national banking association,  
as Trustee,

and

GULFWAY HOUSING PARTNERS, LP,  
a Texas limited partnership,  
as Borrower

Dated as of July 1, 2024

Relating to

[\$27,500,000]  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024

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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement” or this “Regulatory Agreement”) dated as of July 1, 2024 is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer” or “Department”), a public and official agency of the State of Texas (the “State”), **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, as trustee under the hereinafter defined Indenture (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “Trustee”) and **GULFWAY HOUSING PARTNERS, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower” or “Owner”).

### RECITALS

WHEREAS, pursuant to the Act (as hereinafter defined), the Issuer is authorized to issue the Bonds (as hereinafter defined) and to use the proceeds thereof to provide monies to aid in financing the acquisition, equipping and rehabilitation of residential rental property for dwelling units in the State; and

WHEREAS, the Borrower has requested the assistance of the Issuer in connection with the financing of a multifamily residential rental housing development located on the real property described in Exhibit A hereto (as defined herein, the “Development Site”) and described in Exhibit B-1 hereto (as defined herein, the “Development Facilities” and, together with the Development Site, the “Development”), and, as a condition to such assistance, the Borrower has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Development; and

WHEREAS, the Issuer has determined to provide funds in connection with the financing of the Development by issuing its Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 in the aggregate principal amount of \$[27,500,000] (the “Bonds”), and loaning the proceeds of such Bonds to the Borrower, upon the terms and conditions set forth in the Bond Loan Agreement (as hereinafter defined); and

WHEREAS, in order for interest on the Bonds to be excludable from gross income for federal income tax purposes under the Code (as defined herein), and in order to comply with the Act, the use and operation of the Development must be restricted in certain respects; and

WHEREAS, the Borrower has also obtained a loan (the “Mortgage Loan”) from Merchant’s Capital Corp., an Indiana banking corporation, as mortgage lender (the “Lender”) for the Development, and the Issuer has agreed to subordinate the terms of this Regulatory Agreement to the lien of the Mortgage Loan; and

WHEREAS, the Issuer, the Trustee and the Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, equipping, rehabilitation and operation of the Development and in order to ensure that the Development will be acquired, rehabilitated, used and operated in accordance with the Code and the Act.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. In addition to terms defined above, capitalized terms have the respective meanings assigned to them in this Section 1 or as elsewhere defined in this Regulatory Agreement, in the Indenture, in the Bond Loan Agreement or in the Tax Exemption Agreement, unless the context in which they are used clearly requires otherwise:

“**Act**” means Chapter 2306, Texas Government Code, as amended from time to time.

“**Agreement**” or “**Regulatory Agreement**” means this Regulatory and Land Use Restriction Agreement, as it may be amended, modified, supplemented, or restated from time to time.

“**Annual Income**” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by section 142(d) of the Code.

“**Available Unit**” means a Unit (except for any Unit reserved for any resident manager, security personnel or maintenance personnel that is reasonably required for the Development) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Development is acquired by the Borrower or (ii) the Closing Date is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after the renovations are completed.

“**Bond Counsel**” means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes and who is appointed by the Issuer, and initially means Bracewell LLP.

“**Bond Loan**” means the loan of the proceeds of the Bonds made by the Issuer to the Borrower pursuant to the Bond Loan Agreement, as evidenced by the Note.

“**Bond Loan Agreement**” means the Loan Agreement of even date herewith between the Issuer and the Borrower, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

“**Bond Loan Documents**” means the Bond Mortgage, the Note, the Bond Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Bond Loan.

“**Bond Mortgage**” means the Subordinate Multifamily Leasehold Deed of Trust, Security Agreement and Fixture Filing dated to be effective as of the Closing Date from the Borrower and for the benefit of the Department and the Trustee, as it may be amended, modified, supplemented or restated from time to time.

“**Closing Date**” means the date upon which the Bonds are issued and delivered in exchange for the proceeds representing the purchase price of the Bonds paid by the original purchasers thereof.

“**Code**” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent and successor Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).



**“Controlling HUD and GNMA Requirements”** means the National Housing Act and any applicable HUD or GNMA regulations, and related HUD or GNMA administrative requirements and prohibitions.

**“Compliance Monitoring Rules”** means the rules published by the Issuer in Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code.

**“Development”** means the Development Facilities and the Development Site.

**“Development Amenities”** means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process, as more fully set forth in Exhibit B-2 hereto.

**“Development Facilities”** means the multifamily housing structures and related buildings and other improvements on the Development Site as more fully set forth in Exhibit B-1 hereto, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Development.

**“Development Site”** means the parcel or parcels of real property described in Exhibit A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances appertaining thereunto.

**“Eligible Tenants”** means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined by the Issuer under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

**“Equity Investor”** means, Raymond James Tax Credit Fund XX L.L.C., a Florida limited liability company, and their permitted successors and assigns in their respective capacities as the Equity Investor and the special limited partner of the Borrower.

**“Favorable Opinion of Bond Counsel”** means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that, under existing law, such action or omission does not adversely affect the Federal Tax Status of the Bonds.

**“Federal Tax Status”** means, as to the Bonds, the status under existing law of the interest on the Bonds as excludable from gross income for federal income tax purposes (subject to any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds).

**“General Partner”** means Gulfway Housing Management, LLC, a Texas limited liability company, and its permitted successors and assigns, as the Borrower’s general partner.

**“Housing Act”** means the United States Housing Act of 1937, as amended, or a successor thereto.

**“HUD”** means the United States Department of Housing and Urban Development or its successors.

**“HUD Regulatory Agreement”** means the Regulatory Agreement for Multifamily Projects between Borrower and HUD with respect to the Development dated as of July 1, 2024, as the same may be supplemented, amended or modified from time to time.

“**Indenture**” means the Trust Indenture of even date herewith between the Issuer and the Trustee, relating to the issuance of the Bonds, as it may be amended, modified, supplemented or restated from time to time, and any indenture supplemental thereto.

“**Lender**” has the meaning set forth in the Indenture.

“**Lender Loan**” has the meaning set forth in the Indenture.

“**Low-Income Tenant**” means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under sections 142(d)(2)(B) and (E) of the Code and in accordance with this Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

“**Low-Income Unit**” means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

“**Multifamily Tax Subsidy Program Income Limit**” (or successor term) means the income limits provided by HUD pursuant to section 142(d) of the Code.

“**Note**” has the meaning set forth in the Indenture.

“**Organizational Documents**” means the [Amended and Restated Limited Partnership Agreement] of the Borrower, dated as of [July 1, 2024], as it may be amended, modified, supplemented or restated from time to time.

“**Persons with Special Needs**” means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

“**Qualified Project Period**” means, with respect to the Development, the period beginning on the first day on which 10% of the Units are occupied (which date may be the Closing Date) and ending on the latest of (a) the date that is 15 years after the date on which 50% of the Units are occupied (which date may be the Closing Date), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Development is outstanding for federal income tax purposes, or (c) the date on which any assistance provided with respect to the Development under Section 8 of the Housing Act terminates.

“**Regulations**” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“**Related Person**” has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Reserve”** means the Reserve for Replacement account required to be established by the HUD Regulatory Agreement.

**“Reserve for Replacement”** has the meaning set forth in the HUD Regulatory Agreement.

**“Security Instrument”** means Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement from the Owner, as the grantor, in favor of Lender, as the beneficiary, as the same may be supplemented, amended or modified.

**“Set Aside”** means the requirement that at least 40% of the Available Units be occupied or held vacant for occupancy at all times by Low-Income Tenants.

**“State Conversion Date”** means the date of the first amortization payment on the note relating to the Lender Loan.

**“State Reserve Period”** means, with respect to the Development, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Development; (b) the date on which the Borrower suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored; (c) the date on which the Development is demolished; (d) the date on which the Development ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

**“State Restrictive Period”** means, with respect to the Development, the period beginning on the first day on which the Borrower takes legal possession of the Development and ending on the latest of (a) the date that is 40 years (as a result of the Borrower’s election to extend the affordability period) after the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Development from the federal government terminates.

**“Tax Exemption Agreement”** means the Tax Exemption Certificate and Agreement of even date herewith among the Issuer, the Trustee and the Borrower, as in effect on the Closing Date and as it may thereafter be amended, modified, supplemented or restated, from time to time, in accordance with its terms.

**“Tenant Income Certification”** means a certification form available on the Issuer’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Development.

**“Unit”** means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Development; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

**“Unit Status Report”** means the certified residential rental housing program compliance report with respect to the Development to be filed by the Borrower with the Issuer electronically through the filing system available on the Issuer’s website in the form available on the Issuer’s website at the time of submission of the report or in such other form as the Issuer may reasonably prescribe in writing to the Borrower pursuant to Section 4(e) hereof.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender include each other gender, and words of the singular number include

the plural number, and vice versa. This Regulatory Agreement and all the terms and provisions hereof are to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms are to be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and do not in any way modify or restrict any of the terms or provisions hereof and are not to be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent arises.

Section 1A. Acquisition, Equipping and Rehabilitation of the Development. The Borrower hereby represents, covenants and agrees as follows:

(a) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee or both, including specifically the representations and expectations set forth in the Tax Exemption Agreement, are true and correct.

(b) [Reserved].

(c) The Borrower will submit to the Issuer and the Trustee evidence of construction completion as required in the Bond Loan Agreement, and attached as Exhibit C thereto, within 30 days of completion. The Borrower will also submit a request for final construction inspection to the Issuer, in the format prescribed by the Issuer as required pursuant to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code. The Borrower further agrees to cause the architect of record to submit a certification that the Development was rehabilitated in compliance with all applicable laws and the engineer of record (if applicable) must submit a certification that the Development was rehabilitated in compliance with design requirements.

(d) The Borrower will take or not fail to take, as is applicable, all actions necessary to cause the proceeds of the Bonds to be applied in a manner consistent with the requirements of the Indenture, the Bond Loan Agreement, the Tax Exemption Agreement and this Regulatory Agreement. The Borrower acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Borrower and the Development.

(e) The Borrower is a qualified “housing sponsor” as defined in the Act.

(f) The Borrower will not seek an exemption from ad valorem taxation for the Development without prior written notice to the Issuer.

Section 2. Tax-Exempt Status of the Bonds. The Borrower will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the Federal Tax Status of the Bonds. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees:

(a) That the Development will be owned, managed and operated as a “qualified residential rental project” within the meaning of section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Borrower covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) that the Development will be comprised of residential Units and facilities functionally related and subordinate thereto;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code);

(iii) that the land and the facilities that are part of the Development will be functionally related and subordinate to the Units comprising the Development and will be of a character and size that is commensurate with the character and size of the Development;

(iv) that at no time will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than six months (unless the Unit serves as a single room occupancy unit or transitional housing for the homeless (as described in section 42(i)(3)(B) of the Code), in which case such lease may be on a month-to-month basis) or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Development will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Development will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Development tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Development, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time will any Unit in any building or structure in the Development that contains fewer than five Units be occupied by the Borrower;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in this Regulatory Agreement, the Tax Exemption Agreement and the Bond Loan Agreement) at all times during the longer of (A) the remaining term of the Bonds or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided herein, and that at no time will any portion of the Development be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that the Development will meet the Set Aside. For the purposes of this Section 2(a)(ix), a vacant Unit that was most recently occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low-Income Tenant will be denied continued occupancy of a Unit because, after the most recent Tenant Income Certification, such tenant's Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant's Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of the Set Aside, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file Tenant Income Certifications and supporting documentation from each Low-Income Tenant, including (A) a Tenant Income Certification dated immediately prior to the initial occupancy of such Low-Income Tenant in the Development and (B) thereafter, annual Tenant Income Certifications obtained on or before the anniversary of such Low-Income Tenant's occupancy of the Unit, and in no event less than once in every 12-month period following each Low-Income Tenant's occupancy of a Unit; provided that the requirement for annual recertification will not apply for any year in which no Unit in the Development is occupied by a new resident whose income exceeds the applicable income limit. The Borrower will obtain such additional information as may be required in the future by section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations that are tax-exempt private activity bonds described in section 142(d) of the Code. The Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in a Tenant Income Certification is accurate by taking steps required under section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Borrower will document income and assets in accordance with HUD Handbook 4350.3 and the Issuer's Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Borrower will submit to the Secretary of the Treasury, with a copy provided to the Issuer, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of section 142(d) of the Code; and

(xii) that the Borrower will prepare and submit the Unit Status Report in the form available on the Issuer's website at the time of such submission to the Issuer (via the electronic filing system available on the Issuer's website) in accordance with Section 4(e) hereof.

(b) That the Borrower will maintain complete and accurate records pertaining to the Low-Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue

Service to enter upon the Development Site to examine and inspect the Development and to inspect and photocopy the books and records of the Borrower pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units. The Borrower will retain all records maintained in accordance with this Section 2 until the date that is three years after the end of the Qualified Project Period.

(c) That the Borrower will provide to the Trustee and the Issuer a certificate in the form attached hereto as Exhibit F certifying (i) within 90 days thereof, the date on which 10% of the Units are occupied; and (ii) within 90 days thereof, the date on which 50% of the Units are occupied.

(d) That the Borrower will prepare and submit to the Issuer and the Trustee, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower hereunder or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

Section 3. Modification of Tax and Other Restrictive Covenants. The Borrower, the Trustee and the Issuer hereby agree as follows:

(a) During the Qualified Project Period and the State Restrictive Period, to the extent any amendments to the Act or the Code, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Development more restrictive than those imposed by this Regulatory Agreement, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as is necessary to document such automatic amendment hereof to be effective for the duration of such more restrictive requirements. In addition, this Regulatory Agreement will be amended to the extent required by, and in accordance with, the Bond Loan Agreement.

(b) During the Qualified Project Period and the State Restrictive Period, to the extent that the Act, the Code, or any amendments thereto, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Development less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with compliance with the requirements of this Section will be paid by the Borrower and its successors in interest.

Section 4. Housing Development During the State Restrictive Period. The Issuer and the Borrower hereby recognize and declare their understanding and intent that the Development is to be owned,

managed and operated as a “housing development,” as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer until the expiration of the State Restrictive Period.

To the same end, the Borrower hereby represents, covenants and agrees as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Development, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions of Sections 2(a)(viii) and 2(a)(ix) hereof continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Development (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant’s initial occupancy of a Unit in the Development, and, if required as described in Section 2(a)(x) hereof, at least annually thereafter in the manner as described in Section 2(a)(x) hereof, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Development (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Borrower from time to time that (i) such lease is subordinate to the Security Instrument, the Bond Mortgage and this Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility requirements of this Regulatory Agreement and the Bond Loan Agreement are substantial and material obligations of tenancy in the Development, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Borrower, the Trustee and the Issuer, and (v) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer’s website) by the tenth calendar day of each January, April, July and October or other schedule as determined by the Issuer with written notice to the Borrower, a certified quarterly Unit Status Report in a form available on the Issuer’s website at the time of submission or in such other form as the Issuer may reasonably prescribe in writing to the Borrower with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Borrower pertaining to the Development or the incomes of Development tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer’s requirements;

(g) that the Borrower is qualified to be a “housing sponsor” as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Issuer’s website) the Annual Owner’s Compliance Report to the



Issuer in the form available on the Issuer's website at the time of submission by April 30 of each year, commencing April 30, 2026;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached hereto as Exhibit C in the manner provided in such Exhibit, or from any additional supportive services added to the Issuer's rules at any future date that are of similar value to the service it is intending to replace as agreed to in writing by the Issuer. The Borrower must maintain documentation satisfactory to the Issuer of social services provided and such documentation will be reviewed during monitoring reviews beginning with the first monitoring review and must be submitted to the Issuer upon request. The Borrower must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code and other Issuer rules regarding affirmative marketing and written policies and procedures, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD's National Standards for the Physical Inspections of Real Estate and to provide regular maintenance to keep the Development sanitary, safe and decent and to comply with the requirements of section 2306.186 of the Texas Government Code; provided, however, that the Issuer must first provide notice of any default or breach to the Borrower and the Lender, and the Borrower will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Development pursuant to section 2306.185(c) of the Texas Government Code;

(l) the Borrower is not a party to and will not enter into a contract for the Development with, a housing developer that (i) is on the Issuer's debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower's participation in contracts with the agency and the amount of financial assistance awarded to the Borrower by the agency;

(m) to cooperate fully with the Issuer with respect to its compliance and oversight requirements and to cause the manager of the Development to so comply;

(n) to ensure that Units intended to satisfy the Set Aside under Section 2(a)(ix) hereof and the reservation of Units under Section 4(a) hereof will be distributed evenly throughout the Development and will include a reasonably proportionate amount of each type of Unit available in the Development;

(o) to ensure that the Development conforms to the federal Fair Housing Act; and

(p) to pay to the Issuer the Issuer Compliance Fee (as defined in the Indenture).

Section 4.A. Repairs and Maintenance Required by State Law. The Borrower will maintain the Replacement Reserve required by and created pursuant to the HUD Regulatory Agreement or a similar account for the longer of: (a) the period of time required pursuant to the HUD Regulatory Agreement, or (b) the State Reserve Period as required by Section 2306.186 of the Texas Government Code.

Section 4.B. Development Amenities. The Borrower hereby represents, covenants and agrees that the Development will include the Development Amenities as described in Exhibit B-2 attached hereto.

Section 5. Reserved.

Section 6. Persons With Special Needs. The Borrower represents, covenants and warrants that during the State Restrictive Period, it will make at least 5% of the Units within the Development available for occupancy by Persons with Special Needs.

Section 7. Consideration. The Issuer has issued the Bonds to provide funds to make the Bond Loan to finance the Development, all for the purpose, among others, of inducing the Borrower to acquire, rehabilitate, equip and operate the Development. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Development can be put on the terms and conditions set forth herein.

Section 8. Reliance. The Issuer, the Trustee and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all Persons interested in the legality and validity of the Bonds, and in the excludability of interest on the Bonds from gross income for federal income tax purposes under existing law. In performing their duties and obligations hereunder, the Borrower, the Issuer and the Trustee may conclusively rely upon statements and certificates of the Low-Income Tenants or Eligible Tenants and the Issuer and the Trustee may conclusively rely upon (i) statements and certifications by the Borrower; (ii) audits of the books and records of the Borrower pertaining to the Development; and (iii) with respect to the Trustee, any other information provided to the Trustee, pursuant to this Regulatory Agreement. In addition, the Issuer, the Borrower and the Trustee may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection in respect of any action or inaction taken or suffered by the Issuer, the Borrower or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Borrower exists under this Regulatory Agreement, the Trustee is not required to conduct any investigation into or review of the operations or records of the Borrower and may rely on any written report, notice or certificate or other information delivered to the Trustee, as required by this Regulatory Agreement, by any Person retained to review the Borrower's compliance with this Regulatory Agreement or by the Borrower or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 9. Development in Nueces County. The Borrower hereby represents that the Development is located entirely within Nueces County, Texas.

Section 10. Sale or Transfer of the Development or Change in General Partner.

(a) The Borrower covenants and agrees not to sell, transfer or otherwise dispose of the Development (other than pursuant to the lease of Units to Eligible Tenants), without (i) providing 30 days prior written notice to the Issuer, (ii) complying with any applicable provisions of this Regulatory Agreement, the Bond Loan Agreement, the Tax Exemption Agreement and other Bond Loan Documents and (iii) obtaining the prior written consent of the Issuer. Such consent of the Issuer will not be unreasonably withheld and will be given if the following conditions to the sale or other disposition are met or waived in writing by the Issuer: (A) there is delivered to the Trustee and the Issuer a written opinion of independent legal counsel reasonably satisfactory to the Issuer, addressed to the Trustee and the Issuer, concluding that the proposed purchaser or transferee has duly assumed all of the rights and obligations of the Borrower under this Regulatory Agreement, the Bond Loan Agreement, the Tax Exemption Agreement and the other Bond Loan Documents and that each of the documents executed by such proposed purchaser or transferee in connection

therewith has been duly authorized, executed and delivered by such proposed purchaser or transferee and is a valid and enforceable obligation of such proposed purchaser or transferee, subject to customary qualifications, (B) the Issuer receives a Favorable Opinion of Bond Counsel, with a copy to the Trustee, which opinion will be furnished at the expense of the Borrower or the proposed purchaser or transferee, (C) the Issuer receives a transfer fee equal to \$1,000, (D) the proposed purchaser or transferee executes any document requested by the Issuer with respect to assuming the obligations of the Borrower under this Regulatory Agreement, the Bond Loan Agreement, the Tax Exemption Agreement and the other Bond Loan Documents, (E) the Issuer has performed a previous participation review on the proposed purchaser or transferee or any affiliated party, the results of which are satisfactory to the Issuer in accordance with Title 10, Part 1, Chapter 1, Subchapter C, Section 1.301, Texas Administrative Code, and the Issuer does not further have any reason to believe the proposed purchaser or transferee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or transferee relating to the Development, including but not limited to this Regulatory Agreement, the Bond Loan Agreement, the Tax Exemption Agreement, the Security Instrument, the Bond Mortgage and other Bond Loan Documents, (F) the proposed purchaser or transferee has met the requirements in Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406, Texas Administrative Code, and (G) the Borrower or proposed purchaser or transferee have paid any and all fees or expenses of Bond Counsel incurred in association with its review and drafting of documents relating to the transfer. Notwithstanding anything to the contrary contained herein, and subject to the consent of FHA as required by the Controlling HUD and GNMA Requirements or the Mortgage Loan Documents, the following shall be permitted and shall not require the prior written approval of the Issuer, provided that written notice thereof has been provided to the Issuer: (a) the transfer by the Equity Investor of its non-Controlling interest in the Borrower in accordance with the terms of the Organizational Documents of the Borrower, (b) the removal of the General Partner of the Borrower in accordance with the Organizational Documents and the temporary replacement thereof with the Equity Investor or any of its affiliates, (c) the transfer of ownership interests in the Equity Investor, (d) upon the expiration of the tax credit compliance period, the transfer of interests of the Equity Investor in the Borrower to the General Partner of the Borrower or any of its affiliates, and (e) any amendment to the Organizational Documents to memorialize the transfers or removal described above. For the purposes of the preceding sentence, "Control" or "Controlling" has the meaning given to such term in Title 10, Part 1, Subchapter A, Section 11.1, Texas Administrative Code. The foregoing provisions do not apply to transfer by foreclosure or deed in lieu of foreclosure or other similar involuntary transfers (except in the case of a change in ownership resulting from a deed in lieu of foreclosure, advance notice, which notice must include information regarding the applicable rent/income requirements post such deed in lieu of foreclosure, must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer), but such provisions apply to any transfer subsequent to such involuntary transfers. The Borrower hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Borrower of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Borrower so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Bond Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement or any other Bond Loan Document arising after the date of such disposition. The foregoing notwithstanding, the duties of the Borrower as set forth in the Bond Loan Agreement, this Regulatory Agreement or any other Bond Loan Document with respect to matters arising prior to the date of such sale, transfer or other disposition will not terminate upon the sale, transfer or other disposition of the Development.

(b) No transfer of the Development will release the Borrower from its obligations under this Regulatory Agreement arising prior to the date of such transfer, but any such transfer in accordance with this Regulatory Agreement will relieve the Borrower of further liability for obligations under the Bond Loan Agreement and this Regulatory Agreement, the Security Instrument or the Bond Mortgage arising after the date of such transfer.

(c) Except as set forth in Section 10(a) above, the Borrower will not change its General Partner by transfer, sale or otherwise without the prior written consent of the Issuer in accordance with Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406, Texas Administrative Code. A change in the Borrower's General Partner includes any transfer of any controlling ownership interest in the General Partner other than by death or incapacity.

Section 11. Term. This Regulatory Agreement and all and each of the provisions hereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds, discharge of the Bond Loan, termination of the Bond Loan Agreement and defeasance or termination of the Indenture; provided, however, that the provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements set forth herein will terminate, without the requirement of any consent by the Issuer or the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date that prevents the Issuer or the Trustee from enforcing the provisions hereof, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a "qualified residential rental project" that meets the requirements of the Code and State law including, but not limited to, the provisions set forth in Sections 1A through 6, 10, 11 and 12 of this Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, the Borrower or any Related Person obtains an ownership interest in the Development for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee and the Borrower upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of this Regulatory Agreement will be paid by the Borrower and its successors in interest.

Section 12. Covenants to Run with the Land. The Borrower hereby subjects the Development (including the Development Site) to the covenants, reservations and restrictions set forth in this Regulatory

Agreement. The Issuer, the Trustee and the Borrower hereby declare that the covenants, reservations and restrictions set forth herein are covenants running with the land and will pass to and be binding upon the Borrower's successors in title to the Development; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or any portion thereof prior to the termination of this Regulatory Agreement will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

No breach of any of the provisions of this Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Development or any portion thereof.

Section 13. Burden and Benefit. The Issuer, the Trustee and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Development is rendered less valuable thereby. The Issuer, the Trustee and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Development by Low-Income Tenants and Eligible Tenants and by furthering the public purposes for which the Bonds were issued.

Section 14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof will apply uniformly to the entire Development in order to establish and carry out a common plan for the use, development and improvement of the Development Site.

Section 15. Default; Enforcement by the Trustee and Issuer. If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured by the Borrower for a period of 60 days after written notice thereof has been given by the Issuer or the Trustee to the Borrower and the Equity Investor at the Notice Addresses set forth in the Indenture, then the Trustee, acting on its own behalf or on behalf of the Issuer and after being indemnified as provided in the Indenture, will declare an "Event of Default" to have occurred hereunder; provided, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default will not constitute an Event of Default hereunder and will not be declared an Event of Default so long as (i) the Borrower institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) the Borrower delivers to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Equity Investor shall be deemed to be cure by the Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

During the existence of an Event of Default hereunder, the Trustee or the Issuer, each subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(b) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Development during regular business hours following reasonable prior written notice; and

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder.

The Borrower hereby agrees that specific enforcement of the Borrower's agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Borrower herein, and the Borrower therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower hereunder. In addition, if the Issuer succeeds in an action for specific performance of an obligation, covenant or agreement of the Borrower contained herein, it is entitled to the relief provided in Section 16(b) hereof to the extent provided in that provision.

All rights and remedies herein given or granted are cumulative, nonexclusive and in addition to any and all rights and remedies that the parties may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Issuer will to the extent that it has actual knowledge thereof, by notice in writing, use its best efforts to inform the Trustee and the Borrower (provided that the failure to notify will not adversely affect the Issuer's or the Trustee's rights under this Regulatory Agreement) that a violation of this Regulatory Agreement has occurred.

It is specifically declared that this Regulatory Agreement or obligations hereunder may not be enforced by tenants or prospective tenants of the Development (except as described in Section 16 below) or, except as specifically provided in the Indenture, by the owners of the Bonds.

Section 16. Enforcement of Certain Provisions by Tenants and other Private Parties.

(a) During the existence of an Event of Default hereunder with respect to Sections 4(i), and 4(j) hereof only, a tenant of the Development or any private party may, at its option by mandamus or other suit, including injunctive relief, require the Borrower to perform its obligations and covenants under Sections 4(i), and 4(j) hereof.

(b) If the Issuer, a tenant of the Development, or any private party brings an action to enforce the obligations and covenants of the Borrower under Sections 4(i), and 4(j) hereof, such party has the right to recover attorney's fees directly from the Borrower, without recourse to the Development, if such party is successful in an action seeking enforcement of the obligations and covenants of the Borrower hereunder. This is the only monetary relief a tenant of the Development or other private parties may receive under this Regulatory Agreement and any such recovery is subject to the provisions set forth in Section 15 above.

Section 17. The Trustee. The Trustee will act only as specifically provided herein, in the Indenture and in the Tax Exemption Agreement. Subject to the right of the Trustee to be indemnified as provided in the Indenture, the Trustee agrees to act as the agent of and on behalf of the Issuer when requested in writing by the Issuer to do so, and any act required to be performed by the Issuer as herein provided will be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Regulatory Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers, rights and obligations of the Trustee in acting hereunder will be subject to the provisions of the Indenture and the Tax Exemption Agreement, all of which are incorporated by reference herein. The incorporated provisions of

the Indenture and the Tax Exemption Agreement are intended to survive the retirement of the Bonds, discharge of the Bond Loan, termination of the Bond Loan Agreement and defeasance or termination of the Indenture and the Tax Exemption Agreement.

Subject to the Trustee's protections and rights under the Indenture, the Trustee will, at the written direction of the Issuer, take reasonable actions to enforce compliance by the Borrower with the terms of this Regulatory Agreement. The Trustee may rely on certificates, reports or other information delivered to the Trustee, in accordance with this Regulatory Agreement, without independent investigation and the Trustee's responsibility to review and monitor compliance hereunder will not extend beyond the Trustee's receipt of the certificates, reports, and other documents required to be submitted to the Trustee pursuant to this Regulatory Agreement.

The Trustee may resign or be removed only as provided in Sections 11.11 or 11.12, respectively, of the Indenture. Such resignation or removal will not be effective until a successor Trustee satisfying the requirements of the Indenture is appointed and has accepted its appointment. The Trustee's right to indemnification provided in the Bond Loan Agreement will survive the resignation or removal of the Trustee and the termination of this Regulatory Agreement.

Upon discharge of the Indenture, the Borrower will pay to the Trustee a fee, in an amount mutually agreed upon by the Borrower and the Trustee at the time of such discharge, for the performance of the Trustee's duties under this Agreement through the date upon which all of the Bonds are to be paid in full. After the date upon which all of the Bonds have been paid in full, the Trustee shall no longer have any duties or responsibilities under this Regulatory Agreement and all references to the Trustee in this Regulatory Agreement shall be deemed references to the Issuer.

Section 18. Recording and Filing. The Borrower will cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Nueces County, Texas and in such other places as the Issuer or the Trustee may reasonably request. A file-stamped copy of this Regulatory Agreement and, prior to the date upon which all of the Bonds have been paid in full, all amendments and supplements thereto will be delivered to the Trustee. The Borrower will pay all fees and charges incurred in connection with any such recording. This Regulatory Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 19. Reimbursement of Expenses. Notwithstanding any prepayment of the Bond Loan and notwithstanding a discharge of the Indenture and the Tax Exemption Agreement, throughout the term of this Regulatory Agreement, the Borrower will continue to pay to the Issuer and the Trustee all fees and reimbursement for all expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Borrower pursuant to the Bond Loan Agreement and the Tax Exemption Agreement.

Section 20. Governing Law. This Regulatory Agreement is governed by the laws of the State of Texas. The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Regulatory Agreement, the Bond Loan Agreement, the Indenture and the Tax Exemption Agreement.

Section 21. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto (except that after discharge of the Indenture, consent of the Trustee will not be required), or their successors in title, and duly recorded in the real property records of Nueces County, Texas, and only upon receipt of a Favorable Opinion of Bond Counsel by the Issuer, and prior to the discharge of the Indenture, the Trustee. In addition, for so long as the Bond Loan is outstanding, this Regulatory Agreement may not be amended without

HUD's prior written consent, with the exception of clerical errors or administrative correction of non-substantive matters, as set forth in Exhibit D hereto.

Section 22. Notices. Any notice required to be given hereunder to the Issuer, the Trustee, the Equity Investor and the Borrower will be given in the manner and to the Notice Addresses or via electronic means as set forth in the Indenture.

Section 23. Severability. If any provision of this Regulatory Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 24. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which constitute one and the same instrument, and each of which is deemed to be an original.

Section 25. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Borrower to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Bond Loan Agreement and to make on behalf of the Issuer all elections and determinations required or permitted to be made by the Issuer hereunder or under the Indenture and the Bond Loan Agreement. In addition, the Issuer hereby authorizes the Borrower to exercise, on behalf of the Issuer, any election with respect to the Bonds pursuant to the Code or the Regulations, and the Issuer agrees to cooperate with the Borrower and execute any form of statement required by the Code or the Regulations to perfect any such election.

Section 26. Subordination and Incorporation of HUD Rider. Notwithstanding anything to the contrary herein, the HUD Rider to Restrictive Covenants attached hereto as Exhibit E is hereby incorporated herein for all purposes.

Section 27. Compliance with Texas Government Code. The representations in Section 11.23 of the Indenture (with respect to the Trustee) and in Section 2.02(cc) of the Bond Loan Agreement (with respect to the Borrower) are expressly incorporated by reference into this Regulatory Agreement.



IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Issuer

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to the Board

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2024 by James B. "Beau" Eccles, Secretary to the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of said agency.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature

My Commission expires: \_\_\_\_\_

(PERSONALIZED SEAL)

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, as Trustee

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

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2024 by \_\_\_\_\_, a \_\_\_\_\_ of U.S. Bank Trust Company, National Association, a national banking association, on behalf of said entity.

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

My Commission expires: \_\_\_\_\_

(Personalized Seal)

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

ACKNOWLEDGMENT

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2024 personally appeared Stephen R. Whyte, President of Vitus Development III, LLC, a Delaware limited liability company, Sole Member and Manager of Gulfway Housing Management, LLC, a Texas limited liability company, General Partner of Gulfway Housing Partners, LP, a Texas limited partnership, on behalf of said entities.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission expires: \_\_\_\_\_

(Personalized Seal)

EXHIBIT A

PROPERTY DESCRIPTION

A tract of land lying in and being a portion of LOT THIRTY (30), BLOCK TWO (2), in GULFWAY - AIRLINE PARK, a subdivision in Corpus Christi, Nueces County, Texas, according to the map or plat Volume 37, Page(s) 27 of the Map Records of Nueces County, Texas; said tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a found 3/4" I.P. found for the most Southerly Corner of said Lot 30, Block 2;

THENCE North 61° 02' 30" West, along the Southerly line of said Lot 30, Block 2, a distance of 625.00 feet to a found 3/4" I.P.;

THENCE North 29° 03' 30" East, a distance of 665.14 feet to a found Cut "X," being a point on the Northerly line of said Lot 30, Block 2;

THENCE South 61° 01' 30" East, along said Northerly line, a distance of 625.00 feet to a found SWB Brass Cap at a point being the most Easterly Corner of said Lot 30, Block 2;

THENCE South 29° 03' 30" West, along the Easterly line of said Lot 30, Block 2, a distance of 664.94 feet to the Point of Beginning; containing an area of 415,655 square feet or 9.5421 acres, more or less.

EXHIBIT B-1

DESCRIPTION OF DEVELOPMENT

Borrower: Gulfway Housing Partners, LP, a Texas limited partnership

Development: The Development is a 151-unit affordable, multifamily housing development known as Gulfway Manor Apartments, located at 1750 Treyway Lane, Corpus Christi, Nueces County, TX 78412. The unit mix will consist of:

20	one-bedroom/one-bath units
51	two-bedroom/one-bath units
60	three-bedroom/two-bath units
20	four-bedroom/two-bath units
<hr/>	
151	Total Units

## EXHIBIT B-2

### DEVELOPMENT AMENITIES

Development Common Amenities must include fifteen (15) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of amenities from each section. The Borrower may change, from time to time, the amenities offered; however, the overall points must remain the same. The tenant must be provided written notice of the elections made by the Borrower.

(i) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and owner and architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) of this item, and provide evidence of such agreement to the Department on or before submission of the Cost Certification.

(-1-) The agreement must be between the Borrower and an educational provider.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes

to withdraw from the location. This provision will not limit the Borrower's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Borrower must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Borrower, the Borrower must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Borrower, the Borrower will not be considered to be in violation of its commitment to the Department. If the Borrower is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Borrower. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Borrower. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).

(IV) Service provider office in addition to leasing offices (1 point).

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point).

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (V) of this subparagraph is not selected.

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (IV) of this subparagraph is not selected.

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).

(VII) Swimming pool (5 points).

(VIII) Splash pad/water feature play area (3 points).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, Soccer, or Baseball Field) (2 points).



(iv) Design / Landscaping amenities include:

- (I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).
- (II) Enclosed community sun porch or covered community porch/patio (1 point).
- (III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (2 points).
- (IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points).
- (V) Porte-cochere (1 point).
- (VI) Lighted pathways along all accessible routes (1 point).
- (VII) a resident-run community garden with annual soil preparation and mulch provided by the Borrower and access to water (which may be subject to local water usage restrictions) (1 point).

(v) Community Resources include:

- (I) Community laundry room with at least one washer and dryer for every 40 Units (2 points).
- (II) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).
- (III) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).
- (IV) Furnished Community room (2 points).
- (V) Library with an accessible sitting area (separate from the community room) (1 point).
- (VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).
- (VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).
- (VIII) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).
- (IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the clubhouse or community building (1 point).
- (X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).

(XI) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).

(XII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).

(XIII) Recycling Service (includes providing a storage location and service for pick-up) (1 point).

(XIV) Community car vacuum station (1 point).

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 units (1 point).

Unit, Development Construction and Energy and Water Efficiency Features. The Development must include at least nine (9) points selected from the following list. At least two (2) points must be selected from clause (iii) Energy and Water Efficiency Features. The development must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values.

(i) Unit Features include:

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

- (X) Walk-in closet in at least one Bedroom (0.5 point);
  - (XI) 48-inch upper kitchen cabinets (1 point);
  - (XII) Kitchen island (0.5 points);
  - (XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point).
  - (XIV) Natural stone or quartz countertops in kitchen and bath (1 point);
  - (XV) Double vanity in at least one bathroom (0.5 point); and
  - (XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).
- (ii) Development Construction Features include:
- (I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
  - (II) Thirty year roof (0.5 point);
  - (III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
  - (IV) Electric Vehicle Charging Station (0.5 points);
  - (V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and
  - (VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.
    - (-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.
    - (-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).
    - (-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary

to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points).

(X) Wi-Fi enabled, Energy Star or equivalently rated “smart” thermostats installed in all units (1 point); and

(XI) Solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income unit (2 points).

## EXHIBIT C

### TENANT SUPPORTIVE SERVICES

The tenant supportive services to be provided must include at least eight (8) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of services from each section. The Borrower may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the Issuer's rules in subsequent years provide different services than those listed below, the Borrower may be allowed to select services listed therein upon written consent from the Issuer, and any services selected must be of similar value to the service the Borrower is intending to replace. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Borrower.

(A) Transportation Supportive Services include:

- (i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and
- (ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

(B) Children Supportive Services include:

- (i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of §11.101(b)(5)(C)(i)(I). (Half of the points required under §11.101(b)(7)); and
- (ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services include:

- (i) Four hours of weekly, organized, in-person, hybrid, or virtual classes accessible to participants from a common area on site to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, homebuyer counseling, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);
- (ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);
- (iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(v) reporting rent payments to credit bureaus for any resident who affirmatively elects to participate, which will be a requirement of the LURA for the duration of the Affordability Period (2 points);and

(vi) participating in a non-profit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs (2 points).

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified owner or developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Borrower or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

EXHIBIT D

RESERVED



EXHIBIT E

**HUD RIDER TO RESTRICTIVE COVENANTS**

This HUD RIDER TO RESTRICTIVE COVENANTS (“Rider”) is made as of July 1, 2024, by GULFWAY HOUSING PARTNERS, LP, a Texas limited partnership (“Borrower”) and TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (“Agency”).

WHEREAS, Borrower has obtained financing from Merchants Capital, an Indiana banking corporation (“Lender”) for the benefit of the project known as Gulfway Manor Apartments (“Project”), which loan is secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (“Security Instrument”) dated as of July 1, 2024, and recorded in the Official Public Records of Nueces County, Texas (“Records”), and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received tax-exempt bond financing from Agency, which Agency is requiring certain restrictions be recorded against the Project;

WHEREAS, HUD requires as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Merchants Capital Corp., an Indiana banking corporation, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act, 12 USC § 1701 et seq., as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure, the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall terminate, subject to the requirements of 26 C.F.R. 1.103-8(b)(6)(iii)(b), to the extent applicable, or as otherwise approved by HUD. Upon notification from the Lender or HUD of the foreclosure, and payment of the recording fees, Agency will file a release of Restrictive Covenants.

(e) Borrower and Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.

(f) Except for Agency’s reporting requirement, in enforcing the Restrictive Covenants Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if Borrower is a for-profit entity;
- ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available Residual Receipts authorized for release by HUD, if Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.

(h) Subject to the HUD Regulatory Agreement, Agency may require Borrower to indemnify and hold Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding

instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold Agency harmless shall be limited to available Surplus Cash and/or Residual Receipts of Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting Borrower from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

The statements and representations contained in this Rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

EXHIBIT F



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.texas.gov

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**  
Leo Vasquez, *Chair*  
Kenny Marchant, *Vice Chair*  
Anna Maria Farias, *Member*  
Cindy Conroy, *Member*  
Holland Harper, *Member*  
Ajay Thomas, *Member*

**Multi Family Mortgage Revenue Bond  
Qualified Project Period**

The Texas Department of Housing and Community Affairs require the information in Sections A and B below to compute the Qualified Project Period for Mortgage Revenue Bond properties. Please complete the form as the appropriate dates are identified. Upload this form in TDHCA's Compliance Monitoring Tracking System (CMTS) to the attention of Charles Stites immediately after the property reaches the 50% Occupancy Date.

Section A

Property Name	
Address	
Contact Name	
Contact Phone #	

Section B

Initial Bond Closing Date	
Date First Unit Occupied	
10% Occupancy Date	
50% Occupancy Date	
50% Occupancy Date + 15 years	

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_



## Promissory Note

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

[\$27,500,000]

July \_\_, 2024

FOR VALUE RECEIVED, Gulfway Housing Partners, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “*Borrower*”), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the “*Issuer*”) the principal sum of [Twenty Seven Million and Five Hundred Thousand] Dollars, together with interest on the unpaid principal amount hereof, from the Closing Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds. All such payments of principal and interest shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office (initially, in St. Paul, Minnesota) of U.S. Bank Trust Company, National Association, a national banking association, or its successor (the “*Trustee*”) as trustee under the Indenture (as hereinafter defined).

The principal and interest shall be payable on the dates that principal and interest on the Bonds are payable, as provided in the Indenture and the Agreement.

This promissory note is the “*Note*” referred to in the Loan Agreement, dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Agreement*”), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Trust Indenture dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Indenture*”), between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

As long as HUD is the insurer or holder of the Lender Borrower Note on FHA Project No. [115-36038], the following provisions (“HUD Provisions”) shall be in full force and effect (capitalized terms used in the following paragraphs (1)-(7), but not defined herein, shall have the meanings given to them in that certain Subordination Agreement dated as of July 1, 2024, among the Issuer, the Borrower and Merchants Capital Corp., as senior lender):

(1) any payments due under this Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than one percent (1%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Borrower cumulatively exceed one percent (1%) of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note;

(2) no prepayment of this Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources;

(3) after the endorsement to the trustee for the Bonds and pledge of this Note under the Bond Indenture, this Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except (1) with the prior written approval of HUD, or (2) if transferred to another state agency or wholly-owned corporation of a state entity pursuant to state legislative or executive action;

(4) *Intentionally omitted;*

(5) Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note;

(6) the terms and provisions of this Note are enforceable by HUD against Borrower and Lender and their successors and assigns, to the extent allowed by law. This Note may not be modified or amended without the written consent of HUD, except for modifications or amendments caused by changes in state or federal law which become automatically effective without the consent of the parties to this Note; and provided that any modification or amendment made without HUD’s written consent may cause the Bond Mortgage to be an unpermitted encumbrance; and

(7) in the event of any conflict between the terms of this Note and the HUD Provisions, the terms of the HUD Provisions shall control.

*[Signatures continue next page.]*

BORROWER:

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

ENDORSEMENT

Pay to the order of U.S. Bank Trust Company, National Association, a national banking association, without recourse, as Trustee under the Indenture referred to in the Note, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS

By: \_\_\_\_\_  
James B. "Beau" Eccles  
Secretary to Board

Dated: \_\_\_\_\_, 2024



**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

SUBORDINATE MULTIFAMILY DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING

from

GULFWAY HOUSING PARTNERS, LP,  
Grantor,

to

[\_\_\_\_\_] ,  
Trustee,

for the benefit of  
U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

and

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
together, Grantee

Dated as of [July 1], 2024

Relating to:

[\$27,500,000]  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor), Series 2024

**THIS SECURITY INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF GRANTOR AS "DEBTOR" AND GRANTEE AS "SECURED PARTY." THIS INSTRUMENT SHALL ALSO BE EFFECTIVE FROM THE DATE OF ITS RECORDING AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING PART OF THE MORTGAGED PROPERTY WHICH ARE OR ARE TO BECOME FIXTURES.**

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**SUBORDINATE MULTIFAMILY DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING**

This SUBORDINATE MULTIFAMILY DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING, dated as of [July 1], 2024, but effective as of the date of delivery of the hereinafter-defined Bonds (as the same may be amended, modified or supplemented from time to time, this “**Deed of Trust**”), by GULFWAY HOUSING PARTNERS, LP, a Texas limited partnership (together with its successors and assigns, “**Grantor**” or “**Borrower**”), having its principal office at c/o Vitus Group, LLC, 1700 Seventh Avenue, Suite 2000, Seattle, WA 98101, to [ ] and his successors and assigns (the “**Trustee**”), for the benefit of U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as trustee (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “**Bond Trustee**”), an national banking association, having offices at [ ] and TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “**Issuer**” and, together with the Bond Trustee, the “**Grantee**”), a public and official agency of the State of Texas having offices at 221 East 11th Street, Austin, Texas 78701.

W I T N E S S E T H:

**WHEREAS**, the Issuer is authorized by the provisions of Chapter 2306, Texas Government Code, as amended (the “**Act**”), to issue one or more series of its revenue bonds and loan the proceeds thereof to finance residential rental housing facilities for individuals and families of low, very low and extremely low income and families of moderate income; and

**WHEREAS**, by proceedings adopted pursuant to and in accordance with the provisions of the Act, the Issuer has authorized the issuance of its Multifamily Housing Revenue Bonds (Gulfway Manor), Series 2024, in the original aggregate principal amount of \$[27,500,000] (the “**Bonds**”) pursuant to a Trust Indenture between the Issuer and the Bond Trustee dated as of the date hereof (as the same may be modified, amended or supplemented from time to time, the “**Indenture**”); and

**WHEREAS**, Grantor proposes to borrow an amount equal to the aggregate principal amount of the Bonds (the “**Bond Loan**”) from the Issuer pursuant to that certain Loan Agreement dated as of [July 1], 2024 by and among the Issuer and the Grantor (as the same may be amended, modified or supplemented from time to time, the “**Bond Loan Agreement**”); and

**WHEREAS**, Grantor has executed and delivered to the Issuer, and the Issuer has assigned to the Bond Trustee, that certain promissory note dated [CLOSING DATE], 2024 (as the same may be amended, modified or supplemented from time to time, the “**Note**”), which evidences the portion of the amount of the Bonds corresponding to the aggregate principal amount of the Bond Loan (the “**Loan Amount**”) being \$[27,500,000] and being made pursuant to the Bond Loan Agreement; and

**WHEREAS**, the proceeds of the Bond Loan will be utilized by Grantor to pay the costs of acquiring, equipping and rehabilitating a multifamily rental housing development known as Gulfway Manor Apartments (the “**Development**”); and

**WHEREAS**, the Note provides that the Bond Loan matures on the final maturity date of the Bonds, being [August 1, 2028] (the “**Maturity Date**”), upon which date all of the outstanding and unpaid principal and interest under the Note will be Due and Payable; and

**WHEREAS**, the Issuer requires that this Deed of Trust be executed and delivered as a condition to making the Bond Loan and as security for the Grantor’s obligations under the Bond Loan Agreement and the Note.

#### GRANTING CLAUSES

**NOW, THEREFORE**, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, in order to secure the payment of the Indebtedness (as hereinafter defined), together with the interest thereon, at the rates and payable at the time and in the manner specified in the Bond Mortgage Loan Documents (as hereinafter defined), and any other sums payable under the Bond Mortgage Loan Documents; and to secure the performance and observance of all the provisions of the Bond Mortgage Loan Documents, including, without limitation, the repayment to Grantee of the Bond Loan and any other sums advanced by Grantee hereunder or under any other Bond Mortgage Loan Document, Grantor hereby grants, bargains, sells, warrants, conveys, assigns, sets over and confirms to Trustee, in trust for the benefit of Grantee, with power of sale, and grants to Grantee a security interest and lien in, all of the following (all of which is hereinafter collectively referred to as the “**Mortgaged Property**”):

I. All of the real property located in Nueces County, Texas and more fully described on Exhibit A attached hereto (the “**Land**”) including all and singular, the easements, rights, privileges, tenements, hereditaments and appurtenances (including air rights) thereunto belonging or in any way appertaining thereto, and the reversion and the remainder thereof; and all of the estate, right, title, interest, claim or demand of Grantor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired and in all strips and gores therein or adjoining thereto, the air space and right to use said air space thereinabove and all rights of ingress and egress by motor vehicles to parking facilities thereon or therein;

II. All (i) buildings and other improvements and additions thereto now erected or hereafter constructed or placed upon the Land or any part thereof (the “**Improvements**”); (ii) the name or names, if any, as may now or hereafter be used for each Improvement or otherwise in connection with the Land, and the books and records and good will associated therewith, and all licenses, permits, and approvals in connection with the construction and operation of the Improvements; and (iii) refrigerators, dishwashers, air conditioners, microwave ovens, washers, dryers, exercise equipment, lawn care equipment, pool equipment and furniture, devices, apparatus, interior improvements, appurtenances, heating, electrical, mechanical, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment and systems, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, fittings, fixtures, equipment and building materials of every kind and nature whatsoever now or hereafter attached to or placed in or upon the Land or the Improvements, or any part thereof, or used or procured for use in connection with the operation of the Land or the Improvements or

any business conducted thereon (except for fixtures and personal property that are at any time the property of Space Tenants, as hereinafter defined), all of the foregoing items set forth in this clause (iii), except as aforesaid, hereinafter collectively called the “**Equipment**”;

III. All of Grantor’s right, title, and interest in and to all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture, furnishings, decorations, chattels and other personal property now or hereafter in, on or at said Land (except for trade fixtures, furniture and furnishings that are at any time the property of Space Tenants), all of the foregoing, except as aforesaid, hereinafter collectively called the “**Furnishings**”;

IV. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained, or caused to be obtained, by Grantor and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof (collectively, “**Proceeds**”) and all awards and other compensation (collectively “**Awards**”) heretofore and hereafter made to the present and all subsequent owners of the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof by any governmental or other lawful authorities for the taking by eminent domain, Condemnation or otherwise, of all or any part thereof or any easement or other right therein, including Awards for any change of grade of streets, all of which Proceeds and Awards are hereby assigned to Grantee;

V. If applicable pursuant to Section 4.1 hereof, all of the rents, issues, income, receipts, revenues, benefits and profits of the Mortgaged Property (collectively, the “**Rents**”), including all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of Grantor as landlord in and to any of the same, including, without limitation, the interest of Grantor in and to all cash, promissory notes and securities deposited thereunder and the right to receive and collect the Rents and any other sums payable thereunder, all of which are hereby assigned to Grantee;

VI. All of Grantor’s right, title, and interest in and to all rights under any easement or related agreements and all royalties and rights appertaining to the use and enjoyment of the Land, including, without limitation, alley, vault, drainage, mineral, ditch, reservoir, water, oil and gas rights, if any, together with any and all other rights, privileges and interests appurtenant thereto or used in connection with the Land or the Improvements, whether existing now or hereafter acquired;

VII. All of Grantor’s right, title, and interest in and to all construction contracts, subcontracts, architectural agreements, labor, material and payment bonds, guarantees and warranties, plans and specifications, and permits and approvals relating to the construction of the Improvements, whether now or hereafter existing;

VIII. All of Grantor’s right, title, and interest in and to all books, records and good will associated with the Land and the Improvements, all logos, trademarks and tradenames used in connection with the Land and Improvements, all management contracts now in effect or

hereafter entered into, and all extensions, renewals and replacements thereof, and all permits, licenses and approvals for the operation of the Improvements;

IX. Upon foreclosure under this Deed of Trust, all tax credits or abatement certificates under Federal, State or local law arising out of or related to the Mortgaged Property and all of the Grantor's title and interest in and to any instrument, document or agreement relating thereto, including, without limitation, any regulatory agreement relating to the leasing of individual units comprising the Mortgaged Property; and

X. All of Grantor's right, title, and interest in and to all extensions, improvements, betterments, substitutions and replacements of, and all additions and appurtenances to, the Land, the Improvements, the Equipment and the Furnishings, hereafter acquired by or released to Grantor or constructed, assembled or placed on the Land, and all conversions of the security constituted thereby immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein.

**TO HAVE AND TO HOLD** the Mortgaged Property, together with all rights, hereditaments and appurtenances in any wise appertaining or belonging thereto, unto Trustee, its substitutes or its successors and assigns, forever for the uses set forth herein, and Grantor hereby binds itself and its successors and assigns to warrant and forever defend the Mortgaged Property unto Trustee, its substitutes or successors and assigns, against the claim or claims of all Persons claiming or to claim the same or any part thereof.

## ARTICLE I

### CERTAIN DEFINITIONS

In addition to other definitions contained herein, the following terms shall have the meanings set forth below, unless the context of this Deed of Trust otherwise requires. All other capitalized terms used herein which are defined in either the Indenture or the Bond Loan Agreement, and not defined herein, shall have the respective meanings ascribed thereto in the Indenture or Bond Loan Agreement, unless otherwise expressly provided or unless the context otherwise requires.

(a) "Bond Mortgage Loan Documents" shall mean this Deed of Trust, the Note, the Bond Loan Agreement, the Regulatory Agreement and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Bond Loan, or any portion thereof.

(b) "Bridge Loan Documents" shall have the meaning ascribed to such term in the Indenture.

(c) "Condemnation" means any taking of title, of use, or of any other property interest under the exercise of the power of eminent domain, by any governmental body or by any person acting under Governmental Authority.

(d) “Default Rate” shall mean a per annum rate of interest equal to the lower of (a) 12% per annum, or (b) the Maximum Amount.

(e) “Development” shall have the meaning ascribed to such term in the Indenture and in the recitals to this Deed of Trust.

(f) “Due and Payable” shall mean (i) when used with reference to the principal of, premium or interest on the Indebtedness, or when referring to any and all other sums secured by this Deed of Trust or any other of the Bond Mortgage Loan Documents, due and payable, whether at the monthly or other date of payment or at the date of maturity specified in the Note, this Deed of Trust or other Bond Mortgage Loan Documents; or by acceleration or call for prepayment by Grantee as provided in the Note, hereunder or in the other Bond Mortgage Loan Documents, and (ii) when used with reference to Impositions, the last day upon which any such charge may be paid without penalty or interest and without becoming a lien upon the Mortgaged Property.

(g) “Environmental Laws” shall mean and include each and every federal, state or local statute, regulation or ordinance or any judicial or administrative decree, policy, guidance or decision, whether now existing or hereafter enacted, promulgated or issued, governing or relating to the protection of the environment, natural resources and human health and safety, with respect to any Hazardous Substances (as hereinafter defined), Environmentally Sensitive Areas (as hereinafter defined), drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, wells or radon.

(h) “Environmentally Sensitive Area” shall mean (i) a wetland or other “water of the United States” for purposes of the Clean Water Act or other similar area regulated under any Environmental Laws of the State, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable Environmental Laws of the State, (iii) a portion of the coastal zone for purposes of the Federal Coastal Zone Management Act, or (iv) any other area, development of which is specifically restricted under applicable Environmental Laws by reason of its physical characteristics or prior use.

(i) “Event of Default” shall mean each of the events and circumstances described as such in Section 6.1 hereof.

(j) “First Mortgage” means the mortgage on the Development securing the Lender Loan.

(k) “First Mortgage Loan Documents” means, collectively, the First Mortgage and the other documents governing, securing, or evidencing the Lender Loan.

(l) “Governmental Authority” means any federal, state, county, municipal or local government or any department, commission, board, legislature or office thereof, having or claiming jurisdiction over the Mortgaged Property.

(m) “Hazardous Substances” shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined



or identified as hazardous or toxic under any Environmental Law, including, without limitation, asbestos, asbestos-containing materials, poly-chlorinated biphenyls, urea foam formaldehyde insulation, radon and lead-based paint.

(n) “Impositions” shall mean all duties, taxes, water and sewer rents, rates and charges, assessments (including, but not limited to, all assessments for public improvement or benefit), charges for public utilities, excises, levies, licenses and permit fees and other charges, ordinary or extraordinary, whether foreseen or unforeseen, of any kind and nature, whatsoever, which prior to or during the term of this Deed of Trust will have been or may be laid, levied, assessed or imposed upon or become Due and Payable out of or in respect of, or become a lien on, the Mortgaged Property or any part thereof or appurtenances thereto, or which are levied or assessed against the rent and income received by Grantor from the Space Leases (as hereinafter defined) by virtue of any present or future law, order or ordinance of the United States of America or of any state, county or local government or of any department, office or bureau thereof or of any other Governmental Authority.

(o) “Indebtedness” shall mean and include the portion of the Loan Amount attributable to the Bond Loan together with all interest thereon, as evidenced by the Note and the Bond Loan Agreement, any other payments due to Grantee under this Deed of Trust, the Note or any other Bond Mortgage Loan Document, all costs of collection in connection with the Bond Loan, and all other sums, charges, obligations and liabilities of Grantor due or to become due at any time to Grantee under this Deed of Trust, the Note or any other Bond Mortgage Loan Document.

(p) “Land” shall mean that certain tract or parcel of land more particularly described in Exhibit A annexed hereto and incorporated herein, including all and singular, the easements, rights, privileges, tenements, hereditaments and appurtenances (including air rights) thereunto belonging or in any way appertaining thereto, and the reversion and the remainder thereof; and all of the estate, right, title, interest, claim or demand of Grantor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired and in all strips and gores therein or adjoining thereto, the air space and right to use said air space thereinabove and all rights of ingress and egress by motor vehicles to parking facilities thereon or therein.

(q) “Lender” shall have the meaning set forth in the Indenture.

(r) “Lender Loan” shall have the meaning set forth in the Indenture.

(s) “Lender Loan Documents” shall have the meaning set forth in the Indenture.

(t) “Maximum Amount” shall mean the maximum amount permitted to be charged under applicable usury laws or other applicable laws relating to the payment of interest from time to time in effect including, without limitation, Chapter 1204 of the Texas Government Code.

(u) “Net Proceeds”, when used with respect to any Condemnation awards or insurance proceeds allocable to the Development, means the gross proceeds from Condemnation

or insurance remaining after payment of all reasonable expenses (including attorneys' fees) incurred in collection of such gross proceeds.

(v) "Permitted Encumbrances" shall mean, collectively, the First Mortgage, the HUD Regulatory Agreement, the Regulatory Agreement, those liens, easements, rights of way, covenants, restrictions, encumbrances and other matters affecting title to the Mortgaged Property set forth in Schedule B of the mortgagee policy of title insurance insuring this Deed of Trust (or commitment to issue such policy in existence as of the date of this Deed of Trust) and any other liens, easements, rights of way, covenants, restrictions, encumbrances and other matters affecting title to the Mortgaged Property approved in writing by the Grantee.

(w) "Person" shall mean any natural person, firm, partnership, limited liability company, association, corporation, trust, or public body.

(x) "Regulatory Agreement" shall mean the Regulatory and Land Use Restriction Agreement, dated as of the date hereof, by and among the Issuer, the Bond Trustee and the Grantor, as amended or supplemented from time to time.

(y) "Space Lease" shall mean any lease, sublease, license, concession agreement or any other form of agreement, however denominated, granting the right to use and occupy the Mortgaged Property, or any portion thereof, and all renewals, extensions, modifications, amendments and other agreements affecting the same.

(z) "Space Tenant" shall mean the tenant or other user or occupant of part or all of the Mortgaged Property under any Space Lease.

(aa) "Spill" shall mean any release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment.

(bb) "State" shall mean the state in which the Land is located.

(cc) "Threat of Spill" shall mean a substantial likelihood of a Spill which requires action to prevent or mitigate damage to the environment which may result from such Spill.

## ARTICLE II

### PARTICULAR COVENANTS OF GRANTOR

Grantor covenants and agrees as follows:

SECTION 2.1. Payment of Indebtedness. Grantor shall duly and punctually pay to Issuer and/or to the Bond Trustee, as assignee of Issuer, as and when Due and Payable, the Indebtedness.

SECTION 2.2. Warranty of Title. Grantor warrants that (a) it is the lawful owner of fee title to the Land; (b) it has good, marketable, insurable and indefeasible fee simple title to the Land and to the remainder of the Mortgaged Property; (c) the Mortgaged Property is free and

clear of all deeds of trust, deeds to secure debt, mortgages, liens, charges and encumbrances whatsoever except for the Permitted Encumbrances; (d) except as provided in Section 4.1 hereof, Grantor has not heretofore assigned the Rents; (e) it will maintain and preserve the lien and priority of this Deed of Trust until the Indebtedness has been paid in full and all other obligations owing to Grantee by Grantor in connection with the Bond Loan have been satisfied; (f) it has good right and lawful authority to mortgage and assign the Mortgaged Property as provided in and by this Deed of Trust; and (g) except for the Permitted Encumbrances, it will warrant and defend the same against any and all claims and demands whatsoever.

SECTION 2.3. No Defaults. Grantor represents and warrants that no Event of Default or event which, with the giving of notice or passage of time, would constitute an Event of Default exists under the provisions of this Deed of Trust, the Note, the other Bond Mortgage Loan Documents or in the performance of any of the terms, covenants, conditions or warranties hereof or thereof on the part of Grantor to be performed or observed.

SECTION 2.4. To Pay Impositions. Grantor will pay or cause to be paid as and when Due and Payable all Impositions levied upon the Mortgaged Property or any part thereof and, within fifteen (15) days after the payment thereof, will deliver to Grantee receipts evidencing the payment or bonding of all such Impositions. Notwithstanding the foregoing, if by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Grantor shall have the right, provided that no Event of Default shall then exist under this Deed of Trust or any other of the Bond Mortgage Loan Documents, to exercise such option and to cause to be paid or to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments, as they fall due, and before any fine, penalty, further interest or cost may be added thereto. Notwithstanding anything to the contrary set forth in this Deed of Trust and/or the other Bond Mortgage Loan Documents, Grantor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition.

SECTION 2.5. To Maintain Priority of Lien. Grantor will maintain this Deed of Trust as a valid lien on the Mortgaged Property, and Grantor will not, directly or indirectly, create or suffer or permit to be created or to stand against the Mortgaged Property or any portion thereof, or against the Rents therefrom, and will promptly discharge, any lien or charge whatsoever other than the Permitted Encumbrances, whether prior to, upon a parity with, or junior to the lien of this Deed of Trust; provided, however, that nothing herein contained shall require Grantor to pay or cause to be paid any Imposition prior to the time the same shall become Due and Payable. Grantor will keep and maintain the Mortgaged Property, and every part thereof, free from all liens of Persons supplying labor and materials in connection with the construction, alteration, repair, improvement or replacement of the Improvements, the Equipment or the Furnishings. If any such liens shall be filed against the Mortgaged Property, or any part thereof, Grantor shall immediately release or discharge the same of record, by payment, bonding or otherwise, or otherwise provide security satisfactory to Grantee in Grantee's sole discretion, within fifteen (15) days after the filing thereof. In the event that Grantor fails to make payment of or bond over, such liens, Grantee may make payment thereof, and any amounts paid by Grantee as a result thereof, together with interest thereon at the Default Rate from the date of payment by Grantee, shall be immediately Due and Payable by Grantor to Grantee and until paid, shall be added to and become a part of the Indebtedness, and shall have the benefit of the lien hereby created as a

part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust. Grantor shall deliver to Grantee, upon request, all receipts or other satisfactory evidence of the payment of taxes, assessments, charges, claims, liens or any other item which, if unpaid, may cause any such lien to be filed against the Mortgaged Property.

SECTION 2.6. To Pay Recording Fees, Taxes and Other Charges. Grantor will pay all filing, registration or recording fees, and all costs and expenses of Grantee, including without limitation, reasonable attorneys' fees actually incurred and disbursements, title insurance premiums, search fees and survey costs, incident to or in connection with the preparation, execution, delivery or acknowledgment of this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Bond Loan and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Bond Loan, the other Bond Mortgage Loan Documents, or any instrument of further assurance.

SECTION 2.7. Maintenance of Mortgaged Property; Covenants Against Waste; Inspection by Grantee. Grantor will not commit or permit waste on the Mortgaged Property and will keep and maintain at its own expense the Improvements, the Equipment and the Furnishings in a condition and state of repair such that each of the same shall meet or surpass the requirements of any applicable Governmental Authority and customary standards in the general area set by buildings of similar type, age and function for attractiveness of appearance, cleanliness and general soundness of condition, but in any event consistent with multifamily housing projects of a similar type and purpose. Grantor shall do all such further maintenance and repair work as may be required under the Space Leases and applicable law. Grantor will neither do nor permit to be done anything to the Mortgaged Property that may impair the value thereof or which may violate any covenant, condition or restriction affecting the same, or any part thereof, or permit any change therein or in the condition or use thereof which could increase the danger of fire or other hazard arising out of the construction or operation thereof. The Improvements shall not be removed or demolished (except for tenant improvements), without the prior written consent of Grantee. The Equipment and Furnishings shall not be removed without the prior written consent of the Grantee, except where appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items removed. Subject to the terms of Article IV of this Deed of Trust, Grantee and its authorized employees and agents, may enter and inspect the Mortgaged Property at any time upon advance notice during usual business hours, and Grantor shall, within fifteen (15) business days after demand by Grantee (or immediately upon demand in case of emergency), commence such repairs, replacements, renewals or additions, or perform such items of maintenance, to the Mortgaged Property as the Grantee may, in its sole reasonable discretion, require in order to cause the Mortgaged Property to comply with the above standards, shall diligently make the same and shall complete the same as promptly as practicable.

SECTION 2.8. After-Acquired Property. All right, title and interest of Grantor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property hereafter acquired, constructed,

assembled or placed by Grantor on the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the Granting Clauses hereof, but at any time and at all times Grantor, on demand, will execute, acknowledge and deliver to Grantee any and all such further assurances, mortgages, conveyances or assignments thereof as Grantee may require in its sole discretion for the purpose of expressly and specifically subjecting the same to the liens and security interests of this Deed of Trust.

SECTION 2.9. Further Assurances. Grantor shall, at its sole cost and without expense to Grantee, on demand, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Grantee shall from time to time require in its sole discretion for better assuring, conveying, assigning, transferring, confirming and perfecting unto Grantee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound in writing to convey, mortgage or assign to Grantee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering or recording this Deed of Trust.

SECTION 2.10. Status of Grantor. Grantor shall not without the prior written consent of Grantee: (a) change its name; (b) change its state of organization through dissolution, merger, transfer of assets or otherwise; or (c) change its type of organization through conversion, reorganization or otherwise.

SECTION 2.11. Recorded Instruments. Grantor will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property. Grantor shall do or cause to be done all things required to preserve intact and unimpaired and to renew any and all rights-of-way, easements, grants, appurtenances, privileges, licenses, franchises and other interests and rights in favor of or constituting any portion of the Mortgaged Property. Other than Permitted Encumbrances, Grantor will not, without the prior written consent of the Grantee, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property other than the Extended Use Agreement described in Section 8.6 hereof. Grantor shall, however, and shall cause all Space Tenants to, comply with all lawful restrictive covenants and zoning ordinances and other public or private restrictions affecting the Mortgaged Property and other laws and ordinances of any Governmental Authority affecting the Mortgaged Property.

SECTION 2.12. Environmental Provisions. Grantor hereby represents, warrants and covenants that:

2.12.1. (a) No condition, activity or conduct exists on or in connection with the Mortgaged Property which constitutes a violation of any Environmental Laws; (b) there has been no Spill or Threat of Spill of any Hazardous Substances on, upon, into or from the Mortgaged Property nor, to Grantor's knowledge, a Spill which, through soil or groundwater

migration, could reasonably be expected to come to be located on the Mortgaged Property; (c) there are no existing or closed underground or aboveground storage tanks on the Mortgaged Property; (d) there are no existing or closed sanitary landfills, solid waste disposal sites, or hazardous waste treatment, storage or disposal facilities on or affecting the Land; (e) no written notice has been issued to Grantor by any agency, authority, or unit of government that Grantor has been identified as a potentially responsible party under any Environmental Laws; (f) no portion of the Mortgaged Property constitutes an Environmentally Sensitive Area; (g) to Grantor's knowledge, there exists no investigation, action, proceeding, or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanction, or judgment under any Environmental Laws with respect to any condition, use or operation of the Mortgaged Property; (h) there has been no claim by any party that any use, operation, or condition of the Mortgaged Property has caused any nuisance or any other liability or adverse condition on any other property; and (i) Grantor need not obtain any permit or approval for any part of the Development and need not notify any federal, state or local governmental authority having jurisdiction of the Development regarding any part of the Development pursuant to any Environmental Laws.

2.12.2. Grantor shall: (a) comply with and cause all activities at the Mortgaged Property to comply with all Environmental Laws; (b) not store or dispose of (except in compliance with all Environmental Laws pertaining thereto), nor Spill or allow the Spill of any Hazardous Substances on the Land; (c) neither directly nor indirectly transport or arrange for the transport of any Hazardous Substances (except in compliance with all Environmental Laws pertaining thereto); (d) neither install nor permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground except after obtaining written permission from the Grantee to do so and in compliance with Environmental Laws; and (e) comply with all terms and conditions of all permits, authorizations, approvals, waivers, judgments or decrees or notices from Governmental Authorities issued or sent pursuant to Environmental Laws.

2.12.3. Grantor, promptly upon the written request of Grantee from time to time (but no more frequently than once per calendar year) shall provide Grantee, at Grantor's sole cost and expense, with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content reasonably satisfactory to the Grantee.

2.12.4. In the event of any Spill or Threat of Spill affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any contiguous real estate, or if Grantor or the Mortgaged Property otherwise shall fail to comply with any of the requirements of Environmental Laws, Grantee may at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Mortgaged Property and take any and all other actions as Grantee shall reasonably deem necessary or advisable in order to remedy said Spill or the conditions constituting a Threat of Spill or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by Grantee, shall be immediately Due and Payable by Grantor to Grantee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest

in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

2.12.5. Grantor covenants and agrees to conduct representative radon sampling in the Improvements on the Land to determine whether indoor radon levels are below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that said radon sampling results reveal indoor radon levels in excess of 4.0pCi/L, Grantor covenants and agrees to implement radon mitigation techniques to reduce or prevent the build-up or migration of radon in the Improvements on the Land. In the event that radon mitigation is required to be implemented, Grantor further covenants and agrees to conduct radon sampling in the Improvements on the Land following such implementation to confirm that the radon mitigation techniques have succeeded in reducing or preventing the build-up of radon in the Improvements on the Land to below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that such radon sampling results reveal that levels of radon in the Improvements on the Land are still in excess of the above-referenced United States Environmental Protection Agency threshold, Grantor covenants and agrees to undertake any additional measures necessary to reduce radon levels in the Improvements on the Land and bring the Mortgaged Property into compliance with applicable Environmental Laws.

2.12.6. The Grantor shall comply with the Environmental Laws and regulations with respect to on-site wetlands, to the extent applicable, including, but not limited to obtaining, complying with and maintaining any wetland permits, wetland permit requirements, development restrictions, setback and/buffers, habitat protection and mitigation requirements.

2.12.7. The Grantor shall handle any subsurface contamination encountered at the Land during the course of construction or rehabilitation in accordance with a site-specific Health and Safety Plan developed in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations, and any such contamination shall be remediated and disposed of in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations.

**SECTION 2.13. Mold Coverage.** In the event that Grantor is covered by a commercial general liability insurance policy which contains an exclusion for loss or damage caused by mold, dangerous fungi, bacterial or microbial matter, contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells (collectively, "**Mold**") or a property insurance policy which contains an exclusion for loss or damage caused by Mold, in connection with another covered peril (e.g., Mold in connection with water damage caused by a storm or fire), Grantor shall demonstrate to the satisfaction of Grantee that such insurance without the aforementioned exclusions is not available at ordinary and customary insurance rates and either: (i) Grantor shall demonstrate to the satisfaction of Grantee that the potential risk for loss or damage caused by Mold, fungus, moisture, microbial contamination or pathogenic organisms at the Mortgaged Property is minimal because of precautionary measures or techniques to be utilized in the construction or rehabilitation of the Improvements, including without limitation, the use of vapor barriers or other liners to limit the growth and reproduction of Mold; or (ii) Grantor shall implement a moisture management and control program (the "**Moisture Management Program**") for the Improvements at the Mortgaged Property to prevent the occurrence of Mold, at, on or under the Mortgaged Property, which Moisture

Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Mortgaged Property for Mold, (b) removing or cleaning up any Mold in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by Grantee, and (c) in the event that the Mold identified at the Improvements at the Mortgaged Property cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Mortgaged Property, all in accordance with the procedures set forth in the United States Environmental Protection Agency's ("EPA") guide entitled "Mold Remediation in Schools and Commercial Buildings", EPA No. 402-K-01-001, dated March 2001, and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by Grantee. Grantor further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of Grantor hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Mortgaged Property shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

### ARTICLE III

#### CASUALTY AND CONDEMNATION

##### SECTION 3.1. Casualty.

3.1.1. If any of the Improvements, Equipment or Furnishings shall be damaged or destroyed, in whole or part, by fire or other casualty, Grantor shall give prompt notice thereof to Grantee. The Grantee is hereby authorized and empowered by Grantor, to settle, adjust or compromise in a commercially reasonable manner any and all claims for loss, damage or destruction under any policy of insurance.

3.1.2. Subject to the provisions of the First Mortgage Loan Documents and the Bridge Loan Documents, any Proceeds received as payment for any loss under any insurance policies required to be maintained by Grantor in accordance with this Section shall be paid over to the Bond Trustee for deposit into the appropriate fund under the Indenture. For the purposes of this Deed of Trust, "**Net Proceeds**" shall mean any Proceeds actually received by the Bond Trustee as payment for any loss, less all costs and expenses, including, without limitation, all reasonable architects', attorneys', engineers' and other consultants' and professionals' fees actually incurred and disbursements incurred by Grantee or Grantor in connection with the casualty in question. Subject to the conditions set forth in Section 3.3 hereof, Grantee shall cause such Net Proceeds either to be (a) applied to the redemption of the Bonds, (b) applied to the costs to repair, rebuild or replace the damaged Improvements, Equipment or Furnishings that were subject to the applicable casualty upon such terms and conditions as the Grantee shall determine in its sole discretion, or (c) released to Grantor upon such terms and conditions as the Grantee may determine in its sole discretion and accompanied by a Favorable Opinion of Bond Counsel to the effect that such release does not affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is not in contravention of State law.



3.1.3. In the event of the happening of any casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtainable), resulting in damage to or destruction of the Mortgaged Property or any part thereof, if Grantee elects to apply any Net Proceeds received by it in connection with such casualty towards the restoration of the Mortgaged Property (as provided in Section 3.3 hereof), Grantor shall promptly, whether or not the Net Proceeds, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

### SECTION 3.2. Condemnation.

3.2.1. Grantor shall promptly notify Grantee if Grantor shall become aware of the threat or institution of any proceeding or negotiations for the taking of the Mortgaged Property, or any part thereof, whether for permanent or temporary use and occupancy in Condemnation or by the exercise of the power of eminent domain or by agreement of interested parties in lieu of such Condemnation (all the foregoing herein called a “**taking**”); and shall keep Grantee currently advised, in detail, as to the status of such proceedings or negotiations and will promptly give to Grantee copies of all notices, pleadings, judgments, determinations and other papers received or delivered by Grantor therein. Grantee shall have the right to appear and participate therein and may be represented by counsel of its choice. Grantor will not, without the Grantee’s prior written consent, enter into any agreement for the taking of the Mortgaged Property, or any part thereof, with anyone authorized to acquire the same by eminent domain or in Condemnation.

3.2.2. In the event of any such taking, the awards payable in connection therewith are hereby assigned to Grantee and shall be paid to Bond Trustee for deposit into the appropriate fund under the Indenture. For the purposes of this Deed of Trust, “**Net Awards**” shall mean any awards actually received by Bond Trustee less all costs and expenses, including, without limitation, all reasonable architects’, attorneys’, engineers’ and other consultants’ and professionals’ fees actually incurred and disbursements incurred by Grantee or Grantor in connection with the taking in question. Subject to the conditions set forth in Section 3.3, Grantee shall cause such Net Awards either to be (a) applied to the redemption of the Bonds, (b) applied to the costs to repair, rebuild or replace the Improvements, Equipment or Furnishings that were subject to the taking, upon such terms and conditions as the Grantee shall determine in its sole discretion, or (c) released to Grantor upon such terms and conditions as the Grantee may determine in its sole reasonable discretion and accompanied by a Favorable Opinion of Bond Counsel to the effect that such release does not affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is not in contravention of State law.

3.2.3. In the event of the happening of any permanent taking, provided that Grantee elects to apply any Net Awards received by it in connection with such taking towards the restoration of the Mortgaged Property (as provided in Section 3.3 hereof), Grantor shall promptly, whether or not the Net Awards, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the portion of the Mortgaged Property not subject to the taking as nearly as possible to its value, condition and character immediately prior to such taking.

SECTION 3.3. Application of Net Proceeds and Net Awards. Notwithstanding any provision hereof to the contrary, in the event the Improvements, Equipment or Furnishings are damaged or destroyed by fire or other casualty or in the event of a temporary or partial taking in Condemnation of a portion of the Land or Improvements, then the Grantee shall make the Net Awards or Net Proceeds, as the case may be, payable in connection therewith available, at intervals and in amounts in accordance with the provisions of the Indenture and the Bond Loan Agreement, to pay for or to reimburse Grantor for costs and expenses actually incurred by Grantor in the repair and restoration of the Mortgaged Property or to be released to Grantor, provided each of the following conditions is fully satisfied:

(a) the Net Awards or Net Proceeds, as the case may be, are paid to Grantee and deposited into the appropriate fund under the Indenture;

(b) if restoration is contemplated, any plans, specifications, construction contracts, architect's agreements and all other material agreements relating to the restoration shall be approved by the Grantee in writing;

(c) if restoration is contemplated, the Net Awards or Net Proceeds, as the case may be, are in the judgment of the Grantee sufficient to complete the restoration, or, in the event of an insufficiency, Grantor deposits into the appropriate account under the Indenture cash in an amount equal to the insufficiency;

(d) no Event of Default under the Bonds, the Indenture or the Bond Mortgage Loan Documents shall have occurred and be continuing that will not be cured by the contemplated restoration;

(e) if restoration is contemplated, the Grantee determines, in its sole reasonable discretion, that the Improvements, Equipment and Furnishings are capable of being fully restored by the earlier of (i) the date which is 12 months from the occurrence of the loss or damage and (ii) the Maturity Date;

(f) if restoration is contemplated a release of lien with respect to all restoration work theretofore performed is delivered to Grantee from all contractors and materialmen;

(g) Grantee shall receive an official search or a certificate of title from a title insurance company acceptable to it showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other lien affecting the Mortgaged Property which has not been bonded or satisfied and discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed;

(h) upon completion of restoration or upon release of Net Proceeds or Net Awards, the Development will be in compliance with the Regulatory Agreement; and

(i) Grantor shall deliver to Grantee, a Favorable Opinion of Bond Counsel (as defined in the Indenture) with respect to the restoration of the Development with the Net Awards or Net Proceeds or the release of Net Awards or Net Proceeds to Grantor, as the case may be.

Upon completion of the restoration, as certified by an inspecting engineer selected by the Grantee, any excess Net Awards or Net Proceeds, as the case may be, and accrued interest thereon (if any) shall be, at the option of the Grantee, (a) disbursed to Grantor or (b) applied to the redemption of Bonds; provided, however, that any excess Net Awards or Net Proceeds shall be applied to the redemption of Bonds unless Grantor shall deliver to Grantee a Favorable Opinion of Bond Counsel (as defined in the Indenture) with respect to the alternative proposed application of such Net Proceeds or Net Awards. Notwithstanding anything to the contrary set forth in this Deed of Trust, Net Proceeds and Net Awards shall be treated as set forth in the First Mortgage Loan Documents.

#### **ARTICLE IV**

##### **ASSIGNMENT OF SPACE LEASES AND RENT**

SECTION 4.1. Assignment of Space Leases and Rents. Contemporaneously with the execution of this Deed of Trust, Grantor has assigned its interests in the Space Leases and Rents to the Lender in the First Mortgage to secure the payment of the Lender Loan. In the event of the payment of the Lender Loan and release of the First Mortgage without the release of this Deed of Trust, Grantor hereby grants, conveys, assigns, transfers and sets over to Grantee to be effective as of the date of the release of the First Mortgage, the Space Leases now or hereafter entered into by Grantor with respect to all or any part of the Mortgaged Property, and all renewals, extensions, subleases or assignments thereof and all other occupancy agreements (written or oral), by concession, license or otherwise, together with all of the Rents and proceeds arising therefrom and from the Mortgaged Property pursuant to and in accordance with the provisions of Chapter 64 of the Texas Property Code.

#### **ARTICLE V**

##### **SECURITY AGREEMENT UNDER UNIFORM COMMERCIAL CODE**

SECTION 5.1. Security Agreement. It is the intent of the parties hereto that this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State (the "UCC") with respect to so much of the Mortgaged Property as is considered or as shall be determined to be of the type in which a security interest can be created under Article 9 of the UCC, together with all replacements thereof, substitutions therefor or additions thereto (the "Collateral"), and that a security interest shall attach thereto for the benefit of Grantee to secure the Indebtedness and all other sums and charges which may become due hereunder or under the Bond Mortgage Loan Documents. Grantor hereby authorizes Grantee to file financing and continuation statements and amendments thereto with respect to the Collateral without the signature of Grantor, if same is lawful; otherwise Grantor agrees to execute such financing and continuation statements and amendments thereto as Grantee may request. The Bond Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Deed of Trust on which it is listed as a secured party, and which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings (copies of which shall be provided to the Bond Trustee by the Issuer) were made. The Grantor shall be responsible for the reasonable costs incurred by the Bond Trustee in the preparation and filing of all such continuation statements hereunder.

Notwithstanding anything to the contrary contained herein, the Bond Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, and unless the Bond Trustee shall have been notified by the Issuer or Grantor that any such initial filing or description of collateral was or has become defective, the Bond Trustee shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 5.1 and in filing any continuation statements in the same filing offices as the initial filings were made. If there shall exist an Event of Default under this Deed of Trust, Grantee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding as to both real and personal property in accordance with its rights to both real and personal property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Grantee shall elect to proceed with respect to the Collateral separately from the real property, unless a greater period shall then be mandated by the UCC, ten business (10) days' notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Grantee shall be assessed against Grantor and shall include, but shall not be limited to, reasonable attorneys' fees, disbursements and other legal expenses incurred by Grantee. Grantor agrees that it will not remove or permit to be removed from the Mortgaged Property any of the Collateral without the prior written consent of Grantee, unless appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items removed. All replacements, renewals and additions to the Collateral shall be and become immediately subject to the security interest of this Deed of Trust and the provisions of this Article. Grantor warrants and represents that all Collateral now is, and that replacements thereof, substitutions therefor or additions thereto, unless Grantee otherwise consents in writing, shall be free and clear of liens, encumbrances or security interests of others created after the date hereof other than Permitted Encumbrances.

From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Collateral which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

A. Name and Address of Debtor:

Gulfway Housing Partners, LP  
c/o Vitus Group, LLC  
2607 Second Avenue, Suite 300  
Seattle, WA 98121  
Attention: Samantha Cullen  
Telephone: 206-832-1326

B. Name and Address of Secured Party:

U.S. Bank Trust Company, National Association  
111 E Filmore Avenue  
St. Paul, MN 55107-2292  
Attention: Corporate Trust  
E-mail: martha.earley@usbank.com

Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, TX 78701  
Attn: Director of Multifamily Bonds

C. This document covers goods which are or are to become fixtures.

D. State of Debtor's Organization and Organizational Identification No.:  
State: Texas  
I.D. No.: 804592726

E. This filing is made in connection with a public finance transaction as described in Sections 9.515(b) and 9.102(a)(68) of the UCC.

SECTION 5.2. Construction Mortgage. This Deed of Trust shall constitute a "construction mortgage" within the meaning of Section 9.334(h) of the UCC to the extent that it secures an obligation incurred for the construction of improvements on the Land.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.1. Events of Default Defined. The entire amount of the Indebtedness shall become due, at the option of Grantee, subject to any prepayment premium or penalty provided for in the Bond Loan Agreement, if any, upon the happening of any of the following events (each, individually, an "Event of Default" and collectively, "Events of Default"):

6.1.1. if Grantor shall fail or neglect to comply with or otherwise perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Deed of Trust that is required to be complied with or otherwise performed, kept or observed by Grantor, and the continuation of such failure or neglect for a period of 30 days after written notice thereof shall have been given to the Grantor and the Investor Member by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected by not within the applicable period, that failure shall not constitute an Event of Default so long as the Grantor institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice; or

6.1.2. if an “Event of Default” as defined in any of the Bond Mortgage Loan Documents shall have occurred and is continuing beyond any applicable notice and cure periods.

6.1.3. Grantee hereby agrees that any cure of a default or an Event of Default hereunder or under any of the other Bond Mortgage Loan Documents made or tendered by the Equity Investor shall be deemed to be a cure by the Grantor, and shall be accepted or rejected by the Grantee on the same basis as if made or tendered by the Grantor.

SECTION 6.2. Remedies. Upon the occurrence of any Event of Default, and such Event of Default is continuing beyond any applicable notice and cure periods hereunder, Grantee may, without notice, presentment, demand or protest, notice of intent to accelerate, or notice of acceleration, all of which are hereby expressly waived by Grantor to the extent permitted by applicable law, take such action as Grantee deems advisable, to protect and enforce its rights in and to the Mortgaged Property, including, but without limiting the generality of the foregoing, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Grantee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Grantee hereunder, under the other Bond Mortgage Loan Documents, or at law or in equity:

6.2.1. declare the entire amount of the Indebtedness, together with all accrued and unpaid interest thereon, to be immediately Due and Payable, and upon such declaration such amounts shall become and be immediately Due and Payable, anything in the Note, this Deed of Trust or the other Bond Mortgage Loan Documents to the contrary notwithstanding;

6.2.2. after such proceedings as may be required by any applicable law or ordinance and subject to the provisions of Section 8.7 hereof regarding the subordination of this Deed of Trust to the First Mortgage, either in person, or by its agents or attorneys, or by a court-appointed receiver, enter into and upon all or any part of the Mortgaged Property and each and every part thereof and exclude Grantor, its agents and servants wholly therefrom; and having and holding the same, use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or the receiver; and upon every such entry, Grantee, at the expense of the Mortgaged Property, from time to time, either by purchase repairs or construction, may maintain and restore the Mortgaged Property and, likewise, may make all necessary or proper repairs, renewals and replacements and such alterations, betterments, additions and improvement thereto and thereon as it may deem advisable; and in every such case Grantee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Grantor as Grantor’s attorney-in-fact, or otherwise as it shall deem best; and Grantee shall be entitled to collect and receive all Rents and after deducting the expenses of conducting the business thereof and all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for Impositions, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Grantee and for all attorneys, counsel, agents, clerks, servants and other employees or professionals engaged or employed by it, Grantee shall apply the moneys arising as aforesaid, first to the payment of the Indebtedness, whether or not then matured; next, to the payment of any other sums required to be paid by Grantor under this Deed

of Trust; and the balance, if any, shall be turned over to Grantor or such other Person as may be lawfully entitled thereto; or

6.2.3. with or without entry, personally or by its agents or attorneys insofar as applicable:

(a) foreclose this Deed of Trust in accordance with the laws of the State and the provisions hereof, for the entire Indebtedness or for any portion of the Indebtedness or any other sums secured hereby which are then Due and Payable, subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due, and for such purposes Grantor grants to Trustee for the benefit of Grantee a continuing power of sale of the Mortgaged Property; or

(b) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, this Deed of Trust or any other Bond Mortgage Loan Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Grantee shall elect.

SECTION 6.3. Foreclosure; No Marshaling of Assets; One Tract; Appointment of Receiver.

6.3.1. Grantee may foreclose this Deed of Trust either by judicial action or by non-judicial foreclosure through the Trustee. In the case of a foreclosure sale, all of the Mortgaged Property may be sold in one parcel, notwithstanding that the proceeds of such sale exceed or may exceed the Indebtedness. Moreover, Grantee shall not be required to proceed hereunder before proceeding against any other security, shall not be required to proceed against other security before proceeding hereunder, and shall not be precluded from proceeding against any or all of any security in any order or at the same time. In the event that this Deed of Trust is foreclosed, Grantor hereby waives and releases any right to have the Mortgaged Property or any part thereof marshaled, and Grantor and Grantee have jointly agreed that the Mortgaged Property is one project and one tract for all purposes legal, economic and all other. Grantor for itself, its successors and assigns irrevocably waives any right it may have in the event of foreclosure to request that the Mortgaged Property be sold as separate tracts pursuant to any applicable law or statute.

6.3.2. Grantee, in any action to foreclose this Deed of Trust or otherwise upon the occurrence and during the continuance of an Event of Default, shall be entitled (and, to the extent permitted under the laws of the State, without notice, without regard to the adequacy of any security for the Indebtedness and without regard to the solvency of any Person liable for the payment thereof) to the appointment of a receiver of the Mortgaged Property and the Rents, if the assignment of Rents pursuant to Section 4.1 hereof is then effective.

6.3.3. Grantor agrees, to the full extent that it may lawfully do so, that in any foreclosure or other action brought by Grantee hereunder, it will not at any time insist upon or plead or in any way take advantage of any appraisalment, valuation, stay, extension, redemption

or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Deed of Trust or any right or remedies Grantee may have hereunder or by law.

6.3.4. If Grantor shall default hereunder and Grantee shall elect to accelerate the Indebtedness, Grantor, within five (5) business days after demand, will pay over to Grantee, or any receiver appointed in connection with the foreclosure of this Deed of Trust, any and all amounts then held as security deposits under all Space Leases if the assignment of Space Leases pursuant to Section 4.1 hereof is then effective.

6.3.5. Upon the acceleration of the Indebtedness or upon an Event of Default beyond any applicable notice and cure periods under the Note or Event of Default hereunder, and in addition to all other rights of Grantee provided herein or by law, Grantor shall, on demand of Grantee, surrender possession of the Mortgaged Property to Grantee; and Grantor hereby consents that Grantee may exercise any or all of the rights specified herein. Grantor hereby irrevocably appoints Grantee attorney-in-fact, which appointment shall be coupled with an interest, of Grantor for such purposes. In the event that Grantor is an occupant of the Mortgaged Property, it agrees to vacate and surrender the possession of that portion of the Mortgaged Property which it occupies to Grantee immediately upon the acceleration of the Indebtedness or any Event of Default hereunder; and if Grantor remains in possession, such possession shall be as tenant of Grantee, and Grantor shall pay monthly, in advance, to Grantee or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Grantor, and upon the failure of Grantor to make any such payment, Grantor may be evicted by summary proceedings or otherwise. In case of the appointment of a receiver of the Rents, the covenants of this subsection may be enforced by such receiver.

6.3.6. GRANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY.

SECTION 6.4. Remedies Cumulative; No Waiver; Etc.

6.4.1. No remedy herein conferred upon or reserved to Grantee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Grantee to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Deed of Trust to Grantee may be exercised from time to time as often as may be deemed expedient by Grantee. Nothing in this Deed of Trust, in the Note or in any other Bond Mortgage Loan Document shall affect the obligation of Grantor to perform its obligations under the Bond Mortgage Loan Documents, including its obligation to pay the principal of and interest on the Note in the manner and at the time and place therein expressed.

6.4.2. A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof, of the Note or of any other Bond Mortgage Loan Document shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and



other provisions of this Deed of Trust, of the Note and of the other Bond Mortgage Loan Documents shall survive and continue to remain in full force and effect; and no waiver shall be effective unless in writing, dated and signed by Grantee.

6.4.3. Grantor hereby waives and renounces all homestead and similar exemption rights with respect to the Mortgaged Property provided for by the Constitution and the laws of the United States and the State as against the collection of the Indebtedness, or any part thereof, or the Bond Mortgage Loan Documents; and Grantor agrees that where, by the terms of this Deed of Trust or the Note and the other Bond Mortgage Loan Documents secured hereby, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration and is of the essence of the whole agreement between Grantor and Grantee.

SECTION 6.5. No Merger. It is the intention of the parties hereto that if Grantee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, then and until the Indebtedness has been paid in full, the interest of Grantee hereunder and the lien of this Deed of Trust shall not merge or become merged in or with the estate and interest of Grantee as the holder and owner of title to all or any portion of the Mortgaged Property and that, until such payment, the estate of Grantee in the Mortgaged Property and the lien of this Deed of Trust and the interest of Grantee hereunder shall continue in full force and effect to the same extent as if Grantee had not acquired title to all or any portion of the Mortgaged Property. If, however, Grantee shall consent in writing to such merger or such merger shall nevertheless occur without its consent, then this Deed of Trust shall attach to and cover and be a lien upon the fee title or any other estate, title or interest in the premises and the same shall be considered as granted, released, assigned, transferred, pledged, and set over to Grantee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, set over and spread.

## ARTICLE VII

### PROVISIONS OF GENERAL APPLICATION

SECTION 7.1. Modifications. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing, dated and signed by the party against whom such change, amendment, modification, cancellation or discharge is sought to be enforced.

SECTION 7.2. Notices. Except for notices of foreclosure that shall be sent as required by law, all notices, demands, requests, consents, approvals, certificates or other communications hereunder (hereinafter collectively called the “**Notices**”) shall be sufficiently given if given in accordance with the provisions of Section 9.02 of the Bond Loan Agreement.

SECTION 7.3. Grantee’s Rights to Perform Grantor’s Covenants. If Grantor shall fail to pay or cause payment to be made to Grantee in accordance with the terms of this Deed of Trust, or to perform or observe any other term, covenant, condition or obligation required to be performed or observed by Grantor under this Deed of Trust, the Note or any other Bond Mortgage Loan Document, and an Event of Default then exists, without limiting any other

provision of this Deed of Trust, and without waiving or releasing Grantor from any obligation or default hereunder, without notice to Grantor, Grantee (or any receiver of the Mortgaged Property) shall have the right, but not the obligation, to make any such payment, or to perform any other act or take any appropriate action, including, without limitation, entry on the Mortgaged Property and performance of work thereat, as it, in its sole discretion, may deem necessary to cause such other term, covenant, condition or obligation to be performed or observed on behalf of Grantor or to protect the security of this Deed of Trust. All monies expended by Grantee in exercising its rights under this Section (including, but not limited to, legal expenses and disbursements), together with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Grantor to Grantee forthwith upon demand by Grantee, secured by this Deed of Trust and added to and deemed part of the Indebtedness with the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

If Grantor fails to maintain any insurance which is required by any of the Bond Mortgage Loan Documents, Grantee may obtain the same, but must secure the insurance only in its own name and may insure only its interest in the Mortgaged Property, and in connection with Grantee securing any such insurance, the following notice is given and delivered pursuant to §307.052 of the Texas Finance Code:

**NOTICE:**

**(A) GRANTOR IS REQUIRED TO: (i) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT EQUAL TO GRANTOR'S INDEBTEDNESS TO GRANTEE; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME THE GRANTEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS, SUBJECT TO THE FIRST MORTGAGE;**

**(B) GRANTOR MUST, IF REQUIRED BY GRANTEE, DELIVER TO GRANTEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF THE PREMIUMS; AND**

**(C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (A) OR (B) ABOVE, GRANTEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.**

SECTION 7.4. Additional Sums Payable by Grantor. All sums which, by the terms of this Deed of Trust or the Note or the other Bond Mortgage Loan Documents secured hereby, or by the instruments executed and delivered by Grantor to Grantee as additional security for this Deed of Trust, the Note and the other Bond Mortgage Loan Documents, are payable by Grantor to Grantee shall, together with the interest thereon provided for herein or in the Note or the other Bond Mortgage Loan Documents, be secured by this Deed of Trust and added to and deemed part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof

prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust, whether or not the provision which obligates Grantor to make any such payment to Grantee specifically so states.

SECTION 7.5. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of this Deed of Trust or the construction of any provision hereof.

SECTION 7.6. Successors and Assigns. The covenants and agreements contained in this Deed of Trust shall run with the land and bind Grantor, the heirs, executors, administrators, principals, legal representatives, successors and assigns of Grantor and each Person constituting Grantor and all subsequent owners, encumbrancers and Space Tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Grantee, its successors and assigns and all subsequent beneficial owners of this Deed of Trust.

SECTION 7.7. Gender and Number. Wherever the context of this Deed of Trust so requires, the neuter gender includes the masculine or feminine gender and the singular number includes the plural.

SECTION 7.8. Severability. In case any one or more of the provisions contained in this instrument shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been included.

SECTION 7.9. Subrogation. Should the proceeds of the Bond Loan be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Grantee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same.

SECTION 7.10. Incorporation of the Bond Mortgage Loan Documents. This Deed of Trust and the Note secured hereby have been executed and delivered to secure monies advanced or to be advanced to Grantor to be used in accordance with the Bond Mortgage Loan Documents, the provisions of which, including, but not limited to, the usury saving provisions in the Note and the Bond Loan Agreement, as the same may be amended, modified or supplemented from time to time, are incorporated herein by reference with the same force and effect as if herein fully set forth.

SECTION 7.11. Controlling Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

## ARTICLE VIII

### SPECIAL PROVISIONS

SECTION 8.1. Foreclosure—Power of Sale. Grantee may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

8.1.1. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Grantee, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Chapter 51 of the Texas Property Code, as amended, or, if and to the extent the statutes within said Chapter 51 are not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under powers of sale conferred by deeds of trust.

8.1.2. Subject to any applicable requirements at the time of sale governing sales of Texas real property under the powers of sale conferred by deeds of trust, at any time during the bidding, the Trustee may require a bidding party (A) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "**Questioned Bidder**") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may determine that a credit bid is in the best interest of Grantor and Grantee, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; provided, however, (i) the Trustee shall have no obligation to accept any bid except an all cash bid and (ii) the Trustee shall be required to accept the highest bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced provided that it is recommenced within the time frame set forth in the notice of sale given pursuant to Section 51.002 of the Texas Property Code, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

8.1.3. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if an Event of Default shall have occurred and be continuing hereunder, Grantee may at once or at any time thereafter while an Event of Default is continuing, without declaring the entire Indebtedness to be Due and Payable, orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without acceleration of the unmatured balance of the Indebtedness may be made hereunder whenever an Event of Default shall have occurred and be continuing hereunder, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

8.1.4. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Grantee, sell not only the Land and the Improvements, but also the Equipment and Furnishings and other interests constituting a part of the Mortgaged Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary to have present or to exhibit at any sale any of the Mortgaged Property.

8.1.5. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Mortgaged Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Grantee, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Grantee or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

8.1.6. The following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than twelve

(12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax proration, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (ii) and/or (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years' experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

SECTION 8.2. Non-Recourse. The monetary obligations of the Grantor under this Deed of Trust shall be non-recourse to the Grantor and its partners, members, shareholders, directors, officers, employees or agents to the extent provided in Section 9.03 of the Bond Loan Agreement.

SECTION 8.3. Concerning the Trustee.

8.3.1. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument signed by Grantee and unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom and if such request is made and such security and indemnity is tendered, the Trustee shall act in accordance with Grantee's request. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Bond Mortgage Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Grantee.

8.3.2. With the approval of Grantee, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Grantee) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Bond Mortgage Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys in fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney in fact, if selected with reasonable care and approved by the Grantee, or for any error of judgment or act done by Trustee in good faith and in accordance with the terms hereof, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith or failure to act in accordance with the terms hereof, and (iv) any

and all other lawful action as Grantee may instruct Trustee to take to protect or enforce Grantee's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, out-of-pocket expenses reasonably incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

8.3.3. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

8.3.4. Trustee may resign by the giving of notice of such resignation in writing or verbally to Grantee. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Grantee shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Grantee shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Grantee, and if such Grantee be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

8.3.5. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

8.3.6. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Grantee or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

8.3.7. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Grantee pursuant to the Bond Mortgage Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Grantee shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Grantee.

**SECTION 8.4. Indemnity. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS GRANTEE AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST AND DOES HEREBY RELEASE GRANTEE AND TRUSTEE FROM ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF (I) IN THE CASE OF THE ISSUER, NEGLIGENCE OR GROSS NEGLIGENCE AND (II) IN THE CASE OF THE BOND TRUSTEE AND TRUSTEE, NEGLIGENCE (BUT, IN EITHER CASE, NOT THE WILLFUL MISCONDUCT, FRAUD OR BAD FAITH OF SUCH PARTY SO INDEMNIFIED), WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:**

(i) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER BOND MORTGAGE LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR GRANTEE THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR GRANTEE, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT;

(ii) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF GRANTOR IF



GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(iii) ANY ACTION TAKEN OR NOT TAKEN BY GRANTEE OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER BOND MORTGAGE LOAN DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE BOND MORTGAGE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER BOND MORTGAGE LOAN DOCUMENTS;

(iv) ANY ACTION BROUGHT BY GRANTEE OR TRUSTEE AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER BOND MORTGAGE LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT; AND

(v) ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE ON, IN, UNDER OR ABOUT THE MORTGAGED PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF, INCLUDING WITHOUT LIMITATION (A) ALL FORESEEABLE CONSEQUENTIAL DAMAGES OF ANY SUCH USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE, AND (B) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE MORTGAGED PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS.

**GRANTEE AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER BOND MORTGAGE LOAN DOCUMENTS, AND TO ADVISE AND DEFEND GRANTEE AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE GRANTEE AND/OR TRUSTEE FOR THEIR RESPECTIVE REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL**

**OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY GRANTEE AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE MORTGAGED PROPERTY, THE EXERCISE BY GRANTEE OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE OTHER BOND MORTGAGE LOAN DOCUMENTS, AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.**

SECTION 8.5. Purpose of Bond Loan. This Deed of Trust is given pursuant to the Bond Mortgage Loan Documents and secures Grantor's obligations to pay the Indebtedness as described herein and as advanced under the Bond Mortgage Loan Documents, to pay the costs of acquiring, renovating, improving and equipping the Development, among other purposes set forth in the Bond Mortgage Loan Documents.

SECTION 8.6. Extended Low-Income Housing Commitment. The Grantor and Grantee agree that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure or comparable conversion of the Bond Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The Grantor acknowledges and agrees that any default, Event of Default, or breach (however such terms may be defined) under the Extended Use Agreement that continues after the expiration of all notice, grace, and cure periods, or such longer time provided by the holder of the Extended Use Agreement, shall be an Event of Default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees, incurred by the Grantee as a result of an Event of Default by the Grantor and any amounts paid to cure any default under the Extended Use Agreement, shall be an obligation of the Grantor and become a part of the Indebtedness secured by this Deed of Trust.

SECTION 8.7. Subordination. The liens and security interests hereby granted and conveyed by Grantor to Grantee against the Mortgaged Property are subordinate to the First Mortgage and shall remain subordinate to the First Mortgage regardless of the frequency or manner of renewal, extension, change or alteration of the First Mortgage or the Lender Loan secured by the First Mortgage. By its acceptance of this Deed of Trust, the Grantee agrees to the subordination of this Deed of Trust to the First Mortgage and to the foregoing provisions and to the provisions of that certain Subordination Agreement dated as of [July 1], 2024, by and among the Lender, the Grantor, and the Issuer, as subordinate lender, and incorporated herein for all purposes.

SECTION 8.8. Entire Agreement. THIS INSTRUMENT, THE NOTE AND THE OTHER BOND MORTGAGE LOAN DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS INSTRUMENT, THE NOTE AND THE OTHER BOND MORTGAGE LOAN DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Grantor has duly executed this Deed of Trust as of the day and year first above written.

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: sole Member and Manager

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

Stephen R. Whyte, President

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2024 personally appeared Stephen R. Whyte, President of Vitus Development III, LLC, a Delaware limited liability company, sole Member and Manager of Gulfway Housing Management, LLC, a Texas limited liability company, General Partner of Gulfway Housing Partners, LP, a Texas limited partnership, on behalf of said entities.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission expires: \_\_\_\_\_

Notary Seal:

## EXHIBIT A

### LEGAL DESCRIPTION

A tract of land lying in and being a portion of LOT THIRTY (30), BLOCK TWO (2), in GULFWAY - AIRLINE PARK, a subdivision in Corpus Christi, Nueces County, Texas, according to the map or plat Volume 37, Page(s) 27 of the Map Records of Nueces County, Texas; said tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a found 3/4" I.P. found for the most Southerly Corner of said Lot 30, Block 2;

THENCE North 61° 02' 30" West, along the Southerly line of said Lot 30, Block 2, a distance of 625.00 feet to a found 3/4" I.P.;

THENCE North 29° 03' 30" East, a distance of 665.14 feet to a found Cut "X," being a point on the Northerly line of said Lot 30, Block 2;

THENCE South 61° 01' 30" East, along said Northerly line, a distance of 625.00 feet to a found SWB Brass Cap at a point being the most Easterly Corner of said Lot 30, Block 2;

THENCE South 29° 03' 30" West, along the Easterly line of said Lot 30, Block 2, a distance of 664.94 feet to the Point of Beginning; containing an area of 415,655 square feet or 9.5421 acres, more or less.

## ASSIGNMENT OF DEED OF TRUST DOCUMENTS

This Assignment of Deed of Trust Documents (“Assignment”) is dated as of [July 1], 2024 from the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (the “Assignor”), to U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee (the “Assignee”) under the Trust Indenture (the “Indenture”) dated as of [July 1], 2024, between the Assignor as Issuer and the Assignee as Trustee.

### RECITALS

Gulfway Housing Partners, LP, a Texas limited partnership (the “Owner”), as Borrower, has:

(i) entered into with the Assignor a Loan Agreement dated as of [July 1], 2024 (said Loan Agreement with all further supplements and amendments thereto is herein referred to as the “Loan Agreement”), evidencing indebtedness in the aggregate principal amount of \$[27,500,000] (the “Loan”);

(ii) executed and delivered to the Assignor the Promissory Note dated [July 1], 2024 (said Note together with all further supplements and amendments thereto is herein referred to as the “Note”) in the principal amount of \$[27,500,000] and made to the order of the Assignor as Payee, further evidencing the Loan; and

(iii) executed and delivered to the Assignor the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing dated to be effective as of the Closing Date (the “Mortgage”) made to a mortgage trustee for the benefit of the Assignor and the Assignee, securing the Note, and to be recorded in the Deed Records of Nueces County, Texas, and relating to the real estate described in **Exhibit A** hereto.

The documents identified in (i), (ii) and (iii) above, together with all financing and continuation statements to perfect the liens and security interests granted thereby, are collectively referred to herein as the “Deed of Trust Documents.”

The Assignor desires to assign and transfer to the Assignee all its right, title and interest in and to the Deed of Trust Documents, excluding the Reserved Rights, and the Assignee desires to acquire Assignor’s right, title and interest as aforesaid under the Deed of Trust Documents in accordance with the terms hereof. The Assignee is joining in the execution of this Assignment in order to evidence its acceptance hereof.

The Owner is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the Deed of Trust Documents shall be effective to secure the obligations of the Owner to the Assignee as more fully set forth therein and herein.

### AGREEMENT

For and in consideration of the premises, the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. **Definitions.** All words and phrases defined in the Indenture have the same meanings in this Assignment, which definitions are incorporated herein by reference, unless a different definition is set forth in this Assignment.

Section 2. Assignment. The Assignor sells, assigns and sets over and transfers to the Assignee all the right, title and interest of the Assignor in, to and under the Deed of Trust Documents, excluding any Reserved Rights, and Assignee accepts such assignment and assumes Assignor's obligations under the Deed of Trust Documents. This Assignment is made and shall be without recourse, warranty or representation of the Assignor.

Section 3. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument.

It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of Texas, without reference to the conflicts of laws principles of the State of Texas.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Deed of Trust Documents as of the date first above written.

**ASSIGNOR:**

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

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

Name: James B. "Beau" Eccles

Title: Secretary to the Board

Address: P.O. Box 13941  
Austin, Texas 78711-3941

Attention: Director of Multifamily Bonds

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by James B. "Beau" Eccles, Secretary to the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of said agency.

\_\_\_\_\_  
Notary Public's Signature

(PERSONALIZED SEAL)



**ASSIGNEE:**

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

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

Address: \_\_\_\_\_  
Attention: \_\_\_\_\_

**ACKNOWLEDGMENT**

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by \_\_\_\_\_, a \_\_\_\_\_ of U.S. Bank Trust Company, National Association, a national  
banking association, on behalf of said entity.

\_\_\_\_\_  
Notary Public’s Signature

(PERSONALIZED SEAL)

[Signature Page for Assignment of Deed of Trust Documents]

The undersigned, being the Owner referred to in the foregoing Assignment of Deed of Trust Documents, hereby acknowledges receipt and acceptance thereof and consents and agrees to the assignment made therein and to the terms and provisions thereof.

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: sole Member and Manager

By: \_\_\_\_\_  
  
Stephen R. Whyte, President

**ACKNOWLEDGMENT**

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2024 personally appeared Stephen R. Whyte, President of Vitus Development III, LLC, a Delaware limited liability company, sole Member and Manager of Gulfway Housing Management, LLC, a Texas limited liability company, General Partner of Gulfway Housing Partners, LP, a Texas limited partnership, on behalf of said entities.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission expires: \_\_\_\_\_

(Personalized Seal)

**EXHIBIT A**

**LEGAL DESCRIPTION**

A tract of land lying in and being a portion of LOT THIRTY (30), BLOCK TWO (2), in GULFWAY - AIRLINE PARK, a subdivision in Corpus Christi, Nueces County, Texas, according to the map or plat Volume 37, Page(s) 27 of the Map Records of Nueces County, Texas; said tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a found 3/4" I.P. found for the most Southerly Corner of said Lot 30, Block 2;

THENCE North 61° 02' 30" West, along the Southerly line of said Lot 30, Block 2, a distance of 625.00 feet to a found 3/4" I.P.;

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THENCE South 61° 01' 30" East, along said Northerly line, a distance of 625.00 feet to a found SWB Brass Cap at a point being the most Easterly Corner of said Lot 30, Block 2;

THENCE South 29° 03' 30" West, along the Easterly line of said Lot 30, Block 2, a distance of 664.94 feet to the Point of Beginning; containing an area of 415,655 square feet or 9.5421 acres, more or less.

## **BOND PURCHASE AGREEMENT**

**[\$27,500,000]**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024**

July \_\_, 2024

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711

Gulfway Housing Partners, LP  
c/o Vitus Group, LLC  
1700 Seventh Avenue, Suite 2000  
Seattle, Washington 98101

Ladies and Gentlemen:

Colliers Securities LLC (the “Underwriter”), on its own behalf and not as your fiduciary or agent for you, and in its capacity as underwriter of the Bonds (as hereinafter defined), offers to enter into the following agreement (the “Bond Purchase Agreement”) with the Texas Department of Housing and Community Affairs (the “Issuer”) and Gulfway Housing Partners, LP, a Texas limited partnership (the “Borrower”), which, upon acceptance of this offer, will be binding upon the Issuer, the Borrower and the Underwriter. This offer is made subject to the Issuer’s and the Borrower’s acceptance on or before 10:00 a.m., Central time, today; if this offer is not timely accepted, it will thereafter be subject to withdrawal by the Underwriter upon written notice delivered to the Issuer and the Borrower at any time prior to the acceptance hereof by the Issuer and the Borrower. If and when accepted by the Issuer and the Borrower in writing, this Bond Purchase Agreement shall constitute the agreement of the Underwriter to purchase the Bonds on the terms and subject to the conditions herein set forth.

The above-captioned bonds are referred to herein as the “Bonds.” Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture (as such term is hereinafter defined) or the Bond Loan Agreement. The Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, that certain Subordination Agreement, dated as of July [\_\_], 2024 (the “Subordination Agreement”), among the Issuer, the Borrower and the Lender (as hereinafter defined) and this Bond Purchase Agreement, to the extent related to the Issuer, are hereinafter collectively referred to as the “Issuer Documents.” The Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Note, the Bond Mortgage, the Funding Agreement, the Subordination Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and this Bond Purchase Agreement, to the extent related to the Borrower, are hereinafter collectively referred to as the “Borrower Documents.” The Indenture, the Tax Exemption Agreement, the Continuing Disclosure Agreement and the Regulatory Agreement, to the extent related to the Trustee, are hereinafter collectively referred to as the “Trustee Documents.”

### **Section 1. Purchase and Sale of the Bonds.**

Subject to the terms and conditions and in reliance on the representations and warranties herein set forth, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell

to the Underwriter on the Closing Date (as such term is hereinafter defined), all (but not less than all) of the Bonds for a purchase price of [100]% of the principal amount of the Bonds. Inasmuch as this purchase and sale represents a negotiated transaction, the Issuer and Borrower understand, and hereby confirm, that the Underwriter is not acting as a fiduciary of the Issuer or the Borrower, but rather is acting solely in its capacity as Underwriter. The parties acknowledge that the structure, terms and timing of the transaction have been determined by the Underwriter and the Borrower and presented to the Issuer for approval.

The Bonds will be subject to mandatory tender on August 1, 2026 (the “Initial Mandatory Tender Date”), will mature on August 1, 2028 and bear interest at the rate of [\_. ]% per annum from the Closing Date to the Initial Mandatory Tender Date. The Borrower agrees to pay the Underwriter \$ \_\_\_\_\_ (which does not include Underwriter’s Counsel fee) in connection with the purchase of the Bonds (the “Underwriting Fee”), plus an additional \$[5,000] to reimburse the Underwriter for certain fees and expenses, in addition to the other expenses stipulated in Section 8 herein (together with the Underwriting Fee, the “Fees”). The Fees are payable on the Closing Date. Payment of the Fees is solely the obligation of the Borrower, and the Issuer shall have no liability with respect thereto.

The Bonds shall be as described in, and shall be issued pursuant to, a Trust Indenture, dated as of July 1, 2024 (the “Indenture”), between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”). The Bonds shall be issued pursuant to a resolution adopted by the Issuer on [June 13, 2024] (the “Resolution”) and the provisions of Chapter 2306, Texas Government Code (the “Government Code”), as amended (the “Act”), and Chapter 1371, Government Code, as amended.

The proceeds of the Bonds will be used by the Issuer to provide funding for a loan (the “Bond Loan”) to the Borrower. The Bond Loan will be evidenced by a Promissory Note (the “Note”). The Issuer and the Borrower will enter into a Loan Agreement (the “Bond Loan Agreement”) and the Issuer, the Borrower, and the Trustee will enter into a Regulatory and Land Use Restriction Agreement (the “Regulatory Agreement”) and a Tax Exemption Certificate and Agreement (the “Tax Exemption Agreement”), in each case regarding the operation of the Project. The Bonds will be secured by and solely payable from the Trust Estate established under the Indenture. The disbursement of any Bond proceeds pursuant to the Indenture and the Bond Loan Agreement will be conditioned upon, among other things, the prior receipt by the Trustee and deposit in the Collateral Fund of an equal amount of funds by (i) Merchants Capital Corp., an Indiana banking corporation (the “Lender”) in accordance with the Indenture and pursuant to a Funding Agreement, dated as of July 1, 2024, between the Lender and the Borrower, and acknowledged by the Issuer and the Trustee (the “Funding Agreement”) and (ii) Bridgewater Bank (in such capacity, the “Bridge Lender”) of an equity bridge loan in accordance with the Indenture (the “Bridge Loan”).

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THE INDENTURE AND IN THE BOND LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS (THE “STATE”) OR

ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

It shall be a condition (a) to the obligations of the Issuer to sell and deliver the Bonds to the Underwriter, and (b) to the obligations of the Underwriter with respect to the Bonds, to purchase and accept delivery of and to pay for the Bonds, that the entire aggregate principal amount of the Bonds to be sold and delivered by the Issuer in accordance with this Section 1 shall be sold and delivered simultaneously by the Issuer and be purchased, accepted and paid for simultaneously by the Underwriter.

The Borrower and the Issuer acknowledge that the Underwriter, without regard to priority, may allocate the Bonds between customer orders and orders that could be considered to be from “related accounts” for purposes of MSRB Rule G-11. The Issuer and the Borrower hereby agree to the Underwriter’s allocation of the Bonds to the orders that the Underwriter received during the order period for the Bonds, regardless of priority between customer accounts and those accounts that could be considered “related accounts.”

The Project will utilize a mortgage loan (the “Lender Loan”) insured by the Federal Housing Administration (“FHA”) under Section 221(d)(4) of the National Housing Act of 1934, as amended, and applicable regulations promulgated thereunder. In connection with the Lender Loan, the Borrower will execute a Note (Multistate) (the “Lender Borrower Note”). The Borrower’s repayment obligations under the Lender Borrower Note will be secured by a first-lien priority Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (Texas) (the “Lender Mortgage”) on the Project. The Borrower will also execute a Regulatory Agreement for Multifamily Projects required by FHA (the “HUD Regulatory Agreement”) with respect to the Project in order to provide for, among other things, a reserve fund for replacements as well as escrows for taxes, insurance and mortgage insurance premiums, which will be held by the Lender. In the event of conflict between the provisions of the Lender Borrower Note, the Lender Mortgage, the HUD Regulatory Agreement and certain other documents required by FHA or the Lender (collectively, the “Lender Loan Documents”) and the Indenture, the Bond Loan Agreement, the Note, the Bond Mortgage, or the Regulatory Agreement, the Lender Loan Documents will control. Neither the owners of the Bonds nor the Trustee will have rights under the Lender Loan Documents. The Borrower also expects to obtain a Bridge Loan from the Bridge Lender in order to bridge a portion of the Tax Credit equity contributions.

## **Section 2. Official Statement.**

(a) Prior to the date hereof, the Borrower and the Issuer shall have provided to the Underwriter the Preliminary Official Statement related to the Bonds (the “Preliminary Official Statement”), that each of the Borrower and the Issuer hereby deem final as of its date, except for certain omissions in connection with the pricing of the Bonds as permitted by Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”). The Underwriter has received such Preliminary Official Statement prior to the execution of this Bond Purchase Agreement for the purpose of marketing and pricing the Bonds.

(b) With its acceptance hereof, the Issuer will deliver, at the Borrower's expense, to the Underwriter on the earlier of the Closing Date or the date which is seven (7) business days after the date hereof (or within such shorter period as may be requested by the Underwriter in order to accompany any confirmation that requests payment from any customer to comply with paragraph (b)(4) of the Rule, Rule G-32 and all other applicable rules of the Municipal Securities Rulemaking Board), copies of the final Official Statement (the "Official Statement") in an amount mutually agreed upon, dated the date hereof, together with all supplements and amendments thereto, as shall have been accepted by the Underwriter, signed on behalf of the Borrower.

The Issuer hereby ratifies and consents to the use of the Official Statement by the Underwriter in conjunction with the public offering and pricing of the Bonds.

(c) The Borrower and the Issuer agree with the Underwriter that if between the date of this Bond Purchase Agreement and the date which is the earlier of (i) 90 days from the "end of the underwriting period," as determined in subparagraph (d) below, or (ii) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than 25 days following the end of the underwriting period, as to the Issuer, any event shall occur which would or might cause the information supplied by or concerning the Issuer, or as to the Borrower, any event shall occur which would or might cause the information supplied by or concerning the Borrower contained in the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Issuer or the Borrower, as applicable, shall notify the Underwriter thereof, and if in the reasonable opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer and the Borrower shall cooperate with the Underwriter in supplementing or amending the Official Statement, the printing of which will be at the Borrower's expense, in such form and manner and at such time or times as may be reasonably called for by the Underwriter.

(d) Unless otherwise notified in writing by the Underwriter on or prior to the Closing Date, the Issuer and the Borrower can assume that the "end of the underwriting period" for the Bonds for all purposes of the Rule is the Closing Date. In the event such notice is given in writing by the Underwriter, the Underwriter agrees to notify the Issuer and the Borrower in writing following the occurrence of the "end of the underwriting period" (as defined in the Rule) for the Bonds identified in such notice. The "end of the underwriting period" as used herein shall mean the Closing Date or such later date as to which notice is given by the Underwriter in accordance with the preceding sentence.

(e) On or prior to the Closing Date, the Underwriter shall file, or cause to be filed, the Official Statement with the Municipal Securities Rulemaking Board ("MSRB") through Electronic Municipal Market Access ("EMMA").

(f) In order to assist the Underwriter in complying with the Rule, the Borrower will undertake, pursuant to a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") to provide annual financial information and notices of the occurrence of specified events. The form of the Continuing Disclosure Agreement is attached to the Official Statement.

### **Section 3. Representations, Warranties and Covenants of the Issuer.**

The Issuer represents and warrants as of the date hereof to the Underwriter and the Borrower as follows:

(a) The Issuer is a public and official agency of the State, and has full legal right, power and authority (i) to enter into the Issuer Documents, (ii) to adopt the Resolution, (iii) to issue, sell and deliver the Bonds as provided herein and in the Indenture, (iv) to authorize the Trustee under the Indenture to use the proceeds of the Bonds to make the Bond Loan to provide for the acquisition, rehabilitation and equipping of the Project, and (v) to carry out the transactions on its part contemplated by the Issuer Documents, as they may be amended or supplemented from time to time by the Issuer.

(b) The information in the Official Statement under the headings “THE ISSUER” and “NO LITIGATION – The Issuer” (insofar as the information under such captions applies to the Issuer) (together, the “Issuer Information”) was, on the date thereof, and is, on the date hereof, true and correct and did not, on the date thereof, and does not, on the date hereof, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(c) By adopting the Resolution, the Issuer has duly authorized and approved the delivery and use of the Official Statement (but by such authorization and approval, the Issuer makes no representations as to the accuracy or sufficiency of its contents, except as provided herein), has duly authorized and approved the execution and delivery of and the performance by the Issuer of the obligations on its part contained in the Issuer Documents, has duly authorized and approved the issuance, execution and delivery of, and the performance by the Issuer of its obligations under, the Bonds and has duly authorized and approved the consummation by it of all other transactions on its part contemplated by the Issuer Documents. The Resolution has been duly adopted by the Issuer, has not been amended, modified or repealed and is in full force and effect on the date hereof.

(d) The Issuer is not in breach of or default under any applicable law or administrative regulation of the State or of the United States, or any applicable judgment or decree or any loan agreement, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject which would impair in any material respect the performance of its obligations under the Issuer Documents.

(e) The execution and delivery by the Issuer of the Bonds and the Issuer Documents, compliance with the provisions of each thereof and the consummation of the transactions contemplated thereby will not materially conflict with or constitute a material breach of or default under any law, administrative regulation, judgment, decree, loan agreement, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject; provided, however, that the Issuer makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Lender Borrower Note under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended.

(f) All approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to the performance by the Issuer of its obligations under the Issuer Documents have been obtained or will be obtained on or before the Closing Date; provided, however, that the Issuer makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Lender Borrower Note under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended.



(g) There is no action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, pending, or to the actual knowledge of the Issuer threatened in writing, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues or assets of the Issuer pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (i) the use of the Official Statement or the use of the proceeds of the Bonds to make the Bond Loan, (ii) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds or any of the Issuer Documents, (iii) the tax-exempt status of the interest on the Bonds or the accuracy or completeness of the Official Statement, (iv) the execution and delivery of the Issuer Documents or the Bonds, or (v) the power of the Issuer to carry out the transactions contemplated by the Bonds, the Official Statement or any of the Issuer Documents.

(h) The Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriter as provided herein, will be validly issued and outstanding special, limited obligations of the Issuer, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity, and entitled to the benefits of the Indenture.

(i) The Issuer Documents will constitute valid, legal and binding limited obligations of the Issuer, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity.

(j) Any certificate signed by any official of the Issuer and delivered to the Underwriter shall be deemed to be a representation and warranty by the Issuer to the Underwriter as to the statements made therein.

(k) To the best of its knowledge, neither the Issuer nor anyone acting with its authorization on its behalf (other than the Underwriter) has, directly or indirectly, offered for sale or solicited any offer to acquire the Bonds or any security the offering of which would be deemed for purposes of the Securities Act of 1933, as amended, to be part of the offering of the Bonds contemplated hereby.

(l) The Bonds are special, limited obligations of the Issuer payable solely from the Trust Estate established under the Indenture and from no other revenues or assets of the Issuer. The Bonds do not constitute an indebtedness or obligation of the State, and neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal of or interest on the Bonds. The Issuer has no taxing power which is available to pay the Bonds.

The Issuer covenants with the Underwriter as follows:

(m) The Issuer is and will be at the Closing Date duly organized and validly existing as a public and official agency duly organized and existing under the constitution and laws of the State with the power and authority under the constitution and laws of the State, to issue the Bonds and to execute, deliver and perform its obligations hereunder and under the Bond Loan Agreement and the Indenture, to pledge the property described in the Indenture to be pledged thereby in the manner and to the extent therein set forth; all actions required for the issuance of the Bonds and the execution and delivery of, and the performance of its obligations under, this

Bond Purchase Agreement and under the Bond Loan Agreement, the Indenture and the Bonds have been, or as of the Closing Date will have been, duly and effectively taken; this Bond Purchase Agreement has been and the Bond Loan Agreement and the Indenture will, as of the Closing Date, have been duly executed, issued and delivered; and the Bonds will, as of the Closing Date, have been duly authorized, executed, issued and delivered.

(n) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture, the Bond Loan Agreement, or this Bond Purchase Agreement or (ii) the tax-exempt status of interest on the Bonds.

(o) The execution and delivery by the Issuer of the Bonds, the Indenture, the Bond Loan Agreement and this Bond Purchase Agreement and the performance by the Issuer of its obligations thereunder (i) do not violate applicable provisions of the constitution, statutory laws or regulations of the State, (ii) do not violate its authorizing statute, (iii) do not breach or result in a default under any other agreement to which it is a party, and (iv) do not violate the terms of any judicial or administrative judgment, order, decree or arbitral decision that names the Issuer and is specifically directed to it or its properties, and no approval or other action by, or filing or registration with, any governmental authority or agency is required in connection therewith that has not been obtained or accomplished or will not be obtained or accomplished by the Closing Date (provided no representation or warranty is expressed as to any action required under federal or state securities or Blue Sky laws in connection with the sale of the Bonds by the Underwriter).

(p) Each of the representations of the Issuer contained in the Bond Loan Agreement and in the Indenture are and will, as of the Closing Date, be true and correct in all material respects and are hereby made to the Underwriter as if set forth herein.

(q) The Issuer will not take or omit to take any action within its power, which action or omission might in any way affect the excludability from gross income of the interest on the Bonds for federal income tax purposes.

(r) The obligation of the Issuer under this Bond Purchase Agreement shall be subject to the Issuer having received such legal opinions, certificates, proceedings, instruments and other documents as, in the sole discretion of counsel to the Issuer, are necessary in order to satisfy, or evidence satisfaction of, the conditions precedent in the Indenture.

(s) The Underwriter acknowledges that the Issuer, its officers, governing board members, counsel, advisors and agents, and employees and agents of any of the foregoing (each individually an "Issuer Party" and all collectively the "Issuer Parties") have not undertaken to furnish information to the Underwriter, or to ascertain the accuracy or completeness of any information that may have been furnished to the Underwriter by or on behalf of the Borrower relating to the operations, financial condition or future prospects of the Borrower or the Project and that none of the Issuer Parties have made any representations concerning the accuracy or completeness of any information supplied to the Underwriter and relating to the Project. On the basis of the foregoing, the Issuer hereby consents to the Underwriter's lawful use of the Preliminary Official Statement and the Official Statement in connection with the offer, sale, and distribution of the Bonds.

#### **Section 4. Representations, Warranties and Agreements of the Borrower.**

The Borrower represents and warrants to the Underwriter and Issuer as follows:

(a) The Borrower is duly organized and existing as a limited partnership under the laws of the State, has full legal right, power and authority to own its properties and to conduct its business as described in the Official Statement and to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents and the Official Statement, and is duly qualified to do such business and is in good standing wherever such qualification and/or standing are required, including the State.

(b) By all necessary action, the Borrower has duly authorized and adopted the Borrower Documents and approved the execution and delivery of the Borrower Documents, and the performance by the Borrower of the obligations in connection with the issuance of the Bonds on its part contained in the Borrower Documents and the consummation by it of all other transactions contemplated by the Indenture, the Official Statement and the Borrower Documents in connection with the issuance of the Bonds.

(c) On the Closing Date, the Borrower Documents will constitute the valid, legal and binding obligations of the Borrower (assuming due authorization, execution and delivery by the respective other parties thereto, where necessary), enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors' rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.

(d) As of the date hereof, the Borrower is not in violation of, breach of or default under any applicable law of the State or of any state in which the Borrower is authorized to do business or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, which violation or breach of or default would have a material adverse effect upon the transactions contemplated by this Bond Purchase Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Borrower Documents, and compliance with the provisions on the Borrower's part contained therein, do not and will not conflict with or constitute on the part of the Borrower a violation or breach of or default under any law of the State or of any state in which the Borrower is authorized to do business or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound which violation, breach or default would have a material adverse effect upon the transactions contemplated by this Bond Purchase Agreement, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents.

(e) All consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or commission of any state or of the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations thereunder have been obtained or made and are in full force and effect or will be timely obtained.

(f) As of the date hereof, there is no action, suit, proceeding, inquiry or investigation of which the Borrower has been notified, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best knowledge of the Borrower, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers executing this Bond Purchase Agreement to their respective offices, affecting the transaction contemplated by the Official Statement or the exclusion of interest on the Bonds from the gross income, for federal income tax purposes, of the owners of the Bonds, or contesting or affecting as to the Borrower the validity or enforceability of the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the completeness or accuracy of the Official Statement or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the Borrower's financial condition or operations or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.

(g) The Borrower will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts upon the reasonable request of the Underwriter to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Borrower shall not be required to register as a dealer or broker of securities or execute a general or special consent to service of process or qualify to do business in any jurisdiction where it is not now so subject.

(h) Any certificate signed by the Borrower and delivered to the Underwriter or the Issuer pursuant to the Indenture or the Borrower Documents shall be deemed a representation and warranty by the Borrower to the Underwriter and the Issuer as to the statements made therein as of the date thereof.

(i) The Borrower will not take or omit to take any action, which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds under the Internal Revenue Code of 1986, as amended.

(j) The Borrower shall honor all other covenants contained in the Borrower Documents.

(k) All permits, licenses and other authorizations necessary for the ownership, acquisition, rehabilitation, and equipping of the Project in the manner contemplated by the Official Statement and the Borrower Documents have been obtained or will be obtained by the

time required, and said ownership, acquisition, rehabilitation, and equipping are not in conflict with any zoning or similar ordinance applicable to the Project.

(l) The information in the Preliminary Official Statement, as of its date and the date hereof, and the Official Statement, as of its date and the Closing Date (and including any supplements and amendments thereto) under the captions “ESTIMATED SOURCES AND USES OF FUNDS,” “THE PROJECT AND THE PARTICIPANTS,” “CERTAIN BONDHOLDERS’ RISKS” (but only with respect to those risks that expressly relate to the Borrower, the Project and the private participants), “NO LITIGATION – The Borrower” and “CONTINUING DISCLOSURE” (collectively, the “Borrower Portion”) does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

The execution and delivery of this Bond Purchase Agreement by the Borrower shall constitute a representation to the Underwriter that the representations and warranties contained in this Section 4 are true as of the date hereof.

#### **Section 5. Indemnification.**

(a) The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer and the Underwriter (collectively, the “Principal Indemnified Parties”) and each past, present and future affiliate, member, officer, director, official, employee and agent of the Issuer, the Trustee or the Underwriter and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (a “Control Person”) (with respect to the Issuer, each individually an “Issuer Indemnified Party,” and collectively referred to herein as the “Indemnified Parties”), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “Liabilities”) caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Bond Loan, the Bond Loan Agreement, the Indenture, this Bond Purchase Agreement or any document related to the Bonds (the “Transaction Documents”) or any transaction or agreement, written or oral, pertaining to the foregoing or (ii) any untrue or misleading statement or alleged untrue or alleged misleading statement of a material fact contained in the Borrower Portion of the Preliminary Official Statement or the Borrower Portion of the Official Statement or any omission or alleged omission from the Borrower Portion of the Preliminary Official Statement and the Borrower Portion of the Official Statement of any material fact necessary to be stated therein in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; provided, however that the foregoing indemnity of an Indemnified Party pursuant to this Section 5(a) or Section 5(b) below shall not apply to any loss to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party other than the Issuer or caused by the willful misconduct of any Issuer Indemnified Party or any affiliate, member, officer, director, official, employee, agent or Control Person of said Indemnified Party or of the Principal Indemnified Party with which said party is affiliated.

(b) The Borrower also agrees to pay, defend, protect, indemnify, save and hold harmless the Underwriter and each affiliate, member, officer, director, official, employee and agent of the Underwriter from and against the Liabilities directly or indirectly arising from or relating to any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by the Issuer pertaining to the Bonds.

(c) Any Indemnified Party shall notify the Borrower of the existence of any Liability to which this indemnification obligation would apply and shall give to the Borrower an opportunity to defend the same at the Borrower's expense and with counsel reasonably satisfactory to the Indemnified Party, provided that the Indemnified Party shall at all times also have the right to fully participate in the defense but not to take any action to settle the same without the approval of the Borrower which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding and the Borrower shall be obligated to pay the reasonable fees and expenses of such separate counsel if the Indemnified Party reasonably determines that (A) a conflict of interest exists between the interests of the Indemnified Party and the interests of the Borrower or (B) there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party. If the Borrower shall, after this notice and within a period of time necessary to preserve any and all reasonable defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose reasonably satisfactory to the Indemnified Party, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk, cost and expense of, the Borrower.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (a) or (b) of this Section 5 is for any reason held to be unavailable, the Borrower and the Underwriter shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Parties may be subject, so that the Underwriter is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Underwriter in connection with the issuance and administration of the Bonds bear to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Underwriter be responsible for any amount in excess of the fees paid by the Borrower to the Underwriter in connection with the issuance and administration of the Bonds and provided further that the Borrower shall not be required to contribute for Liabilities arising from the gross negligence or willful misconduct of the Underwriter. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Act of 1933) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

(e) The Indemnified Parties, other than the Issuer and the Underwriter, shall be considered to be third-party beneficiaries of this Bond Purchase Agreement for purposes of this Section 5. The provisions of this Section 5 will be in addition to all liability that the Borrower may otherwise have under law or any other Borrower Document and shall survive any termination of this Bond Purchase Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

(f) The indemnification hereunder shall be in addition to, and shall not limit, any indemnity granted by the Borrower pursuant to the Bond Loan Agreement, the Regulatory Agreement or any other document.

(g) Nothing herein shall be construed to create recourse debt to the Borrower for the Bond Loan or the Bonds.

## **Section 6. Closing.**

At or before 11:00 a.m., Central time, on July \_\_, 2024, or at such other time or date as shall be agreed upon in writing by the Issuer, the Borrower and the Underwriter, the Issuer shall direct the Trustee to cancel the initial Bond registered by the Comptroller of Public Accounts of the State of Texas in the name of the Underwriter and to deliver the Bonds to the Underwriter as noted below in this Section

through the facilities of The Depository Trust Company (“DTC”), New York, New York, in definitive form, duly executed and authenticated by the Trustee and registered in the name of the Cede & Co., as nominee of DTC. Subject to the terms and conditions hereof, the Issuer and the Borrower shall deliver at the Issuer’s offices the other documents and instruments to be delivered pursuant to this Bond Purchase Agreement (the “Closing Documents”) and the Underwriter shall accept delivery of the Bonds and Closing Documents and pay the purchase price for the Bonds as set forth in Section 1 hereof by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer shall direct. As a condition precedent to such acceptance, the Underwriter shall have received the Underwriting Fee by wire transfer in immediately available federal funds to the order of the Underwriter, in such manner as shall be agreed upon by the Borrower and the Underwriter (but in no event shall such fee be netted against the purchase price of the Bonds). This delivery and payment is herein called the “Closing” and the date on which the Closing occurs is herein called the “Closing Date.” The Bonds shall be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Official Statement or multiples thereof. One fully registered Bond in the total aggregate principal amount of the Bonds, bearing a proper, duly assigned CUSIP number, will be issued initially in the name of Cede & Co., as nominee of DTC.

### **Section 7. Closing Conditions.**

The Underwriter has entered into this Bond Purchase Agreement in reliance upon representations, warranties and agreements of the Issuer and the Borrower contained herein, in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the Borrower of their obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter’s obligations under this Bond Purchase Agreement to purchase, to accept delivery of and to pay for the Bonds shall be subject to the performance by the Issuer and the Borrower of their obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy of the representations and warranties of the Issuer and of the Borrower contained herein as of the date hereof and as of the Closing as if made on the Closing Date, and shall also be subject to the following additional conditions:

(a) At the time of the Closing, the Resolution shall have been duly approved and adopted by the Issuer and shall be in full force and effect and the Issuer Documents shall have been duly authorized, executed and delivered, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter and there shall have been taken in connection therewith and in connection with the issuance of the Bonds all such actions as, in the opinion of Bond Counsel and counsel for the Underwriter, shall be necessary and appropriate in connection with the transactions contemplated hereby.

(b) The Underwriter may terminate this Bond Purchase Agreement by notification to the Issuer and the Borrower if at any time subsequent to the date hereof and at or prior to the Closing:

(i) Legislation with an effective date before the Closing Date shall have been enacted by the Congress, or recommended to the Congress for passage by the President of the United States of America or the Department of the Treasury of the United States or the Internal Revenue Service or any member of the United States Congress, or favorably reported for passage to either House of the Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United States, or the United States Tax Court, or (iii) an order, ruling, regulation (final, temporary, or proposed) or communication (including a press release)

shall have been issued by the Department of the Treasury of the United States or the Internal Revenue Service or any other governmental agency, in each case referred to in clauses (i), (ii) and (iii), with the purpose or effect, directly or indirectly, of imposing federal income taxation upon interest to be received on obligations of the general character of the Bonds.

(ii) Legislation shall have been enacted or a decision by a court of the United States of America shall be rendered or any action taken by the Securities and Exchange Commission or any other governmental agency which, in the opinion of counsel to the Underwriter, has the effect of requiring the offer or sale of the Bonds to be registered under the Securities Act of 1933, as amended, or the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, or any event shall have occurred that, in the judgment of the Underwriter, makes untrue or incorrect in any material respect any statement or information contained in the Official Statement or that, in the judgment of the Underwriter, should be reflected therein in order to make the statements contained therein, in light of the circumstances under which they are made, not misleading, and the Official Statement shall not have been supplemented or amended to reflect such event.

(iii) In the judgment of the Underwriter, the marketability of the Bonds or the market price of the Bonds is adversely affected because: (A) additional material restrictions not in force as of this date shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; (B) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter; (C) a general banking moratorium shall have been established by federal, New York or State authorities; (D) a state, national or international calamity or crisis, or escalation thereof, in the financial markets shall have occurred, or any conflict involving the armed forces of the United States of America shall have escalated to such a magnitude as to materially affect the ability of the Underwriter to market the Bonds; (E) an amendment to the Constitution of the United States or the Constitution of the State shall have been ratified; (F) any federal or state legislation is proposed, introduced or enacted; (G) any decision of any federal or state court shall have been delivered; (H) any ruling or regulation (final, temporary or proposed) of the Treasury Department of the United States, the Internal Revenue Service or other federal or State authority shall have been issued or promulgated; or (i) any bill shall have been favorably reported out of committee in either House of the Congress of the United States, in any case affecting the tax status of the Issuer, its property or income, its outstanding securities (including the Bonds), or the interest thereon, or any tax exemption granted or authorized by the Act; (ii) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting or affecting any authority or security for or the validity of the Bonds, or the existence or powers of the Issuer; (iii) legislation shall have been introduced in or enacted by the Legislature of the State with the purpose or effect, directly or indirectly, of imposing State income taxation upon interest to be received by any owners of the Bonds or that would, in the reasonable judgment of the Underwriter, adversely affect an investment in or the security pledged for the Bonds; (iv) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission has been issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds is in violation of any provisions of the Securities Act of 1933, as amended, or of the Trust Indenture Act of 1939, as



amended; or (v) in the Congress of the United States, legislation has been enacted or a bill has been favorably reported out of committee to either House, or a decision by a court of the United States of America is rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter is made, to the effect that outstanding securities of the Issuer or of any similar public body are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended, or the Trust Indenture Act of 1939, as amended.

(iv) There shall have occurred any change that, in the reasonable judgment of the Underwriter, makes unreasonable or unreliable any of the assumptions upon which: (i) yield on the Bonds for purposes of compliance with the Code, (ii) payment of debt service on the Bonds, or (iii) the basis for the exclusion from gross income for federal income tax purposes of interest on the Bonds, is predicated.

(v) The marketability of the Bonds or the market price thereof, in the opinion of the Underwriter, has been materially and adversely affected by disruptive events, occurrences or conditions in the securities or debt markets.

(vi) There shall have occurred or any notice shall have been given of any intended downgrading, suspension, withdrawal or negative change in credit watch status by any national rating service to the Bonds or any of the Borrower's obligations.

(vii) Any state blue sky or securities commission or other governmental agency or body shall have withheld registration, exemption or clearance of the offering of the Bonds as described herein, or issued a stop order or similar ruling relating thereto.

(viii) A general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, or the establishment of minimum prices on either such exchange.

(ix) Any amendment to the federal or State Constitution or action by any federal or state court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the Issuer, its property, or income securities (or interest thereon).

(x) Any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue or incorrect in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(xi) There shall have occurred since the date of this Bond Purchase Agreement any materially adverse change in the affairs or financial condition of the Borrower.

(xii) The United States of America shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency or there shall have occurred any other outbreak or escalation of hostilities or a national or international calamity or crisis, or any escalation thereof, financial or otherwise.

(xiii) Any fact or event shall exist or have existed that, in the Underwriter's judgment, requires or has required an amendment of or supplement to the Official Statement.

(c) At or prior to the Closing, the Underwriter shall receive the following documents (each of which may be provided electronically):

(i) an approving opinion of Bond Counsel addressed to the Issuer, Trustee and Underwriter, dated the Closing Date substantially in the form attached to the Official Statement;

(ii) opinions or certificates, as the case may be, dated the Closing Date and addressed to the Underwriter and to such other parties as may be appropriate, of

(A) Bond Counsel, substantially in the form attached hereto as Appendix A, and the General Counsel of the Texas Department of Housing and Community Affairs, in form and substance satisfactory to the Underwriter;

(B) Borrower's Counsel, substantially in the form attached hereto as Appendix B; and

(C) Counsel to the Trustee, in form and substance satisfactory to the Underwriter and Bond Counsel.

(d) The Underwriter shall have received an opinion of its counsel in a form satisfactory to the Underwriter.

(e) The Underwriter shall have received certificates, dated the Closing Date (which may be combined with other certificates given by the Borrower at Closing), and signed on behalf of the Issuer, to the effect that the representations and warranties of the Issuer contained in this Bond Purchase Agreement and the Issuer Documents are true and correct in all material respects on the date thereof with the same effect as if made on the date hereof; to the Issuer's knowledge, no event has occurred to cause the information in the Preliminary Official Statement, as of its date and the date hereof, and the Official Statement, as of its date and the Closing Date, under the captions "THE ISSUER" and "NO LITIGATION – The Issuer" to contain an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading; and that the Issuer has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied under the Bonds and the Issuer Documents on or prior to the date thereof.

(f) The Underwriter shall have received a certificate of the Borrower, dated the Closing Date (which may be combined with other certificates given by the Borrower at Closing), that (A) each of the representations and warranties set forth in the Borrower Documents (including this Bond Purchase Agreement) is true and correct in all material respects on the Closing Date with the same effect as if made on the Closing Date, (B) to the Borrower's knowledge, no event has occurred since the respective dates of the Preliminary Official Statement and the Official Statement to cause the information in the Borrower Portion of the Preliminary Official Statement and Borrower Portion of the Official Statement to contain an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, and (C) the Borrower has

complied with all agreements and satisfied all the conditions on its part to be performed or satisfied under the Borrower Documents on or prior to the Closing Date.

(g) The Underwriter shall have received electronic copies of each of the Issuer Documents, Borrower Documents and Trustee Documents.

(h) The Underwriter shall have received written evidence satisfactory to the Underwriter that Moody's Ratings has issued a rating of "Aaa" for the Bonds, which rating has not been placed under review or on "Credit Alert" with negative implications or a similar credit alert by a national rating service and such rating shall be in effect on the Closing Date.

(i) The Underwriter and Bond Counsel shall have received a tax certificate of the Issuer and the Borrower, dated the Closing Date, with respect to the facts, estimates and circumstances and reasonable expectations pertaining to Section 148 of the Code to support the conclusion that, among other things, none of the Bonds will be an "arbitrage bond."

(j) The Underwriter shall have received a closing certificate from the Trustee in a form acceptable to the Underwriter.

(k) The Underwriter shall have received such agreements, certificates and opinions as requested by the Underwriter to evidence the closing of the Bond Loan.

(l) The Underwriter shall have received an opinion of the Attorney General of the State (the "Attorney General") approving the Bonds and certification from the Attorney General representing compliance with Section 1372.037(b), Government Code, and a certificate of registration of the Bonds by the Comptroller of Public Accounts of the State.

(m) The Underwriter shall have received such additional legal opinions, certificates (including any certificates necessary or desirable in order to establish the exclusion of the interest on the Bonds from gross income for federal income tax purposes), instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the Issuer's and the Borrower's representations herein and in the Official Statement and the due performance or satisfaction by the Issuer and the Borrower on or prior to such date of all agreements then to be performed, and all conditions then to be satisfied by them.

If the obligations of the Underwriter shall be terminated for any reason permitted by this Bond Purchase Agreement, neither the Underwriter nor the Issuer shall be under further obligation hereunder.

## **Section 8. Expenses.**

The Underwriter shall be under no obligation to pay, and the Borrower hereby agrees to pay, all expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to, (a) the costs of printing and preparation for printing or other reproduction for distribution and use in connection with the public offering of the Bonds, such number of copies as the Underwriter shall require of the Indenture, the Resolution, the Preliminary Official Statement, the Official Statement and the blue sky survey, as well as any delivery costs incurred in connection with the distribution of the foregoing documents; (b) the cost of preparing the definitive Bonds; (c) the fees and disbursements of Bond Counsel in connection with the authorization and issuance of the Bonds; the fees and expenses of the Trustee and its counsel; the fees and expenses of the Issuer and its counsel; and the fees and disbursements of any other experts or consultants retained by the Issuer; (d) the fees of any rating agencies in connection with the rating of the Bonds; (e) all advertising expenses in connection with the

public offering of the Bonds; (f) the Fees, including the Underwriting Fee, the Underwriter's Advance, and the fees and expenses of counsel to the Underwriter; and (g) all other expenses in connection with the public offer and sale of the Bonds. The Borrower shall also pay for any expenses (included in the expense component of the Underwriter's discount) incurred by the Underwriter which are incidental to implementing this Bond Purchase Agreement and the issuance of the Bonds, including, but not limited to, meals, transportation and lodging, if any, and any other miscellaneous closing costs. The Borrower acknowledges it had an opportunity, in consultation with such advisors as it deemed appropriate, if any, to evaluate and consider the fees and expenses being incurred as part of the issuance of the Bonds.

The Issuer shall not have any obligation to pay any fees, expenses or costs associated with or resulting from the issuance and delivery of the Bonds.

The Borrower acknowledges that the Underwriter will pay from the Underwriter's expense allocation of the underwriting discount the applicable per bond assessment charged by the Municipal Advisory Council of Texas, a non-profit corporation whose purpose is to collect, maintain and distribute information relating to issuing entities of municipal securities.

#### **Section 9. Notices.**

Any notice or other communication to be given to the Issuer or the Borrower at the respective addresses set forth on the first page hereof and any such notice or other communication to be given to the Underwriter may be given by mailing the same to Colliers Securities LLC, 90 South 7th Street, Suite 4300, Minneapolis, Minnesota 55402, Attention: Public Finance.

#### **Section 10. Parties in Interest.**

This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Borrower and the Underwriter (including any successor or assignees of the Underwriter), and, except as provided in Section 5 hereof, no other party or person shall acquire or have any right hereunder or by virtue hereof.

#### **Section 11. Amendments.**

This Bond Purchase Agreement may not be amended without the written consent of the Issuer, the Borrower and the Underwriter.

#### **Section 12. Survival of Representations and Warranties.**

The representations and warranties of the Issuer and the Borrower shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the Issuer and the Borrower and regardless of delivery of and payment for the Bonds.

#### **Section 13. Execution in Counterparts.**

This Bond Purchase Agreement may be executed by the parties hereto in separate counterparts (including executed counterparts exchanged by email in PDF format), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

#### **Section 14. No Prior Agreements.**

This Bond Purchase Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the purchase and sale of Bonds.

#### **Section 15. Effective Date.**

This Bond Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Issuer and the Borrower and shall be valid and enforceable as of the time of such acceptance.

#### **Section 16. Governing Law.**

This Bond Purchase Agreement shall be governed by the internal laws of the State without giving effect to the conflict of law principles of the State.

#### **Section 17. Underwriter Not Acting as Advisor or Fiduciary.**

The Issuer and the Borrower each acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm's-length commercial transaction among the Issuer, the Borrower, and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, advisor, municipal advisor or fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has advised or provided other services or is currently advising or providing other services to the Issuer or the Borrower on other matters) and the Underwriter has no obligation to the Issuer or the Borrower with respect to the offering contemplated hereby except the obligations expressly set forth in this Bond Purchase Agreement and (iv) the Issuer and the Borrower have consulted their own legal, financial and other advisors to the extent they deem appropriate.

#### **Section 18. Establishment of Issue Price.**

Notwithstanding any provision of this Bond Purchase Agreement to the contrary, the following provisions related to the establishment of the issue price of the Bonds apply:

(a) *Definitions.* For purposes of this Section, the following definitions apply:

(i) "Public" means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than a Tax Law Underwriter or a Related Party to a Tax Law Underwriter.

(ii) "Related Party" means any two or more persons who are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profits interests of the partnership, as applicable, if one entity is a corporation and the other entity is a

partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(iii) “Sale Date” means the date of execution of this Bond Purchase Agreement by all parties.

(iv) “Tax Law Underwriter” means, with respect to each Issue of the Bonds, (A) any person that agrees pursuant to a written contract with the Issuer to participate in the initial sale of such Issue of the Bonds to the Public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of such Issue of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

(b) *Issue Price Certificate.* The Underwriter agrees to assist the Issuer in establishing the issue price of the Bonds and to execute and deliver to the Issuer at Closing an “issue price” or similar certificate relating to each Issue of the Bonds, together with the supporting pricing wires or equivalent communications substantially in the form attached hereto as Appendix C, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the Public of the Bonds (the “Issue Price Certificate”).

(c) *Public Offering.* The Underwriter confirms that, on the Sale Date, the Underwriter offered each Issue of the Bonds to the Public at the offering price or prices (each, an “Initial Offering Price”), or at the corresponding yield or yields, set forth in Section I hereto.

(d) *10% Test.* Except as set forth in the Issue Price Certificate, the Issuer will determine the issue price of the Bonds based on the first price at which 10% of the Bonds is sold to the Public (the “10% Test”) (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% Test). The Issue Price Certificate will confirm if the issue price will be the applicable Initial Offering Price because the 10% Test was satisfied as of the Sale Date.

(e) *Hold-The-Offering-Price Rule.* The Issue Price Certificate will confirm if the 10% Test was not satisfied as of the Sale Date and, if such is the case, the Issuer and the Underwriter agree that the restrictions in the next sentence will apply, which will allow the Issuer to treat the Initial Offering Price to the Public of each the Bonds as the issue price of the Bonds (the “Hold-the-Offering-Price Rule”). If the 10% Test was not satisfied as of the Sale Date, the Underwriter will neither offer nor sell unsold Bonds to any person at a price that is higher than the applicable Initial Offering Price of the Bonds during the period starting on the Sale Date and ending on the earlier of the following:

(i) the close of the fifth business day after the Sale Date; or

(ii) the date on which the Tax Law Underwriters have sold at least 10% of the Bonds to the Public at a price that is no higher than the Initial Offering Price of the Bonds.

The Underwriter will promptly advise the Issuer when the Tax Law Underwriters have sold 10% the Bonds to the Public at a price that is no higher than the applicable Initial Offering

Price of the Bonds, if that occurs prior to the close of the fifth business day after the Sale Date. On or after the sixth business day after the Sale Date, if requested by the Issuer or Bond Counsel, the Underwriter also will promptly confirm that the Tax Law Underwriters have complied with the Hold-the-Offering-Price Rule. If at any time the Underwriter becomes aware of any noncompliance by a Tax Law Underwriter with respect to the Hold-the-Offering-Price Rule, the Underwriter will promptly report such noncompliance to the Issuer.

The Issuer acknowledges that, in making the representation that the Underwriter will comply with the Hold-the-Offering-Price Rule with respect to any held Bonds of an issue of the Bonds, the Underwriter is relying on (A) in the event a selling group has been created in connection with the sale of the Issue of the Bonds to the Public, the agreement of each dealer who is a member of the selling group to comply with the Hold-the-Offering-Price Rule, as set forth in a selling group agreement and the related pricing wires, and (B) in the event that a Underwriter is a party to a third-party distribution agreement that was employed in connection with the sale of an issue of the Bonds, the agreement of each broker-dealer that is a party to such agreement to comply with the Hold-the-Offering-Price Rule, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer further acknowledges that each Tax Law Underwriter will be solely liable for its failure to comply with its agreement regarding the Hold-the-Offering-Price Rule and that no Tax Law Underwriter will be liable for the failure of any other Tax Law Underwriter to comply with its corresponding agreement regarding the Hold-the-Offering-Price Rule as applicable to an issue of the Bonds.

(f) *Matters Relating to Certain Agreements.* The Underwriter confirms that:

(i) any selling group agreement and each third-party distribution agreement to which the Underwriter is a party relating to the initial sale of the Bonds to the Public, together with related pricing wires, contains or will contain language obligating the Underwriter, each dealer who is a member of any selling group, and each broker-dealer that is a party to any such third-party distribution agreement, as applicable:

(A) to comply with the Hold-the-Offering-Price Rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the relating pricing wire;

(B) to promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a Related Party to a Tax Law Underwriter participating in the initial sale of the Bonds to the Public; and

(C) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter will assume that each order submitted by the dealer or broker-dealer is a sale to the Public.

(ii) any selling group agreement relating to the initial sale of the Bonds to the Public, together with related pricing wires, contains or will contain language obligating each dealer that is a party to any third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to comply with the Hold-the-Offering Price Rule, if applicable, in each case if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

(g) *Sale to Related Party not a Sale to the Public.* The Underwriter acknowledges that sales of any Bonds to any person that is a Related Party to a Tax Law Underwriter do not constitute sales to the Public for purposes of this Section.

#### **Section 19. State Law Verifications.**

The Underwriter makes the following representation and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Government Code, as amended, in entering into this Bond Purchase Agreement. As used herein, “affiliate” means an entity that controls, is controlled by, or is under common control with the Underwriter within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Bond Purchase Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Bond Purchase Agreement, notwithstanding anything in this Bond Purchase Agreement to the contrary.

The Underwriter represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153, Government Code, or Section 2270.0201, Government Code.

(a) The foregoing representation excludes the Underwriter and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(b) The Underwriter hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Bond Purchase Agreement. As used in the foregoing verification, “boycott Israel” has the meaning provided in Section 2271.001, Government Code.

(c) The Underwriter hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Bond Purchase Agreement. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning provided in Section 2274.001(3), Government Code.

(d) The Underwriter hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Bond Purchase Agreement. As used in the foregoing verification, “boycott energy companies” has the meaning provided in Section 2276.001(1), Government Code.

The Underwriter represents and verifies that it is aware of the Texas Office of the Attorney General’s All Bond Counsel Letter, dated November 1, 2023, that is available on the website of the Attorney General using the following link: (<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABCLetter-11-01-2023.pdf>) and the Attorney General’s supplemental All Bond Counsel Letter, dated November 16, 2023, that is available on the website of the Attorney General using the following link: (<https://texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABCLetter-11-06-2023.pdf>). The Underwriter represents and verifies that the Underwriter has (i) on file a standing letter



(“Standing Letter”) acceptable to the Attorney General addressing the representations and verifications in Section 19 of this Bond Purchase Agreement, and (ii) will, upon request of the Issuer or Bond Counsel on behalf of the Issuer, provide the Issuer and Bond Counsel with a copy of its Standing Letter. The Underwriter further represents and verifies that its Standing Letter remains in effect as of the date of this Bond Purchase Agreement and that the Attorney General has not notified the Underwriter that a determination has been made that the Underwriter boycotts energy companies or has a policy that discriminates against firearm entities or firearm trade associations under the laws of the State. Upon request of the Issuer or Bond Counsel on the Issuer’s behalf, the Underwriter shall provide additional written certifications to the Issuer and Bond Counsel (which may be by email) to the effect that the Attorney General may continue to rely on the Standing Letter and the statutory representations and covenants contained in this Bond Purchase Agreement through the Closing Date (the “Bringdown Verification”). The Issuer reserves the right, and the Underwriter hereby expressly authorizes the Issuer, to provide such Bringdown Verifications to the Attorney General.

#### **Section 20. Severability.**

If any provision of this Bond Purchase Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule or public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatsoever.

#### **Section 21. Limitation of Liability.**

The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions of any conceivable kind under any conceivable theory under this Bond Purchase Agreement or any document or instrument referred to herein or by reason of or in connection with this Bond Purchase Agreement or other document or instrument except to the extent it receives amounts from the Borrower available for such purpose.

Notwithstanding any provision herein to the contrary, any member, officer, director, partner, agent, commissioner, board members or employee of the Issuer, the Underwriter or the Borrower, including any person executing this Bond Purchase Agreement, shall not bear any liability as a result of any failure of the Issuer, the Underwriter or the Borrower to perform the obligations of each, respectively, set forth in this Bond Purchase Agreement.

#### **Section 22. HUD Provisions**

The Borrower, the Trustee and the Issuer acknowledge that this Bond Purchase Agreement, and any obligations of the Borrower hereunder, are subject and subordinate to the Lender Loan Documents. Notwithstanding any provision in this Bond Purchase Agreement to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the Lender Mortgage) or (ii) any reserve or deposit made with the Lender or any other party as required by HUD in connection with the Lender Loan Documents, or (C) a Lender Collateral Deposit which has been deposited into the Collateral Fund by or at the direction of the Lender (collectively, “Non-Project Sources”). No claims or actions shall be made (or payable) under this Bond Purchase Agreement against the Project, the proceeds of the Lender Borrower Note, or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Bond Purchase

Agreement and all other documents evidencing, implementing, or securing this Bond Purchase Agreement (collectively, the “Subordinate Bond Documents”) are and shall be subordinated in all respects to the rights and obligations of the parties to and under the Lender Loan Documents. In the event of any conflict between the provisions of (i) this Bond Purchase Agreement or the Subordinate Bond Documents and (ii) the provisions of the Lender Loan Documents or the Program Obligations (as defined in the Lender Mortgage), GNMA statutory, regulatory or administrative requirements, the provisions of the Lender Loan Documents, the Program Obligations or the GNMA statutory, regulatory or administrative requirements, as applicable, shall control. The provisions described under this caption shall control over any inconsistent provisions in this Bond Purchase Agreement or the Subordinate Bond Documents. No amendment to this Bond Purchase Agreement shall conflict with the provisions of the Program Obligations.

(Remainder of Page Intentionally Left Blank)

If the foregoing is in accordance with your understanding of the Bond Purchase Agreement please sign and return to us the enclosed duplicate copies hereof, whereupon it will become a binding agreement among the Issuer, the Borrower and the Underwriter in accordance with its terms.

Very truly yours,

**COLLIERS SECURITIES LLC**

By: \_\_\_\_\_  
Name: Frank J. Hogan  
Title: Senior Vice President

(Issuer's Signature Page to the Bond Purchase Agreement)

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Name: Teresa Morales  
Title: Director of Multifamily Bonds

(Borrower's Signature Page to the Bond Purchase Agreement)

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

**APPENDIX A**

**FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL**

July \_\_, 2024

[TO BE PROVIDED]

## APPENDIX B

### BORROWER'S COUNSEL OPINION

Colliers Securities LLC  
90 South 7th Street, Suite 4300  
Minneapolis, Minnesota 55402

U.S. Bank Trust Company, National Association  
60 Livingston Ave, 3<sup>rd</sup> Floor  
EP-MN-WS3C  
St. Paul, Minnesota 55107

Texas Department of Housing and Community  
Affairs  
P.O. Box 13941  
Austin, Texas 78711

Merchants Capital Corp.  
410 Monon Blvd, 5<sup>th</sup> Floor  
Carmel, Indiana 46032

[\$27,500,000]

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024

[After appropriate introductory language, the opinion shall state substantially as follows:]

1. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Texas and has all requisite limited partnership power and all material government licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business. The Borrower is qualified to do business in the State of Texas.
2. The Borrower has full legal right, power and authority (a) to own its properties and conduct its business as described in the Preliminary Official Statement and the Official Statement and (b) to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents.
3. The General Partner is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Texas and has all requisite limited liability company power and all material government licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business. The Sole Member is qualified to do business in the State of Texas.
4. By all necessary action, the Borrower has duly authorized and adopted the Borrower Documents, and approved the execution and delivery of, and the performance by the Borrower of the obligations in connection with the issuance of the Bonds on its part contained in the Bonds and the Borrower Documents and the consummation by it of all other transactions contemplated by the Indenture and the Borrower Documents in connection with the issuance of the Bonds. The individual who has executed the Borrower Documents on behalf of the General Partner of the Borrower has the authority to bind the General Partner and thereby the Borrower to the terms and conditions of the Borrower Documents.
5. The Borrower Documents have been duly executed and delivered by the Borrower and, assuming the due authorization, execution and delivery of such agreements by the respective other parties thereto where necessary, if any, constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability

affecting the enforcement of creditors' rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.

6. The execution and delivery of the Borrower Documents, the performance by Borrower of its obligations thereunder and the consummation of the transactions contemplated therein are within the organizational powers of Borrower and will not (i) conflict with or constitute a breach of the Borrower's organizational documents; (ii) to our knowledge, constitute a default under any indenture, mortgage, deed of trust or other material lien, lease, contract, note, order, judgment, decree or other material agreement, instrument or restriction of any kind to which Borrower is a party or by which any of its properties are bound or affected; or (iii) result in a violation of any constitutional or statutory provision or any material order, rule, regulation, decree or ordinance of any court, government or governmental authority known to us to be applicable to the Borrower or its property.

7. To the best of our knowledge after due and diligent inquiry, as of the Closing Date, the Borrower is not in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Bonds and the Borrower Documents, and compliance with the provisions on the Borrower's part contained therein, do not and will not conflict with, or constitute on the part of the Borrower a violation of, breach of or default under, any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents.

8. As of the Closing Date, all consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or issuer of any state or of the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations thereunder have been obtained or made and are in full force and effect.

9. To the best of our knowledge after due and diligent inquiry, as of the Closing Date, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best of our knowledge, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers to their respective offices, or contesting or affecting as to the Borrower the validity or enforceability of the Act, the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated thereby; nor, to the best of our knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially



adversely affect the financial condition or operations of the Borrower or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.

10. Nothing has come to our attention that would lead us to believe that the statements and information contained in the Preliminary Official Statement, as of its date and the date of the Bond Purchase Agreement, and the Official Statement, as of its date and the date hereof, under the headings “ESTIMATED SOURCES AND USES OF FUNDS,” “THE PROJECT AND THE PARTICIPANTS,” “CERTAIN BONDHOLDERS’ RISKS” (but only with respect to those risks that expressly relate to the Borrower, the Project and the private participants), “NO LITIGATION—The Borrower” and “CONTINUING DISCLOSURE” (except as to the statistical and financial data included in the Preliminary Official Statement and the Official Statement with respect to which we do not express any opinion), contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

11. The Borrower may not plead the defense of usury or maintain an action for usury with respect to the loan(s) being made under the Transaction Documents.

Very truly yours,

## APPENDIX C

\$[27,500,000]  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BONDS  
(GULFWAY MANOR)  
SERIES 2024

### ISSUE PRICE CERTIFICATE

I, the undersigned officer of Colliers Securities LLC (“Colliers”), make this certification in connection with the \$[27,500,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “Bonds”). Each capitalized term used but not defined herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement prepared in connection with the Bonds (the “Tax Exemption Agreement”).

1. I hereby certify as follows in good faith as of the Issue Date of the Bonds:

(a) I am the duly chosen, qualified and acting officer of Colliers for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of Colliers. I am the officer of Colliers charged, along with other officers of Colliers, with responsibility for the Bonds.

(b) The first price at which at least 10% of the Bonds was sold to the Public is the price set forth on the cover of the Official Statement prepared in connection with the Bonds (each, an “Actual Sales Price”).

(c) The aggregate of the Actual Sales Prices is \$[27,500,000].

2. For purposes of this Issue Price Certificate, the following definitions apply:

(a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

(b) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Colliers's interpretation of any laws, including specifically sections 103 and 148 of the Internal Revenue Code. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

(EXECUTION PAGE FOLLOWS)

EXECUTED as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**COLLIERS SECURITIES LLC**

By: \_\_\_\_\_  
Name: Frank J. Hogan  
Title: Senior Vice President

**NEW ISSUE/BOOK-ENTRY ONLY**

**RATING: Moody's: "Aaa" (See "RATING" herein)**

*In the opinion of Bracewell LLP ("Bond Counsel"), assuming compliance with certain covenants and based on certain representations, under existing law (i) interest on the Bonds is excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except with respect to interest on any Bond for any period during which such bond is held by a person who is a "substantial user" of the Project or a "related person" of such a "substantial user," as those terms are defined for purposes of Section 147(a) of the Code and (ii) interest on the Bonds is not an item of tax preference for purposes of the alternative minimum tax on individuals. See "TAX MATTERS" herein, including information regarding potential alternative minimum tax consequences for corporations*

**[\$27,500,000]\***

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024**

The above-captioned Bonds (the "Bonds") are being issued by the Texas Department of Housing and Community Affairs (the "Issuer") to fund a loan (the "Bond Loan") to Gulfway Housing Partners, LP, a Texas limited partnership (the "Borrower"). The proceeds of the Bond Loan will be used to finance a portion of the costs of the acquisition, rehabilitation and equipping of an approximately 151-unit multifamily rental housing development known as Gulfway Manor Apartments and located in Nueces County, Texas (the "Project"), which property shall be occupied by persons of low to moderate income as required by state law and the Internal Revenue Code of 1986, as amended (the "Code"). The Issuer is issuing the Bonds pursuant to a Trust Indenture, dated as of July 1, 2024 (the "Indenture") between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"). The Issuer will make the Bond Loan to the Borrower pursuant to the terms of a certain Loan Agreement, dated as of July 1, 2024 (the "Bond Loan Agreement") between the Issuer and the Borrower.

The Bonds will be issued as fully registered bonds and when issued will be registered in the name of Cede & Co. as nominee for The Depository Trust Company ("DTC"), New York, New York. Individual purchases of the Bonds will be made in Book Entry Form only in principal amounts of \$5,000 each or integral multiples of \$1,000 thereafter. Individual purchasers of Bonds will not receive certificates evidencing their interest in the Bonds. So long as the Bonds are in Book Entry Form only, all payments of principal of and interest on the Bonds will be made by the Trustee to DTC or its successors. Disbursement of such payments from DTC to the DTC Participants is the responsibility of DTC and disbursement to the beneficial owners is the responsibility of the DTC Participants. The Bonds will bear interest from the date of the initial delivery, payable semiannually on February 1\* and August 1\* of each year, commencing February 1, 2025\*.

The Bonds are subject to mandatory tender for purchase, subject to satisfaction of the applicable terms and conditions set forth in the Indenture, on the Mandatory Tender Date set forth above. All Bondholders must tender their Bonds for purchase on the Mandatory Tender Date. The Bonds may be remarketed and a new interest rate for the Bonds may be determined on the Mandatory Tender Date in accordance with the terms of the Indenture. If the Bonds are remarketed on the Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Mandatory Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing. See "THE BONDS – Mandatory Tender" herein.

The Bonds are not subject to optional redemption prior to the Mandatory Tender Date. See "THE BONDS - Redemption of Bonds." The maturity of the Bonds may be accelerated upon the occurrence of certain events as described herein. See "APPENDIX B – DOCUMENT SUMMARIES - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Events of Default and Acceleration" herein.

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE (AS DEFINED HEREIN), ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THE INDENTURE AND IN THE BOND LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

This cover page contains only a brief description of the Bonds and the security therefor. It is not intended to be a summary of material information with respect to the Bonds. Investors must read this Official Statement in its entirety to obtain information essential to the making of an informed investment decision.

<u>Initial Mandatory Tender Date</u>	<u>Maturity Date</u>	<u>Amount</u>	<u>Interest Rate to Initial Mandatory Tender Date</u>	<u>Price</u>	<u>CUSIP</u>
August 1, 2026*	August 1, 2028*	[\$27,500,000]*	._%	%	_____

*The Bonds are offered when, as and if issued and received by the Underwriter, subject to the approval as to their validity by the Attorney General of Texas, Bracewell LLP, Bond Counsel, and certain other conditions. Certain financial advisory services will be provided to the Issuer by Stifel, Nicolaus & Company, Incorporated. Certain legal matters will be passed upon for the Borrower by its counsel, Winthrop & Weinstine, P.A., Minneapolis, Minnesota, and [LOCAL COUNSEL], and for the Underwriter by its counsel, Norris George & Ostrow PLLC, Washington, D.C. It is anticipated that the Bonds will be available for delivery through the facilities of DTC on or about July \_\_, 2024.*



Date: July \_\_, 2024

\* Preliminary; subject to change.

\*\* The Issuer is not responsible for the use of the CUSIP numbers referenced in this Official Statement nor is any representation made by the Issuer as to their correctness; such CUSIP numbers are included solely for the convenience of the readers of this Official Statement.

This Preliminary Official Statement and certain of the information contained herein is in a form deemed final for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (except for the omission of certain information permitted to be omitted under Rule 15c2-12(b)(1)). The information herein is subject to revision, completion or amendment in a final Official Statement. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

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This Official Statement, including the cover page hereof and appendices hereto, is provided for the purpose of setting forth information in connection with the issuance and sale of the Bonds. No dealer, broker, salesperson or other person has been authorized by the Issuer, the Borrower or the Underwriter to give any information or to make any representations with respect to the Bonds other than those contained in this Official Statement, and, if given or made, such information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the Bonds offered herein, nor shall there be any sale of the Bonds by any person in any jurisdiction in which such offer, solicitation or sale is not authorized or in which the person making such offer, solicitation or sale is not qualified to do so or to any person to whom it is unlawful to make such offer, solicitation or sale.

The information set forth herein has been furnished by the Issuer, the Borrower and other sources which are believed to be reliable, but has not been independently verified, and such information is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Issuer, the Borrower or the Underwriter. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall create any implication that there has been no change in the financial condition or operations of the Issuer, the Borrower, or any other parties described herein since the date hereof. This Official Statement contains, in part, estimates and matters of opinion that are not intended as statements of fact, and no representation or warranty is made as to the correctness of such estimates and opinions or that they will be realized.

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities law as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The Issuer has not reviewed or approved any information in this Official Statement except information relating to the Issuer under the captions "THE ISSUER" and "NO LITIGATION – The Issuer" and takes no responsibility for any other information contained in this Official Statement (other than with respect to the description herein under the captions "THE ISSUER" and "NO LITIGATION - The Issuer").

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS OFFERED HEREBY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

U.S. Bank Trust Company, National Association, in each of its capacities, including, but not limited to, Trustee, Bond Registrar, and Paying Agent, has not participated in the preparation of this Official Statement and assumes no responsibility for its content, including, without limitation, the accuracy or completeness of the information concerning the Borrower, the Issuer or any other party contained herein or for any failure by any of such parties to disclose events that may have occurred and may affect the significance or accuracy of such information.

## OFFICIAL STATEMENT

**[\$27,500,000]\***

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BONDS  
(GULFWAY MANOR)  
SERIES 2024**

### INTRODUCTION

The purpose of this Official Statement, including the cover page and the appendices attached hereto, is to set forth information concerning the offering and sale by the Texas Department of Housing and Community Affairs (the “Issuer”) of its \$[27,500,000]\* Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “Bonds”).

The Bonds are authorized to be issued pursuant to the provisions of Chapter 2306, Texas Government Code, as amended (the “Act”), Chapter 1371, Texas Government Code, as amended, and the Trust Indenture, dated as of July 1, 2024 (the “Indenture”), between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”).

The Bonds are being issued for the purpose of funding a loan (the “Bond Loan”) to Gulfway Housing Partners, LP, a Texas limited partnership (the “Borrower”), pursuant to the terms of a Loan Agreement, dated as of July 1, 2024 (the “Bond Loan Agreement”), between the Issuer and the Borrower. The proceeds of the Bond Loan will be used to finance a portion of the costs of the acquisition, rehabilitation and equipping of an approximately 151-unit multifamily rental housing development known as Gulfway Manor Apartments and located in Corpus Christi, Texas (the “Project”), as more fully described under “THE PROJECT AND THE PARTICIPANTS” herein. The Borrower’s obligations to repay the Bond Loan will be evidenced by a Promissory Note (the “Note”) executed by the Borrower in favor of the Issuer and assigned to the Trustee. See “APPENDIX B - DOCUMENT SUMMARIES” herein for summaries of certain provisions of the Indenture and the Bond Loan Agreement.

The Borrower is required to operate the Project in compliance with a Regulatory and Land Use Restriction Agreement, dated as of July 1, 2024 (the “Regulatory Agreement”), by and among the Issuer, the Trustee, and the Borrower, which contains certain representations, warranties and covenants concerning the operation of the Project. Under the Regulatory Agreement, the Borrower is required during the Qualified Project Period (as such term is defined in the Regulatory Agreement), among other things, to lease at least 40% of the completed residential units in the Project to Low Income Tenants (i.e., persons or families with an adjusted gross income that is at or below 60% of the median gross income for the area in which the Project is located), as further described in the Regulatory Agreement. A failure to comply with certain of these requirements could result in the loss of the federal tax exemption on the Bonds retroactive to their date of issuance. See “THE PROJECT AND THE PARTICIPANTS – The Regulatory Agreement,” “CERTAIN BONDHOLDERS’ RISKS – Taxability of the Bonds,” “TAX MATTERS” and “APPENDIX B - DOCUMENT SUMMARIES - SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT” herein.

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\* Preliminary; subject to change.



The Project will also be encumbered by certain rent and occupancy restrictions in connection with the low income housing tax credits (the “Tax Credits”) expected to be granted for the Project. See “THE PROJECT AND THE PARTICIPANTS – Additional Restrictive Covenants” herein.

The Bonds are subject to mandatory tender for purchase, subject to satisfaction of the applicable terms and conditions set forth in the Indenture, on August 1, 2026\* (the “Mandatory Tender Date”). All Bondholders must tender their Bonds for purchase on the Mandatory Tender Date. A new interest rate for the Bonds may be determined on the Mandatory Tender Date in accordance with the terms of the Indenture. If the Bonds are remarketed on the Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Mandatory Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing. See “THE BONDS – Mandatory Tender” herein.

The Bonds are not subject to optional redemption prior to the Mandatory Tender Date. See “THE BONDS - Redemption of Bonds” herein.

The disbursement of Bond proceeds from the Project Fund will be conditioned, among other things, on the prior deposit to the Collateral Fund of an amount of funds equal to such disbursement by either (i) Merchants Capital Corp., an Indiana banking corporation (the “Lender”), pursuant to a Funding Agreement, dated as of July 1, 2024 (the “Funding Agreement”), by and between the Lender and the Borrower, and acknowledged by the Issuer and the Trustee, or (ii) Bridgewater Bank, a Minnesota state banking corporation (the “Bridge Lender”), as applicable (each, a “Lender Collateral Deposit”). **At all times, the Bonds will be secured by Preference Proof Moneys and Permitted Investments on deposit in the Special Funds sufficient to pay, without need for reinvestment, all of the interest and principal on the Bonds when due to the Mandatory Tender Date, as further described herein.**

Interest payments due on the Bonds will be made from the funds deposited in the Capitalized Interest Account of the Bond Fund on the Closing Date as well as investment earnings on Permitted Investments deposited with the Trustee on the Closing Date. The payment of principal of the Bonds at the Mandatory Tender Date will be made from funds on deposit in the Bond Fund and the Collateral Fund. See “SECURITY FOR THE BONDS” herein. The amounts deposited in the Special Funds are to be invested in Permitted Investments, as defined in the Indenture. See “APPENDIX B - DOCUMENT SUMMARIES - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE - Investment” herein. The aggregate funds on deposit in the Special Funds, as invested pursuant to the Indenture, have been calculated to be sufficient to pay, at all times, principal of and interest on the Bonds as and when they become due to the Mandatory Tender Date.

The Lender will make a loan in the aggregate principal amount not to exceed \$[24,710,000]\* to the Borrower to provide permanent financing for the Project (the “Lender Loan”). In connection with the Lender Loan, the Borrower will execute a Note (Multistate) (the “Lender Borrower Note”). The Borrower’s repayment obligations under the Lender Borrower Note will be secured by a first-lien priority Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (Texas) on the Project (the “Lender Mortgage”).

In no event shall the U.S. Department of Housing and Urban Development (“HUD”) or the Lender have any claim or lien upon the Trust Estate and funds pledged to secure the repayment of the Bonds.

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\* Preliminary; subject to change.

None of the Owners of the Bonds, the Trustee or the Issuer will have rights with respect to the Lender Loan or under the Lender Loan Documents. Furthermore, none of the Owners of the Bonds, the Trustee or the Issuer will have a lien on any funds, accounts or reserves established, disbursed, maintained and/or collected by the Lender in connection with the Lender Loan.

Definitions of certain terms used herein and not otherwise defined are set forth in Appendix A hereto. Brief descriptions of the Issuer, the Project, the Borrower, the use of proceeds of the Bonds and the Bonds together with summaries of the Indenture, the Bond Loan Agreement and the Regulatory Agreement are provided below. All information with respect to the Borrower, the Project and the private participants contained in this Official Statement has been furnished by the Borrower. The descriptions and summaries of the Bond Loan Agreement, the Indenture, the Regulatory Agreement and other documents contained herein do not purport to be comprehensive or definitive and are qualified in their entirety by reference to those documents, and all references to the Bonds are qualified in their entirety by the definitive forms thereof included in the Indenture. See “MISCELLANEOUS” herein for the availability of those documents.

## THE ISSUER

*The following information has been provided by the Issuer for uses herein. While the information is believed to be reliable, none of the Trustee, the Borrower, the Underwriter nor any of their respective counsel, members, officers or employees make any representations as to the accuracy or sufficiency of such information.*

### General

The Issuer, a public and official agency of the State of Texas (the “State”), was created pursuant to and in accordance with the Act. The Issuer is the successor agency to the Texas Housing Agency (the “Agency”) and the Texas Department of Community Affairs, both of which were abolished by the Act and their functions and obligations transferred to the Issuer. One of the purposes of the Issuer is to provide for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State. Pursuant to the Act, the Issuer may issue bonds, notes or other obligations to finance or refinance residential housing and to refund bonds previously issued by the Agency, the Issuer or certain other quasi-governmental issuers. The Act specifically provides that the revenue bonds of the Agency become revenue bonds of the Issuer.

The Issuer is subject to the Texas Sunset Act (Chapter 325, Texas Government Code, as amended, hereinafter referred to as the “Sunset Act”), and its continued existence is subject to a review process that resulted in passage of legislation in the 2023 Legislative Session which continued the Issuer in existence until September 2029, at which time it will be subject to review. The Sunset Act, however, recognizes the continuing obligation of the State to provide for the payment of bonded indebtedness incurred by a State agency abolished under the provisions thereof and provides that the Governor of the State shall designate an appropriate State agency to continue to carry out all covenants with respect to any bonds outstanding, including the payment of any bonds from the sources provided in the proceedings authorizing such bonds.

In the Act, the State also pledges and agrees with the holders of any bonds issued under the Act (such as the Bonds) that the State will not limit or alter the rights vested in the Issuer to fulfill the terms of any agreements made with the holders thereof that would in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, interest on any unpaid installments of interest and all costs and expenses incurred in connection with any action or proceeding by or on behalf of such holders are fully met and discharged.

## **Organization and Membership**

Governing Board. The Issuer is governed by a governing board (the “Board”) consisting of seven public members appointed by the Governor, with the advice and consent of the State Senate. Board members hold office for six-year staggered terms. Each member serves until his or her successor is appointed and qualified. Each member is eligible for reappointment. Members serve without compensation but are entitled to reimbursement for actual expenses incurred in performing their duties of office. The Act requires the Governor to make appointments so that the places on the Board are occupied by persons who have a demonstrated interest in issues related to housing and support services and who broadly reflect the geographic, economic, cultural and social diversity of the State, including ethnic minorities, persons with disabilities, and women.

The Governor of the State designates a member of the Board to serve as the presiding officer (the “Chair”) of the Board at the pleasure of the Governor. The Chair presides at all meetings and performs such other duties as may be prescribed from time to time by the Board and by the Act. In addition, the members of the Board elect one of its members as assistant presiding officer (the “Vice Chair”) to perform the duties of the Chair when the Chair is not present or is incapable of performing such duties. The Board also elects a Secretary and a Treasurer (which offices may be held by one individual, neither of which is required to be a Board member) to perform the duties prescribed by the Board.

One seat on the Board is currently vacant. The remaining members of the Board, their occupations and their terms of office are as follows:

LEO VASQUEZ, Chair and Board Member. Corporate finance and business management consultant, Houston, Texas. His term expires January 31, 2029.

KENNY MARCHANT, Vice Chair and Board Member. Retired U.S. Representative for the 24<sup>th</sup> Congressional District of Texas, Coppell, Texas. His term expires January 31, 2025.

AJAY THOMAS, Board Member. Executive Vice President and U.S. Head of Public Finance for FHN Financial, a division of First Horizon Bank, Austin, Texas. His term expires January 31, 2025.

ANNA MARIA FARIAS, Board Member. Retired Assistant Secretary of the Office of Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development. Her term expires January 31, 2027.

HOLLAND HARPER, Board Member. Chief Development Officer of Harrison, Walker and Harper, LLC, Paris, Texas. His term expires January 31, 2029.

CINDY CONROY, Board Member. Director of community outreach, aide to the chairman of WestStar Bank, Chair of the El Paso Community College Foundation and Heart Gallery of El Paso. Her term expires January 31, 2027.

All of the above Board members have been appointed by the Governor and confirmed by the State Senate. Texas law requires that confirmations of any such appointment be considered at the next legislative session, whether regular or special. Pursuant to Article XVI, Section 17, of the Texas Constitution, any Board member whose term has expired or who has tendered his or her resignation continues to serve until his or her successor has been appointed.

Administrative Personnel. The Act provides that the Issuer is to be administered by an Executive Director to be employed by the Board with the approval of the Governor. The Executive Director serves at

the pleasure of the Board, but may also be removed by a newly elected Governor who did not approve the Executive Director's appointment by action taken within 90 days after such Governor takes office. The Executive Director is responsible for administering the Issuer and its personnel. The Executive Director may employ other employees necessary for the discharge of the duties of the Issuer, subject to the annual budget and the provisions of any resolution authorizing the issuance of the Issuer's bonds.

Currently, the Issuer has 370 employees. The following is a biographical summary of certain of the Issuer's senior staff members who have responsibility with respect to multi-family housing bond matters:

ROBERT WILKINSON, Executive Director. Mr. Wilkinson was hired by the Governing Board to serve as the Executive Director at the Board meeting of July 25, 2019, and he began his tenure on August 15, 2019. Most recently, Mr. Wilkinson served as the Deputy Budget Director to Texas Governor Greg Abbott. Mr. Wilkinson served in the Budget and Policy Division within the Office of the Governor for the first three legislative sessions of Governor Abbott's administration 2015, 2017, and 2019. His duties included the development of the Governor's proposed budgets, the analysis and tracking of hundreds of filed bills including the General Appropriations Act, the development of policy, and the coordination of governance with executive state agencies. Housing and TDHCA were important elements of Mr. Wilkinson's portfolio of responsibility from 2014 (under former Governor Rick Perry) through 2019. Before 2014, Mr. Wilkinson held other positions within the Office of the Governor and worked in the private sector in various capacities including a stint as a project manager at a large commercial electrical contractor. Mr. Wilkinson received his Bachelor of Arts from the University of Texas at Austin.

JAMES "BEAU" ECCLES, General Counsel. J. Beau Eccles joined the Issuer in June 2015 as its General Counsel and is responsible for coordination of all internal and external legal counsel for the Issuer. Before joining the Issuer, Mr. Eccles served as an Assistant Texas Attorney General for thirteen years, including five years as Deputy Chief, then two years as Chief, of the General Litigation Division. Mr. Eccles is a graduate of the Texas Tech School of Law, and received his B.A. from the University of Texas at Austin.

TERESA MORALES, Director of Multifamily Bonds. Ms. Morales began her career with the Department in 1999 as a Senior Accountant responsible for back-end compliance relating to the Department's Residential Mortgage Revenue Bond and Multifamily Bond Trust Indentures. Since 2004 she has overseen the Department's Multifamily Private Activity Bond and 4% Housing Tax Credit programs. Ms. Morales earned her Bachelor's degree in Psychology and her Master's degree in Applied Sociology from Texas State University.

The offices of the Issuer are located at 221 East 11th Street, Austin, Texas 78701-2410, and the telephone number for the Issuer is 512/475-3800 or toll-free 800/525-0657.

### **Other Indebtedness of the Issuer**

Single Family Mortgage Revenue Bonds. As of March 31, 2024, the aggregate outstanding principal amount of bonded indebtedness of the Issuer for single-family purposes was \$2,528,470,240, and includes both single family mortgage revenue bonds and residential mortgage revenue bonds.

Multifamily Housing Revenue Bonds. As of March 31, 2024, the aggregate outstanding principal amount of multifamily housing revenue bonds was \$1,450,529,689, which have been issued pursuant to separate trust indentures and are secured by individual trust estates which are separate and distinct from each other.

THE ISSUER HAS NOT REVIEWED THIS OFFICIAL STATEMENT AND IS NOT RESPONSIBLE FOR ANY INFORMATION CONTAINED HEREIN, EXCEPT FOR THE INFORMATION IN THIS SECTION AND UNDER THE CAPTION “NO LITIGATION – THE ISSUER” HEREIN.

## SECURITY FOR THE BONDS

### General

**At all times the Bonds will be secured by Preference Proof Moneys and Permitted Investments on deposit in the Special Funds sufficient to pay, without need for reinvestment, all of the interest and principal on the Bonds when due to the Mandatory Tender Date, as further described herein.**

Pursuant to the Indenture, the Issuer grants, bargains, sells, conveys, pledges and assigns, without recourse, to the Trustee and its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the “Trust Estate”): (i) all right, title and interest of the Issuer in and to all Revenues (as defined below), derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of the Indenture and the Bond Loan Agreement (other than the Reserved Rights of the Issuer (as defined in Appendix A)), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate; (ii) all right, title and interest of the Issuer in and to the Note (other than the Reserved Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof; (iii) any fund or account created under the Indenture except for the Cost of Issuance Fund, the Expense Fund and the Rebate Fund; (iv) all right, title and interest of the Issuer in and to, and remedies under, the Bond Loan Agreement and the Bond Mortgage (other than the Reserved Rights of the Issuer); and (v) all funds, moneys and securities and any and all other rights and interests in property whether tangible or intangible from time to time by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security under the Indenture for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is authorized by the Indenture to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture. “Revenues” means all payments paid or payable to the Trustee in accordance with the Bond Loan Agreement, the Bond Loan and the Note and all investment earnings derived or to be derived on any moneys or investments held by the Trustee under the Indenture, but excluding (a) amounts paid as fees, reimbursement for expenses or for indemnification of any Issuer Indemnified Party and the Trustee, (b) amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer and (c) any Rebate Requirement.

### **The Collateral Fund; Application of Lender Collateral Deposits**

On the Closing Date, the proceeds of the Bonds will be deposited in the Project Fund pursuant to the Bond Loan Agreement and the Indenture. On the Closing Date and from time to time thereafter, the Lender or the Bridge Lender, as applicable, will irrevocably deposit into the Collateral Fund an amount at least equal to the principal amount of the Bonds. Following the deposit of a Lender Collateral Deposit into the Collateral Fund, Bond proceeds in an amount equivalent to such Lender Collateral Deposit will be disbursed by the Trustee in accordance with the direction of the Lender to be applied to the costs of the Project.

Together with amounts on deposit from time to time in the Project Fund and the Bond Fund (including the Capitalized Interest Account therein), amounts on deposit in the Collateral Fund, including any investment earnings thereon, have been calculated to be sufficient to pay, at all times, the principal of and interest on the Bonds to the Mandatory Tender Date. See “APPENDIX B – DOCUMENT

SUMMARIES – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Funds and Accounts – Collateral Fund” herein.

In no event shall HUD or the Lender have any claim or lien upon the Trust Estate and funds pledged to secure the repayment of the Bonds.

None of the Owners of the Bonds, the Trustee or the Issuer will have rights with respect to the Lender Loan or under the Lender Loan Documents. Furthermore, none of the Owners of the Bonds, the Trustee or the Issuer will have a lien on any funds, accounts or reserves established, disbursed, maintained and/or collected by the Lender in connection with the Lender Loan.

**Nonrecourse Liability of Borrower**

The Bond Loan Agreement provides that (i) the liability of the Borrower under the Bond Loan Agreement shall be limited to the Trust Estate, and such amounts as may be invested in accordance with the Indenture, and the Issuer and the Trustee shall look exclusively thereto or to such other security as may from time to time be given or have been given for payment of the Bonds, and any judgment rendered against the Borrower under the Bond Loan Agreement shall be limited to the Project and moneys derived from the operation of the Project, and any other security so given for satisfaction thereof, and (ii) no deficiency or other personal judgment shall be sought or rendered against the Borrower or its successors, transferees or assigns, in any action or proceeding arising out of the Bond Loan Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing contained in the Bond Loan Agreement shall limit the Issuer’s or the Trustee’s ability to exercise any right or remedy with respect to any property pledged or granted to the Issuer or to any trustee under the Bond Loan Agreement, or both, or to exercise any right against the Borrower, on account of any claim for fraud or deceit, and against any other Person on account of any claim for fraud or deceit. Notwithstanding anything in the Bond Loan Agreement to the contrary, nothing in the provisions of the Bond Loan Agreement described in this paragraph shall limit the rights of indemnification against the Borrower pursuant to the terms of the Bond Loan Agreement. Furthermore, notwithstanding anything to the contrary, the Borrower shall be fully liable for (1) amounts payable to the Issuer constituting Reserved Rights of the Issuer, (2) any amount due and owing as a result of any calculation or determination which may be required in connection with the Bonds for the purpose of complying with Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”) (including rebate liability) or any applicable Treasury regulation, (3) payment of the Issuer’s Fees, the Trustee’s Fee and the Rebate Analyst’s Fee and (4) any indemnification or payment obligations to the Issuer Indemnified Parties as more particularly described in the Bond Loan Agreement.

**Limited Obligations of the Issuer**

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THE INDENTURE AND IN THE BOND LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER

CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

**ESTIMATED SOURCES AND USES OF FUNDS\***

The total costs of the Project and the sources of funds to pay those costs are estimated by the Borrower as follows:

**Sources of Funds\***

Lender Loan	\$[24,710,000]
Tax Credit Equity <sup>†</sup>	[18,876,347]
Surplus Cash Note	[2,250,000]
Deferred Developer Fee	[4,427,210]
Solar Tax Credit Equity	[712,000]
<b>Total</b>	<b>\$[53,375,740]</b>

**Uses of Funds\***

Acquisition – (Land and Broker Fees)	\$[23,480,000]
Hard Costs – Rehabilitation	[12,747,291]
Hard Costs Contingency	[1,454,721]
Contractor Fees	[1,799,917]
Soft Costs	[5,121,943]
Financing Costs	[1,503,133]
Reserves	[890,000]
Developer Fee	[6,103,091]
<b>Total</b>	<b>\$[53,375,740]</b>

<sup>†</sup> The Borrower expects to obtain a loan (the “Bridge Loan”) from Bridgewater Bank, a Minnesota state banking corporation (the “Bridge Lender”) in the approximate principal amount of \$[7,500,000]\* in order to bridge a portion of the Tax Credit equity contributions.

All costs of issuing the Bonds, including the Underwriter’s fee, will be paid by the Borrower.

The sources and uses of funds for the Project to be applied under the Indenture are estimated by the Borrower to be approximately as follows.

<b>Sources of Funds*</b>	
Bond Proceeds	\$[27,500,000]
Lender Collateral Deposits	[27,500,000]
Capitalized Interest Deposit†	[ ]
Tax Credit Equity	[ ]
<b>Total</b>	\$[ ]
<b>Uses of Funds*</b>	
Deposit to Project Fund	\$[27,500,000]
Deposit to Collateral Fund	[27,500,000]
Deposit to Capitalized Interest Account	[ ]
Deposit to Cost of Issuance Fund	[ ]
<b>Total</b>	\$[ ]

† The Capitalized Interest Deposit has been calculated to be sufficient to pay, together with investment earnings on Permitted Investments deposited with the Trustee on the Closing Date, and without the need for reinvestment, the interest which will become due on the Bonds to but not including the Mandatory Tender Date.

Simultaneously with the issuance of the Bonds, the Borrower will close the Lender Loan on the Project in the amount of \$[24,710,000]\*. The Lender will ultimately advance all of the \$[24,710,000]\* principal amount of the Lender Loan in the form of Lender Collateral Deposits to the Trustee for deposit to the Collateral Fund. The Bonds will be initially secured by their own proceeds to be deposited in the Project Fund under the Indenture (plus the Capitalized Interest Deposit, if any, which, together with investment earnings on Permitted Investments deposited with the Trustee at closing, have been calculated to be sufficient to pay, without the need for reinvestment, capitalized interest on the Bonds to the Mandatory Tender Date). At closing and from time to time thereafter, Bond proceeds will be disbursed to or at the direction of the Lender against a simultaneous deposit to the Collateral Fund by the Lender of an equivalent Lender Collateral Deposit. The aggregate funds on deposit in the Special Funds, as invested pursuant to the Indenture, have been calculated to be sufficient to pay, at all times, principal of and interest on the Bonds as and when they become due to the Mandatory Tender Date.

### **Tax Credits**

Simultaneously with the issuance of the Bonds, the Borrower expects to sell to Raymond James Tax Credit Fund XX L.L.C., a Florida limited liability company (the “Equity Investor”) expects to acquire a 99.99% ownership interest in the Borrower so the Equity Investor may acquire 99.99% of the Tax Credits available to the Borrower. The funding of the Tax Credit equity by the Equity Investor is expected to total approximately \$[18,876,347]\*. The funding levels and the timing of the funding are subject to numerous adjustments and conditions that could result in the amounts funded and/or the timing or even occurrence of the funding to vary significantly from the projections set forth above and no representation is made as to the availability of such funds.

### **Subordinate Loans**

Simultaneously with the issuance of the Bonds, the Bridge Lender will make the Bridge Loan in a principal amount equal to approximately \$[7,500,000]\* to the Borrower to bridge a portion of the Tax Credit equity contributions. The Bridge Loan will be evidenced by a promissory note and will be secured

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\* Preliminary; subject to change.



by (i) a pledge of the Tax Credit equity contributions described above, (ii) a pledge of the general partnership interests in the Borrower, and (iii) a sponsor guaranty by Vitus Group, LLC, a Delaware limited liability company, as guarantor. Payment of developer fees will be subordinated to repayment of the Bridge Loan. The Bridge Loan is anticipated to be repaid from the above-described Tax Credit equity contributions, will bear interest at a rate of [7.5% per annum] [the greater of (i) 6.50% or (ii) 1-Month SOFR plus 275 basis points (adjusting daily)], payable monthly, and will mature on [July/August \_\_, 2026], subject to a 6-month extension option\*. The Bridge Lender will advance a portion of the proceeds of the Bridge Loan to be deposited with the Trustee on behalf of the Borrower for deposit to the Collateral Fund in exchange for the disbursement of an equal amount of Bond proceeds to pay Qualified Project Costs.

Simultaneously with the issuance of the Bonds, the General Partner (defined below) will make a surplus cash loan (the “Surplus Cash Note”) in a principal amount equal to approximately \$[2,250,000]\* to the Borrower. The Surplus Cash Note will be secured by a promissory note. The Surplus Cash Note is anticipated to be repaid from [surplus cash generated by Project revenues], will bear interest at a rate of [4.79]%\* per annum, and will have a [480]-month term\*.

## **THE PROJECT AND THE PARTICIPANTS**

### **The Project**

The Project consists of the rehabilitation of a 151-unit multifamily rental housing development known as Gulfway Manor Apartments, located at 1750 Treyway Lane, Corpus Christi, Texas 78412. The rehabilitation of the Project is expected to commence immediately on the Closing Date and be completed approximately 12\* months later.

The planned rehabilitation of the Project will include improvements to the general site such as added site accessibility, repairing sidewalks and concrete steps, jetting the sewer lines, installing an updated playground area as well as new dumpster enclosures and landscaping throughout. The rehabilitation of the exterior of the buildings on the Project will include pressure washing, brick repair, replacement of siding (as needed) as well as replacement of shingles and gutters. The rehabilitation of the interior units will include installation of new water heaters in all units, new split systems and hardwired fire/smoke detectors in all units, repairs to flooring and interior doors and painting in all living areas and stairwells.

The unit mix of the Project is as follows:

<b>Number of Units</b>	<b>Composition</b>	<b>Approximate Square Footage</b>
20	One Bedroom	600
51	Two Bedroom	726
60	Three Bedroom	986
20	Four Bedroom	1,130
<b>151</b>		

### **The Borrower**

The Borrower is Gulfway Housing Partners, LP, a Texas limited partnership (the “Borrower”), formed for the sole purpose of acquiring, rehabilitating, equipping and operating the Project. Upon the issuance of the Bonds, Gulfway Housing Management, LLC, a Texas limited liability company (the

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\* Preliminary; subject to change.

“General Partner”) is expected to own a 0.01% partnership interest in the Borrower, and the Equity Investor is expected to own a 99.99% partnership interest in the Borrower.

The developer of the Project will be Vitus Development III, LLC (“Vitus”). Vitus has been in the business of acquiring, owning and developing affordable apartment complexes for 27 years. Vitus was formed in 1993, and Vitus and its affiliates have been involved in the development of more than 100 apartment complexes comprising approximately 10,000 units across 30 states and the District of Columbia. These projects include more than 100 low income housing tax credit projects.

The prior experience of Vitus or its affiliates is no assurance that the Project will be successful.

### **Limited Assets and Obligations of the Borrower**

The Borrower entity was formed to develop, rehabilitate, construct and operate the Project. The Borrower has no material assets other than the Project and has covenanted not to engage in any activities unrelated to the Project. However, Vitus and its affiliates are engaged in and will continue to engage in the acquisition, development, ownership and management of market rate and affordable housing developments. They may be financially interested in, as officers, partners or otherwise, and devote substantial times to, business and activities that may be inconsistent or competitive with the interests of the Project.

The obligations and liabilities of the Borrower under the Note are of a non-recourse nature and are limited to funds deposited or to be deposited under the Indenture to enable the Borrower to satisfy such obligations. Neither the Borrower nor its members have any personal liability for payments on the Note to be applied to pay the principal of and interest on the Bonds. Furthermore, no representation is made that the Borrower has substantial funds available for the Project. Accordingly, neither the Borrower’s financial statements nor those of its members are included in this Official Statement.

### **The General Contractor**

The general contractor for the Project is expected to be Wilshire Pacific Builders (the “General Contractor”). The General Contractor has over 7 years of experience in renovating residential multifamily housing developments, and its principals have, collectively, over 25 years of such experience. The General Contractor has completed over 57 multifamily construction projects across the south and southeast regions of the United States.

Any previous experience of the General Contractor is no assurance that the Project will be successful.

### **Property Manager**

The Project will be managed by UAG Ventures AC, a [\_\_\_\_\_] limited partnership (the “Property Manager”). The Property Manager was established in 1995 and currently manages over 29,000 multifamily units throughout the southeastern United States.

Any previous experience of the Property Manager is no assurance that the Project will be successful.

## **The Architect**

The architect for the Project will be True Craft Architecture (the “Architect”). Founded in 2019, the Architect has been the principal architect on over 55 multifamily projects containing over 5,300 units throughout 18 states across the United States.

Any previous experience of the Architect is no assurance that the Project will be successful.

## **The Mortgage Lender**

The Lender for the Project will process the Lender Loan in accordance with the FHA insurance commitment issued by FHA. The Lender is a mortgage banking firm specializing, among other things, in FHA insured construction and permanent mortgage loans.

Upon satisfaction of certain conditions of the FHA insurance commitment, the Lender will make the Lender Loan to the Borrower and service the Lender Loan and serve as issuer of the GNMA security to be issued with respect to the Lender Loan described elsewhere herein. For issuers approved to participate in the multifamily program, which is comprised of mortgage-backed securities backed by multifamily construction or permanent loans, the minimum net worth requirement is \$1,000,000 plus 1% of the total effective multifamily outstanding obligations in excess of \$25 million up to \$175 million plus 0.20 percent (20 basis points) of the total effective multifamily outstanding obligations in excess of \$175 million. The total effective multifamily outstanding obligation is the sum of: 1) all multifamily securities outstanding, 2) available commitment authority to issue new multifamily pools, and 3) unexpended multifamily construction draws.

## **The HAP Contract**

The Project will receive the benefit of a Section 8 Housing Assistance Payment Contract (the “HAP Contract”) covering 151 of the units at the Project. The HAP Contract is expected to expire on or about November 30, 2033.

Funding under the HAP Contract will be subject to annual Congressional appropriations, as more particularly described below. The Section 8 project-based housing assistance payment program (the “Section 8 Program”) is authorized by Section 8 of the United States Housing Act of 1937, as amended, and in the case of Section 8 contracts is administered by local public housing authorities. Renewals of Section 8 HAP contracts are governed by the Multifamily Assisted Housing Reform and Affordability Act, as amended (“MAHRA”). The Section 8 Program authorizes housing assistance payments to owners of qualified housing for the benefit of low-income families (defined generally as families whose incomes do not exceed 80% of the area median income (“AMI”) for the area as determined by the U.S. Department of Housing and Urban Development (“HUD”)), and very low-income families (defined generally as families whose income do not exceed 50% of the AMI as determined by HUD). Section 8 housing assistance payments generally represent the difference between the “contract rent” for the unit approved by HUD and the eligible tenant’s contribution, which is generally 30% of income, as adjusted for family size and certain expenses, subject to a minimum rent contribution. The rents approved by HUD for the Project, as they may be adjusted from time to time with procedures set forth in MAHRA and the HAP Contract, are the “contract rents” for the Project. The HAP Contract will require the Borrower to maintain the Project in decent, safe and sanitary condition and to comply with other statutory and regulatory requirements governing the operation of the Project, use of project funds, and other matters. If the Borrower fails to comply with the terms of the HAP Contract, HUD or the contract administrator could seek to abate or terminate the payments under the HAP Contract, or take other sanctions. MAHRA requires that upon the request of the Borrower,

HUD shall renew the HAP Contract under the Section 8 Program. However, because the HAP Contract is subject to receipt of annual appropriations by Congress, there is no assurance that the HAP Contract will be renewed or replaced upon its expiration. Funding for HAP contracts is appropriated by Congress on an annual basis, and there is no assurance that adequate funding will be appropriated each year during the term of the HAP Contract. Since payments received under the HAP Contract constitute a primary source of revenues for the Project, the expiration of the HAP Contract, or the failure of Congress to appropriate funds sufficient to fund the HAP Contract during each year of its term, would have a material adverse effect on the ability of the Project to generate revenues.

### **The Regulatory Agreement**

At all times during the Qualified Project Period, not less than 40% of the completed residential units in the Project, other than those units occupied by the Borrower, are required to be occupied (or held available for occupancy) on a continuous basis by Low Income Tenants (i.e., persons or families at or below 60% of the median gross income for the area in which the Project is located).

The Borrower will agree that each individual rental unit in the Project will be rented or held for rental on a first-come, first-served basis, to the general public on a continuous basis, subject to the restrictions in the Regulatory Agreement. In addition, the Borrower will agree to the occupancy requirements described under the heading “APPENDIX B – DOCUMENT SUMMARIES – SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT.”

The Regulatory Agreement will also contain provisions for verifying compliance with the terms thereof. The provisions of the Regulatory Agreement discussed herein are intended, among other things, to ensure compliance with the requirements of the Code with respect to the excludability of the interest on the Bonds from gross income. Upon any breach by the Borrower of any provisions of the Regulatory Agreement, the Issuer or the Trustee may (in some cases only with the consent of Lender) take such actions at law or in equity as deemed appropriate under the circumstances, including an action for specific performance of the Regulatory Agreement, as described under the heading “APPENDIX B – DOCUMENT SUMMARIES – SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT.” Such a breach by the Borrower may result in interest on the Bonds being included in gross income of the owners of the Bonds for purposes of federal income taxation as described in “CERTAIN BONDHOLDERS’ RISKS - Taxability of the Bonds” and “TAX MATTERS.”

### **Additional Restrictive Covenants**

**Tax Credits.** In connection with the Tax Credits expected to be allocated to the Borrower in connection with the Project, the Borrower will execute an Extended Low-Income Housing Agreement for the Project in compliance with Section 42 of the Code (the “Extended Low-Income Housing Agreement”). The Extended Low-Income Housing Agreement for the Project will, among other things, require that at least [40]% of the residential rental units in the Project must be occupied by or set aside for individuals or families whose income does not exceed [60]% of the area median gross income for the county in which the Project is located, adjusted for family size in accordance with Section 142(d) of the Code, and that the rents which may be charged for occupancy of such units shall be restricted to an amount not greater than [30]% of [60]% of the area median gross income for the area in which the Project is located.

There are additional regulatory agreements restricting the property with remaining terms. These will be assigned to the Borrower at closing so that the restrictions on the property remain in place for the duration of the applicable term. These regulatory agreements include the Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits (the “LIHTC LURA”), made by and between GW Affordable Housing, LP and the Texas Department of Housing and

Community Affairs. The LIHTC LURA requires that the development owner shall lease 100% of units in the development to individuals or families whose income is 60% or less of the area median gross income. The LIHTC LURA includes additional use restrictions requiring the development owner to maintain tenant supportive services that are both coordinated with state programs, and selected from the list of eligible services outlined in the LIHTC LURA. The development owner must also consider prospective tenants referred from the waiting list of the Housing Authority of Corpus Christi, as well as adhere to accessibility requirements and maintain a certain number of units identified in the LIHTC LURA (approximately 5% of units) as mobility accessible. Finally, the development owner is obligated to maintain certain unit and property amenities that are specifically listed in the LIHTC LURA.

Also attached to the property is the Regulatory Agreement and Declaration of Restrictive Covenants (the “Bond Regulatory Agreement”), among Nueces County Housing Finance Authority, Regions Bank, and GW Affordable Housing, LP. The Bond Regulatory Agreement stipulates that no less than 40% of the total units of the project shall at all times be rented to and occupied by low income tenants whose income is 60% or less of the area median gross income. This agreement will also be assigned to the Borrower at closing.

In the event of a conflict among any of the restrictions encumbering the Project, the Project is required to comply with the most restrictive covenants.

## THE BONDS

*The following is a summary of certain provisions of the Bonds. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Bond, a copy of which is on file with the Trustee.*

### General

The Bonds will be dated July 1, 2024, and will bear interest from the date of their initial delivery at the rate per annum, and mature in the principal amount and on the Maturity Date, set forth on the front cover of this Official Statement. Interest on the Bonds will be payable initially on February 1, 2025\* and semiannually thereafter on February 1\* and August 1\* of each year until the Mandatory Tender Date or prior redemption of the Bonds. If the date of payment of principal or interest on the Bonds is not a Business Day, then such payment may be made on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided for such payment.

The Bonds will be issued in Book Entry Form only in denominations of \$5,000 each or integral multiples of \$1,000 thereafter and, when issued, will be registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York (“DTC”). See “BOOK-ENTRY ONLY SYSTEM” below.

### Redemption of Bonds

(a) The Bonds are not subject to optional redemption prior to the initial Mandatory Tender Date. From and after the initial Mandatory Tender Date, the Bonds are subject to optional redemption prior to maturity from Preference Proof Moneys, at the direction of a Borrower Representative (with delivery of a Cash Flow Projection, if required pursuant to paragraph (c) below), in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium,

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\* Preliminary; subject to change.

to the date fixed for redemption, on any Business Day that is on or after the date that is halfway between the most recent Mandatory Tender Date and the next Mandatory Tender Date or the Maturity Date, as applicable (provided the Bonds may not be redeemed prior to the date the Borrower has provided notice to the Trustee that the Project has been placed in service).

(b) Other than as set forth in paragraph (a) above, the Bonds are not subject to redemption prior to the Maturity Date.

(c) If, to pay the redemption price, the Trustee is required to sell or otherwise dispose of Permitted Investments shown in the most recent Cash Flow Projection delivered to the Rating Agency before the maturity or mandatory tender date of such Permitted Investments, then a new Cash Flow Projection shall be provided to the Trustee (with a copy to the Rating Agency) with the direction described in paragraph (a) above, and the Trustee shall utilize the amounts and take the actions set forth in such Cash Flow Projection to pay the redemption price of the Bonds called for redemption.

(d) In the event of a redemption in part, the particular Bonds to be redeemed shall be selected by the Trustee by lot in such manner as the Trustee shall deem fair and appropriate, provided that if a Book Entry System is then in effect, the Securities Depository shall select the interests of the beneficial owners of the Bonds to be redeemed.

### **Notice of Redemption**

All or a portion of the Bonds shall be called for optional redemption pursuant to the provisions of the Indenture described under the caption "Redemption of Bonds" above by the Trustee as provided in the Indenture upon receipt by the Trustee and the Issuer, at least 30 days prior to the redemption date (unless a shorter notice shall be satisfactory to the Trustee), of written notice of a Borrower Representative specifying the principal amount of the Bonds to be called for redemption and the redemption date. In the case of every redemption, the Trustee shall cause notice of such redemption to be given by mailing by first class mail, postage prepaid, a copy of the redemption notice to the Bondholders designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration records, in each case not more than 30 nor less than 20 days prior to the redemption date, provided, however, that failure to receive such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. Notwithstanding anything contained in the Indenture to the contrary, so long as the Bonds are in Book Entry Form, notice of redemption will be given by the Trustee only to DTC or its successor. Redemption is conditioned upon the Trustee having sufficient moneys on deposit in the Special Funds, on or prior to the redemption date, to redeem all of the Bonds called for redemption, and if the Trustee does not have sufficient funds for this purpose, no Bonds shall be redeemed. The Trustee shall furnish the Borrower, the Equity Investor, the Issuer, the Remarketing Agent and the Rating Agency with a copy of each notice of redemption given with respect to any optional redemption under the provisions of the Indenture described under the caption "Redemption of Bonds" above as soon as practicable after the delivery of notice to the Bondholders.

Each notice of redemption shall specify the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon will cease to accrue. Each notice of redemption may also state that the redemption is conditioned on receipt of sufficient Preference Proof Moneys for such redemption by the Trustee on or prior to the redemption date; if sufficient moneys are not so received, the redemption of the Bonds for which notice was given shall not be made, and the Trustee promptly shall give notice of cancellation of such redemption in substantially the same manner as the original notice of redemption. If

less than all the Outstanding Bonds are to be redeemed, the notice of redemption shall specify the numbers of the Bonds or portions thereof to be redeemed.

### **Mandatory Tender**

The Bonds are subject to mandatory tender in whole and not in part on the Mandatory Tender Date (August 1, 2026\*) and shall be purchased at a price equal to [100]% of the principal amount of such Bonds, plus accrued interest, if any, to the Mandatory Tender Date, and without premium. No later than 10:00 a.m., New York City time, on the Mandatory Tender Date, the Holders shall deliver the Bonds to the Trustee. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 1:30 p.m. New York City time on the Mandatory Tender Date, in the following priority: (i) amounts representing proceeds of remarketed Bonds received pursuant to the Indenture, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund and the Project Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Bond Fund (including the Capitalized Interest Account therein) to pay the accrued interest, if any, on Bonds tendered for purchase, and (iv) any other Preference Proof Moneys available or made available for such purpose at the direction of the Borrower.

If the conditions for remarketing set forth in the Indenture are not satisfied and/or the Trustee shall not have received remarketing proceeds on the Mandatory Tender Date equal to the principal amount of the Bonds Outstanding on such date, the Bonds shall be purchased in whole on the Mandatory Tender Date using amounts on deposit in the Collateral Fund, the Project Fund and the Bond Fund, and, immediately following such purchase, the Bonds shall be deemed redeemed on the Mandatory Tender Date and cancelled by the Trustee.

Not less than 30 days before the Mandatory Tender Date, the Trustee shall give written notice of mandatory tender and remarketing to the Holders by first class mail, postage prepaid, at their respective addresses as they appear on registration books kept by the Trustee as Bond Registrar. The Trustee shall also provide such notice to the Borrower and Equity Investor at the notice addresses provided in the Indenture. The notice shall state the Mandatory Tender Date and that:

- (1) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date and must be tendered for purchase on the Mandatory Tender Date;
- (2) all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date;
- (3) Holders will not have the right to elect to retain their Bonds and any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date; and
- (4) the address of the office of the Trustee at which Holders should deliver their Bonds for purchase on the Mandatory Tender Date.

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\* Preliminary; subject to change.

If notice is given as stated in this section, failure of any Holder to receive such notice, or any defect in the notice, shall not affect the remarketing or the validity of the proceedings for the remarketing of the Bonds.

### **BOOK-ENTRY ONLY SYSTEM**

*The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Borrower believes to be reliable, but the Borrower takes no responsibility for the accuracy thereof.*

The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will be initially issued and issuable only as one fully registered Bond certificate for each maturity, registered in the name of Cede & Co. as partnership nominee of DTC. Those fully registered Bonds will be deposited with and retained in the custody of DTC.

For ease of reference in this and other discussions, reference to "DTC" includes when applicable any successor securities depository and the nominee of the depository.

For all purposes under the Bond proceedings, DTC will be and will be considered by the Issuer and the Trustee to be the owner or Holder of the Bonds.

Owners of book-entry interests in the Bonds (book-entry interest owners) will not receive or have the right to receive physical delivery of Bonds, and will not be or be considered by the Issuer and the Trustee to be, and will not have any rights as, owners or holders of Bonds under the Bond proceedings.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has an S&P rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the book-entry interest owner) is in turn to be recorded on the Direct and Indirect Participant's records. Book-entry interest owners will not receive written confirmation from DTC of their purchase, but are expected to receive written confirmations providing details of the transaction, as well as periodic



statements of their holdings, from the Direct or Indirect Participant through which the book-entry interest owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Participants acting on behalf of book-entry interest owners. Book-entry interest owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in actual ownership. DTC has no knowledge of the book-entry interest owners (or beneficial owners) of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the book-entry interest owners. Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to book-entry interest owners, will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and debt service payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to book-entry interest owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and debt service payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the book-entry interest owners will be the responsibility of Direct and Indirect Participants.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds, as more fully described in the Indenture.

***Direct Participants and Indirect Participants may impose service charges on book-entry interest owners in certain cases. Purchasers of book-entry interests should discuss that possibility with their brokers.***

The Issuer, the Borrower and the Trustee have no role in the purchases, transfers or sales of book-entry interests. The rights of book-entry interest owners to transfer or pledge their interests, and the manner of transferring or pledging those interests, may be subject to applicable state law. Book-entry interest owners may want to discuss with their legal advisers the manner of transferring or pledging their book-entry interests.

The Issuer, the Borrower and Trustee have no responsibility or liability for any aspects of the records or notices relating to, or payments made on account of, book-entry interest ownership, or for maintaining, supervising or reviewing any records relating to that ownership.

The Issuer and the Borrower cannot and do not give any assurances that DTC, Direct Participants, Indirect Participants or others will distribute to the book-entry interest owners payments of debt service on the Bonds made to DTC as the registered owner, or any notices, or that they will do so on a timely basis, or that DTC will serve and act in the manner described in this Official Statement.

### **CERTAIN BONDHOLDERS' RISKS**

*The following is a summary of certain risks associated with a purchase of the Bonds. There are other possible risks not discussed below. The Bonds are payable from the payments to be made by the Borrower under the Bond Loan Agreement and the Note and from amounts on deposit in the Special Funds and the investment earnings thereon.*

#### **Limited Security; Investment of Funds**

The Bonds are special, limited obligations of the Issuer payable solely from certain funds pledged to and held by the Trustee pursuant to the Indenture, including the Special Funds. See “SECURITY FOR THE BONDS - Limited Obligations of the Issuer” herein.

The Bonds are secured by the Bond Mortgage, but any security provided by the Bond Mortgage is severely limited. Although the Borrower will deliver the Bond Mortgage to the Issuer (to be assigned to the Trustee at closing) in order to comply with the requirements of the Act, the Bond Mortgage is subordinate to the Lender Loan and the Trustee will have little or no practical means to realize any proceeds by foreclosing on the Bond Mortgage in the event of a default on the Bonds. Accordingly, investors should not look at the value of the Project, and should look exclusively to amounts on deposit in the Special Funds under the Indenture and investment earnings thereon as the source of payment of debt service on the Bonds.

The Bonds are offered solely on the basis of the amounts held under the Indenture and are not offered on the basis of the credit of the Borrower, the feasibility of the Project or any other security. As a consequence, limited information about the Project and no information about the financial condition or results of operations of the Borrower is included in this Official Statement. The Bonds are offered only to investors who, in making their investment decision, rely solely on the amounts held under the Indenture, and the investment earnings thereon, and not on the credit of the Borrower, the feasibility of the Project or any other security.

The principal of and interest on the Bonds are payable from and secured by certain revenues and funds pledged thereto under the Indenture. The Trustee is required to invest amounts held in the Special Funds in Permitted Investments, as defined in the Indenture. See “APPENDIX B — DOCUMENT

SUMMARIES — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE — Investment.” Failure to receive a return of the amounts so invested could affect the ability to pay the principal of and interest on the Bonds.

### **Lender Collateral Deposits; Disbursement of Bond Proceeds**

As described under the heading “SECURITY FOR THE BONDS – The Collateral Fund; Application of Lender Collateral Deposits” above, Lender Collateral Deposits will be disbursed and deposited into the Collateral Fund under the Indenture as a condition precedent to the disbursement of Bond proceeds from the Project Fund in an equal amount to pay a portion of the costs of acquiring, rehabilitating and equipping the Project. In order to have the Lender initiate the transfer of a Lender Collateral Deposit or the Bridge Lender initiate the transfer of proceeds of the Bridge Loan, as applicable, into the Collateral Fund, the Borrower will be required to satisfy any agreements relating to the Lender Loan, or the Bridge Loan, as applicable, (including requirements related to the completion of rehabilitation of the Project, which may be delayed by an epidemic or pandemic infectious disease such as COVID-19). Failure of the Borrower to satisfy additional future conditions could result in the Lender or Bridge Lender suspending disbursements of the Lender Loan or Bridge Loan, as applicable, until the conditions have been satisfied which, in turn, could result in the inability of the Borrower to pay the costs of completing the Project. However, such a failure to complete the Project would not affect the security for the Bonds or cause a default on the Bonds.

### **Exercise of Legal Remedies**

The ability of the Issuer to enforce its rights or exercise its remedies upon default under the Bond Loan Agreement is dependent upon regulatory and judicial actions which may be subject to discretion and delay. Under existing law and judicial decisions (including laws relating to bankruptcy), the remedies provided for under the Bond Loan Agreement or the Indenture may not be readily available or may be limited, and the Borrower will have no personal liability for the satisfaction of any obligation of the Borrower under such agreements or of any claim against the Borrower arising out of such agreements or the Indenture.

The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Bonds and the documents described above is subject to limitations imposed by such things as the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or a court of equity), including judicial limitations on rights to specific performance and bankruptcy, insolvency, reorganization, moratorium or other similar laws heretofore or hereafter in effect affecting creditors’ rights, to the extent constitutionally applicable.

### **Infectious Disease Outbreak**

Without limiting the generality of the foregoing, an outbreak of a highly contagious, epidemic or pandemic infectious disease such as COVID-19, Zika or Ebola nationally or locally in the Project’s market area could adversely affect the Borrower’s operations and financial results, including the cost or length of time necessary to complete the rehabilitation of the Project. An increase in delinquencies and/or vacancies could depress rental revenue, and operating costs could increase, resulting in a default by the Borrower on its obligations with respect to the Bonds or the Lender Loan, including the taxability of interest paid on, and/or the extraordinary mandatory redemption of, the Bonds.

## **Taxability of the Bonds**

THE BONDS ARE NOT SUBJECT TO ACCELERATION OR REDEMPTION UPON ANY DETERMINATION OF TAXABILITY OF INTEREST ON THE BONDS. IN ADDITION, THE RATE OF INTEREST ON THE BONDS IS NOT SUBJECT TO ADJUSTMENT BY REASON OF THE INTEREST ON THE BONDS BEING INCLUDED IN GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION. Such event could occur if the Borrower (or any subsequent owner of the Project) or other parties to the transaction do not comply with the provisions of the Regulatory Agreement, certain other tax-related agreements executed in connection with the Bonds, and the Bond Loan Agreement, or if the transaction is deemed not to comply with requirements of the Code in order for the interest on the Bonds to be excluded from gross income for federal income tax purposes. Under such circumstances, interest on the Bonds might become subject to federal income taxation retroactive to the date of issuance or some other subsequent date. See “APPENDIX B – DOCUMENT SUMMARIES – SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT” and “TAX MATTERS” herein.

## **Permitted Investments**

Preference Proof Moneys received by the Trustee for deposit into the Special Funds are required to be invested in Permitted Investments. See “APPENDIX A — DEFINITIONS” hereto for the definition of Permitted Investments. There can be no assurance that there will not be a loss resulting from any investment held for the credit of the Special Funds, and any failure to receive a return of the amounts so invested could affect the ability to pay the principal of and interest on the Bonds.

## **Rating Based on Permitted Investments**

The rating on the Bonds is based upon the Bonds being fully secured by Permitted Investments held in the Trust Estate. If one or more of such investments fail to meet the rating standards for Permitted Investments after their purchase and prior to their maturity, such a change may result in a downgrade or withdrawal of the rating on the Bonds.

## **Subordination to Lender Loan Documents**

The Indenture, the Bond Loan Agreement, the Note, the Bond Mortgage and the Regulatory Agreement contain provisions regarding subordination of such documents to the Lender Loan Documents. No assurance can be given that such provisions will not impair the excludability of interest on the Bonds from gross income for federal income tax purposes.

## **Secondary Markets and Prices**

No representation is made concerning the existence of any secondary market for the Bonds. The Underwriter will not be obligated to repurchase any of the Bonds, nor can any assurance be given that any secondary market will develop following the completion of the offering of the Bonds. Further, there can be no assurance that the initial offering prices for the Bonds will continue for any period of time. Furthermore, the Bonds should be purchased for their projected returns only and not for any resale potential, which may or may not exist.

## **Future Legislation; IRS Examination**

The Project, its operation and the treatment of interest on the Bonds are subject to various laws, rules and regulations adopted by the local, State and federal governments and their agencies. There can be

no assurance that relevant local, State or federal laws, rules and regulations may not be amended or modified or interpreted in the future in a manner that could adversely affect the Bonds, the Trust Estate, the Project, or the financial condition of or ability of the Borrower to comply with its obligations under the various transaction documents.

The Internal Revenue Service (“IRS”) routinely engages in enforcement activity regarding tax-exempt bonds. Currently, the primary penalty available to the IRS under the Code is a determination that interest on bonds is subject to federal income taxation. Such event could occur for a variety of reasons, including, without limitation, failure to comply with certain requirements imposed by the Code relating to investment restrictions, periodic payments of arbitrage profits to the United States of America, the timely and proper use of Bond proceeds and the facilities financed therewith and certain other matters. See “TAX MATTERS” herein. No assurance can be given that the IRS will not examine the Issuer, the Borrower, the Project or the Bonds. If the Bonds are examined, it may have an adverse impact on their price and marketability.

## TAX MATTERS

**The following discussion of certain federal income tax considerations is for general information only and is not tax advice. Each prospective purchaser of the Bonds should consult its own tax advisor as to the tax consequences of the acquisition, ownership and disposition of the Bonds.**

### Tax Exemption

#### *In General*

In the opinion of Bond Counsel, assuming compliance with certain covenants and based on certain representations, under existing law (i) interest on the Bonds is excludable from gross income for federal income tax purposes under Section 103 of the Code, except with respect to interest on any Bond for any period during which such bond is held by a person who is a “substantial user” of the Project or a “related person” of such a “substantial user,” as those terms are defined for purposes of Section 147(a) of the Code, as and (ii) interest on the Bonds is not an item of tax preference for purposes of the alternative minimum tax on individuals.

The Code imposes a number of requirements that must be satisfied for interest on state or local obligations, such as the Bonds, to be excludable from gross income for federal income tax purposes. These requirements include, among other things, limitations on the use of the bond-financed project, limitations on the use of bond proceeds, limitations on the investment of bond proceeds prior to expenditure, a requirement that excess arbitrage earned on the investment of bond proceeds be paid periodically to the United States, and a requirement that the Issuer file an information report with the IRS. The Issuer and the Borrower have covenanted in the Indenture, Bond Loan Agreement, Tax Exemption Agreement and Regulatory Agreement that they will comply with these requirements.

Bond Counsel’s opinion will assume continuing compliance with the covenants of the Indenture, Financing Agreement, Tax Exemption Agreement and Regulatory Agreement pertaining to those sections of the Code that affect the excludability of interest on the Bonds from gross income for federal income tax purposes and, in addition, will rely on representations by the Issuer, the Borrower, the Issuer’s financial advisor and the Underwriter with respect to matters solely within the knowledge of the Issuer, the Borrower, the Issuer’s financial advisor, and the Underwriter, respectively, which Bond Counsel has not independently verified. If the Issuer or the Borrower should fail to comply with the covenants in the Indenture, Bond Loan Agreement, Tax Exemption Agreement and Regulatory Agreement or if the foregoing representations should be determined to be inaccurate or incomplete, interest on the Bonds could become includable in

gross income for federal income from the date of original delivery of the Bonds, regardless of the date on which the event causing such inclusion occurs.

Bond Counsel will express no opinion as to the amount or timing of interest on the Bonds or, except as stated above, any federal, state or local tax consequences resulting from the receipt or accrual of interest on, or the acquisition, ownership or disposition of, the Bonds. Certain actions may be taken or omitted subject to the terms and conditions set forth in the Indenture and related documents, upon the advice or with an approving opinion of Bond Counsel. Bond Counsel will express no opinion with respect to its ability to render an opinion that such actions, if taken or omitted, will not adversely affect the excludability from gross income of interest on the Bonds for federal income tax purposes.

Bond Counsel's opinions are based on existing law, which is subject to change. Such opinions are further based on Bond Counsel's knowledge of facts as of the date thereof. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Bond Counsel's attention or to reflect any changes in any law that may thereafter occur or become effective. Moreover, Bond Counsel's opinions are not a guarantee of result and are not binding on the IRS; rather, such opinions represent Bond Counsel's legal judgment based upon its review of existing law and in reliance upon the representations and covenants referenced above that it deems relevant to such opinions. The IRS has an ongoing audit program to determine compliance with rules that relate to whether interest on state or local obligations is includable in gross income for federal income tax purposes. No assurance can be given whether or not the IRS will commence an audit of the Bonds. If an audit is commenced, in accordance with its current published procedures the IRS is likely to treat the Issuer as the taxpayer and the Owners may not have a right to participate in such audit. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit regardless of the ultimate outcome of the audit.

### *Operation of the Project*

In the case of bonds used to provide residential rental housing, such as the Bonds, Section 142 of the Code requires that such bonds also satisfy the tenant eligibility requirements applicable to "qualified residential rental projects" under Section 142(d) of the Code. Section 142(d) of the Code requires that at all times during the "qualified project period" a certain percentage of the available units in the Project be occupied by individuals with income below certain levels pursuant to the Issuer's election made under Section 142(d)(1) of the Code. The "qualified project period" for the Project will commence on the delivery date of the Bonds and will end on the latest of the following: (1) the date that is 15 years after the first date on which 50 percent of the residential units in the Project are occupied; (2) the first day on which no tax-exempt private activity bond issued with respect to the Project remains outstanding for federal income tax purposes; or (3) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates. Treasury Regulations (the "Regulations") setting forth requirements for compliance with a comparable provision of the predecessor of Section 142 of the Code require, among other things, that (1) the low-income set aside requirement must be met on a continuous basis during the "qualified project period" and (2) all of the units in the Project must be rented or available for rental to the general public on a continuous basis during such period. Under the Regulations, the failure to satisfy the foregoing requirements on a continuous basis or the failure to satisfy any of the other requirements of the Regulations, unless corrected within a reasonable period of not more than 60 days after such non-compliance is first discovered or would have been discovered by the exercise of reasonable diligence, will cause interest on the Bonds to be includable in gross income for federal income tax purposes as of the date of their original issue, irrespective of the date such non-compliance actually occurred.

The Issuer has established requirements, procedures and safeguards that it believes to be sufficient to ensure compliance with the requirements of the Code and the Regulations with respect to the Project.

Such requirements, procedures and safeguards are incorporated into the Regulatory Agreement, the Bond Loan Agreement, the Tax Exemption Agreement and the Indenture. In addition, the Issuer and the Trustee have each covenanted in the Tax Exemption Agreement to follow and enforce such procedures to ensure compliance with such requirements. However, no assurance can be given that in the event of a breach of any of the provisions or covenants described above, the remedies available to the Issuer and the Trustee can be judicially enforced in such manner as to assure compliance with the Code and therefore to prevent the loss of the excludability of the interest on the Bonds from gross income for federal income tax purposes. Furthermore, if the Borrower fails to comply with the Regulatory Agreement, the Tax Exemption Agreement or the Bond Loan Agreement, the enforcement remedies available to the Issuer, the Trustee and the Owners are severely limited and may be inadequate to prevent the loss of the excludability of interest on the Bonds from gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. In such event, there is no provision for acceleration or redemption of the Bonds, and the holders of the Bonds may be required to hold the Bonds until maturity bearing interest that is includable in gross income for federal income tax purposes.

Prospective purchasers should be aware that HUD has required the inclusion of a rider to the Regulatory Agreement (the “HUD Rider”) providing that the provisions of the Regulatory Agreement are subordinate to the HUD Requirements (as defined in the HUD Rider). Bond Counsel expresses no opinion as to whether any of the covenants and requirements set forth in the Regulatory Agreement conflict with the HUD Rider. Furthermore, Bond Counsel expresses no opinion as to the initial and continuing excludability of interest on the Bonds from gross income for federal income tax purposes in the event that the provisions of the HUD Rider preclude compliance with any of the covenants or requirements of the Regulatory Agreement. See “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT – HUD Requirements.”

#### **Additional Federal Income Tax Considerations**

Prospective purchasers of the Bonds should be aware that the ownership of tax-exempt obligations may result in collateral federal income tax consequences, including but not limited to, those noted below. Therefore, prospective purchasers of the Bonds should consult their own tax advisors as to the tax consequences of the acquisition, ownership and disposition of the Bonds.

An “applicable corporation” (as defined in Section 59(k) of the Code) may be subject to a 15% alternative minimum tax imposed under Section 55 of the Code on its “adjusted financial statement income” (as defined in Section 56A of the Code) for such taxable year. Because interest on tax-exempt obligations, such as the Bonds, is included in a corporation’s “adjusted financial statement income,” ownership of the Bonds could subject certain corporations to alternative minimum tax consequences.

Ownership of tax-exempt obligations also may result in collateral federal income tax consequences to financial institutions, life insurance and property and casualty insurance companies, certain S corporations with Subchapter C earnings and profits, individual recipients of Social Security or Railroad Retirement benefits, taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, low and middle income taxpayers otherwise qualifying for the health insurance premium assistance credit and individuals otherwise qualifying for the earned income tax credit. In addition, certain foreign corporations doing business in the United States may be subject to the “branch

profits tax” on their effectively connected earnings and profits, including tax-exempt interest such as interest on the Bonds.

Prospective purchasers of the Bonds should also be aware that, under the Code, taxpayers are required to report on their returns the amount of tax-exempt interest, such as interest on the Bonds, received or accrued during the year.

### **Tax Legislative Changes**

Current law may change so as to directly or indirectly reduce or eliminate the benefit of the excludability of interest on the Bonds from gross income for federal income tax purposes. Any proposed legislation, whether or not enacted, could also affect the value and liquidity of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed, pending or future legislation.

## **UNDERWRITING**

The Bonds are being purchased by Colliers Securities LLC (the “Underwriter”) at the price listed on the cover page hereof. As consideration for its underwriting of the Bonds, the Underwriter will be paid an aggregate fee equal to \$\_\_\_\_\_, plus \$[5,000] to reimburse the Underwriter for certain fees and expenses.

The Underwriter has committed to purchase all of the Bonds if any of such Bonds are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Bond Purchase Agreement, the approval of certain legal matters by counsel, and certain other information, and to use its best efforts to sell the Bonds. The Bonds are being offered for sale at the price set forth on the cover page of this Official Statement, which price may be lowered by the Underwriter from time to time without notice. The Bonds may be offered and sold to dealers, including the Underwriter and dealers acquiring Bonds for their own account or any account managed by them, at prices lower than the public offering prices. In the Bond Purchase Agreement, the Borrower has agreed to indemnify the Issuer and the Underwriter with respect to certain matters in connection with the Bonds.

In addition to serving as the Underwriter, Colliers Securities LLC has been designated to serve as Remarketing Agent and will receive a fee for its remarketing services in connection with the remarketing, if any, of the Bonds on the Mandatory Tender Date.

## **RATING**

The Bonds have been assigned a rating of “Aaa” by Moody’s Ratings (“Moody’s,” and in its capacity as rating agency for the Bonds, the “Rating Agency”). The rating assigned to the Bonds described above reflects only the view of the Rating Agency, and an explanation of the significance of such rating may be obtained from the Rating Agency. The rating is not a recommendation to buy, sell, or hold the Bonds. There is no assurance that the rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by the Rating Agency if in the judgment of the Rating Agency circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Bonds. See “CERTAIN BONDHOLDERS’ RISKS—Rating Based on Permitted Investments” herein.

Certain information and materials not included in this Official Statement were furnished to the Rating Agency. Generally, rating agencies base their ratings on the information and materials so furnished and on investigations, studies, and assumptions by the rating agency.



The Issuer has not assumed any responsibility to notify the owners of any proposed change in, suspension or withdrawal of such rating subsequent to the date of this Official Statement, and the Borrower has such responsibility only in connection with the reporting of events as provided in the Continuing Disclosure Agreement. Neither of them has any responsibility to contest any such revision, suspension or withdrawal.

#### **SUBORDINATION TO LENDER LOAN DOCUMENTS AND PROGRAM OBLIGATIONS**

The Indenture, the Bond Loan Agreement, the Note, and the Regulatory Agreement (the “Bond Financing Documents”) provide that, notwithstanding anything in such documents to the contrary, the Bond Financing Documents will be subordinate to the Lender Loan Documents. In the event of any conflict between the provisions of the Bond Financing Documents and the Lender Loan Documents or the Program Obligations (as defined in the Lender Mortgage), the Lender Loan Documents or the Program Obligations will control. Enforcement of the Bond Financing Documents will not result in any claim against the Project, the Lender Mortgage proceeds, any reserve or deposit required by HUD in connection with the Lender Mortgage, or the rents or other income from the Project (except “surplus cash,” as defined in the HUD Regulatory Agreement). No assurance can be made that such provision will not impair the excludability of interest on the Bonds from gross income for federal income tax purposes. In no event shall HUD or the Lender have any claim to or lien upon the Trust Estate and funds pledged to secure the repayment of the Bonds.

#### **CERTAIN LEGAL MATTERS**

Delivery of the Bonds will be accompanied by the approving legal opinion of the Texas Attorney General to the effect that the Bonds are valid and legally binding obligations of the Issuer under the laws of the State of Texas, payable from the Trust Estate. Certain legal matters relating to the execution and delivery of the Indenture and the Bond Loan Agreement are subject to the approving opinion of Bracewell LLP, Bond Counsel, which will be furnished at the expense of the Borrower (the “Bond Counsel Opinion”). See “APPENDIX C – PROPOSED FORM OF OPINION OF BOND COUNSEL” hereto. Certain financial advisory services will be provided to the Issuer by Stifel, Nicolaus & Company, Incorporated. Certain legal matters will be passed upon for the Borrower by its counsel, Winthrop & Weinstine, P.A., Minneapolis, Minnesota, and [LOCAL COUNSEL], and for the Underwriter by its counsel, Norris George & Ostrow PLLC, Washington, D.C. Fees and expenses of certain of the above-mentioned counsel are contingent upon the issuance of the Bonds.

Bracewell LLP, whose legal services as Bond Counsel have been retained by the Issuer, will opine on the date of issuance of the Bonds with regard to the excludability of interest on the Bonds from gross income. See “TAX MATTERS” herein. The proposed text of the legal opinion is set forth in APPENDIX C. The actual legal opinion to be delivered may vary from that text if necessary to reflect facts and law on the date of delivery of the Bonds. The opinion will speak only as of its date, and subsequent distribution of it by recirculation of this Official Statement or otherwise shall create no implication that Bond Counsel has reviewed or expresses any opinion concerning any of the matters referenced in the opinion subsequent to its date.

In rendering its approving opinion, Bond Counsel will rely on certifications and representations of fact to be contained in the transcript of proceedings which Bond Counsel will not have independently verified.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions on the legal issues explicitly addressed therein. By rendering the legal opinion, the opinion giver does not become an insurer or guarantor of an

expression of professional judgment of the transaction opined upon, or of the future performance of parties to such transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

## **NO LITIGATION**

### **The Borrower**

There is no action, suit, proceeding, inquiry or investigation of which the Borrower has been notified, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best knowledge of the Borrower, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers to their respective offices, affecting the transaction contemplated by this Official Statement or the exclusion of interest on the Bonds from the gross income, for federal income tax purposes, of the owners of the Bonds, or contesting or affecting as to the Borrower the validity or enforceability of the Bonds, any document entered into by the Borrower in connection with the transaction contemplated hereby (the “Borrower Documents”) or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the completeness or accuracy of this Official Statement or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the Borrower’s financial condition or operations or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.

### **The Issuer**

There is no action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, pending, or to the actual knowledge of the Issuer threatened in writing, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues or assets of the Issuer pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (i) the use of this Official Statement or the use of the proceeds of the Bonds to make the Bond Loan, (ii) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds or any of the Issuer Documents, (iii) the tax-exempt status of the interest on the Bonds or the accuracy or completeness of this Official Statement, (iv) the execution and delivery of the Issuer Documents or the Bonds, or (v) the power of the Issuer to carry out the transactions contemplated by the Bonds, this Official Statement or any of the Issuer Documents.

## **CONTINUING DISCLOSURE**

The Borrower will enter into a Continuing Disclosure Agreement, dated as of July 1, 2024 (the “Continuing Disclosure Agreement”), with the Trustee, acting as the Dissemination Agent, obligating the Borrower to send, or cause to be sent, certain financial information with respect to the Project to the Municipal Securities Rulemaking Board annually and to provide notice, or cause notice to be provided, to the Municipal Securities Rulemaking Board, of certain enumerated events for the benefit of the beneficial owners and Holders of any of the Bonds, pursuant to the requirements of Section (b)(5)(i) of Securities Exchange Commission Rule 15c2-12 (the “Rule”). See APPENDIX D - “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

A failure by the Borrower to comply with the provisions of the Continuing Disclosure Agreement will not constitute a default under the Indenture or Bond Loan Agreement (although Bondholders will have

any available remedy at law or in equity for obtaining necessary disclosures). Nevertheless, such a failure to comply is required to be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds.

The Borrower is a new entity and has not previously been subject to the continuing disclosure requirements of the Rule.

### **FINANCIAL ADVISOR**

Stifel, Nicolaus & Company, Incorporated (the “Financial Advisor”) has served as a financial advisor to the Issuer for purposes of assisting the Issuer with the development and implementation of the bond program in connection with the Bonds. The Financial Advisor has not been engaged by the Issuer to compile, create or interpret any information in this Official Statement relating to the Issuer, including (without limitation) any of the Issuer’s financial and operating data, whether historical or projected. Any information contained in this Official Statement concerning the Issuer, any of its affiliates or contractors and any outside parties has not been independently verified by the Financial Advisor, and inclusion of such information is not and should not be construed as a representation by the Financial Advisor as to its accuracy or completeness or otherwise. The Financial Advisor is not a public accounting firm and has not been engaged by the Issuer to review or audit any information in this Official Statement in accordance with accounting standards.

The Financial Advisor does not assume any responsibility for the covenants and representations contained in any of the legal documents with respect to the federal income tax status of the Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

### **ENFORCEABILITY OF REMEDIES**

The remedies available to the Trustee, the Issuer and the Owners of the Bonds upon an Event of Default under the Bond Loan Agreement, the Regulatory Agreement or the Indenture are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, including specifically the Federal Bankruptcy Code, the remedies provided for under the Federal Bankruptcy Code, the Bond Loan Agreement, the Regulatory Agreement or the Indenture may not be readily available or may be limited.

In addition, the Bond Loan Agreement and the Regulatory Agreement both provide that the payment obligations of the Borrower contained in such agreements (other than certain obligations to the Issuer and the Trustee individually and not on behalf of the Owners of the Bonds) will be limited obligations payable solely from the income and assets of the Borrower, and that no member of the Borrower will have any personal liability for the satisfaction of any payment obligation of the Borrower under such agreements or of any claim against the Borrower arising out of such agreements or the Indenture.

The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified as to the enforceability of various legal instruments by limitations imposed by the valid exercise of the constitutional powers of the State and the United States of America and bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

## MISCELLANEOUS

Copies of the Indenture, the Bond Loan Agreement, the Note and the Regulatory Agreement are on file at the office of the Trustee and are available for inspection upon request.

This Official Statement is submitted in connection with the sale of the securities referred to herein and may not be reproduced or used, as a whole or in part, for any other purpose. Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Issuer or the Borrower and the purchasers or Holders of any of the Bonds.

The Issuer makes no representations with respect to any information in this Official Statement other than the information under the headings “THE ISSUER” and “NO LITIGATION – The Issuer.”

This Official Statement has been approved by the Issuer and the Borrower for distribution to current Bondholders and potential purchasers of the Bonds.

(Remainder of Page Intentionally Left Blank)

(Signature Page to Official Statement – Gulfway Manor)

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

## APPENDIX A

### DEFINITIONS

“Account” means an account within any Fund created pursuant to the Indenture.

“Act” means Chapter 2306, Texas Government Code, as amended.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Authorized Officer” means the Chair or Vice Chair of the Board, the Executive Director of the Issuer, the Director of Financial Administration of the Issuer, the Director of Bond Finance of the Issuer, the Director of Multifamily Bonds of the Issuer, and the Secretary or Assistant Secretary to the Board.

“Board” means the Governing Board of the Issuer.

“Bond” or “Bonds” means the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 issued, authenticated and delivered under the Indenture.

“Bond Counsel” means nationally recognized bond counsel selected by the Issuer and initially means Bracewell LLP.

“Bond Documents” means, with respect to the Bonds, the Bonds, the Indenture, the Bond Loan Agreement, the Bond Mortgage, the Note, the Bond Purchase Agreement, the Regulatory Agreement, the Continuing Disclosure Agreement, the Tax Exemption Agreement, the Funding Agreement and any and all documents executed in connection with the Bonds.

“Bond Fund” means the Bond Fund created in the Indenture.

“Bond Loan” means the mortgage loan in the principal amount of \$[27,500,000]\* made by the Issuer to the Borrower evidenced by the Note, described in the Bond Loan Agreement and made in connection with the issuance of the Bonds.

“Bond Loan Agreement” or “Agreement” means the Loan Agreement, dated as of July 1, 2024, between the Issuer and the Borrower, and any and all amendments or supplements thereto, pursuant to which the Bond Loan is being made to the Borrower.

“Bond Mortgage” means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing, dated of even date with the Indenture, from the Borrower to [Martha Earley] for the benefit of the Trustee and the Issuer, and as the same may be amended, supplemented or restated.

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\* Preliminary; subject to change.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated July \_\_, 2024, among the Issuer, the Borrower and the Underwriter.

“Bond Registrar” has the meaning assigned to it in the Indenture.

“Bondholder” or “Holder of the Bonds” or “Holder” or “Owner of the Bonds” or “Owner” when used with respect to any Bond, means the Person or Persons in whose name such Bond is registered as the owner thereof on the books of the Issuer maintained at the Trust Office of the Trustee for that purpose.

“Book Entry Form” or “Book Entry System” means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“Borrower” means Gulfway Housing Partners, LP, a Texas limited partnership, duly organized and existing in the State of Texas, and its successors and assigns.

“Borrower Documents” means the Bond Loan Agreement, the Bond Mortgage, the Note, the Tax Exemption Agreement, the Regulatory Agreement, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Bond Loan evidenced by the Bond Loan Agreement.

“Borrower Obligations” means the obligations of the Borrower under the Bond Loan Agreement, the Note and the other Borrower Documents to (a) pay the principal of, and interest on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Bond Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer and the Trustee, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Bond Loan Agreement, the Note, the Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“Borrower Representative” means a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by one of its officers, which certificate may designate an alternate or alternates.

“Bridge Lender” means Bridgewater Bank, a Minnesota state banking corporation, and its successors and assigns.

“Bridge Loan” means the equity bridge loan to the Borrower relating to the Project from the Bridge Lender in the maximum principal amount of \$[7,500,000]\*

“Business Day” or “business day” means a day, other than a Saturday or Sunday, on which (a) banks located in New York, New York or in the city in which the Trust Office of the Trustee is located,

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\* Preliminary; subject to change.

are not required or authorized by law or executive order to close for business and (b) the New York Stock Exchange is not closed.

“Capitalized Interest Account” means the Account by that name created in the Bond Fund pursuant to the Indenture.

“Capitalized Interest Deposit” means the deposit of \$[\_\_\_\_\_] from Preference Proof Moneys to the Capitalized Interest Account of the Bond Fund on the Closing Date, as provided in the Indenture.

“Cash Flow Projection” means a cash flow projection prepared by an Independent firm of certified public accountants, a financial advisory firm, a law firm or other Independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing, to the satisfaction of the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Preference Proof Moneys delivered to the Trustee by or on behalf of the Borrower to pay principal of and interest on the Bonds when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed optional redemption of the Bonds, as provided in the Indenture, (iii) the release of Preference Proof Moneys from the Capitalized Interest Account of the Bond Fund, as provided in the Indenture, and (iv) the purchase, sale or exchange of Permitted Investments as provided in the Indenture.

“Closing Date” means the date of delivery of the Bonds in exchange for the purchase price thereof.

“Closing Memorandum” means the closing memorandum prepared by the Underwriter and executed by the Borrower and/or the Issuer in connection with the issuance of the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import enacted after the date of the Indenture, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“Collateral Fund” means the Collateral Fund created pursuant to the Indenture.

“Construction Draw Date” means the date on which a disbursement from the Project Fund shall be made solely to pay Costs of the Project.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated as of July 1, 2024, between the Borrower and the Dissemination Agent.

“Controlling HUD and GNMA Requirements” means the National Housing Act and any applicable HUD or GNMA regulations, and related HUD or GNMA administrative requirements and prohibitions, including “Program Obligations” as defined in the HUD Regulatory Agreement.

“Costs of Issuance” means all fees, costs and expenses incurred in connection with the issuance of the Bonds and the extension of the Bond Loan that are payable from amounts deposited in the Cost of Issuance Fund.



“Cost of Issuance Deposit” means the deposit to the Cost of Issuance Fund on the Closing Date in the amount designated in the Closing Memorandum, as provided in the Indenture.

“Cost of Issuance Fund” means the Cost of Issuance Fund created pursuant to the Indenture.

“Costs of the Project” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“Dissemination Agent” means U.S. Bank Trust Company, National Association, a national banking association and its permitted successors and assigns as Dissemination Agent under the Continuing Disclosure Agreement.

“Dissemination Agent Fee” means the fee payable to U.S. Bank Trust Company, National Association, in its capacity as Dissemination Agent pursuant to the Continuing Disclosure Agreement.

“Documents” means and shall include (without limitation), with respect to the Bonds, the Indenture, the Bond Documents, the Borrower Documents, and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may execute and deliver after the date of the Indenture, to evidence or secure the Bonds and the Borrower Obligations, or any part thereof, or in connection therewith, and any and all supplements thereto.

“Equity Investor” means Raymond James Tax Credit Fund XX L.L.C., a Florida limited liability company, and its permitted successors and assigns in its capacity as the Equity Investor of the Borrower.

“Event of Default” or “Default” means, when used in the Indenture, those events of default or defaults specified therein and, when used in the Bond Loan Agreement, those events of default or defaults specified therein.

“Expense Fund” means the fund by that name created and established pursuant to the Indenture.

“Favorable Opinion of Bond Counsel” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the Federal Tax Status of the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“Federal Tax Status” means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond during any period during which it is held by a “substantial user” of the Project or “related person” to such a substantial user within the meaning of Section 147(a) of the Code).

“FHA” means the Federal Housing Administration of HUD or any successor entity and any authorized representatives or agents thereof, including the Secretary of HUD, the Federal Housing Commissioner and their representatives or agents.

“Fund” means any fund created pursuant to the Indenture.

“Funding Agreement” means the Funding Agreement, dated as of July 1, 2024, by and between the Lender and the Borrower, and acknowledged by the Issuer and the Trustee, as amended, supplemented or restated from time to time.

“General Partner” means Gulfway Housing Management, LLC, a Texas limited liability company, as the Borrower’s general partner.

“GNMA” means the Government National Mortgage Association.

“Government Obligations” means non-callable, non-redeemable direct obligations issued by the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America, including, when available, SLGS.

“Governmental Authority” means any federal, State or local governmental or quasi-governmental entity, including, without limitation, any agency, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity.

“Governmental Requirements” means all laws, ordinances, orders, rules or regulations of all Governmental Authorities applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBS”) and compounds containing them; lead and lead based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above ground storage tanks, whether empty or containing any substance; any substance the presence of which at the Project is prohibited by any federal, state or local authority; any substance that requires special handling under any Hazardous Materials Law; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law, but does not include any such substance that is a customary and ordinary household, cleaning, office, swimming pool or landscape maintenance product used on the Project by the Borrower or any tenant or agent of the Borrower, or customary construction materials used during the course of construction and equipping of the Project by the Borrower or the Contractor, provided such use is in accordance with applicable hazardous material laws.

“Hazardous Materials Law” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Project. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs, including laws of the State.

“Highest Rating Category” means, with respect to a Permitted Investment, that the Permitted Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below Aaa or Aaa/VMIG-1 if rated by Moody’s or A-1+ or AA+ if rated by S&P.

“HUD” means the U.S. Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects between the Borrower and HUD, as amended or supplemented from time to time.

“Indenture” means the Trust Indenture, dated as of July 1, 2024, between the Issuer and the Trustee, and any and all Supplements thereto, authorizing the issuance of the Bonds.

“Independent” means a Person that has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner, member or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, partner, member, officer or employee of any partner or member of the Borrower or any Affiliate of the Borrower.

“Initial Bond” means the initial Bond registered by the Comptroller and subsequently canceled and replaced by a definitive Bond pursuant to the Indenture.

“Interest Payment Date” means each February 1\* and August 1\*, beginning February 1, 2025\*.

“Issuer” means the Texas Department of Housing and Community Affairs, a public and official agency of the State, and its successors and assigns.

“Issuer Documents” means the Bond Loan Agreement, the Indenture, the Regulatory Agreement, the Bond Purchase Agreement, the Tax Exemption Agreement and any and all documents, agreements or instruments executed by the Issuer in connection with the Bond Loan evidenced by the Bond Loan Agreement.

“Issuer Indemnified Party” or “Issuer Indemnified Parties” has the meaning set forth in the Bond Loan Agreement.

“Issuer Administration Fee” means the fee payable annually in advance to the Issuer on each July 1, in the amount of 0.10% per annum of the aggregate principal amount of Bonds Outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Issuer Administration Fee for the period from the Closing Date to [June 30, 2026]. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after [July 1, 2026].

“Issuer Compliance Fee” means the fee payable annually in advance to the Issuer on each July 1, in the amount of \$25 per Unit (as defined in the Regulatory Agreement) in the Project, for the duration of the State Restrictive Period (as defined in the Regulatory Agreement). The first annual Issuer Compliance Fee shall be paid on the Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after [July 1, 2027]. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

“Issuer’s Fees” means, collectively, the Issuer Administration Fee and the Issuer Compliance Fee.

“Lender” means Merchants Capital Corp., an Indiana banking corporation, and its successors and assigns.

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\* Preliminary; subject to change.

“Lender Borrower Note” means the \$[24,710,000]\* Note (Multistate), dated as of July 1, 2024, from the Borrower to the Lender to evidence its indebtedness under the Lender Loan and endorsed by HUD.

“Lender Collateral Deposit” shall have the meaning given to such term in the Indenture.

“Lender Loan” means the loan made by the Lender to the Borrower in the original principal amount not to exceed \$[24,710,000]\*, as evidenced by the Lender Borrower Note and secured by the Lender Mortgage.

“Lender Loan Documents” means the documents related to the Lender Loan, including the Lender Borrower Note, the Lender Mortgage, the HUD Regulatory Agreement and any and all other documents, agreements, or instruments which evidence or secure the indebtedness evidenced by the Lender Loan.

“Lender Mortgage” means the first-lien priority Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (Texas), dated July 1, 2024, from Borrower for the benefit of the Lender to secure the repayment of the Lender Borrower Note.

“Mandatory Tender Date” means (i) August 1, 2026\*, and (ii) if the Bonds are remarketed pursuant to the Indenture for a period that does not extend to the Maturity Date, the day immediately following such period.

“Maturity Date” means August 1, 2028\*.

“Maximum Rate” shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Bonds under State law pursuant to Chapter 1204 of the Texas Government Code.

“Moody’s” means Moody’s Ratings, a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“Note” means the Promissory Note, dated the Closing Date, from the Borrower to the Issuer in substantially the form attached as an exhibit to the Bond Loan Agreement, and any amendments, supplements or modifications thereto, which Note has been assigned by the Issuer to the Trustee.

“Official Statement” means this Official Statement, dated July \_\_, 2024, relating to the Bonds.

“Opinion of Counsel” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer and the Trustee with experience in the matters to be covered in the opinion.

“Optional Redemption Date” means any date the Bonds are redeemed pursuant to the Indenture.

“Outstanding,” “outstanding” or “Bonds Outstanding” when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under the Indenture, except:

- (a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;

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\* Preliminary; subject to change.

(b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee or other escrow agent in accordance with the Indenture; or

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under the Indenture.

“Organizational Documents” means the Amended and Restated Limited Partnership Agreement, dated as of July 1, 2024, as any of the foregoing may be amended, modified, supplemented or restated from time to time.

“Paying Agent” means the Trustee in its capacity as paying agent for the Bonds.

“Permitted Investments” means (i) Government Obligations, and (ii) shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that Rating Category), including mutual funds of the Trustee or its Affiliates or for which the Trustee or an Affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consist primarily of Government Obligations. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories, and the Trustee shall have no responsibility to monitor the ratings of Permitted Investments upon or after the initial purchase of such Permitted Investments.

“Person” shall include an individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

“Plans and Specifications” means the plans and specifications and/or the scope of work for the Project, together with such amendments thereto as are made from time to time in accordance with the Bond Loan Agreement.

“Preference Proof Moneys” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds plus any additional amount paid by the Underwriter to the Trustee in excess of the offering price (or in the case of a remarketing, by the Remarketing Agent in excess of the reoffering price) of the Bonds, (iii) proceeds of a Lender Collateral Deposit, (iv) proceeds of the Bridge Loan deposited with the Trustee on behalf of the Borrower, or (v) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code. “Preference Proof Moneys” shall also include investment earnings derived from any of the foregoing.

“Project” means the multifamily rental housing development known as Gulfway Manor Apartments, which will consist of approximately 151 apartment units and related facilities located in Nueces County, Texas.

“Project Fund” means the Project Fund created in the Indenture.

“Purchase in Lieu of Redemption Date” means the date set forth in the Indenture.

“Qualified Project Costs” has the meaning assigned to such term in the Tax Exemption Agreement.

“Qualified Project Period” has the meaning assigned to such term in the Regulatory Agreement.

“Rating Agency” means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

“Rating Category” means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Permitted Investment.

“Rating Confirmation” means a letter of confirmation from the Rating Agency to the effect that the proposed action would not result in a withdrawal, suspension or downgrade of the rating then in effect on the Bonds.

“Rebate Analyst” has the meaning assigned to such term in the Tax Exemption Agreement.

“Rebate Analyst Fee” means the fee payable by the Borrower to the Rebate Analyst upon delivery of its report in accordance with the Tax Exemption Agreement.

“Rebate Fund” means the Rebate Fund created in the Indenture.

“Rebate Requirement” means the amount, if any, which is to be paid to the United States of America pursuant to Section 148(f) of the Code and the Indenture or to reduce the yield on investments to the yield on the Bonds pursuant to Section 148 of the Code.

“Record Date” means the 15<sup>th</sup> day of the month preceding the date on which interest is due and payable.

“Regulations” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“Regulatory Agreement” means the Regulatory and Land Use Restriction Agreement, dated as of July 1, 2024, among the Issuer, the Trustee, and the Borrower, and any and all amendments or supplements thereto.

“Remarketing Agent” means initially Colliers Securities LLC, and any successor Remarketing Agent that may be appointed by the Borrower.

“Remarketing Agreement” means the Remarketing Agreement, dated as of even date with the Indenture, between the Borrower and the Remarketing Agent.

“Remarketing Notice Parties” means the Borrower, the Issuer, the Trustee, the Remarketing Agent, the Equity Investor and the Rating Agency.

“Remarketing Rate” means the interest rate or rates established pursuant to the Indenture and borne by the Bonds then Outstanding from and including a Mandatory Tender Date to but not including the next Mandatory Tender Date or the Maturity Date, as applicable.

“Representation Letter” means the Blanket Letter of Representations from the Issuer to DTC, or any similar Letter of Representations at the time in use by DTC.

“Requisition” means (a) the request signed by the Borrower Representative to make a disbursement from the Project Fund on a Construction Draw Date in the manner provided pursuant to the Indenture or

(b) the request signed by the Borrower Representative to make a disbursement from the Cost of Issuance Fund in the manner provided pursuant to the Indenture.

“Reserved Rights of the Issuer” and “Reserved Rights” means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to the Bond Loan Agreement, including the Issuer’s Fees; (c) all rights of the Issuer to receive any Rebate Amount (as defined in the Tax Exemption Agreement) required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to make determinations and grant approvals or consent under the Indenture, the Bond Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Bond Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in the Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, or the Bond Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, the Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Bond Mortgage or the Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of the Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, Bond Mortgage and the Note; (h) any and all limitations of the Issuer’s liability and the Issuer’s disclaimers of warranties set forth in the Indenture, the Regulatory Agreement, the Tax Exemption Agreement or the Bond Loan Agreement, and the Issuer’s right to inspect and audit the books, records and permits of the Borrower and the Project; and (i) any and all rights under the Bond Loan Agreement and the Regulatory Agreement required for the Issuer to enforce or to comply with Section 2306.186 of the Texas Government Code.

“Resolution” means the resolution adopted by the Issuer on [June 13, 2024], duly authorizing and directing the issuance, sale and delivery of the Bonds.

“Responsible Officer” means, when used with respect to the Trustee, any vice president, assistant vice president, senior associate, associate or other officer of the Trustee within the Trust Office (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of the Indenture.

“Revenues” means, all payments paid or payable to the Trustee in accordance with the Bond Loan Agreement, the Bond Loan and the Note and all investment earnings derived or to be derived on any moneys or investments held by the Trustee under the Indenture, but excluding (a) amounts paid as fees, reimbursement for expenses or for indemnification of any Issuer Indemnified Party and the Trustee, (b) amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer and (c) any Rebate Requirement.

“S&P” means S&P Global Ratings, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“Securities Depository” means The Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

“SLGS” means Time Deposit Treasury Securities – State and Local Government Series.

“Special Funds” means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein, all as created in the Indenture.

“State” means the State of Texas.

“Supplement” or “Supplements” means any and all extensions, renewals, modifications, amendments, supplements and substitutions to the Indenture.

“Tax Exemption Agreement” means the Tax Exemption Certificate and Agreement, dated as of July 1, 2024, among the Issuer, the Borrower and the Trustee, and any and all amendments or supplements thereto.

“Trust Estate” has the meaning given such term in the Granting Clauses of the Indenture.

“Trust Office” means the corporate trust office of the Trustee located at the address set forth in the Indenture or such other office designated by the Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the Trustee.

“Trustee” means U.S. Bank Trust Company, National Association, a national banking association, duly organized and existing under the laws of the United States of America, and authorized to exercise corporate trust powers in the State, and its successor or successors in the trust created by the Indenture.

“Trustee’s Fee” means the ongoing compensation and expenses payable to the Trustee as follows: (a) the acceptance fee of the Trustee of \$[\_\_\_\_\_] payable on the Closing Date; (b) the annual administration fees and expenses of the Trustee, as Trustee, Registrar, Dissemination Agent and Paying Agent of \$[\_\_\_\_\_] for the ordinary services of the Trustee rendered under the Indenture during each twelve month period, payable annually in advance beginning on the Closing Date and thereafter on each anniversary of the Closing Date; (c) the reasonable fees and charges of the Trustee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture as and when the same become due, including reasonable counsel fees (including in-house counsel fees and fees prior to litigation, at trial, in insolvency proceedings or for appellate proceedings); provided, further, that the Trustee shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Trustee shall have been made; (d) for purposes of the Bond Loan Agreement, indemnification of the Trustee by the Borrower; and (e) the annual Dissemination Agent Fee under the Continuing Disclosure Agreement of \$[\_\_\_\_\_] , payable annually in advance on the Closing Date and thereafter on each anniversary of the Closing Date.

“Trustee Indemnified Party” or “Trustee Indemnified Parties” has the meaning set forth in the Bond Loan Agreement.

“Underwriter” means Colliers Securities LLC.

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## APPENDIX B

### DOCUMENT SUMMARIES

#### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The Indenture contains terms and conditions relating to the issuance and sale of Bonds under it, including various covenants and security provisions, certain of which are summarized below. This summary does not purport to be comprehensive or definitive and is subject to all of the provisions of the Indenture to which reference is hereby made, a copy of which is on file with the Trustee. This summary uses various terms defined in the Indenture and such terms as used herein shall have the same meanings as so defined.*

#### **Funds and Accounts**

The following trust funds are created by the Issuer under the Indenture to be held separately by the Trustee:

- (1) Bond Fund, and within the Bond Fund, a Capitalized Interest Account;
- (2) Project Fund;
- (3) Rebate Fund;
- (4) Expense Fund;
- (5) Collateral Fund; and
- (6) Cost of Issuance Fund.

**Bond Fund.** On the Closing Date, upon receipt of the Capitalized Interest Deposit, if any, in accordance with the Bond Loan Agreement, the Trustee shall deposit the Capitalized Interest Deposit to the Project Fund, and thereafter transfer or allocate to the Capitalized Interest Account of the Bond Fund the amounts set forth in the Closing Memorandum. All Revenues received by the Trustee, except for funds deposited in the Bond Fund (including the Capitalized Interest Account therein), the Project Fund or the Collateral Fund on the Closing Date and any investment earnings thereon, shall be deposited, first, to the credit of the Expense Fund to the extent any fees, costs, or expenses described under the caption “Expense Fund” below are due and payable, and then to the Bond Fund. In accordance with the Indenture, for so long as the Bonds are outstanding under the Indenture, funds on deposit in the Project Fund, the Collateral Fund or the Bond Fund (including the Capitalized Interest Account therein) shall not be deposited in the Expense Fund or otherwise used to pay fees, costs or expenses described under the caption “Expense Fund” below.

In connection with the issuance of the Bonds, certain moneys may be deposited with the Trustee before the Closing Date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Trustee subject to the terms and conditions of the Indenture in addition to terms provided in such letter(s) of instruction.

The funds on deposit in the Bond Fund shall be used by the Trustee to pay principal of and interest on the Bonds on each date a payment of principal or interest is due to be made, whether by maturity, redemption or scheduled Interest Payment Date.

In the event that amounts on deposit in the Bond Fund on any Interest Payment Date or Mandatory Tender Date or such other Bond payment date are insufficient to make the payment of principal of or interest on the Bonds when due, the Trustee shall transfer funds in the following order to the Bond Fund and use such funds, together with amounts then on deposit in the Bond Fund, to make such payments when due:

- (a) first, from amounts on deposit in the Capitalized Interest Account of the Bond Fund;
- (b) second, from amounts on deposit in the Collateral Fund; and
- (c) third, from amounts on deposit in the Project Fund.

So long as there are any Outstanding Bonds, payments due under the Note and the Bond Loan Agreement shall be deemed made by the Trustee's transfer of funds on each Interest Payment Date from the Capitalized Interest Account of the Bond Fund or from the Collateral Fund to the Bond Fund, in an amount necessary to pay the interest on and principal (if any) of the Bonds.

Promptly following receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is authorized under the Indenture to take the actions and release from the Capitalized Interest Account the amount of Preference Proof Moneys set forth in such Cash Flow Projection to or at the written direction of the Borrower.

**Project Fund.** The proceeds received by the Trustee for such purpose upon the issuance and sale of the Bonds shall be deposited in the Project Fund in the amount set forth in the Closing Memorandum. Disbursements from the Project Fund shall be made upon the receipt by the Trustee of the following and shall be used solely to pay Costs of the Project incurred in connection with the acquisition and construction of the Project: (1) a request or requests therefor executed by the Borrower, in the form of a Requisition in substantially the form attached to the Indenture, (2) if applicable, a request by the Lender accompanied by its approved FHA draw, and (3) an amount equal to the requested disbursement has been received by the Trustee and deposited to the Collateral Fund in accordance with the Indenture. Together with amounts on deposit in the Project Fund and any other Preference Proof Moneys on deposit in the Capitalized Interest Account of the Bond Fund, amounts on deposit in the Bond Fund and the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable.

Each Lender Loan Requisition shall be made in accordance with the Lender Loan Documents and FHA/HUD requirements. Upon approval of a Requisition by the Lender or the Bridge Lender, as applicable (each an "Approved Advance") and, if required, HUD, the Lender shall, in accordance with the Funding Agreement, deliver to the Trustee an amount equal to the Approved Advance to be held by the Trustee and to be deposited into the Collateral Fund, together with its request for a disbursement from the Project Fund in an amount equal to the Approved Advance, which disbursement shall be used by the Lender to provide for the payment of Costs of the Project. In the event that for any reason the Trustee is not prepared to promptly disburse funds from the Project Fund, the Trustee shall not deposit the amount of the Approved Advance in the Collateral Fund, shall so inform the Lender or the Bridge Lender, as applicable, and the Borrower and shall return such deposit to the originating Lender in accordance with the written instructions of such Lender.

Notwithstanding any provision of the Bond Loan Agreement or the Indenture to the contrary, the Trustee shall not disburse moneys from the Project Fund, other than to pay principal and/or interest payments on the Bonds in accordance with the Indenture, unless and until the Trustee receives satisfactory evidence that a Lender Collateral Deposit or other Preference Proof Moneys in an amount equal to or greater

than the requested disbursement amount has been deposited in the Collateral Fund. Prior to making any disbursement, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund, (ii) the Capitalized Interest Account of the Bond Fund, (iii) the Project Fund and (iv) the Bond Fund, will be sufficient to pay principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable. Upon satisfaction of the conditions precedent described under this caption, and notwithstanding anything in the Bond Documents to the contrary, once the Lender or Bridge Lender, as applicable, deposits the Lender Collateral Deposit and upon satisfaction of the conditions described under this caption, the Trustee is irrevocably and unconditionally obligated to disburse an equal amount of moneys from the Project Fund in accordance with approved Requisitions. Upon such disbursement, the Lender Collateral Deposit is irrevocable and constitutes part of the Trust Estate.

All disbursements from the Project Fund will be made to or at the direction of the Lender, or shall be transferred to the Bond Fund.

The Trustee and the Issuer shall not in any event be responsible or liable to any Person for the disbursement of, or failure to disburse, moneys from the Project Fund, or any part thereof, and no contractor, subcontractor or material or equipment supplier shall have any right or claim against the Trustee or the Issuer under the Indenture.

**Rebate Fund.** The Rebate Fund is created for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Issuer or the Holders of the Bonds. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. The Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under the Indenture. Notwithstanding the foregoing, with respect to the Rebate Fund the Trustee is afforded all the rights, protections and immunities otherwise accorded to it under the Indenture.

**Expense Fund.** The Trustee shall deposit amounts received from the Borrower for the purpose of paying Trustee's Fees, the Issuer's Fees, the Rebate Analyst Fee and any other fees and expenses required under the Bond Loan Agreement into the Expense Fund. The Trustee shall pay such amounts to the proper persons on the dates and in the amounts due. Amounts on deposit in the Expense Fund shall be withdrawn or maintained, as appropriate by the Trustee to pay (i) to the Issuer, the Issuer's Fees, (ii) to the Trustee, the Trustee's Fee, (iii) to the Rebate Analyst, the Rebate Analyst Fee, (iv) upon receipt, to the Trustee, any amounts due to the Trustee which have not been paid, other than amounts paid in accordance with clause (ii) above, and (v) upon receipt, to the Issuer, the Issuer's Fees due and unpaid, other than amounts paid in accordance with clause (i) above.

**Collateral Fund.** Upon receipt of (a) proceeds of the sale of a GNMA security from the Lender, (b) a draw on the Lender's warehouse line of credit or (c) funds otherwise provided by the Lender or the Bridge Lender, as applicable (each, a "Lender Collateral Deposit") or other Preference Proof Moneys, the Trustee shall, in accordance with the Funding Agreement, deposit such amounts to the Collateral Fund. Together with amounts on deposit in the Project Fund and the Bond Fund (including the Capitalized Interest Account therein), amounts on deposit in the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds to but not including the next Mandatory Tender Date or the Maturity Date, as applicable. On each date on which principal of or interest on the Bonds is due, the Trustee shall transfer a sufficient amount of funds from the Collateral Fund for deposit to the Bond Fund to enable the Trustee to make such payments as and when due.

**Cost of Issuance Fund.** On or before the Closing Date the Borrower shall deliver the Cost of Issuance Deposit to the Trustee. On the Closing Date, the Trustee shall deposit or transfer, as applicable, the Cost of Issuance Deposit into the Cost of Issuance Fund as designated in the Closing Memorandum.

Except as otherwise described under this caption, the amounts deposited in the Cost of Issuance Fund shall be expended for Costs of Issuance and for no other purpose. The Borrower shall deliver to the Trustee the Requisition in the form attached as an exhibit to the Indenture, executed by the Borrower, specifying in detail the amount that constitutes Costs of Issuance to be paid or reserved to be paid under this caption, the respective firms or persons to whom such payments are to be made, and their respective payment instructions. The Trustee shall make the payments specified therein concurrently with or as soon as may be practicable after the delivery of the Bonds.

Any moneys remaining in the Cost of Issuance Fund twelve (12) months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower upon the written instruction to the Trustee from the Borrower, in accordance with the provisions described under the caption "Payment to Borrower of Excess Moneys" below. Upon final disbursement, the Trustee shall close the Cost of Issuance Fund.

**Payment to Borrower of Excess Moneys.** Subject to the provisions of the Indenture, any amounts remaining in the Cost of Issuance Fund after the payment in full of all Costs of Issuance shall be paid (upon written direction from the Borrower to the Trustee) to the Borrower in accordance with the provisions described under the caption "Cost of Issuance Fund" above, and any amounts remaining in the Collateral Fund or the Bond Fund (except for amounts then held by the Trustee in the Bond Fund for payment of principal of, or interest on, any of the Bonds) after payment in full of the principal of and interest on the Bonds, payment of any and all fees and expenses due in accordance with the Indenture and the Bond Loan Agreement, and payment of all other costs associated with the discharge of the Bonds and receipt of the final rebate arbitrage report and payment of any rebate amount (if any), shall, upon written instruction to the Trustee from the Borrower (with a copy to the Issuer), be paid to the Borrower upon the expiration or sooner termination of the term of the Bond Loan Agreement.

## **Investment**

On the Closing Date, a portion of the moneys on deposit in the Project Fund in the amount, if any, set forth in the Closing Memorandum will be held by the Trustee uninvested until disbursed to the Borrower on the Closing Date in accordance with the Closing Memorandum. The balance of amounts on deposit in the Project Fund after any such disbursement shall be invested as set forth in the following paragraph.

In accordance with the Closing Memorandum, the Trustee has been directed to purchase, on the Closing Date, Permitted Investments maturing on or before the initial Mandatory Tender Date, with respect to the investment of certain amounts on deposit in the Special Funds, the principal and interest of which will be sufficient to pay principal and interest on the Bonds when due to the initial Mandatory Tender Date. All interest earned from the foregoing investments shall be deposited in the Bond Fund. Such funds shall remain on deposit, subject to reallocation pursuant to the Indenture, until the initial Mandatory Tender Date or earlier Optional Redemption Date, on which date they will be withdrawn to make payment on the Bonds. If any investments in the Special Funds must be liquidated prior to the Maturity Date, such investments shall be liquidated under the Indenture. Anything to the contrary contained in the Indenture notwithstanding, earnings received by the Trustee with respect to Permitted Investments purchased under the Indenture shall be invested in money market funds described in clause (ii) of the definition of Permitted Investments.

At no time shall the Borrower direct that any funds constituting Gross Proceeds (as defined in the Tax Exemption Agreement) of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code, all as set forth in the Tax Exemption Agreement. Following the Closing Date, at the written direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Permitted Investments so long as the Trustee has received a Cash Flow Projection.

As long as no Event of Default shall have occurred and be continuing, the Borrower shall have the right to designate the investments to be sold and to otherwise direct the Trustee in writing in the sale or purchase of the investments made with the moneys in the Special Funds, provided that the Trustee shall be entitled to conclusively assume the absence of any such Event of Default unless it has notice thereof; if there has been an Event of Default, the Trustee shall have said right.

Except as otherwise specified in the Indenture, amounts on deposit in the Special Funds shall be invested at all times in Permitted Investments. The investments described in each of the above paragraphs shall be made by the Trustee pursuant to the written direction provided by the Indenture and in accordance with the written direction of the Borrower to be provided on the Closing Date, which shall remain in effect until further written direction is provided by the Borrower. In the absence of investment instructions from the Borrower, the Trustee shall invest the moneys held in the Special Funds in the following investment: [\_\_\_\_\_].

Amounts, if any, on deposit in the Cost of Issuance Fund, until disbursed or returned to the Borrower pursuant to the provisions described under the caption "Cost of Issuance Fund" above, shall be invested at the direction of the Borrower Representative. The Expense Fund shall be invested at the direction of the Borrower Representative. In the absence of investment instructions from the Borrower, the Trustee shall not be responsible or liable for keeping the moneys held in the Cost of Issuance Fund or the Expense Fund under the Indenture fully invested in Permitted Investments.

### **Investment of Rebate Fund**

Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee as set forth in the Tax Exemption Agreement.

### **Discharge of Lien**

If and when the Bonds secured by the Indenture shall become due and payable in accordance with their terms as provided in the Indenture, or otherwise, and the whole amount of the principal and the interest so due and payable upon all of the Bonds, together with all other amounts payable under the Indenture by the Issuer and all fees and expenses of the Trustee and the Issuer, shall be paid, or provision shall have been made for the payment of the same, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon request of the Borrower, the Trustee shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing and after receipt of a rebate analyst report and, if necessary, funding for any rebate payment, any surplus in the Collateral Fund and all balances remaining in any other fund created under the Indenture and shall assign and transfer to the Borrower all other property then held by the Trustee under the Indenture and shall execute such documents as may be reasonably required by the Borrower.

If and when the Trustee shall hold sufficient moneys under the Indenture, as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations, to provide for payment of the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all the Bonds, together with

all other amounts (exclusive of amounts in the Cost of Issuance Fund, the Rebate Fund or the Expense Fund) payable or which may thereafter become payable under the Indenture by the Issuer, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Trustee in and to the Trust Estate shall not have ceased, terminated and become void as described under this caption, the Trustee, on demand of the Borrower, shall deposit with or at the written direction of the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, any surplus in the Collateral Fund in excess of the amount sufficient to pay the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all Bonds together with all other amounts payable or which may thereafter become payable under the Indenture by the Issuer or the Borrower.

All Outstanding Bonds shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect described above if (a) there shall have been deposited with the Trustee (as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations) either (i) moneys in an amount which shall be sufficient, or (ii) Government Obligations which are not subject to redemption prior to maturity, the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal and interest due and to become due on such Bonds on the maturity date thereof, and (b) the Borrower shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, a notice to the Holders of such Bonds and the Rating Agency that the deposit required by (a) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with the provisions described under this caption and stating such maturity upon which moneys are to be available for the payment of the principal and interest on such Bonds.

Neither the securities nor moneys deposited with the Trustee pursuant to the provisions described under this caption nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest, on such Bonds; provided that any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, may be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal and interest to become due on such Bonds on and prior to such maturity dates thereof, as the case may be, and interest earned from such reinvestment shall be invested in money market funds described in clause (ii) of the definition of Permitted Investments and be deposited into the Bond Fund.

The release of the obligations of the Issuer described under this caption shall be without prejudice to the right of the Trustee provided in the Indenture to be paid reasonable compensation for all services rendered by it under the Indenture and all its reasonable expenses, charges and other disbursements, including those of its attorneys, agents and employees, and shall not affect the obligations of the Borrower to make the payments required by the Bond Loan Agreement or the Note.

Notwithstanding the foregoing, any provisions of the Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of money in trust, the rebate of money to the United States in accordance with the provisions described under the caption "Rebate Fund" above and the Tax Exemption Agreement, and the rights and duties of the Trustee in connection with all of the foregoing, or which by their terms survive payment and discharge of the Bonds, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of the Indenture. The provisions described under this caption shall survive the release, discharge and satisfaction of the Indenture.

Notwithstanding anything in the Indenture to the contrary, the purchase of Permitted Investments in accordance with the provisions described under the caption "Investment" above, together with the Capitalized Interest Deposit, shall not cause a discharge of the Indenture as described under this caption.

### **Events of Default and Acceleration**

The following events shall constitute an "Event of Default" under the Indenture:

- (a) any interest on any Bond is not paid on the date on which the same becomes due;  
or
- (b) the principal of any Bond is not paid on the date on which the same becomes due, whether at the stated maturity thereof, by acceleration or otherwise; or
- (c) a Default occurs under the Bond Loan Agreement; or
- (d) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as described in (a) or (b) above) contained in the Bonds or in the Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of ninety (90) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; provided, however, that if such default be such that it is correctable but cannot be corrected within ninety (90) days, it shall not be an Event of Default if the Issuer or the Borrower is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Bond Loan or the Bonds.

If any Bond Loan payment required under the Bond Loan Agreement to avoid a default described in (a) or (b) above shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under such (a) or (b), the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower and the Equity Investor, which telephonic notice shall be confirmed by electronic, telegraphic or written notice to the Borrower and the Equity Investor. If any other default shall occur under the provisions described under this caption, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Equity Investor, the Holders of the Bonds and the Rating Agency. A default or an Event of Default described in (a) through (d) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a) or (b) above shall occur and be continuing, the Trustee, may, and upon written request of the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall, declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Borrower, and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided in such notice, anything in the Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (c) or (d) above shall occur and be continuing, the Trustee, upon written request of the Holders of 100% in aggregate principal amount of the Bonds then Outstanding, shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing

to that effect delivered to the Issuer, the Borrower and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided in such notice, anything in the Indenture or in the Bonds to the contrary notwithstanding.

Anything in the Indenture to the contrary notwithstanding, the Equity Investor shall have the right, but not the obligation, to cure any default under the Indenture on the same terms provided to the Borrower.

## **Remedies**

Upon the happening of any Event of Default and in addition to and not in limitation of any rights and remedies described under the caption “Events of Default and Acceleration” above, then and in every such case the Trustee in its discretion may, and upon the written request of the Holders of a majority in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity, shall:

- (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents including, but not limited to, foreclosing upon the security interest in or otherwise using funds on deposit in the Collateral Fund;
- (b) bring suit upon the Bonds; or
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Notwithstanding anything contained in the Indenture to the contrary, upon the occurrence and continuance of an Event of Default, before taking any action which may subject the Trustee to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such action.

## **No Interference or Impairment of Lender Loan**

Notwithstanding anything in the Indenture to the contrary, none of the Issuer, the Trustee nor any other Person shall:

- (a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or
- (b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the Reserved Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of the Indenture so long as it does not violate the Program Obligations (as defined in the HUD Regulatory Agreement).



Notwithstanding anything in the Indenture to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under the Indenture which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due under the Lender Loan Documents.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regards to the Project.

Promptly upon determining that an Event of Default under the Indenture has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

#### **Amendments to Indenture and Bond Loan Agreement Not Requiring Consent of Bondholders**

The Issuer and the Trustee may, from time to time and at any time, without the consent of Bondholders, enter into Supplements or other agreements supplemental to the Indenture and the Bond Loan Agreement as follows:

- (1) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;
- (2) to cure any formal defect, omission or ambiguity in the Indenture or the Bond Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;
- (3) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with the Indenture as previously in effect;
- (4) to add to the covenants and agreements of the Issuer in the Indenture or the Bond Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Indenture or the Bond Loan Agreement as theretofore in effect;
- (5) to add to the limitations and restrictions in the Indenture or the Bond Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Indenture or the Bond Loan Agreement as theretofore in effect;
- (6) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, the Indenture, of the Revenues or of any other moneys, securities or funds; or

(7) to modify, amend or supplement the Indenture or the Bond Loan Agreement in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the owners of the Bonds.

Before the Issuer shall enter into any Supplement to the Indenture pursuant to the provisions described under this caption, there shall have been filed with the Trustee an opinion of Bond Counsel to the effect that such Supplement is authorized or permitted by the Indenture and complies with the terms thereof, and that upon adoption such Supplement will be valid and binding upon the Issuer in accordance with its terms. The opinion of Bond Counsel filed with the Trustee shall also include a Favorable Opinion of Bond Counsel.

The Trustee shall send written notice to the Rating Agency, the Borrower and the Equity Investor of any amendment to the Indenture or the Bond Loan Agreement.

### **Amendments to Indenture Requiring Consent of Bondholders**

Subject to the terms and provisions described under this caption and not otherwise, the Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplement to the Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in the Indenture; provided, however, that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing contained in the Indenture shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by the Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in the Indenture, including (without limitation) that required for consent to such Supplements. The provisions described under this caption shall not limit or otherwise affect the ability of the Issuer to enter into Supplements to the Indenture without the consent of the Bondholders pursuant to the provisions described under the caption "Amendments to Indenture and Bond Loan Agreement Not Requiring Consent of Bondholders" above.

If at any time the Issuer and the Trustee shall determine to enter into any Supplement for any of the purposes described under this caption, the Trustee shall cause written notice of the proposed Supplement to be given to all Holders of the Bonds; provided, however, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant to the indenture. Such notice shall briefly set forth the nature of the proposed Supplement and shall state that a copy thereof is on file at the Trust Office of the Trustee for inspection by all Bondholders.

No later than 120 days after the date of giving such notice, the Issuer and the Trustee may enter into such Supplement in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding (or 100% if required under the Indenture) and (ii) an opinion of Bond Counsel to the effect that (1) such Supplement is authorized or permitted by the Indenture and complies with the terms thereof, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms, and (2) the effectiveness of the Supplement will not affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

If the Holders of at least the percentage of Bonds required by the provisions described under this caption shall have consented to and approved the Supplement as provided in the Indenture, no Holder of any Bond shall have any right to object to such Supplement, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

Upon the effectiveness of any Supplement entered into pursuant to the provisions described under this caption, the Indenture shall be, and be deemed to be, modified and amended in accordance with such Supplement, and the respective rights, duties and obligations under the Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under the Indenture subject in all respects to such modifications and amendments.

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## **SUMMARY OF CERTAIN PROVISIONS OF THE BOND LOAN AGREEMENT**

*The Bond Loan Agreement contains terms and conditions relating to the issuance and sale of the Bonds certain of which are summarized below. This summary does not purport to be comprehensive or definitive and is subject to all of the provisions of the Bond Loan Agreement to which reference is hereby made, copies of which are on file with the Trustee. This summary uses various terms defined in the Bond Loan Agreement and such terms as used herein shall have the same meanings as so defined.*

### **Loan of Proceeds**

The Issuer agrees, upon the terms and conditions contained in the Bond Loan Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. Such proceeds shall, in accordance with the terms of the Indenture, be disbursed to or on behalf of the Borrower from the Project Fund to pay Costs of the Project in the manner consistent with the Tax Exemption Agreement. The Trustee shall make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture as an exhibit. The Borrower agrees that the moneys transferred by the Trustee from the Project Fund to any reserve fund required by the Disbursement Agreement shall only be disbursed for Qualified Project Costs as permitted by the Tax Exemption Agreement.

### **Borrower Required to Pay in Event Project Fund Insufficient**

In the event the moneys in the Project Fund available for payment of the Costs of the Project are not sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that, if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Costs of the Project pursuant to the provisions described under this caption, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under the Bond Loan Agreement. Notwithstanding the foregoing, the terms, conditions and covenants described under this caption do not in any way affect the ability of the Issuer to pursue its rights and remedies under the Documents.

### **Amounts Payable**

On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered the Capitalized Interest Deposit, if any, to the Trustee for deposit to the Capitalized Interest Account of the Bond Fund.

The Borrower covenants and agrees to repay the Bond Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the Capitalized Interest Account of the Bond Fund and the Collateral Fund, will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) and interest on the Bonds as provided in the Indenture. Deposits into the Bond Fund for payments by the Trustee of principal and interest on the Bonds from amounts in the Capitalized Interest Account of the Bond Fund or the Collateral Fund shall be credited against the Borrower's obligation to pay principal and interest on the Bond Loan.

It is understood and has been agreed to that all payments of principal and interest payable by the Borrower as described under this caption will be assigned by the Issuer in accordance with the terms of the Indenture to the Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund and the Expense Fund). The Borrower consents to such assignment.

In the event the Borrower should fail to make any of the payments required under this caption, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

### **Lender Loan and Bridge Loan to the Borrower**

To provide and secure funds for the completion of the Project, and to provide for the delivery of a Lender Collateral Deposit and other Preference Proof Funds, the Borrower shall concurrently with the execution and delivery of the Bond Loan Agreement, (a) obtain the Lender Loan from the Lender and enter into the Lender Mortgage and (b) obtain the Bridge Loan from the Bridge Lender. The Borrower will promptly take all necessary actions on its part to close the Lender Loan and the Bridge Loan to satisfy all other terms and conditions of the Lender Loan and the Bridge Loan and the requirements of the Lender and the Bridge Lender, as applicable.

Pursuant to the terms of the Funding Agreement, the Borrower shall cause the Lender and/or the Bridge Lender, as applicable, to advance funds in an aggregate amount not to exceed \$[27,500,000]\* comprising one or more Lender Collateral Deposits or deposits of Bridge Loan proceeds, as applicable, to the Trustee for deposit into the Collateral Fund subject to the provisions described in “APPENDIX B – DOCUMENT SUMMARIES –SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Project Fund.”

### **Defaults Defined**

The following shall be “Defaults” under the Bond Loan Agreement and the term “Default” shall mean, whenever it is used in the Bond Loan Agreement, any one or more of the following events:

(a) failure by the Borrower to pay any amount required to be paid under the Bond Loan Agreement for debt service on the Bonds or certain fees and expenses;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Bond Loan Agreement, other than as referred to in clause (a) above or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Regulatory Agreement, or the Tax Exemption Agreement, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower by the Issuer or the Trustee; provided, with respect to any such failure described in this clause (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such sixty (60) day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby, as certified to the Issuer and the Trustee by the Borrower;

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\* Preliminary; subject to change.

(c) the dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for ninety (90) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due; or

(d) the occurrence and continuance of an Event of Default under the Indenture.

The provisions of clause (b) described under this caption are subject to the following limitation: if by reason of force majeure it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained in the Bond Loan Agreement (other than certain obligations relating to the loan of the proceeds of the Bonds set forth in the Bond Loan Agreement), the Borrower shall not be deemed in Default during the continuance of such inability. Such force majeure event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The term “force majeure” as used in the Bond Loan Agreement shall mean, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; terrorism; landslides; earthquakes; fires; storms; droughts; floods; epidemics; pandemics; or explosions; not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement.

### **Remedies on Default**

A copy of any notice of default provided to Borrower under any of the Borrower Documents shall also be provided to the Equity Investor and the Lender. Whenever any Default as described under the caption “Defaults Defined” above shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, or the Issuer (in the event the Trustee fails to act), may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under the Bond Loan Agreement, the Note, the Regulatory Agreement or any other Document in the event of default thereunder. Any amounts collected pursuant to action taken under this caption shall be paid into the Collateral Fund.

### **No Remedy Exclusive**

Subject to the provisions described in “APPENDIX B – DOCUMENT SUMMARIES – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Events of Default and Acceleration,” no remedy in the Bond Loan Agreement conferred upon or reserved to the Issuer or 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 under the Bond Loan Agreement or existing at law or in equity as of or after the date of the Bond Loan Agreement. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in the Bond Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be required in the Bond Loan Agreement. Such rights and remedies as are given to the Issuer under the Bond

Loan Agreement shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements contained in the Bond Loan Agreement.

### **No Additional Waiver Implied by One Waiver**

In the event any agreement contained in the Bond Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under the Bond Loan Agreement.

### **Right to Cure**

Notwithstanding anything to the contrary in the Bond Loan Agreement or otherwise in the Borrower Documents, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform under any of the Borrower Documents and, as a result, a default or event of default occurs or may occur thereunder, the Equity Investor shall have the right to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such default or event of default, provided such default or event of default is cured within any applicable cure period or grace period provided to the Borrower in the Bond Loan Agreement or otherwise in the Borrower Documents. Any cure of any event of default by the Equity Investor under the Borrower Documents shall be deemed a cure by Borrower thereunder.

### **No Interference or Impairment of Lender Loan**

Notwithstanding anything in the Bond Loan Agreement to the contrary, none of the Issuer, the Trustee nor any other Person shall:

- (a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or
- (b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the ability or rights of the Trustee to take any actions permitted under the Indenture or to affect the Reserved Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of the Bond Loan Agreement so long as it does not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Notwithstanding anything in the Bond Loan Agreement to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under the Bond Loan Agreement which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due under the Lender Loan Documents.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regards to the Project.

Promptly upon determining that an Event of Default under the Bond Loan Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

### **No Pecuniary Liability of the Issuer; Issuer May Rely**

(a) All obligations of the Issuer incurred under the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement and the Indenture shall be limited obligations of the Issuer, payable solely and only from Bond proceeds, Revenues and other amounts derived by the Issuer from the Trust Estate. NO GOVERNING BOARD MEMBER, OFFICER, AGENT, EMPLOYEE, OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE BOND LOAN AGREEMENT ON BEHALF OF THE ISSUER, SHALL BE LIABLE PERSONALLY UNDER THE BOND LOAN AGREEMENT OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE BOND LOAN AGREEMENT OR ANY AMENDMENT TO THE BOND LOAN AGREEMENT, AGAINST ANY DIRECTOR, OFFICER, AGENT, EMPLOYEE, ATTORNEY OR MEMBER OF THE ISSUER, OR ANY SUCCESSOR WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THE BOND LOAN AGREEMENT AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

(b) It is expressly understood and agreed by the parties to the Bond Loan Agreement that:

(i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, any Bondholder or the Borrower as to the existence of a fact or state of affairs required under the Bond Loan Agreement to be noticed by the Issuer;

(ii) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Borrower or such other appropriate party; and

(iii) none of the provisions of the Bond Loan Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under the Bond Loan Agreement unless it first shall have been adequately indemnified



to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

(c) No provision, representation, covenant or agreement contained in the Bond Loan Agreement or in the Indenture, the Bonds, or any obligation therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability (except to the extent of any loan repayments, revenues and receipts derived by the Issuer pursuant to the Bond Loan Agreement and other moneys held pursuant to the Indenture, other than in the Rebate Fund and the Expense Fund). No provision of the Bond Loan Agreement shall be construed to impose a charge against the general credit of the Issuer, the State or any other political subdivision or public body of the State, or any personal or pecuniary liability upon any director, officer, agent or employee of the Issuer.

(d) All covenants, obligations and agreements of the Issuer contained in the Bond Loan Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the Issuer in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in the Bond Loan Agreement or in the Indenture. No provision, covenant or agreement contained in the Bond Loan Agreement, the Indenture or the Bonds, or any obligation therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in the Bond Loan Agreement or in any Bond or for any claim based on the Bond Loan Agreement or otherwise in respect of the Bond Loan Agreement or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any member of the governing body of the Issuer, its officers, counsel, financial advisor, or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the governing board, officers, counsel, financial advisors, or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental thereto or to the Bond Loan Agreement, and that all personal liability of that character against every such director, officer, counsel, financial advisor, or agent, is, by the execution of the Bonds, the Bond Loan Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, the Bond Loan Agreement, and the Indenture, expressly waived and released.

### **Amendments, Changes and Modifications**

Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Bond Loan Agreement, the Bond Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, in accordance with the provisions of the Indenture. See “APPENDIX B – DOCUMENT SUMMARIES – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Amendments to Indenture and Bond Loan Agreement Not Requiring Consent of Bondholders” and “Amendments to Indenture Requiring Consent of Bondholders” as provided herein.

## SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT

*The Regulatory Agreement contains terms and conditions relating to the acquisition, rehabilitation and equipping of the Project in order to preserve the exclusion of interest on the Bonds from gross income under the Code and to ensure compliance with certain provisions of the Act, including various covenants, restrictions and agreements, certain of which are summarized below. This summary does not purport to be comprehensive or definitive and is subject to all of the provisions of the Regulatory Agreement which reference is hereby made, a copy of which is on file with the Trustee. This summary uses various terms defined in the Regulatory Agreement and such terms as used herein shall have the same meanings as so defined.*

“Annual Income” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by section 142(d) of the Code.

“Available Unit” means a Unit (except for any Unit reserved for any resident manager, security personnel or maintenance personnel that is reasonably required for the Project) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Project is acquired by the Borrower or (ii) the Closing Date is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after the renovations are completed.

“Eligible Tenants” means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined by the Issuer under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

“Housing Act” means the United States Housing Act of 1937, as amended, or a successor thereto.

“Low-Income Tenant” means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under sections 142(d)(2)(B) and (E) of the Code and in accordance with the Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

“Low Income Unit” means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

“Multifamily Tax Subsidy Program Income Limit” (or successor term) means the income limits provided by HUD pursuant to section 142(d) of the Code.

“Persons with Special Needs” means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

“Project” means the Project Facilities and the Project Site.

“Project Facilities” means the multifamily housing structure and related buildings and other improvements on the Project Site as more fully set forth in the Regulatory Agreement, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Project.

“Project Site” means the parcel or parcels of real property described in an exhibit to the Regulatory Agreement, and all rights and appurtenances appertaining thereunto.

“Qualified Project Period” means, with respect to the Project, the period beginning on the first day on which 10% of the Units are occupied (which date may be the Closing Date) and ending on the latest of (a) the date that is 15 years after the date on which 50% of the Units are occupied (which date may be the Closing Date), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in Section 142(d)(2) of the Code) issued with respect to the Project is outstanding for federal income tax purposes, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

“Related Person” has the meaning set forth in Section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

“Security Instrument” means the Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement from the Borrower, as the grantor, in favor of Lender, as the beneficiary, as the same may be supplemented, amended or modified.

“Set Aside” means the requirement that at least 40% of the Available Units be occupied or held vacant for occupancy at all times by Low-Income Tenants.

“State Conversion Date” means the date of the first amortization payment on the note relating to the Lender Loan.

“State Reserve Period” means, with respect to the Project, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Project; (b) the date on which the Borrower suffers a total casualty loss with respect to the Project or the date on which the Project becomes functionally obsolete, if the Project cannot be or is not restored; (c) the date on which the Project is demolished; (d) the date on which the Project ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

“State Restrictive Period” means, with respect to the Project, the period beginning on the first day on which the Borrower takes legal possession of the Project and ending on the latest of (a) the date that is 40 years (as a result of the Borrower’s election to extend the affordability period) after the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Project is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Project from the federal government terminates.

“Tenant Income Certification” means a certification form available on the Issuer’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Project.

“Unit” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Project; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

### **Tax-Exempt Status of the Bonds**

The Borrower will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the Federal Tax Status of the Bonds. With the intent not to limit the generality of the foregoing, the Borrower has covenanted and agreed:

(a) That the Project will be owned, managed and operated as a “qualified residential rental project” within the meaning of section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Borrower has covenanted and agreed, continuously during the Qualified Project Period, as follows:

(i) that the Project will be comprised of residential Units and facilities functionally related and subordinate thereto;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code);

(iii) that the land and the facilities that are part of the Project will be functionally related and subordinate to the Units comprising the Project and will be of a character and size that is commensurate with the character and size of the Project;

(iv) that at no time will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than six months (unless the Unit serves as a single room occupancy unit or transitional housing for the homeless (as described in section 42(i)(3)(B) of the Code), in which case such lease may be on a month-to-month basis) or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Project will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Project will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Project tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Project, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time will any Unit in any building or structure in the Project that contains fewer than five Units be occupied by the Borrower;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in the Regulatory Agreement, the Tax Exemption Agreement and the Bond Loan Agreement) at all times during the longer of (A) the remaining term of the Bonds or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided in the Regulatory Agreement, and that at no time will any portion of the Project be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that the Project will meet the Set Aside. For the purposes of this clause (a)(ix), a vacant Unit that was most recently occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low-Income Tenant will be denied continued occupancy of a Unit because, after the most recent Tenant Income Certification, such tenant's Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant's Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of the Set Aside, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file Tenant Income Certifications and supporting documentation from each Low-Income Tenant, including (A) a Tenant Income Certification dated immediately prior to the initial occupancy of such Low-Income Tenant in the Project and (B) thereafter, annual Tenant Income Certifications obtained on or before the anniversary of such Low-Income Tenant's occupancy of the Unit, and in no event less than once every 12-month period following each Low-Income Tenant's occupancy of the Unit; provided that the requirement for annual recertification will not apply for any year in which no Unit in the Project is occupied by a new resident whose income exceeds the applicable income limit. The Borrower will obtain such additional information as may be required in the future by section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service as of or after the date of the Regulatory Agreement with respect to obligations that are tax-exempt private activity bonds described in section 142(d) of the Code. The Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in a Tenant Income Certification is accurate by taking steps required under section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Borrower will document income and assets in accordance with HUD Handbook 4350.3 and the Issuer's Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Borrower will submit to the Secretary of the Treasury, with a copy provided to the Issuer, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the

Secretary of the Treasury as to whether the Project continues to meet the requirements of section 142(d) of the Code; and

(xii) that the Borrower will prepare and submit the Unit Status Report in the form available on the Issuer's website at the time of such submission to the Issuer (via the electronic filing system available on the Issuer's website) in accordance with the provisions described in paragraph (e) under the caption "Housing Development During the State Restrictive Period" below.

(b) That the Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Project Site to examine and inspect the Project and to inspect and photocopy the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. The Borrower will retain all records maintained in accordance with the provisions described under this caption until the date that is three years after the end of the Qualified Project Period.

(c) That the Borrower will provide to the Trustee and the Issuer a certificate in the form attached as an exhibit to the Regulatory Agreement certifying (i) within 90 days thereof, the date on which 10% of the Units are occupied; and (ii) within 90 days thereof, the date on which 50% of the Units are occupied.

(d) That the Borrower will prepare and submit to the Issuer and the Trustee, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in the Regulatory Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties thereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower under the Regulatory Agreement or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

### **Housing Development During the State Restrictive Period**

The Issuer and the Borrower have recognized and declared their understanding and intent that the Project is to be owned, managed and operated as a "housing development," as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer until the expiration of the State Restrictive Period.

To the same end, the Borrower has represented, covenanted and agreed as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Project, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions described in clauses (a)(viii) and (a)(ix) under the caption “Tax-Exempt Status of the Bonds” above continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Project (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant’s initial occupancy of a Unit in the Project, and, if required as described in clause (a)(x) under the caption “Tax-Exempt Status of the Bonds” above, at least annually thereafter in the manner as described in such clause, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Project (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Borrower from time to time that (i) such lease is subordinate to the Security Instrument, the Bond Mortgage and the Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility requirements of the Regulatory Agreement and the Bond Loan Agreement are substantial and material obligations of tenancy in the Project, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Borrower, the Trustee and the Issuer, and (v) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Project;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer’s website) by the tenth calendar day of each January, April, July and October or other schedule as determined by the Issuer with written notice to the Borrower, a certified quarterly Unit Status Report in a form available on the Issuer’s website at the time of submission or in such other form as the Issuer may reasonably prescribe in writing to the Borrower with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Borrower pertaining to the Project or the incomes of Project tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer’s requirements;

(g) that the Borrower is qualified to be a “housing sponsor” as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Issuer’s website) the Annual Owner’s Compliance Report to the Issuer in the form available on the Issuer’s website at the time of submission by April 30 of each year, commencing April 30, 2026;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached to the Regulatory Agreement as an exhibit in the manner provided in such exhibit, or from any additional supportive services added to the Issuer’s rules at any future date that are of similar value to the service it is intending to replace as agreed to in writing by the Issuer. The Borrower must maintain documentation satisfactory to the Issuer of social services provided and such documentation will be reviewed during monitoring

reviews beginning with the first monitoring review and must be submitted to the Issuer upon request. The Borrower must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code and other Issuer rules regarding affirmative marketing and written policies and procedures, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD's National Standards for the Physical Inspections of Real Estate and to provide regular maintenance to keep the Project sanitary, safe and decent and to comply with the requirements of section 2306.186 of the Texas Government Code; provided, however, that the Issuer must first provide notice of any default or breach to the Borrower and the Lender, and the Borrower will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Project pursuant to section 2306.185(c) of the Texas Government Code;

(l) the Borrower is not a party to and will not enter into a contract for the Project with, a housing developer that (i) is on the Issuer's debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower's participation in contracts with the agency and the amount of financial assistance awarded to the Borrower by the agency;

(m) to cooperate fully with the Issuer with respect to its compliance and oversight requirements and to cause the manager of the Project to so comply;

(n) to ensure that Units intended to satisfy the Set Aside in clause (a)(ix) under the caption "Tax-Exempt Status of the Bonds" above and the reservation of Units described in paragraph (a) under this caption will be distributed evenly throughout the Project and will include a reasonably proportionate amount of each type of Unit available in the Project;

(o) to ensure that the Project conforms to the federal Fair Housing Act; and

(p) to pay to the Issuer the Issuer Compliance Fee (as defined in the Indenture).

### **Persons with Special Needs**

The Borrower has represented, covenanted and warranted that during the State Restrictive Period, it will make at least 5% of the Units within the Project available for occupancy by Persons with Special Needs.

### **Term**

The Regulatory Agreement and all and each of the provisions thereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided in the Regulatory Agreement and, except as otherwise described under this caption, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions of the Regulatory Agreement are intended to survive the retirement of the Bonds, discharge of the Bond Loan, termination of the Bond Loan Agreement and defeasance or termination of the Indenture; provided, however, that the



provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of the Regulatory Agreement to the contrary notwithstanding, the requirements set forth in the Regulatory Agreement will terminate, without the requirement of any consent by the Issuer or the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of the Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date that prevents the Issuer or the Trustee from enforcing the provisions of the Regulatory Agreement, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a “qualified residential rental project” that meets the requirements of the Code and State law including, but not limited to, certain provisions set forth in the Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, the Borrower or any Related Person obtains an ownership interest in the Project for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of the Regulatory Agreement, the Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee and the Borrower upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of the Regulatory Agreement, the parties thereto have agreed to execute, deliver and record appropriate instruments of release and discharge of the terms of the Regulatory Agreement; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of the Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of the Regulatory Agreement will be paid by the Borrower and its successors in interest.

### **Covenants to Run with the Land**

The Borrower has subjected the Project (including the Project Site) to the covenants, reservations and restrictions set forth in the Regulatory Agreement. The Issuer, the Trustee and the Borrower have declared that the covenants, reservations and restrictions set forth in the Regulatory Agreement are covenants running with the land and will pass to and be binding upon the Borrower’s successors in title to the Project; provided, however, that upon the termination of the Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument executed after the date of the Regulatory Agreement covering or conveying the Project or any portion thereof prior to the termination of the Regulatory Agreement will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

No breach of any of the provisions of the Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Project or any portion thereof.

### **HUD Requirements**

The information under this caption describes some of the provisions included in the HUD Rider to Restrictive Covenants (the “HUD Rider”) attached as an exhibit to the Regulatory Agreement.

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in the HUD Rider, the provision contained in the HUD Rider shall govern and be controlling in all respects as set forth more fully in the HUD Rider.

(b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Merchants Capital Corp., an Indiana banking corporation, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act, 12 USC § 1701 et seq., as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions thereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to in the HUD Rider as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing in the HUD Rider limits Issuer’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure, the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained therein) shall terminate, subject to the requirements

of 26 C.F.R. 1.103-8(b)(6)(iii)(b), to the extent applicable, or as otherwise approved by HUD. Upon notification from the Lender or HUD of the foreclosure, and payment of the recording fees, the Issuer will file a release of Restrictive Covenants.

(e) Borrower and Issuer acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.

(f) Except for Issuer's reporting requirement, in enforcing the Restrictive Covenants Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if Borrower is a for-profit entity;
- ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available Residual Receipts authorized for release by HUD, if Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Issuer shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, Issuer may require Borrower to indemnify and hold Issuer harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Issuer relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold Issuer harmless shall be limited to available Surplus Cash and/or Residual Receipts of Borrower.

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relating thereto (excepting only the matters set forth in our supplemental opinion of Bond Counsel of even date herewith). We have not assumed any responsibility with respect to the financial condition or capability of the Issuer or the Borrower, or the disclosure thereof. We have participated in the preparation of and have examined a transcript of certain materials pertaining to the Bonds, including certain certified proceedings of the Issuer, the State of Texas, the Trustee and the Borrower, and customary certificates, opinions, affidavits and other documents executed by officers, agents and representatives of the Issuer, the State of Texas, the Trustee, the Borrower and others. We also have analyzed such laws, regulations, guidance, documents and other materials as we have deemed necessary to render the opinions herein. We have also examined the Initial Bond registered by the Comptroller.

In providing the opinions set forth herein, we have relied on representations and certifications of the Issuer, the Borrower, the Issuer's financial advisor, Colliers Securities LLC, as underwriter and other parties involved with the issuance of the Bonds with respect to matters solely within the knowledge of the Issuer and such parties, which we have not independently verified. In addition, we have assumed for purposes of this opinion continuing compliance with the covenants in the Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, including, but not limited to, covenants relating to the tax-exempt status of the Bonds.

Based on said examination, and subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that, under existing law:

1. The Issuer has duly authorized the issuance, execution and delivery of the Bonds. The Bonds constitute legal, valid and binding special limited obligations of the Issuer and are entitled to the benefit and security of the Indenture.
2. Interest on the Bonds is excludable from gross income for federal income tax purposes under section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except with respect to the interest on any Bond for any period during which such Bond is held by a "substantial user" of the Development or a "related person" of such a "substantial user," as those terms are defined for purposes of Section 147(a) of the Code.
3. Interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of determining a taxpayer's alternative minimum tax liability.

Except as stated above, we express no opinion as to the amount of interest on the Bonds or any federal, state or local tax consequences resulting from the receipt or accrual of interest on, or the acquisition, ownership or disposition of, the Bonds. Further, in the event that the representations of the Issuer, the Borrower, or other parties are determined to be inaccurate or incomplete or the Issuer or the Borrower fail to comply with the covenants of the Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement pertaining to those sections of the Code that affect the tax-exempt status of the Bonds, interest on the Bonds could become includable in gross income for federal income tax purposes from the date of the original delivery of the Bonds, regardless of the date on which the event causing such inclusion occurs.

We express no opinion as to the priority or perfection of the security interest granted by the Issuer in the Trust Estate.

The enforceability of certain provisions of the Bonds may be limited by sovereign immunity, bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors. Furthermore,

availability of equitable remedies under the Bonds may be limited by general principles of equity that permit the exercise of judicial discretion.

Prospective purchasers should be aware that the United States Department of Housing and Urban Development (“HUD”) has required the inclusion of a rider to the Regulatory Agreement (the “HUD Rider”) providing that the provisions of the Regulatory Agreement are subordinate to the Mortgage Loan Documents and the Program Obligations (as defined in the HUD Rider). The HUD Rider also provides that the Regulatory Agreement will terminate in the event of foreclosure of the Development. We express no opinion as to whether any of the covenants and requirements set forth in the Regulatory Agreement conflict with the Mortgage Loan Documents and the Program Obligations. Furthermore, we express no opinion as to the initial and continuing excludability of interest on the Bonds from gross income for federal income tax purposes in the event that (i) the provisions of the HUD Rider preclude compliance with any of the covenants or requirements of the Regulatory Agreement or (ii) the Regulatory Agreement terminates as a result of a foreclosure of the Development.

The opinions set forth above speak only as of their date and only in connection with the Bonds and may not be applied to any other transaction. Such opinions are specifically limited to the laws of the State of Texas and, to the extent applicable, the laws of the United States of America.

Our opinions are based on existing law and our knowledge of facts as of the date hereof and may be affected by certain actions that may be taken or omitted on a later date. We assume no duty to update or supplement our opinions, and this opinion letter may not be relied upon in connection with any changes to the law or facts, or actions taken or omitted, after the date hereof. This letter is delivered to the addressees hereof in connection with the issuance and delivery of the Bonds, and no other party is entitled to rely hereon without our written permission.

Very truly yours,

## APPENDIX D

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) is executed and delivered by Gulfway Housing Partners, LP, a Texas limited partnership (the “Borrower”) and U.S. Bank Trust Company, National Association, as dissemination agent (the “Dissemination Agent”), in connection with the issuance of \$[27,500,000]\* Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “Bonds”). The Bonds are being issued under a Trust Indenture dated as of July 1, 2024 (the “Indenture”), between the Texas Department of Housing and Community Affairs (the “Issuer”) and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”). The proceeds of the Bonds are being loaned by the Issuer to the Borrower pursuant to a Loan Agreement dated as of July 1, 2024, between the Issuer and the Borrower (the “Bond Loan Agreement”), for the purpose of the acquisition and rehabilitation of a multifamily rental housing development located in Corpus Christi, Texas, known as Gulfway Manor Apartments.

The Borrower and the Dissemination Agent covenant and agree as follows:

1. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Continuing Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report prepared by the Borrower pursuant to, and as described in, Sections 2 and 3 of this Continuing Disclosure Agreement.

“Business Day” shall mean a day on which commercial banks located in Houston, Texas are required or permitted by law to be open for the purpose of conducting a commercial banking business.

“Disclosure Representative” shall mean the authorized representative of the Borrower or his or her designee, or such other person as the Borrower shall designate in writing to the Trustee from time to time.

“Financial Obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; provided, however, the term “financial obligation” excludes municipal securities for which a final official statement has been provided to the MSRB consistent with the Rule.

“Holder” shall mean the registered holder of any Bonds as reflected on the Bonds register maintained in accordance with the Indenture, or any beneficial owner reflected on the books of the registered holder.

“Material Event Filing” shall mean any of the material events listed in Section 4(a) of this Continuing Disclosure Agreement.

“MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, as amended. All documents provided to the MSRB shall be in an electronic format and accompanied by identifying information, as prescribed by the MSRB.

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\* Preliminary; subject to change.

Initially, all document submissions to the MSRB pursuant to this Continuing Disclosure Agreement shall use the MSRB's Electronic Municipal Market Access (EMMA) system at [www.emma.msrb.org](http://www.emma.msrb.org).

“Participating Underwriter” shall mean the original underwriter for the Bonds, if any, required to comply with the Rule in connection with offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” means the Securities and Exchange Commission.

## 2. Provision of Annual Reports.

(a) Not later than the one hundred twenty (120) days after the end of the Borrower's fiscal year (currently December 31) except as provided in subsection (e) below, commencing with fiscal year 2024, the Borrower shall provide to the Dissemination Agent, an Annual Report prepared by an independent certified public accounting firm selected by the Borrower, together with sufficient copies of such Annual Report for filing with the MSRB. However, an annual financial statement compiled or reviewed by a licensed certified public accountant may be submitted in lieu of an audited financial statement for the Project prior to the issuance of a certificate of occupancy for any unit in the Project, provided that the subsequent annual audited financial statement shall include all operations since inception. If the Dissemination Agent has not received the Annual Report by such date, the Dissemination Agent shall notify the Borrower in writing by electronic means.

(b) The Dissemination Agent shall, as soon as practical, but in no event later than the fourteenth (14th) Business Day following receipt of an Annual Report, provide such Annual Report to the MSRB.

(c) If an Annual Report is not filed on or before the date required in any year, the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit “A”.

(d) Following the Dissemination Agent filing an Annual Report with the MSRB, the Dissemination Agent shall provide a written report to the Borrower stating that the Annual Report has been provided to the MSRB pursuant to this Continuing Disclosure Agreement, and stating the date it was provided.

(e) The Borrower shall deliver Annual Reports to the Dissemination Agent at least annually, notwithstanding any fiscal year longer than twelve (12) months. The Borrower shall notify the Dissemination Agent in writing of any change in the Borrower's fiscal year, and the Dissemination Agent shall notify the MSRB of each change in the Borrower's fiscal year.

3. Content of Annual Reports. The Annual Report prepared by Borrower shall contain or incorporate by reference the following:

The certified audited financial statements of the Borrower for the prior fiscal year, including income statement, balance sheet, and cash flows of operations of Gulfway Manor Apartments (the “Project”), prepared in accordance with generally accepted accounting principles as promulgated from time to time by the Financial Accounting Standards Board. The Borrower shall also include in each Annual Report the Project's current occupancy levels, current monthly rental rates and the current expenditures for monthly maintenance, taxes and property insurance.



Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the Borrower is an “obligated person” (as defined by the Rule), which have been filed with the MSRB or the SEC. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Borrower shall clearly identify each such other document so incorporated by reference. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package.

The Dissemination Agent shall have no duty or obligation to review the content of the Annual Report for compliance with this Continuing Disclosure Agreement or the Rule, but shall file the Annual Report in the form it is received by the Dissemination Agent.

4. Reporting of a Material Event Filing.

(a) This Section 4 shall govern the giving of notices of the occurrence of any of the following events (each, a “Material Event”):

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulty;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulty;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) events that may adversely affect the tax exemption of the Bonds, including issuance by the Internal Revenue Service of proposed and final decisions about whether such Bonds can be taxed;
- (vii) Modifications to rights of security holders, if material;
- (viii) Bonds calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) Rating changes (including those relating to the Bonds, the Borrower, reserve fund surety bonds, providers of guaranteed investment contracts, and other entities directly or indirectly securing payment of the Bonds);
- (xii) bankruptcy, insolvency, receivership, or similar proceeding of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, trustee or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, the entry of an order confirming a plan of reorganization,

arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;

(xiii) mergers, consolidations, or acquisitions of the Borrower, the sale of all or substantially all of the assets of the Borrower, or the termination of the Borrower, if material;

(xiv) appointment of a successor or additional Trustee or paying agent or the change of the name of a Trustee or paying agent, if material;

(xv) incurrence of a Financial Obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Borrower, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Borrower, any of which reflect financial difficulties.

(b) Whenever the Borrower obtains knowledge of the occurrence of a Material Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than seven (7) Business Days after the occurrence of such event, determine if such event is required by the Rule to be disclosed and provide the Dissemination Agent with notice and instructions pursuant to subsections (c) or (d) below.

(c) If the Borrower has determined that a Material Event is required to be disclosed, the Borrower shall promptly prepare a written notice describing the Material Event and provide the same to the Dissemination Agent along with instructions to file the same pursuant to subsection (e) below.

(d) If the Borrower determines that a Material Event is not required to be disclosed, the Borrower shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (e).

(e) If the Dissemination Agent has been provided with a written notice describing the Material Event and instructed by the Borrower to report the occurrence of a Material Event, the Dissemination Agent shall, within three (3) Business Days of its receipt of such written notice and in any event no more than ten (10) Business Days after the occurrence of the Material Event, provided that the Borrower has complied with the notice requirements set forth in subsection (b), file the notice with the MSRB, and send a copy to the Borrower. The foregoing notwithstanding, notice of a Material Event described in subsections (a)(viii) and (ix) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the Holders of affected Bonds pursuant to the Indenture. The foregoing notwithstanding, the Borrower is solely responsible for instructing the Dissemination Agent to provide notice to the MSRB no more than ten (10) Business Days after the occurrence of a Material Event.

5. Successors. If the Borrower's obligations under the Agreement are assumed in full by some other entity, such entity shall be responsible for compliance with this Continuing Disclosure Agreement in the same manner as if it were the Borrower and the original Borrower shall have no further responsibility hereunder. If the Trustee's obligations under the Indenture are assumed in full by a successor Trustee, such person shall be responsible for compliance with this Continuing Disclosure Agreement in the same manner as if it were the Dissemination Agent and the original Dissemination Agent shall have no further responsibility hereunder.

6. Amendment, Waiver. Notwithstanding any other provision of this Continuing Disclosure Agreement, the Borrower and the Dissemination Agent may amend this Continuing Disclosure Agreement

(and the Dissemination Agent shall agree to any amendment so requested by the Borrower) if in the opinion of counsel expert in federal securities law matters affecting governmental bonds acceptable to the Borrower and the Dissemination Agent, (i) the amendment is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the Borrower, or the type of business it conducts, (ii) this Continuing Disclosure Agreement, as amended, would have complied with the Rule at the time the Bonds was issued, after taking into account any amendments or interpretations of the Rule, as well as any changes in circumstances, and (iii) the amendment does not materially impair the interests of the Holders. A copy of any amendment to this Continuing Disclosure Agreement shall be delivered to the MSRB.

7. Termination. This Continuing Disclosure Agreement may be terminated by any party to this Continuing Disclosure Agreement upon thirty days' written notice of termination delivered to the other party or parties to this Continuing Disclosure Agreement; provided the termination of this Continuing Disclosure Agreement is not effective until (i) the Borrower, or its successor, enters into a new continuing disclosure agreement with a dissemination agent who agrees to continue to provide, to the MSRB and the Holders of the Bonds, all information required to be communicated pursuant to the rules promulgated by the SEC or the MSRB, (ii) a nationally recognized bond counsel or counsel expert in federal securities laws provides an opinion that the new continuing disclosure agreement is in compliance with all applicable state and federal securities laws, and (iii) notice of the termination of this Continuing Disclosure Agreement is provided to the MSRB.

The Dissemination Agent shall be fully discharged at the time any such termination is effective. This Continuing Disclosure Agreement shall terminate (i) automatically upon payment or provisions for payment of the Bonds, or (ii) when all of the Bonds are or are deemed to be no longer outstanding by reason of redemption or legal defeasance or at final maturity.

8. Additional Information. Nothing in this Continuing Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is required by this Continuing Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is specifically required by this Continuing Disclosure Agreement, the Borrower shall have no obligation under the Bond Loan Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Material Event.

9. Default. In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Continuing Disclosure Agreement, the Dissemination Agent may (and at the request of the Holders of at least 25% in aggregate principal amount of the Bonds, shall), or any Holder may, take such action as permitted hereby. A default under this Continuing Disclosure Agreement shall not be deemed an Event of Default under the Indenture or the Bond Loan Agreement, and the sole remedy under this Continuing Disclosure Agreement in the event of any failure of the Borrower or the Dissemination Agent to comply with this Continuing Disclosure Agreement shall be an action to compel performance. Anything in the Indenture to the contrary notwithstanding, the Dissemination Agent shall not be required to bring any enforcement action unless provision has been made to the satisfaction of the Dissemination Agent for payment of all fees and expenses of the Dissemination Agent and its counsel in connection with such action.

10. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent has entered into this Continuing Disclosure Agreement solely in its capacity as Dissemination Agent under this Continuing Disclosure Agreement and the Indenture. Article XI of the Indenture is hereby made applicable to this Continuing Disclosure Agreement as if this Continuing Disclosure Agreement were contained in the

Indenture. The Dissemination Agent shall have only such duties as are specifically set forth in this Continuing Disclosure Agreement, and the Borrower agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. The obligations of the Borrower under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Borrower has provided such information to the Dissemination Agent as required by this Continuing Disclosure Agreement. The Dissemination Agent shall not be responsible for the Borrower's failure to submit a complete Annual Report and shall not be responsible for the content of any notice or report prepared by the Borrower pursuant to this Continuing Disclosure Agreement. The Dissemination Agent shall have no duty or obligation to review or verify any information, disclosures or notices provided to it by the Borrower and shall not be deemed to be acting in any fiduciary capacity for the Issuer, the Holders of the Bonds or any other party. The Dissemination Agent shall have no responsibility for the Borrower's failure to report to the Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether the Borrower has complied with this Continuing Disclosure Agreement. The Dissemination Agent may conclusively rely upon Certifications of the Borrower at all times. The Dissemination Agent shall have no responsibility to determine the materiality of any Listed Event or potential Listed Event.

Neither the Dissemination Agent nor the Trustee shall have any obligation to make disclosure about the Bonds, the Borrower, or any other matter except as expressly provided herein. The fact that the Dissemination Agent, or any affiliate thereof, may have any fiduciary or banking relationship with the Issuer, the Borrower, any manager of the Project financed with the Bonds or any person with whom the Issuer or the Borrower contracts in connection with such Project, apart from the relationship created by this Continuing Disclosure Agreement, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition relating to the Bonds or the Project except in its respective capacities under this Continuing Disclosure Agreement.

No provision of this Continuing Disclosure Agreement shall require or be construed to require the Dissemination Agent to interpret or provide an opinion concerning any information disclosed hereunder.

The Borrower hereby agrees to compensate the Dissemination Agent for the services provided and the expenses incurred pursuant to this Continuing Disclosure Agreement, in an amount to be agreed upon from time to time hereunder, and to reimburse the Dissemination Agent upon its request for all reasonable expenses, disbursements and advances incurred by the Dissemination Agent hereunder (including any reasonable compensation and expenses of counsel).

No provision of this Continuing Disclosure Agreement shall require the Dissemination Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights of powers.

11. Beneficiaries. This Continuing Disclosure Agreement shall inure solely to the benefit of the Issuer, the Borrower, the Dissemination Agent, the Participating Underwriters, and Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

12. Counterparts. This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

13. Notice. Any notice or other communication required or permitted to by this Continuing Disclosure Agreement must be in writing unless expressly provided otherwise herein, and to the following addresses or fax numbers (with telephone confirmation using the phone number given), or such other addresses or fax/phone numbers designated in a notice to the other party hereto:

If to the Dissemination Agent: U.S. Bank Trust Company, National Association  
111 E. Fillmore Avenue  
EP-MN-WS3C  
St. Paul, Minnesota 55107-2292

with a copy to: Kutak Rock LLP  
60 South Sixth St., Suite 3400  
Minneapolis, Minnesota 55402-4513

If to the Borrower: Gulfway Housing Partners, LP  
c/o Vitus Group, LLC  
1700 Seventh Avenue, Suite 2000  
Seattle, Washington 98101

with a copy to: Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629

14. EMMA Contact Information. If contact information for the Borrower is requested while the Dissemination Agent is using EMMA for matters relating to this Continuing Disclosure Agreement, the Dissemination Agent shall provide the contact information listed for the Borrower included in Section 13 hereof.

(Remainder of Page Intentionally Left Blank)

(Borrower's Signature Page to Continuing Disclosure Agreement)

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

(Counterpart Signature Page to Continuing Disclosure Agreement)

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION**, as Dissemination Agent

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT "A"

NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Texas Department of Housing and Community Affairs  
Name of Issue: \$[27,500,000]\*  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024  
Name of Borrower: Gulfway Housing Partners, LP, a Texas limited partnership  
Date of Issuance: July \_\_, 2024

NOTICE IS HEREBY GIVEN that the Borrower has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Agreement dated as of July 1, 2024 between U.S. Bank Trust Company, National Association, and the Borrower. [The Borrower anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, as Dissemination Agent

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

cc: Borrower

\_\_\_\_\_

\* Preliminary; subject to change.



**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

Dated as of

July 1, 2024

among

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,**  
as Issuer

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,**  
as Trustee

and

**GULFWAY HOUSING PARTNERS, LP,**  
as Borrower

regarding

**[\$27,500,000]**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds (Gulfway Manor)  
Series 2024**

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## TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of July 1, 2024, but effective as of the Issue Date of the Bonds (as defined below) is among the **Texas Department of Housing and Community Affairs** (together with its successors and assigns, the “Issuer”), a public and official agency of the State (as defined herein), **U.S. Bank Trust Company, National Association**, a national banking association, as Trustee under the hereinafter defined Indenture (together with any successor Trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), and **Gulfway Housing Partners, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower”) and is entered into in connection with the issuance of the \$[27,500,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “Bonds”). The representations of facts and circumstances and the covenants of the Issuer made herein are made in part for purposes of fulfilling the requirements set forth in Section 1.148-2(b)(2) of the Regulations (as defined herein).

### RECITALS

WHEREAS, the Governing Board of the Issuer has determined to authorize the issuance of the Bonds pursuant to and in accordance with the terms of the Indenture (as defined herein) for the purpose of obtaining funds to finance the Project (as defined herein), all under and in accordance with the Constitution and laws of the State (as defined herein); and

WHEREAS, the Issuer desires to use the Proceeds (as defined herein) of the Bonds to fund a mortgage loan to the Borrower (i.e., the Bond Loan, as defined herein) upon the terms and conditions set forth in the Loan Agreement (as defined herein) in order to finance Project Costs (as defined herein); and

WHEREAS, the Issuer and the Borrower desire that interest on the Bonds be excludable from gross income for federal income tax purposes under the Code (as defined herein); and

WHEREAS, the purpose of executing this Agreement is to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Project and to establish the expectations of the Issuer, the Borrower, and the Trustee as to future events regarding the Bonds, the Project, and the use and investment of Proceeds of the Bonds.

NOW THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby certify, covenant, represent, and agree on behalf of the Issuer, the Borrower, and the Trustee (but not in their individual capacities), respectively, as follows:

1. Definitions. Each capitalized term used in this Agreement has the meaning ascribed to such term below or has the meaning or is the amount, as the case may be, specified for such term in this Agreement or in Exhibits to this Agreement and for all purposes hereof has the meaning or is in the amount therein specified. All capitalized terms used but not defined herein, to the extent that such terms are defined in the Indenture, the Loan Agreement, or the Regulatory Agreement for all purposes hereof have the meanings therein specified. All such terms defined in

the Code or Regulations that are not defined herein will for all purposes hereof have the same meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

“**Bond Counsel**” means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes, and initially shall mean Bracewell LLP.

“**Bond Fund**” means the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Bond Fund” established pursuant to Section 4.01 of the Indenture, including the “Capitalized Interest Account” therein.

“**Bond Loan**” means the loan of proceeds of the Bonds from the Issuer to the Borrower pursuant to the terms of the Loan Agreement.

“**Bond Year**” means each one-year period that ends on the day selected by the Borrower in a certificate provided to the Issuer and the Trustee. The first and last bond years may be short periods. If no day is selected by the Borrower before the earlier of the final maturity date of the Bonds or the date that is five years after the Issue Date of the Bonds, a bond year will end on each anniversary of the Issue Date of the Bonds and on the final maturity date of the Bonds.

“**Code**” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference is deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“**Collateral Fund**” means the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Collateral Fund” established pursuant to Section 4.01 of the Indenture.

“**Computation Date**” means each Installment Computation Date and the Final Computation Date.

“**Costs of Issuance**” means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of Section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

“**Costs of Issuance Fund**” means the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Cost of Issuance Fund” established pursuant to Section 4.01 of the Indenture.

“**Expense Fund**” means the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Expense Fund” established pursuant to Section 4.01 of the Indenture.

“**Favorable Opinion of Bond Counsel**” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability from gross income for federal income tax purposes of interest payable on the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“**Final Computation Date**” means the date on which the final payment in full of the Bonds is made.

“**Financial Advisor**” means Stifel, Nicolaus & Company, Incorporated.

“**Form 8038**” means IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

“**Gross Proceeds**” means any Proceeds and any Replacement Proceeds.

“**Indenture**” means the Trust Indenture by and between the Issuer and the Trustee, dated as of July 1, 2024.

“**Installment Computation Date**” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“**Investment Proceeds**” has the meaning set forth in Section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from investing Proceeds.

“**IRS**” means the Internal Revenue Service.

“**Issue Date**” means, with respect to an issue of obligations, the first date on which an issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any obligation.

“**Issue Price**” has the meaning ascribed to it in Section 1.148-1(f) of the Regulations.

“**Loan Agreement**” means the Loan Agreement among the Issuer and the Borrower, dated as of July 1, 2024.

“**Median Gross Income for the Area**” means, with respect to the Project, the median income for the households in the area which includes the standard metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of HUD, under Section 8 of the Housing Act (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size.

“**Minor Portion**” means that portion of the Gross Proceeds of the Bonds that does not exceed in the aggregate \$100,000.

“**Net Proceeds**” means Sale Proceeds, less the portion of any Sale Proceeds invested in a reasonably required reserve or replacement fund.

“**Nonpurpose Investment**” means any “investment property,” within the meaning of Section 148(b) of the Code, that is not a purpose investment acquired to carry out the governmental purpose of the Bonds.

“**Official Intent Date**” means September 7, 2023.

[“**Original Issue Discount**” means the excess of the Stated Redemption Price at Maturity over the Issue Price.

“**Original Issue Premium**” means the excess of the Issue Price over the Stated Redemption Price at Maturity.]

“**Permitted Investments**” has the meaning set forth in the Indenture.

“**Placed in Service**” has the meaning set forth in Section 1.150-2(c) of the Regulations and means, with respect to a facility, the date on which, based on all the facts and circumstances, (a) the facility reaches a degree of completion that will permit its operation at substantially its design level, and (b) the facility is, in fact, in operation at such level.

“**Pre-Issuance Accrued Interest**” has the meaning set forth in Section 1.148-1(b) of the Regulations and, generally, means amounts representing interest that accrued on an obligation for a period not greater than one year before its Issue Date but only if those amounts are paid within one year after the Issue Date.

“**Preliminary Expenditures**” are described in Section 1.150-2(f)(2) of the Regulations and include architectural, engineering, surveying, soil testing, reimbursement bond issuance and similar costs that are incurred prior to commencement of acquisition, construction or rehabilitation of a project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction or rehabilitation.

“**Proceeds**” has the meaning set forth in Section 1.148-1(b) of the Regulations and, generally, means any Sale Proceeds and Investment Proceeds.

“**Project**” means the multifamily rental housing development known as Gulfway Manor Apartments, located at 1750 Treyway Lane, Corpus Christi, Nueces County, Texas 78412.

“**Project Costs**” means, to the extent authorized by State law, any and all costs incurred by the Borrower with respect to the acquisition, construction, rehabilitation, and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the Issue Date of the Bonds, including, without limitation, costs for site preparation, the planning of housing and improvements, the removal or demolition of existing structures, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal

services, other expenses necessary or incident to determining the feasibility of the Project, contractors' and Borrower's overhead and supervisor's fees and costs directly allocable to the Project, and administrative and other expenses necessary or incident to the Project and the financing thereof.

**“Project Fund”** means the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Project Fund” established pursuant to Section 4.01 of the Indenture.

**“Qualified Administrative Costs”** are those costs of issuing, carrying or repaying the Bonds, and any underwriter's discount. Qualified Administrative Costs do not include the costs of issuing, carrying or repaying the Bond Loan.

**“Qualified Project Costs”** means Project Costs that meet the following requirements:

(a) The costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that only such portion of the interest accrued on the Bonds during, and fees for a “qualified guarantee” (within the meaning of Section 1.148-4 of the Regulations) attributable to the period of, the rehabilitation of the Project will constitute Qualified Project Costs as bear the same ratio to all such interest or fees, as applicable, as the Qualified Project Costs bear to all Project Costs.

(b) If any portion of the Project is being constructed or rehabilitated by the Borrower or a Related Person to the Borrower (whether as a general contractor or a subcontractor), such costs include only (i) the actual out-of-pocket costs incurred by the Borrower or such Related Person in constructing or rehabilitating the Project (or any portion thereof), (ii) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component) and (iii) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and do not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the rehabilitation of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof).

(c) The costs are not Costs of Issuance.

(d) (i) The costs were paid no earlier than 60 days prior to the Official Intent Date and (ii) the reimbursement allocation is made no later than 18 months after the later of (A) the date the expenditure was paid and (B) the date the Project is Placed in Service or abandoned, but in no event more than three years after the original expenditure is paid; provided that such limitations do not apply to any amount not in excess of \$100,000 or to Preliminary Expenditures that do not exceed 20 percent of the Sale Proceeds of the Bonds.

**“Qualified Project Period”** means, with respect to the Project, the period beginning on the first day on which 10 percent of the Units are occupied (which date may be the Issue Date of the

Bonds) and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied (which date may be the Issue Date of the Bonds), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in Section 142(d)(2) of the Code) issued with respect to the Project is outstanding for federal income tax purposes or, (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

**“Qualifying Tenant”** means a tenant whose Annual Income is 60 percent or less of Median Gross Income for the Area, as determined under Sections 142(d)(2)(B) and (E) of the Code. If all the occupants of a Unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants are not Qualifying Tenants, unless such students meet the qualifications under Section 42(i)(3)(D) of the Code.

**“Rebate Amount”** has the meaning set forth in Section 1.148-3(b) of the Regulations and, generally, means the excess, as of any date, of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as determined in accordance with Section 1.148-3 of the Regulations.

**“Rebate Analyst”** means a Person that is (a) qualified and experienced in the calculation of rebate payments under Section 148 of the Code, (b) chosen by the Borrower, and (c) engaged for the purpose of determining the amount of required deposits, if any, to the Rebate Fund.

**“Rebate Fund”** means the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Rebate Fund” established pursuant to Section 4.01 of the Indenture.

**“Regulations”** means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

**“Regulatory Agreement”** means the Regulatory and Land Use Restriction Agreement, among the Issuer, the Trustee, and the Borrower, dated as of July 1, 2024.

**“Related Party”** means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to a person that is not a governmental unit or a 501(c)(3) organization, a Related Person.

**“Related Person”** has the meaning set forth in Section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under Sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Proceeds”** has the meaning set forth in Section 1.148-1(c) of the Regulations and, generally, consist of amounts that have a sufficiently direct nexus to an issue of obligations or the governmental purpose of an issue of obligations to conclude that the amounts



would have been used for that governmental purpose if the Proceeds were not used or to be used for that governmental purpose.

**“Sale Proceeds”** has the meaning set forth in Section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from the sale (or other disposition) of any obligation, including amounts used to pay underwriters’ discount or compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also include amounts derived from the sale of a right that is associated with any obligation and that is described in Section 1.148-4(b)(4) of the Regulations.

**“State”** means the State of Texas.

**“Stated Redemption Price at Maturity”** means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the debt instrument).

**“Substantial User”** has the meaning given to such term in Section 1.103-11(b) of the Regulations, and generally includes any person who regularly uses a part of a facility in its trade or business and (i) such facility, or part thereof, is specifically constructed, reconstructed, or acquired for such person or (ii) such person (A) receives more than five percent of the total revenue derived by all users of such facility as gross revenue or (B) occupies more than five percent of the entire usable area of the facility.

**“Underwriter”** means Colliers Securities LLC.

**“Unit”** means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation; provided that, a residential accommodation will not fail to be treated as a “Unit” merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

**“Verification Report”** means the Verification Report for the Bonds prepared by [Causey Demgen & Moore, P.C.], certified public accountants.

**“Weighted Average Maturity”** means the sum of the products of the Issue Price and the number of years to maturity (taking into account mandatory redemptions) of an obligation, divided by the aggregate Issue Price of such obligation.

**“Yield”** on (a) an issue of obligations has the meaning set forth in Section 1.148-4 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments of principal, interest and fees for qualified guarantees to be paid on the obligation produces an amount equal to the Issue Price of such issue and (b) any investment has the meaning set forth in Section 1.148-5 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments to be received on the investment produces an amount equal to all payments for the investment.

**“Yield Reduction Payments”** means amounts paid in accordance with Section 1.148-5(c) of the Regulations that are treated as payments that reduce the Yield on an investment.

“**40-60 Test**” means the requirement set forth in Section 142(d)(1)(B) of the Code providing that 40 percent or more of the Units in the Project be occupied by individuals whose income is 60 percent or less of the Median Gross Income for the Area.

2. Authorized Representatives.

(a) Issuer. The undersigned representative of the Issuer represents that such representative (i) is charged, along with others, with the responsibility for the Bonds and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Issuer to execute and deliver this Agreement and (ii) is aware of the provisions of Sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Issuer personnel and consultants to the Issuer, the undersigned representative of the Issuer has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(b) Borrower. The undersigned representative of the Borrower represents that such representative (i) is a duly chosen, qualified and acting officer or other representative of the Borrower, which will be the owner of the Project and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Borrower to execute and deliver this Agreement and (ii) is aware of the provisions of Sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Borrower personnel and consultants to the Borrower, the undersigned representative of the Borrower has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(c) Trustee. The undersigned representative of the Trustee represents that such representative is a duly chosen, qualified and acting officer or other representative of the Trustee and is authorized on behalf of the Trustee to execute and deliver this Agreement.

3. Reasonable Expectations. The Issuer and the Borrower hereby affirm that the facts and estimates that are set forth in this Agreement are accurate and the expectations that are set forth in this Agreement are reasonable in light of such facts and estimates. There are no other facts or estimates that would materially change such expectations. The Issuer has also relied, to the extent appropriate, on (a) the Issue Price Certificate attached hereto as Exhibit A, (b) the Certificate of Financial Advisor attached hereto as Exhibit B and (c) the Verification Report. The undersigned representatives of the Issuer and the Borrower are aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of all or any portion of the representations set forth in such certificates.

4. Reliance on Borrower’s Representations and Covenants. Except as otherwise indicated in this Agreement, the representations, expectations, certifications, covenants and warranties of the Issuer concerning the use and investment of the Proceeds of the Bonds and certain other matters described in this Agreement are based solely upon representations, expectations,

certifications, covenants and warranties of the Borrower, as set forth in this Agreement or in the Exhibits attached hereto. In relying upon such representations, expectations, certifications, covenants and warranties of the Borrower, the Issuer has not made any independent investigations of the matters pertaining thereto. The Issuer is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation, expectations, certifications, covenants and warranties of the Borrower made in this Agreement or in the Exhibits attached hereto.

5. Completeness of Borrower Information. The Borrower has supplied or caused to be supplied to Bond Counsel all documents, instruments and written information requested by Bond Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Bond Counsel, which have been reasonably relied upon by Bond Counsel in rendering its opinion with respect to the excludability from gross income for federal income tax purposes of the interest on the Bonds, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information for which Bond Counsel has not asked. After due investigation, there is no information not obtained, or any investigation or inspection not heretofore pursued, that would be relevant or material to the certifications set forth below.

6. General Requirements Relating to the Issuance of the Bonds.

(a) Governmental Purpose. The Borrower has applied to the Issuer and been approved for the Bond Loan to be made from the Proceeds of the Bonds. The proceeds of the Bond Loan (and, thus, the Proceeds of the Bonds) will be used to finance a portion of the Project Costs.

(b) Public Hearing and Approval. As required under Section 147(f) of the Code, the Issuer hosted a public hearing on March 6, 2024, regarding the Bonds and the Project and for which there was reasonable public notice. After such hearing was held, the Attorney General of the State approved the issuance of the Bonds.

(c) Volume Cap. The Issuer has received from the Texas Bond Review Board a reservation of State private activity bond volume cap in an amount no less than the aggregate principal amount of the Bonds (or if greater, the Issue Price of the Bonds) for the purpose of issuing the Bonds to finance the Project.

(d) Issue. There are no other obligations that (i) are sold at substantially the same time as the Bonds (i.e., less than 15 days apart), (ii) are sold pursuant to the same plan of financing with the Bonds, and (iii) will be paid out of substantially the same source of funds as the Bonds.

(e) Form 8038. The Borrower has examined the completed Form 8038 with respect to the Bonds, including accompanying schedules and statements, and, to the best of the Borrower's knowledge and belief, the information in Parts IV and V, which was

furnished by the Borrower, is true, correct, and complete. The Issuer will cause Form 8038 with respect to the Bonds to be filed timely with the IRS.

(f) Substantial User.

(i) No person that was a Substantial User of the Project at any time during the five-year period before the Issue Date of the Bonds or any Related Person to such Substantial User will (i) receive (directly or indirectly) more than five percent of the Proceeds of the Bonds for such user's interest in the Project and (ii) be a Substantial User of the Project at any time during the five-year period after the Issue Date of the Bonds.

(ii) The Borrower does not reasonably expect that, during the five-year period following the Issue Date of the Bonds, the combined amount of any amounts distributed to Gulfway Housing Management, LLC, as general partner of the Borrower, will exceed 5% of the total revenue of the Project during such five-year period.

(g) Program Covenant. Neither the Borrower nor any Related Party of the Borrower is, or will be, a party to any agreement, formal or informal, pursuant to which it will purchase any of the Bonds in an amount related to the amount of the Bond Loan made to the Borrower unless the Borrower or such Related Party provides a Favorable Opinion of Bond Counsel to the Issuer.

(h) No Federal Guarantee. Neither the Issuer nor the Borrower will take any action that would result in all or any portion of the Bonds being treated as federally guaranteed within the meaning of Section 149(b)(2) of the Code.

(i) Borrower's EIN. The Borrower represents that the Borrower's EIN is 88-2806712.

7. Sale Proceeds of the Bonds. The amount of Sale Proceeds received by the Issuer from the sale of the Bonds is \$[Issue Price]. The Sale Proceeds of the Bonds will be loaned to the Borrower and used by the Borrower to pay Project Costs and Costs of Issuance of the Bonds.

8. Pre-Issuance Accrued Interest. There is no Pre-Issuance Accrued Interest on the Bonds.

9. Use of Proceeds of the Bonds.

(a) Qualified Project Costs. At least 95 percent of the Net Proceeds of the Bonds actually expended will be used to pay or reimburse Qualified Project Costs. Not more than five percent of the Net Proceeds of the Bonds will be expended for or allocated to Project Costs that are not Qualified Project Costs.

For purposes of this subparagraph (a) the Project includes only: (i) those portions of buildings included in the Project that are (A) separate and complete facilities for living, sleeping, eating, cooking and sanitation that will be used on other than a transient basis by

one or more persons and that will be available on a regular basis for use by members of the general public and will be rented, or available for rental, on a continuous basis during the Qualified Project Period, and (B) facilities in building areas that are functionally related and subordinate thereto, such as centrally located machinery and equipment and common areas in a typical apartment building (but not including any health club facilities, except a facility that will be available only to tenants and their guests with no separate fee to be paid for the use of such facility); and (ii) land and other facilities that are properly allocable to such living facilities, such as parking areas and recreational areas for occupants of the living facilities.

Further, all of the allocable functionally related and subordinate land areas, facilities, and building areas taken into account in determining Qualified Project Costs under this subparagraph (a) are of a character and size commensurate with the number and size of the living facilities and are not functionally related and subordinate to, or properly allocable to, any other facilities.

(b) Additional Limitations.

(i) Costs of Issuance. No Costs of Issuance in the amount of are expected to be paid out of the Net Proceeds of the Bonds. In no event will Costs of Issuance paid from Proceeds of the Bonds exceed two percent of the Sale Proceeds of the Bonds. Any Costs of Issuance in excess of two percent of Sale Proceeds of the Bonds will be paid by the Borrower from sources other than Net Proceeds of the Bonds.

(ii) Capitalized Interest. Net Proceeds of Bonds will not be used to pay interest amounts accruing after the Placed in Service Date of the Project.

(iii) Acquisition of Existing Property. No portion of the Net Proceeds of the Bonds will be used to pay or reimburse the cost of acquiring any property or an interest therein unless, (i) the first use of such property is pursuant to such acquisition, except for land, or (ii) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the portion of the cost of acquiring such building and equipment financed with the Net Proceeds of the Bonds (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term “rehabilitation expenditures” shall have the meaning set forth in Section 147(d)(3) of the Code. If the Project has two or more buildings, the provisions regarding rehabilitation expenditures are to be applied on a project-wide basis. Net Proceeds of the Bonds in the amount of \$22,380,000 will be used to acquire the buildings (and equipment therefor) of the Project, and the rehabilitation expenditures with respect to the Project will equal or exceed 15 percent of such amount (i.e., \$3,357,000).

(iv) Limitation on Land Acquisition. Net Proceeds of the Bonds in the amount of \$1,100,000 are expected to be used (directly or indirectly) to acquire land (or an interest therein). In no event will 25 percent or more of the Net Proceeds

of the Bonds be used (directly or indirectly) to acquire land (or an interest therein) and no portion of the Net Proceeds of the Bonds will be used (directly or indirectly) for farming purposes. For this purpose, an amount is considered used for the acquisition of land (or an interest therein) to the extent of that portion of the acquisition cost of the Project that is properly allocable for all federal income tax purposes to the land component (including interests in land) of the Project.

(v) Prohibited Facilities. None of the Proceeds of the Bonds will be used to acquire, construct, or equip, and no portion of the Project will be, an airplane, a skybox or any other type of luxury box, a health club facility, a facility primarily used for gambling, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; provided that, any fitness room functionally related to and subordinate to the Project for use by tenants of the Project or their guest is not considered a health club facility for purposes of this subparagraph.

(vi) Payments to Related Persons. Any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower will not exceed an arm's-length charge that is the amount that would be charged to a person other than the Borrower. Further, any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower would be paid under the same circumstances by a person other than the Borrower to such affiliated person or entity. Notwithstanding the foregoing, in no event will amounts of Proceeds of the Bonds that are paid to a Related Person to the Borrower be treated as spent until such amounts are spent on capital expenditures by such Related Person.

(vii) No Working Capital. Except for an amount that does not exceed five percent of the Sale Proceeds of the Bonds (and that is directly related to the Project), the Proceeds of the Bonds will only be expended for (A) costs that would be chargeable to the capital account of the Project if the Issuer's income were subject to federal income taxation; (B) interest on the Bonds in an amount that does not cause the aggregate amount of interest paid on the Bonds to exceed that amount of interest on the Bonds that is attributable to the period that commences on the Issue Date of the Bonds and ends on the later of (1) the date that is three years from the Issue Date of the Bonds or (2) the date that is one year after the date on which the Project is Placed in Service; and/or (C) fees for a qualified guarantee of the Bonds or payment for a qualified hedge on the Bonds.

(viii) No Pooling. The Proceeds of the Bonds are not being used directly or indirectly to make or finance loans to two or more ultimate unrelated borrowers.

(ix) Weighted Average Economic Life. The Weighted Average Maturity of the Bonds, as calculated by the Financial Advisor as set forth in Exhibit B hereto, is [WAM] years. The weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds is at least

[WAM/1.2] years. Thus, the Weighted Average Maturity of the Bonds is not more than 120 percent of the weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds. Such weighted average reasonably expected economic life is determined in accordance with the following assumptions: (A) the weighted average is determined by taking into account the respective costs of each asset, excluding land; (B) the reasonably expected economic life of an asset is determined as of the later of (1) the Issue Date of the Bonds or (2) the date on which such asset is originally Placed in Service (or expected to be Placed in Service); and (C) the economic lives for the itemized assets are the useful lives that would have been used for depreciation purposes under Section 167 of the Code prior to the enactment of the ACRS system under Section 168 of the Code (i.e., the mid-point lives under the Class Life Asset Depreciation Range System of Section 167(m) of the Code where applicable and the guideline lives under Revenue Procedure 62-21, 1962-2 C.B. 418, in the case of structures). The Borrower hereby covenants not to make any changes to the Project that would, at the time made, cause the remaining Weighted Average Maturity of the Bonds to be more than 120 percent of the remaining weighted average estimated economic life of the portion of the Project financed with Proceeds of the Bonds.

(c) Reimbursement. The Borrower does not expect that it will use Proceeds of the Bonds to reimburse itself for expenditures paid prior to the Issue Date of the Bonds. If the Borrower later determines to do so, other than (i) an amount not greater than \$100,000 and/or (ii) Preliminary Expenditures up to an amount not in excess of 20 percent of the Issue Price of the Bonds, no portion of the Proceeds of the Bonds will be disbursed to reimburse the Issuer, the Borrower or any Related Person to the Borrower for any expenditures paid or incurred prior to the date that is 60 days before the Official Intent Date, which is the date on which the Issuer adopted a resolution describing the Project, stating the maximum principal amount of obligations expected to be issued for the Project and stating the Issuer's reasonable expectation that expenditures for costs of the Project would be reimbursed with Proceeds of an obligation. Such resolution was not an official intent declared as a matter of course or in an amount substantially in excess of the amount expected to be necessary for the Project. Neither the Issuer nor the Borrower has engaged in a pattern of failure to reimburse actual original expenditures covered by official intents. Such reimbursed portion will be treated as spent for purposes of the "Funds—Project Fund" subparagraph herein and the "Compliance with Yield Reduction and Rebate Requirements; Rebate Fund" paragraph herein.

(d) Allocations and Accounting. The Borrower will prepare a final allocation of the Proceeds of the Bonds to expenditures not later than 18 months after the later of the date the original expenditure is made or the date the Project is Placed in Service, but in no event later than the date that is 60 days after the fifth anniversary of the Issue Date of the Bonds or the retirement of the Bonds, if earlier; provided that, if such allocation is made pursuant to a reimbursement expenditure described above, such reimbursement allocation will in no event be made later than the date that is three years after the date each such original expenditure is paid. The Borrower may redetermine the allocation of Proceeds of the Bonds within the time frame set forth in the immediately preceding sentence, provided that, the Borrower will notify the Issuer and Bond Counsel of any such reallocation and

provide such parties with documentation of such reallocation, including evidence that the Borrower, on the date of the original expenditure was paid, had on hand sufficient such other sources to pay such expenditure. The Borrower hereby elects to consistently allocate the expenditure of Proceeds of the Bonds to Qualified Project Costs of the Project. No Proceeds of the Bonds will be allocated to any expenditures to which Proceeds of any other tax-exempt obligations have heretofore been allocated.

10. Issue Price. In accordance with Section 1.148-1(f)(2)(iv) of the Regulations, the Issuer hereby identifies in its books and records maintained for the Bonds the rule the Issuer will use to determine the Issue Price for each maturity of the Bonds as the rule set forth in the first sentence of Section 1.148-1(f)(2)(i) of the Regulations, i.e., the Issue Price is the first price at which a substantial amount (i.e. 10%) is sold to the public. Based on the representations set forth in Exhibit A hereto, the aggregate Issue Price of the Bonds is \$[Issue Price]. The Issue Price of the Bonds represents the Stated Redemption Price at Maturity (excluding Pre-Issuance Accrued Interest for those Bonds the interest on which is paid at least once annually) of the Bonds, plus Original Issue Premium.

11. Yield on the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Yield on the Bonds will be computed separately for each computation period. For the purposes of this Agreement, the Yield on the Bonds for each computation period is the discount rate that, when used in computing the present value as of the first day of the computation period of all payments of principal and interest and fees for qualified guarantees on the Bonds that are attributable to the computation period, produces an amount equal to the present value, using the same discount rate, of the aggregate Issue Price (or deemed Issue Price, as determined by Section 1.148-4(c)(2)(iv) of the Regulations) of the Bonds as of the first day of the computation period.

(b) Neither the Issuer nor the Borrower has entered into any hedging transaction with respect to the Bonds, and each covenants not to enter into a hedging transaction with respect to the Bonds unless there is first received a Favorable Opinion of Bond Counsel.

12. Yield on the Bond Loan. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Bond Loan is allocated to the Bonds. The Yield on the Bond Loan is computed using the same compounding interval and financial conventions used to compute the Yield on the Bonds. For the purposes of this Agreement, the Yield on the Bond Loan is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds of all receipts with respect to the Bond Loan, produces an amount equal to the present value, using the same discount rate, of the aggregate payments with respect to the Bond Loan as of the Issue Date of the Bonds. The aggregate payments made to the Borrower with respect to the Bond Loan include no payments other than the “purchase price” of the Bond Loan. The purchase price of the Bond Loan is the amount loaned to the Borrower by the Issuer on the Issue Date of the Bonds, i.e., \$[Issue Price].



(b) The Bond Loan is a purpose investment that the Issuer intends to treat as a “program investment” within the meaning of Section 1.148-1 of the Regulations, because it is part of a governmental program (i) that involves the origination or acquisition of purpose investments; (ii) in which at least 95 percent of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, organizations exempt from tax under Section 501(c)(3) of the Code, persons who provide housing and related facilities, or any combination of the foregoing; (iii) in which at least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption; and (iv) in which the program documents prohibit any obligor on a purpose investment financed by the program or any “related party,” within the meaning of Section 1.150-1(b) of the Regulations, to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor. The Issuer has not waived the right to treat the Bond Loan as a program investment.

(c) The receipts from the Borrower with respect to the Bond Loan include interest and principal payments with respect to the Bond Loan and the Qualified Administrative Costs paid by the Borrower, and the Qualified Administrative Costs paid by the Borrower have been taken into account, as provided by Section 1.148-5(e) of the Regulations, for purposes of computing the Yield on the Bond Loan. Because the Issuer intends to treat the Bond Loan as a “program investment” within the meaning of Section 1.148-1 of the Regulations, the Qualified Administrative Costs do not include the costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Bond Loan, which include amounts paid directly to the Issuer as set forth in Exhibit C hereto, as well as any amounts paid as a servicing fee or otherwise relating to the Bond Loan.

(d) As set forth in the Certificate of Financial Advisor attached hereto as Exhibit B, the Yield on the Bond Loan, calculated in the manner set forth above does not exceed the Yield on the Bonds by more than 1.5 percentage points.

13. Investment of Proceeds Pending Expenditure; No Arbitrage.

(a) Investment Proceeds. Amounts on deposit in the Bond Fund and the Project Fund may be comprised of Proceeds of the Bonds and amounts that are not Proceeds of the Bonds or any tax-exempt obligation. If Proceeds of the Bonds and amounts that are not Proceeds of the Bonds are commingled, the Borrower will take into account for purposes of its covenant to comply with the arbitrage and rebate requirements that Proceeds of the Bonds and amounts that are not Proceeds of the Bonds have been commingled as an investment. Investment Proceeds resulting from the investment of any Proceeds of the Bonds pending expenditure of such Proceeds for Project Costs will be used to pay Qualified Project Costs or, if not used to pay Qualified Project Costs, such amounts will be treated as “bad costs.”

(b) Minor Portion and Yield Reduction Payments. All Gross Proceeds of the Bonds will be invested in accordance with the “Funds” paragraph herein. To the extent such amounts remain on hand following the periods set forth in the “Funds” paragraph herein or exceed the limits set forth in the “Funds” paragraph herein, such amounts will be invested at a restricted Yield as set forth in such paragraph; provided, however, that an amount not to exceed the Minor Portion may be invested at a Yield that is higher than the Yield on the Bonds and, provided further, that, if permitted by Section 1.148-5(c) of the Regulations, the Yield restriction requirements may be satisfied by making Yield Reduction Payments to the federal government.

(c) Bonds Are Not Hedge Bonds. Not more than 50 percent of the Proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more. Further, at least 85 percent of the spendable Proceeds of the Bonds are reasonably expected to be used to carry out the governmental purposes of the Bonds within the three-year period beginning on the Issue Date of the Bonds.

(d) No Arbitrage. On the basis of the facts, estimates and circumstances set forth in this Agreement, it is expected by the Issuer and the Borrower that the Gross Proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code. To the best of the knowledge and belief of the undersigned representatives of the Issuer and the Borrower, there are no other facts, estimates or circumstances that would materially change such expectations. Except as provided in the Indenture and the Loan Agreement, the Borrower will not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under the Loan Agreement or the note relating to the Bond Loan, will not establish any segregated reserve or similar fund for such purpose and will not prepay any such amounts in advance of the redemption date of an equal principal amount of the Bonds, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel. The Borrower will not, at any time prior to the final maturity of the Bonds, direct or permit the Trustee to invest Gross Proceeds of the Bonds in any investment (or to use Gross Proceeds of the Bonds to replace money so invested), if as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Bonds to stated maturity, except as permitted by Section 148 of the Code. The Issuer and the Borrower further covenant and agree that each will comply with and will take all action reasonably required to ensure that the Trustee complies with all applicable requirements of Section 148 of the Code relating to the Bonds and the interest thereon.

14. Covenants of Trustee Relating to Investment of Proceeds. The Trustee will invest funds held under the Indenture in accordance with the respective terms of the Indenture and this Agreement, which covenant will extend throughout the term of the Bonds, to all funds and accounts created under the Indenture and this Agreement and all moneys on deposit to the credit of any fund or account.

Should the Issuer or the Borrower deliver notice (in the manner required under the Indenture or the Loan Agreement, as applicable) to the Trustee (it being understood that neither

the Issuer nor the Borrower has an obligation to so deliver) or should the Trustee receive an opinion of Bond Counsel to the effect that any proposed investment or other use of Proceeds of the Bonds would cause the Bonds to become “arbitrage bonds” within the meaning of Section 148 of the Code, then the Trustee will comply with any written direction of the Borrower regarding such investment or use so as to prevent the Bonds from becoming an “arbitrage bond.” The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent the Trustee materially follows the written directions of the Borrower or the Issuer.

15. Compliance with Yield Reduction and Rebate Requirements; Rebate Fund.

(a) Covenant to Comply with Rebate Requirements. The Issuer and the Borrower covenant to comply with the requirement that (i) if Gross Proceeds of the Bonds have been invested at a Yield that is “materially higher” than the Yield on the Bonds and Yield Reduction Payments are permitted under Section 1.148-5(c)(3) of the Regulations, Yield Reduction Payments be made to the federal government and (ii) “rebateable arbitrage earnings” on the investment of the Gross Proceeds of the Bonds, within the meaning of Section 148(f) of the Code, be rebated to the federal government.

(b) Rebate Fund. The Indenture established the Rebate Fund, which will be maintained and held in trust by the Trustee and which will be disbursed and applied only as herein authorized in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph. Notwithstanding anything herein to the contrary, all provisions of the Indenture relating to the general administration of the funds created thereunder will apply to the Rebate Fund, and the Trustee is afforded all the rights, protections and immunities otherwise accorded to it thereunder as if the provisions set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph were set forth in the Indenture.

(c) Delivery of Documents and Money by Borrower on Computation Dates. The Borrower will deliver to the Trustee and the Issuer, within 55 days after each Computation Date:

(i) (A) a statement, signed by an officer or other authorized representative of the Borrower, stating the Rebate Amount as of such Computation Date and the amount of any Yield Reduction Payments due, and (B) a copy of the report prepared by the Rebate Analyst in connection therewith;

(ii) (A) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90 percent of the Rebate Amount and Yield Reduction Payments due as of such Installment Computation Date, less any “previous rebate payments” (determined in accordance with Section 1.148-3(f)(1) of the Regulations), made to the United States of America or (B) if such Computation Date is the Final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount and Yield Reduction Payments due as of such Final Computation Date,

less any “previous rebate payments” (determined in accordance with Section 1.148-3(f)(1) of the Regulations) made to the United States of America; and

(iii) an IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (“Form 8038-T”) properly signed and completed as of such Computation Date.

(d) Administration of Rebate Fund and Payment of Rebate.

(i) The Trustee will deposit or transfer to the credit of the Rebate Fund, pursuant to written direction from the Borrower, each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. Within five days after each receipt or transfer of funds to the Rebate Fund, the Trustee will withdraw such funds from the Rebate Fund and pay such funds to the United States of America. The Trustee may conclusively rely on the instructions of the Borrower with regard to any actions to be taken by it pursuant to this paragraph and will have no liability for any consequences of any failure of the Borrower to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided herein, the Trustee will have no duty or responsibility with respect to the Rebate Fund or the Borrower’s duties and responsibilities with respect thereto except to follow the Borrower’s specific written instructions related thereto.

(ii) Moneys and securities held by the Trustee in the Rebate Fund will not be deemed funds of the Bonds and are not pledged or otherwise subject to any security interest in favor of the owners of the Bonds to secure the Bonds or any other obligations.

(iii) Moneys in the Rebate Fund will be separately invested and reinvested by the Trustee, at the written direction of the Borrower, in Permitted Investments, subject to the Code. The Trustee will sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes. In the absence of written direction from the Borrower, the Trustee will not be responsible or liable for keeping the moneys held as part of the Rebate Fund fully invested.

(iv) The Borrower will provide to the Trustee and the Trustee will keep such records of the results of the computations made pursuant to this paragraph for a period of three years after the last Bond and any tax-exempt obligations issued to refinance the Bonds is retired. The Trustee will keep and make available to the Issuer and the Borrower such records concerning the investments of Gross Proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Issuer or the Borrower in order to enable the Borrower to make the computations required under Section 148(f) of the Code.

(e) Correction of Underpayments. If the Borrower discovers or is notified as of any date that any amount required to be paid to the United States of America pursuant

to this Agreement has not been paid as required or that any payment paid to the United States of America pursuant to this Agreement has failed to satisfy any requirement of Section 148(f) of the Code or Section 1.148-3 of the Regulations (whether or not such failure is due to any default by the Borrower, the Issuer, or the Trustee), the Borrower will (i) deliver to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States of America from the Rebate Fund (A) the Rebate Amount or Yield Reduction Payments due that the Borrower failed to pay, plus any interest specified in Section 1.148-3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (B) if such correction payment is not delivered to and received by the Trustee within 175 days after such discovery or notice, the amount determined in accordance with clause (A) of this subparagraph plus the 100 percent penalty required by Section 1.148-3(h)(1) of the Regulations, and (ii) deliver to the Trustee and the Issuer a Form 8038-T completed as of such date. If such Rebate Amount or Yield Reduction Payments, together with any penalty and/or interest due, is not paid to the United States of America in the amount and manner and by the time specified in the Regulations, the Borrower will take such steps as are necessary to prevent the Bonds from becoming “arbitrage bonds” within the meaning of Section 148 of the Code.

(f) Identification of Rebate Analyst. The contact information for the initial Rebate Analyst is:

Firm Name: Norris George & Ostrow PLLC  
Contact: Ethan Ostrow  
Address: The Army Navy Office Building  
1627 I Street NW, Suite 1220  
Washington, DC 20006  
Telephone: (202) 973-0111  
E-mail: eostrow@ngomunis.com

If the Borrower determines to engage the services of a different Rebate Analyst, the Borrower will provide the name and contact information for such entity to the Issuer within thirty days of engagement.

(g) Fees and Expenses. The Borrower agrees to pay all of the fees and expenses of Bond Counsel, the Rebate Analyst, and any other necessary consultant employed by the Borrower, the Trustee, or the Issuer in connection with computing the Rebate Amount and the Yield Reduction Payments; provided that nothing herein will be construed as the Trustee being responsible for creating, preparing or reviewing any of the computations contemplated under this Agreement.

(h) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Bonds that is not purchased at fair market value (as defined in Section 1.148-5(d)(6)(iii) of the Regulations)

or includes terms that the Borrower would not have included if the Bonds were not subject to Section 148(f) of the Code.

(i) Amounts Not Required in Certain Circumstances.

(i) Notwithstanding the foregoing, the Borrower will not be required to perform the obligations set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph, except for the obligation to retain accounting records and the payment of expenses as described herein, if (A) the Gross Proceeds of the Bonds have not been invested at a Yield that is “materially higher” than the Yield on the Bonds and therefore is not required to pay Yield Reduction Payments and/or (B) the Borrower has not earned any rebatable arbitrage and, therefore, is not subject to the rebate obligation set forth in Section 148(f) of the Code. To the extent that the Borrower will not be required to perform such obligations, the Borrower will send written notice to the Trustee and the Issuer within 55 days after the applicable Computation Date.

(ii) Notwithstanding anything to the contrary in this Agreement requiring a payment to be made based on the Rebate Analyst’s calculations showing a rebate being due, no payment will be made by the Trustee to the United States of America if the Borrower furnishes to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. In such event, the Borrower will be entitled to withdraw funds from the Rebate Fund to the extent provided in such Favorable Opinion of Bond Counsel.

(j) Trustee Reliance on Written Directions. The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent it materially follows the written directions of the Borrower, the Issuer, or the Rebate Analyst.

16. Funds.

(a) Bond Fund. Amounts on deposit in the Bond Fund will be used primarily to achieve a proper matching of payments made pursuant to the Loan Agreement and debt service on the Bonds within each Bond Year. Any amounts in the Bond Fund held for longer than 13 months will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(b) Collateral Fund. Amounts on deposit in the Collateral Fund will be used for the purposes set forth in Section 4.03 of the Indenture. Any amounts held in the Collateral Fund will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(c) Costs of Issuance Fund. Amounts on deposit in the Costs of Issuance Fund will be used for the purpose of paying Costs of Issuance of the Bonds. Amounts remaining in the Costs of Issuance Fund after the payment of all Costs of Issuance of the Bonds, and in any event not later than six months following the Closing Date of the Bonds, will be (i) to the extent such amounts represent Proceeds of the Bonds, transferred to the Project Fund and (ii) to the extent such amounts represent amounts that are not Proceeds of the Bonds, transferred to the Borrower. There is no assurance that amounts on deposit in the Costs of Issuance Fund will be available to pay debt service on the Bonds.

(d) Expense Fund. Amounts on deposit in the Expense Fund will be used for the purposes of payment of fees and expenses required under the Loan Agreement. There is no assurance that amounts on deposit in the Expense Fund will be available to pay debt service on the Bonds.

(e) Project Fund. All of the Proceeds of the Bonds in the Project Fund are expected to be invested and disbursed as described in the Indenture to pay Project Costs. The Issuer and the Borrower hereby waive the temporary period available under Section 1.148-2(e)(2) of the Regulations. Amounts in the Project Fund will be invested at a Yield that is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(f) Rebate Fund. The Rebate Fund will be used in the event the Borrower is required to pay rebatable arbitrage earnings to the federal government, as described in the “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph above. Amounts on deposit in the Rebate Fund are not subject to the lien of the Indenture; accordingly, there is no assurance that amounts on deposit, if any, in the Rebate Fund will be available to pay debt service on the Bonds.

17. Replacement Proceeds. The Issuer and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than the Bond Fund and the Collateral Fund, there is no debt service fund, redemption fund, reserve fund, replacement fund, or similar fund reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds.

(b) No Pledged Funds. Other than amounts in the Bond Fund and the Collateral Fund, there is no amount that is directly or indirectly pledged to pay principal or interest on the Bonds, or to a guarantor of the Bonds, such that such pledge provides reasonable assurance that such amount will be available to pay principal or interest on the Bonds if the Issuer encounters financial difficulty. For purposes of this certification, an amount is treated as so pledged if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders or the guarantor of the Bonds.

(c) No Other Replacement Proceeds. There are no other Replacement Proceeds allocable to the Bonds because the Issuer reasonably expects that the term of the Bonds will not be longer than is reasonably necessary for the governmental purpose of the Bonds.

Furthermore, even if the Bonds were outstanding longer than necessary for the purpose of the Bonds, no Replacement Proceeds will arise because the Issuer reasonably expects that no amounts will become available during the period that the Bonds remain outstanding longer than necessary based on the reasonable expectations of the Issuer as to the amounts and timing of future revenues. The Bonds would be issued to achieve the governmental purpose of the Bonds independent of any arbitrage benefit as evidenced by the expectation that the Bonds reasonably would have been issued if the interest on the Bonds were not excludable from gross income (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate and that tax credits issued under Section 42 of the Code would be available in connection therewith).

18. Not an Abusive Transaction. The Issuer and the Borrower hereby represent as follows:

(a) General. A device has not been and will not be employed in connection with the issuance of the Bonds to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates. Furthermore, no action taken in connection with the Bonds is or will be an abusive arbitrage device by having the effect of (i) enabling the Issuer or the Borrower to exploit, other than during an allowable temporary period, the difference between tax-exempt and taxable interest rates to obtain a material financial advantage (including as a result of an investment of any portion of the Gross Proceeds of the Bonds over any period of time, notwithstanding that, in the aggregate, the Gross Proceeds of the Bonds are not invested in higher yielding investments over the term of the Bonds) and (ii) overburdening the tax-exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Bonds, based on all the facts and circumstances. Specifically, (A) the primary purpose of each transaction undertaken in connection with the issuance of the Bonds is a bona fide governmental purpose; (B) each action taken in connection with the issuance of the Bonds would reasonably be taken to accomplish the governmental purposes of the Bonds if the interest on the Bonds were not excludable from gross income for federal income tax purposes (assuming the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate on the Bonds); and (C) the Proceeds of the Bonds will not exceed by more than a Minor Portion the amount reasonably anticipated to be necessary to accomplish the governmental purposes of the Bonds and will in fact not be substantially in excess of the amount of Proceeds allocated to expenditures for the governmental purposes of the Bonds.

(b) No Sinking Fund. No portion of the Bonds has a term that has been lengthened primarily for the purpose of creating a sinking fund or similar fund with respect to the Bonds.

(c) No Window. No portion of the Bonds has been structured with maturity dates the primary purpose of which is to make available released revenues that will enable the Issuer to avoid transferred proceeds or to make available revenues that may be invested to be ultimately used to pay debt service on another issue of obligations.



(d) No Disposition. No portion of the Project is reasonably expected to be disposed of while the Bonds are outstanding.

(e) No Overissuance. The Net Proceeds of the Bonds do not exceed the total amount necessary for the governmental purposes of the Bonds. The issuance of the Bonds as sized is necessary to achieve the 50% of basis requirement of Section 42 of the Code in order for the Borrower to receive low-income housing tax credits, without which the Project could not be provided for low-income tenants. The funding of the Collateral Fund as described in this Agreement is necessary to secure the rating on the Bonds and to enable the Bonds to be sold to the public with terms acceptable to the Borrower.

19. The Project. The Borrower hereby represents and covenants as follows:

(a) The Project will be comprised of (i) Units, all of which will be rented to individuals or families for residential occupancy and none of which will be owner-occupied (other than any functionally related and subordinate Units used by management for the purpose of housing any reasonably required resident managers, security personnel or maintenance personnel for the Project) and (ii) facilities, all of which are functionally related and subordinate to the aforementioned Units (i.e., facilities that are of a size and character commensurate with the size and character of such Units). All Units are similarly constructed and offer fixtures of similar quality. All amenities that are part of the Project will be made available to all residential tenants and their guests on an equal basis, regardless of the rent charged for the Unit occupied by the residential tenant.

(b) There has been and will be no substantial deviation from the description and location of the Project and the Borrower, operator or manager set forth in the notice of hearing published with respect to the Bonds for purposes of satisfying the requirements of Section 147(f) of the Code.

(c) The Project will be designed and equipped and will be owned, maintained and operated on a continuous basis in accordance with the Loan Agreement and the Regulatory Agreement. For purposes of this subparagraph, each of the enumerated types of facilities includes the interior furnishings of such facility (including the facility's plumbing, electrical and decorating costs) and the structural components required for the facility (including the facility's walls, ceilings and special enclosures). Each such enumerated type of facility includes only those normal components of the structure in which it is located, such as the structure's structural supports, to the extent that those components are required because of the facility. The recreational facilities, if any, included as part of the Project will be available only to residential tenants and their guests and no separate fee will be required for the use of such facilities.

(d) Except to the extent that any Unit is a single room occupancy unit under Section 42 of the Code, each Unit will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Specifically, each Unit will contain a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, full-size refrigerator and sink, all of which are separate and distinct from the facilities included in other Units.

(e) The Project will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (i) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (ii) will be owned by the same person for federal income tax purposes, and (iii) will be financed pursuant to a common plan.

(f) Parking spaces included in the Project are functionally related and subordinate to the Units included in the Project in that they are no greater in number than is normally appropriate for a residential rental facility that is of the size of the Project. Only tenants, prospective tenants, guests of tenants, employees of the Borrower, and employees of the manager are expected to use these parking spaces.

(g) If the Project contains a clubhouse, exercise or similar recreational facility, such facility exists as a tenant amenity and may be used by any tenant free of any separate charge and will be constructed for the exclusive use of tenants of the Project and their guests. Such facility, if any, is of a character and size commensurate with the character and size of the Project and will not be open to the general public on a membership basis.

(h) The Project will not include any nonresidential or commercial space, including particularly, without limitation, any other space or facility not described in this paragraph. Costs relating to the acquisition, rehabilitation and equipping of any nonresidential or commercial space developed in connection with the Project (including any costs of land acquisition allocable thereto) will be allocated to sources other than the Bonds.

(i) No continual or frequent skilled or unskilled nursing services will be available at the Project, although the tenants will be permitted to engage such services from providers that are not affiliated with the Borrower or the manager. Thus, neither the Borrower nor the manager, nor any Related Person to either the Borrower or the manager, will provide any assistance to any tenant in connection with his or her activities of daily living, other than concierge and valet services. The Project will not be licensed as a convalescent or nursing home, continuing care facility, personal care facility, special care facility or other assisted living facility under State law.

20. Tenant Income Certifications. The Borrower hereby represents and covenants as follows:

(a) The Borrower will obtain and maintain tenant income certifications in a form that satisfies the requirements of Section 1.103-8(b)(8) of the Regulations demonstrating that the 40-60 Test is met with respect to the occupied Units continuously throughout the Qualified Project Period. The Borrower expects that more than 10 percent of the Units in the Project will remain occupied throughout the rehabilitation of the Project and, as such, compliance with the 40-60 Test will not be required during the twelve-month “transition period” beginning on the Issue Date of the Bonds, as set forth in Revenue Procedure 2004-39, 2004 C.B. 49.

(b) The Borrower will ensure that each person who is intended to be a Qualifying Tenant will sign and deliver to the Borrower or a manager of the Project a tenant income certification in the form required by the Regulatory Agreement. In addition, the Borrower will ensure that such person will provide whatever other information, documents or certifications are deemed necessary to substantiate the tenant income certification.

(c) The Borrower will timely file, or take such actions as are necessary to cause any other person who is properly treated as the “operator” for purposes of Section 142(d)(7) of the Code to file timely, the annual certifications described in Section 142(d)(7) of the Code (currently, IRS Form 8703, Annual Certificate of Residential Rental Project).

(d) For a period of at least three years after the date the Bonds are retired, a tenant income certification in the form required by the Regulatory Agreement will at all times be maintained on file at the applicable location for the Project with respect to each Qualifying Tenant who resides or has resided in a Unit.

21. Form of Lease. The Borrower will ensure that the term of a lease of any Unit will be for a term of not less than six months, subject to the provision that any lease may be terminated if the tenant’s physical condition no longer permits full-time residence in the Project; provided, however, that the form of lease to be utilized by the Borrower in renting any Units to a person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by such person to immediate eviction in accordance with applicable law for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the tenant income certification.

22. Change in Use. The Borrower acknowledges that any failure to satisfy the applicable requirements of Sections 103 and 142 through 150, inclusive, of the Code, including the 40-60 Test, with respect to the Project will be treated as a change in use for purposes of Section 150(b)(2) of the Code with the result that no deduction will be allowed for federal income tax purposes for interest paid by the Borrower with respect to the portion of the Bond Loan that is allocable to Proceeds of the Bonds that accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date that the Project meets such requirements.

On the earlier of (a) the date on which the Borrower reasonably determines that the Project will not be completed or (b) the date on which the Project is Placed in Service, the Borrower will identify the amount of unspent Net Proceeds of the Bonds, if any, and will use such amount to redeem or, if not permitted by the terms of the Bonds, defease the Bonds, all in accordance with the requirements of Section 1.142-2 of the Regulations, the Indenture and the Loan Agreement, as applicable, including the requirement that, if a defeasance is necessary, timely written notice be provided to the IRS.

23. [Reserved.]

24. Post-Issuance Compliance Procedures. The Issuer has implemented written post-issuance tax compliance procedures regarding federal tax compliance that include provisions to ensure that all nonqualified bonds are remediated according to the requirements under the Code

and Regulations and to monitor the requirements of Section 148 of the Code. A copy of the Issuer's then-current post-issuance tax compliance procedures is and will be available on the Issuer's website during the term of this Agreement. If the Issuer's website is not available, a copy of the then-current post-issuance tax compliance procedures will be made available to the Borrower, upon request. The Borrower agrees to take such actions as required therein to be taken by the Borrower to maintain compliance with requirements in the Code. In the event that the terms of the Issuer's post-issuance tax compliance procedures conflict with the terms of this Agreement, the terms of this Agreement will control.

25. Record Retention. The Borrower and the Trustee (to the extent the Trustee receives such records in accordance with the terms of the Bond Documents) will retain or cause to be retained all pertinent and material records relating to any formal elections made for purposes of federal income tax law; the use of the Project; the investment, use and expenditure of the Proceeds of the Bonds; and the calculation of rebate in connection with the Bonds until three years after the Bonds, including any tax-exempt obligations issued to refinance the Bonds, are redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Issuer to retrieve and reproduce such books and records in the event of an examination of the Bonds by the IRS.

26. Examination by IRS. The Borrower acknowledges that, in the event of an examination by the IRS of the excludability of interest on the Bonds from the gross income of the owners thereof for federal tax purposes, the Issuer will likely be treated as the "taxpayer", and the Borrower agrees to respond in a commercially reasonable manner on behalf of, and at the direction of, the Issuer (and in consultation with the Trustee, who will have the right to participate in all related proceedings (including tax court challenges and appeals)) to such examination and to pay the costs of the counsel selected by the Issuer to provide a defense regarding the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. THE BORROWER WILL INDEMNIFY AND HOLD HARMLESS THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL COSTS, LOSSES, CLAIMS, DAMAGES, OR LIABILITY OF, OR RESULTING FROM, SUCH AN EXAMINATION AND THE SETTLEMENT THEREOF BY THE ISSUER AND THE TRUSTEE (INCLUDING THE COST OF THE ISSUER'S AND THE TRUSTEE'S LEGAL COUNSEL), EXCEPT AS A RESULT OF THE WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE ISSUER (WITH RESPECT TO INDEMNIFICATION OF THE ISSUER) OR THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE TRUSTEE (WITH RESPECT TO INDEMNIFICATION OF THE TRUSTEE).

27. Term. The obligations of the Issuer, the Borrower and the Trustee, under this Agreement will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the excludability from gross income of interest on the Bonds for federal income tax purposes.

28. Amendments.

(a) To the extent any amendments to the Code or the Regulations, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, this Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as will be necessary to document such automatic amendment hereof.

(b) To the extent that the Code or the Regulations, or any amendments thereto, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All reasonable costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with an amendment to this Agreement will be paid by the Borrower and its successors in interest.

29. Remedies. The Issuer, the Trustee, and the Borrower each hereby agrees that the remedies available under Article X of the Indenture and Article VII of the Loan Agreement apply upon the occurrence of an Event of Default (as defined under the Indenture or the Loan Agreement, as applicable) resulting from an action or omission of an action by any party hereunder with respect to any provision of this Agreement.

30. Miscellaneous.

(a) Severability. If any provision of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such provision will not affect any of the remaining provisions hereof.

(b) Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

(c) Notices. All notices, demands, communications and requests which may or are required to be given hereunder or by any party hereto will be deemed given on the date on which the same will have been mailed by registered or certified mail, postage prepaid, addressed to such parties at the addresses set forth in the Indenture and the Loan Agreement, as applicable.

(d) Successors and Assigns. The terms, provisions, covenants and conditions of this Agreement bind and inure to the benefit of the respective successors and assigns of the Issuer, the Borrower, and the Trustee.

(e) Headings. The headings of this Agreement are inserted for convenience only and will not be deemed to constitute a part of this Agreement.

(f) Governing Law. This Agreement is governed by the laws of the State, without regard to the choice of law rules of the State. Venue for any action under this Agreement will lie within the district courts of the State, and the parties hereto consent to the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

[EXECUTION PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Issuer, the Borrower and the Trustee (but, as for the Trustee, it is only agreeing to Sections 2(c), 14, 15, and 25 through 30) have caused this Agreement to be executed and delivered by duly authorized officers thereof as of the Issue Date of the Bonds.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Issuer

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

Name: Teresa Morales

Title: Director of Multifamily Bonds

*Signature Page to Tax Exemption Agreement*

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

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

Stephen R. Whyte, President

*Signature Page to Tax Exemption Agreement*



**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee**

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

*Signature Page to Tax Exemption Agreement*

## EXHIBIT A

### ISSUE PRICE CERTIFICATE

I, the undersigned officer of Colliers Securities LLC (“Colliers”), make this certification in connection with the \$[27,500,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “Bonds”). Each capitalized term used but not defined herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement prepared in connection with the Bonds (the “Tax Exemption Agreement”).

1. I hereby certify as follows in good faith as of the Issue Date of the Bonds:

(a) I am the duly chosen, qualified and acting officer of Colliers for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of Colliers. I am the officer of Colliers charged, along with other officers of Colliers, with responsibility for the Bonds.

(b) The first price at which at least 10% of the Bonds was sold to the Public is the price set forth on the cover of the Official Statement prepared in connection with the Bonds (each, an “Actual Sales Price”).

(c) The aggregate of the Actual Sales Prices is \$[Issue Price].

2. For purposes of this Issue Price Certificate, the following definitions apply:

(a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

(b) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Colliers' interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

[EXECUTION PAGE FOLLOWS]

The foregoing Issue Price Certificate has been duly executed as of the Closing Date.

**COLLIERS SECURITIES LLC**

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

Name: Frank J. Hogan

Title: Senior Vice President

*Signature Page to Issue Price Certificate*

## EXHIBIT B

### CERTIFICATE OF FINANCIAL ADVISOR

I, the undersigned officer of Stifel, Nicolaus & Company, Incorporated (the “Financial Advisor”), make this certificate in connection with the \$[27,500,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit B is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Bonds:

1. I am the duly chosen, qualified and acting officer of the Financial Advisor for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Financial Advisor.

2. The Issue Price plus any Pre-Issuance Interest on the Bonds, based on the representations of the Underwriter in the Issue Price Certificate attached as Exhibit A to the Tax Exemption Agreement, is not more than \$[Issue Price].

3. Solely for the purposes of demonstrating the fact that the Yield on the Bond Loan is not more than 1.5 percentage points higher than the Yield on the Bonds, the Financial Advisor computed the Yield on the Bonds (based on the Issue Price and assuming semiannual compounding, a rate of interest of [\_\_\_\_\_]%, and payment of the bonds on the maturity date of [\_\_\_\_\_] ) to be [\_\_\_\_\_] percent and the Yield on the Bond Loan to be [\_\_\_\_\_] percent. Accordingly, the Yield on the Bond Loan does not exceed the Yield on the Bonds by more than 1.5 percentage points.

4. For purposes of determining the Yields in paragraphs 3 above, the Financial Advisor has performed certain calculations relating to the Bonds and the Bond Loan. Such calculations are attached hereto as Schedule I. The Financial Advisor hereby represents that such calculations are based on assumptions and methodologies provided by Bond Counsel and are in all material respects consistent with the assumptions and methodologies set forth in the “Yield on the Bonds” and “Yield on the Bond Loan” paragraphs of the Tax Exemption Agreement. These calculations include calculations based upon assumptions, information, and estimates obtained from the Borrower and the Issuer, which the Financial Advisor, based on its experience with similar transactions, has no reason to believe are not reasonable in light of the relevant facts and circumstances. To the best of the Financial Advisor’s knowledge, as of the Issue Date of the Bonds, no fact or circumstance has come to the Financial Advisor’s attention that conflicts with the assumptions, information and estimates described in the preceding sentence.

5. As shown in Schedule I attached hereto, the Financial Advisor computed the Weighted Average Maturity of the Bonds, calculated in accordance with the provisions of the Tax Exemption Agreement, to be [WAM] years.

6. The Financial Advisor represents that to the best of its knowledge as of the Issue Date of the Bonds, the statements set forth in paragraphs (a) through (c) of the “Not An Abusive Transaction” paragraph of the Tax Exemption Agreement are true.

The Issuer may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the conditions imposed by the Code on the excludability of interest on the Bonds from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Financial Advisor has been duly executed as of the Issue Date of the Bonds.

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

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

*Signature Page to Certificate of Financial Advisor*

**SCHEDULE I**  
**TO CERTIFICATE OF FINANCIAL ADVISOR**

*Schedule I to Certificate of Financial Advisor*



**EXHIBIT D**

**SCHEDULE OF BOND LOAN COSTS**

**Paid Prior to Closing**

Application Fee \$[\_\_\_\_\_]

**Paid at Closing**

Issuer Issuance Fee \$[\_\_\_\_\_]

Issuer Administration Fee  
(first two years, prorated) \$[\_\_\_\_\_]

Issuer Compliance Fee  
(first year) \$[\_\_\_\_\_]

**Annual Fees**

Issuer Administrative Fee  
(beginning June 1, 2026) 0.10% per annum of the aggregate principal  
amount of the Bonds outstanding

Issuer Compliance Fee  
(beginning June 1, 2027) \$25 per Unit in the Project (excluding any  
market rate units), paid until the end of the  
State Restrictive Period

This Texas-only template has been approved for subordinate, fully cross-collateralized, short-term tax-exempt four percent loans provided by TDHCA. This template is to be used for all such transactions. This June 2, 2023, template is only approved until the expiration of the current OMB-approved *Subordination Agreement – Public*.

**Subordination Agreement –  
TDHCA only for fully  
collateralized four percent  
bonds**

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

**Warning:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

**{This form is required with subordinate, fully cross-collateralized, short-term tax-exempt four percent loans provided by TDHCA. The subordinate lien and early maturity date are only permitted pursuant to Program Obligations and must be approved in writing by HUD.**

**HUD will consider requested changes to this form that are necessary to comply with state or local law. All such requests must be accompanied by a substantive explanation prepared by counsel to the Subordinate Lender. HUD's written acceptance of any changes for state or local law will result in a template Subordination Agreement- Public, for a given jurisdiction and program. Consistent with the PRA, permission to use any such HUD-approved template will expires upon implementation of the next OMB-approved version of this form. When a new OMB form is issued, public lenders may request HUD consideration of changes to the new form in accordance with the level of flexibility the form provides.}**

Project Name: Gulfway Manor  
HUD Project No: [115-36038]

THIS **SUBORDINATION AGREEMENT ("Agreement")** is entered into this 1st day of [July], 2024 by and among (i) [Merchants Capital Corp.], an Indiana banking corporation ("**Senior Lender**"), (ii) Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas ("**Subordinate Lender**"), and (iii) Gulfway Housing Partners, LP, a Texas limited partnership ("**Borrower**").

## Recitals

**WHEREAS**, Borrower is the owner of that certain 151 unit residential rental development known as "Gulfway Manor Apartments" ("**Project**"), located at 1750 Treyway Lane, Corpus Christi, Nueces County, Texas 78412. Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto to Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the Note described in Schedule A ("**Senior Note**"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, "**Senior Security**

**Instrument"**), covering the property described in Exhibit A attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior Security Instrument ("**Mortgaged Property**").

**WHEREAS**, Borrower has requested Senior Lender to permit Subordinate Lender to make a subordinate loan to Borrower in the amount of \$[27,500,000] ("**Subordinate Loan**"), pursuant to the Subordinate Loan Documents as defined below, and secured by, among other things, a mortgage lien against the Mortgaged Property.

**WHEREAS**, Senior Lender, with the approval of the U.S. Department of Housing and Urban Development ("**HUD**"), has agreed to permit Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement and in accordance with Program Obligations. "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: Handbooks, guides, notices, and mortgagee letters are available on "HUDCLIPS," at [www.hud.gov](http://www.hud.gov).

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

**1. Definitions.**

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

(a) "**Affiliate**" is any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(p) "Subordinate Loan Documents"** means the Subordinate Note, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as identified in Schedule B. The terms Subordinate Note and Subordinate Mortgage are defined in Schedule B.

**(q) "Subordinate Loan Enforcement Action"** means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative (other than administrative action regarding restrictions under the Regulatory and Land Use Restriction Agreement ("Regulatory Agreement")) by and among Subordinate Lender, U.S. Bank Trust Company, National Association, as trustee, and Borrower dated as of even date with the Subordinate Loan Documents pursuant to Chapter 2306 of the Texas Government Code) or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

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

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

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

Senior Lender agrees, subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects to the lien of the Senior Security Instrument) to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan. Senior Lender agrees that the existence of the Subordinate Loan does not create a basis for default of the Senior Indebtedness. Such permission is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to Borrower. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on both of those dates, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

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

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

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

**(b) Terms of the Subordinate Loan.** The original principal amount of the Subordinate Note is \$[27,500,000]. Interest on the Subordinate Note is payable semiannually at the rate of [INTEREST RATE]% per annum. The Subordinate Note is due and payable in full on [August 1, 2028] ("Maturity"). The principal of the Subordinate Note will have a balloon principal payment of \$[27,500,000] due at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make payments as follows: semiannual payments of interest on the first calendar day of [February] and [August] beginning [February 1, 2025], and payment of principal at Maturity or earlier redemption pursuant to the Bond Indenture, subject to Section 3(c) immediately below.

**(c) Required HUD Language in Subordinate Note.** The Subordinate Note contains or incorporates the following provisions:

"As long as HUD is the insurer or holder of the Senior Note (as such term and other capitalized terms are defined in the form Subordination Agreement, HUD-92420M) on FHA Project No. [115-36038], the following provisions ("**HUD Provisions**") shall be in full force and effect:

(1) any payments due under the Subordinate Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than one percent (1%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Maker cumulatively exceed one percent (1%) of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;

(2) no prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources; **{NTD: HUD must approve this prepayment in writing for each deal; failure of Borrower timely requesting HUD's approval prior to posting of any offering document for the Bonds will likely result in inability to close bond transaction} [FHA LENDER TO CONFIRM]**

(3) after the endorsement to the trustee for the Bonds and pledge of the Subordinate Note under the Bond Indenture, this Subordinate Note is non-negotiable and may not be sold, transferred, assigned, or

pledged by the Subordinate Lender except (1) with the prior written approval of HUD, or (2) if transferred to another state agency or wholly-owned corporation of a state entity pursuant to state legislative or executive action;

(4) [interest on the Subordinate Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument] [*intentionally omitted*]; **{NTD: this provision may be removed with “Intentionally Omitted” inserted in its place for Low Income Housing Tax Program and short-term, cross-collateralized TDHCA Bond transactions, when approved in writing by HUD in accordance with Program Obligations; failure of HUD to approve prior to posting of any offering document for the Bonds will likely result in inability to close bond transaction}** **[FHA LENDER TO CONFIRM]**

(5) Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Subordinate Note;

(6) the terms and provisions of this Subordinate Note are enforceable by HUD against Borrower and Subordinate Lender and their successors and assigns to the extent allowed by law. This Subordinate Note may not be modified or amended without the written consent of HUD, except for modifications or amendments caused by changes in state or federal law which become automatically effective without the consent of the parties to the Subordinate Note; and provided that any modification or amendment made without HUD's written consent may cause the Subordinate Mortgage to be an unpermitted encumbrance; and

(7) in the event of any conflict between the terms of the Subordinate Note and the HUD Provisions, the terms of the HUD Provisions shall control.”

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

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

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

certified to be true, correct and complete.

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

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

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

**(b) Loan Documents.** A complete set of the Subordinate Loan Documents, including this Subordination Agreement.

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

**(a) Agreement to Subordinate.** Senior Lender and Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

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

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



**(d) Payments After Senior Security Instrument Default.** Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Project Sources on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) unless either (i) such payment is being made solely from Non-Project Sources or (ii) such payment is made with Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Security Instrument Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 5 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new default notice from Senior Lender in accordance with the provisions of this Section 5(d).

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

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

unless the Office of the Texas Attorney General or other allowable Executive under the Texas Constitution independently decides to commence such proceedings.

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

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

### **(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.**

**(1)** If a Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without Senior Lender's prior written consent. Subordinate Lender agrees to use best efforts to resolve the Subordinate Mortgage Default, in an effort to avoid the pursuit of available remedies by the Subordinate Lender. In the event Subordinate Lender forecloses on the Mortgaged Property, the purchaser must comply with HUD's Previous Participation regulations and processes, Transfer of Physical Asset requirements, and Program Obligations before it can take title to the Mortgaged Property.

**(2)** Intentionally deleted.

**(3)** Nothing in this subsection (b) shall (i) limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources or (ii) preclude Subordinate Lender from exercising or enforcing all the rights available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable law to enforce covenants and agreements of Borrower relating to income, rent or affordability restrictions.

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

**(a) Notice of Default and Cure Rights.** Senior Lender shall deliver to

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

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

## **8. Conflict.**

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

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

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

subject matter:

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

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

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

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

**(c) No Modification of Subordinate Loan Documents.** Borrower and Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the

amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents without Senior Lender's consent shall be void ab initio and of no effect whatsoever, except for amendments caused by changes in state or federal law which become automatically effective without the consent of the parties to the Subordinate Note; and provided that any modification or amendment made without HUD's written consent may cause the Subordinate Mortgage to be an unpermitted encumbrance.

**10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness; Transfer of Physical Assets.**

- (a) Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, provided however, there shall be no modification of the Senior Loan Documents without the consent of the Subordinate Lender if such modification would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.
- (b) Subordinate Lender agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness in accordance with Program Obligations (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Indebtedness, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the indebtedness related to the refinance loan, the refinance note, the security instrument securing the refinance note, all documents evidencing, securing or otherwise pertaining to the refinance note and the holder of the refinance note, provided however, there shall be no refinancing of the Senior Indebtedness without the consent of the Subordinate Lender if such refinancing would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.
- (c) Intentionally omitted.
- (d) Intentionally omitted.

- (e) Subordinate Lender further agrees that the Subordinate Indebtedness is assumable when a sale or transfer of physical assets occurs, and the Senior Indebtedness remains in place, provided the new owner satisfies Subordinate Lender's general ownership requirements in accordance with state law and rules. Assumption of loans and transfer of ownership is subject to the laws, requirements and processes under Section 2306.6713 of the Texas Government Code and Title 10, Part 1, Chapters 10 and 13 of the Texas Administrative Code ("TAC"). Ownership transfers must be approved in accordance with all requirements in 10 TAC §10.406 relating to "Ownership Transfers", and no prospective "Owner" including person, or affiliate, as those terms are defined in 2 CFR Part 180 and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

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

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief, provided that the Subordinate Lender's financial liability shall be limited to the Trust Estate (as defined in the Bond Indenture).

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

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

SENIOR LENDER:

Merchants Capital Corp.  
410 Monon Boulevard, 5<sup>th</sup> Floor  
Carmel, IN 46032  
Attn: Gulfway Manor, FHA No.

With a copy to:

U.S. Department of Housing and Urban Development

Director - Office of Multifamily Asset Management  
Room 6160  
451 Seventh Street, S.W.  
Washington, DC 20410

**SUBORDINATE LENDER:**

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941  
Attention: Director of Multifamily Bonds

With a copy to:

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941  
Attention: Legal Services

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

**13. General.**

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

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

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

**(d) Further Assurances; UCC Financing Statements.** Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan

Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

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

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

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

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

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

Each signatory below hereby certifies that each of their statements and



representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

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

SENIOR LENDER

MERCHANTS CAPITAL CORP.,  
an Indiana banking corporation

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

ACKNOWLEDGMENT

State of \_\_\_\_\_ §  
County of \_\_\_\_\_ §

The foregoing instrument was acknowledged, signed and sworn to before me on \_\_\_\_\_, 2024 by \_\_\_\_\_, \_\_\_\_\_ of Merchants Capital Corp., an Indiana banking corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public Signature  
My Commission expires: \_\_\_\_\_

(Personalized Seal)

SUBORDINATE LENDER

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to Board

ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2024 by James B. "Beau" Eccles, Secretary to Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said agency.

\_\_\_\_\_  
Notary Public Signature  
My Commission expires: \_\_\_\_\_

(Personalized Seal)

BORROWER:

GULFWAY HOUSING PARTNERS, LP,  
a Texas limited partnership

By: Gulfway Housing Management, LLC,  
a Texas limited liability company  
its general partner

By: Vitus Development III, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: \_\_\_\_\_  
Stephen R. Whyte  
President

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Stephen R. Whyte, President of Vitus Development III, LLC, a Delaware limited liability company, sole member and manager of Gulfway Housing Management, LLC, a Texas limited liability company, general partner of Gulfway Housing Partners, LP, on behalf of said entities.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission expires: \_\_\_\_\_

(Personalized Seal)

Exhibit A – Legal Description

Schedule A – List of Senior Loan Documents

## Schedule B – List of Subordinate Loan Documents

**EXHIBIT A: LEGAL DESCRIPTION**

A tract of land lying in and being a portion of LOT THIRTY (30), BLOCK TWO (2), in GULFWAY - AIRLINE PARK, a subdivision in Corpus Christi, Nueces County, Texas, according to the map or plat Volume 37, Page(s) 27 of the Map Records of Nueces County, Texas; said tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a found 3/4" I.P. found for the most Southerly Corner of said Lot 30, Block 2;

THENCE North 61° 02' 30" West, along the Southerly line of said Lot 30, Block 2, a distance of 625.00 feet to a found 3/4" I.P.;

THENCE North 29° 03' 30" East, a distance of 665.14 feet to a found Cut "X," being a point on the Northerly line of said Lot 30, Block 2;

THENCE South 61° 01' 30" East, along said Northerly line, a distance of 625.00 feet to a found SWB Brass Cap at a point being the most Easterly Corner of said Lot 30, Block 2;

THENCE South 29° 03' 30" West, along the Easterly line of said Lot 30, Block 2, a distance of 664.94 feet to the Point of Beginning; containing an area of 415,655 square feet or 9.5421 acres, more or less.

**SCHEDULE A**

[SENIOR LOAN DOCS TO COME]

And all other documents of whatever nature and kind relating to the Senior Loan.

**SCHEDULE B**

1. Trust Indenture dated as of [July 1], 2024 (“Bond Indenture”), between Subordinate Lender and U.S. Bank Trust Company, National Association, as trustee (“Bond Trustee”)
2. Loan Agreement dated as of [July 1], 2024, between Subordinate Lender and Borrower
3. Regulatory and Land Use Restriction Agreement dated as of [July 1], 2024 among Subordinate Lender, Bond Trustee, and Borrower
4. Tax Exemption Certificate and Agreement dated as of [July 1], 2024, among Subordinate Lender, Bond Trustee and Borrower
5. Funding Agreement dated as of [July 1], 2024, among Senior Lender and Borrower, and acknowledged by Subordinate Lender and Bond Trustee
6. Promissory Note dated as of [July 1], 2024 (“Subordinate Note”), from Borrower to Subordinate Lender
7. Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing dated as of [July 1], 2024 (“Subordinate Mortgage”), from Borrower to a trustee for the benefit of Subordinate Lender and Bond Trustee





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 657

**Agenda Date:** 6/13/2024

**Agenda #:** 20.

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Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for Norwood Estates (HTC #19407)

**RECOMMENDED ACTION**

**WHEREAS**, Norwood Estates (the Development) received a 4% Housing Tax Credit (HTC) award in 2019 for the new construction of 228 units for the general population in Austin, Travis County;

**WHEREAS**, construction of the Development has been completed, and LDG Estates at Norwood, LP (the Development Owner or Owner) requests, at cost certification, to increase the annual HTC amount from \$1,467,918, the amount reflected in the Determination Notice, to \$2,431,282, a difference of \$963,364, which represents a 65.63% increase;

**WHEREAS**, §42(m)(2) of the Internal Revenue Code allows an increase of tax credits for a bond financed project when the increase is determined necessary as demonstrated through the submission of the cost certification package;

**WHEREAS**, 10 TAC §10.401(d) requires approval by the Board if an increase to the amount of tax credits exceeds 120% of the amount of credit reflected in the Determination Notice; and

**WHEREAS**, a review of the cost certification package submitted by the Development Owner supports the need for the additional tax credits requested, and staff has determined that the increase is necessary for the viability of the transaction;

**NOW, therefore, it is hereby**

**RESOLVED**, that the housing tax credit increase for Norwood Estates requested by the Development Owner is approved as presented to this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

**BACKGROUND**

Norwood Estates received a 4% HTC award in 2019 for new construction of 228 units for the general population in Austin, Travis County. On October 14, 2019, a Determination Notice was issued with an approved annual tax credit amount of \$1,467,918. The residential buildings in the Development placed in service in 2023, and the final cost certification was received by the

Department on March 27, 2024.

In a letter dated March 27, 2024, Jason Trevino, the representative for the Development Owner, requested an annual tax credit award of \$2,431,282, and this amount represents an increase of \$963,364 (65.63%) from the amount reflected in the Determination Notice. Through the cost certification review process, the representative for the Development Owner explained that the Development incurred increased costs during construction and construction delays.

A comparison of the development costs from the time of the Application, in 2019, to Cost Certification indicates that total development costs increased approximately \$12.5MM (28.49%), from \$43,873,370 to \$56,374,033. The Owner explained that direct construction costs were underestimated at the time of application, as the applicant did not have actual construction bids at that time. Additionally, there were several change orders, which also increased the direct construction costs. Lumber had a significant price escalation during this timeframe. The City of Austin added unanticipated offsite construction work to the permit prior to issuance and refused to issue a permanent water meter until the offsite construction was complete. There was also a delay from Austin Energy, as they were unable to provide transformers and meters. Furthermore, grading plans had to be reissued for the project, as errant grades were discovered during construction causing additional concrete for retaining walls and additional dirt haul off. There was also an extended delay in getting the detention pond details approved by the City of Austin. General Conditions and Overhead costs increased due to construction delays. Construction delays caused an increase to financing costs such as construction interest and financing fees. Developer fees also increased, as they are calculated at 15% of the project's eligible costs.

In addition, the credit calculation at application was based on an applicable percentage of 3.45%, whereas at cost certification the percentage was adjusted due to the enactment of the Consolidated Appropriations Act of 2021. In this instance, a supplemental bond was funded on May 1, 2023, allowing the Owner to take advantage of the new 4% floor rather than the applicable percentage based on the placed in service date of each building.

Staff's analysis of this transaction at cost certification has concluded that the Development supports an annual tax credit allocation of \$2,431,282 and that the recommended increase is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. This results in a 65.63% increase from \$1,467,918, the original annual HTC amount in the Determination Notice. In accordance with 10 TAC §10.401(d), Board approval is required because the requested tax credit amount exceeds 120% of the HTC amount reflected in the Determination Notice. The Development Owner will be required to submit the Tax-Exempt Bond Credit Increase Request Fee required in 10 TAC §11.901(8) for the increase to the HTC amount prior to issuance of Forms 8609. Additionally, all required pending documentation for the cost certification review must be provided for the issuance of 8609s.

Staff recommends approval of the increase in the tax credit award as presented herein.



**UNIT MIX/RENT SCHEDULE**

*Norwood Estates, Austin, Texas, # 19407*

LOCATION DATA	
CITY:	Austin
COUNTY:	Travis
PROGRAM REGION:	7

UNIT DISTRIBUTION			Income	# Units
# Beds	# Units	% Total		
Eff			20%	0
1	36	15.8%	30%	0
2	108	47.4%	40%	0
3	84	36.8%	50%	0
4			60%	228
			70%	0
			80%	0
			MR	0
<b>TOTAL</b>	<b>228</b>	<b>100.0%</b>	<b>TOTAL</b>	<b>228</b>
<b>Average Income:</b>				60.00%

Applicable Programs
4% Housing Tax Credits

PRO FORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	130%
APPLICABLE FRACTION:	100.00%
APP % - ACQUISITION:	
APP % - CONSTRUCTION:	4.00%
AVERAGE SF	1,117

**UNIT MIX / MONTHLY RENT SCHEDULE**

HTC		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC60%	\$1,314	36	1	1	849	\$1,314	\$105	\$1,209	\$0	\$1.42	\$1,209	\$43,524	\$43,524	\$1,209	\$1.42	\$0		0.00	
TC60%	\$1,578	108	2	2	1,094	\$1,578	\$121	\$1,457	\$0	\$1.33	\$1,457	\$157,356	\$157,356	\$1,457	\$1.33	\$0		0.00	
TC60%	\$1,822	84	3	2	1,262	\$1,822	\$137	\$1,685	\$0	\$1.34	\$1,685	\$141,540	\$141,540	\$1,685	\$1.34	\$0		0.00	
<b>TOTALS / AVERAG</b>		<b>228</b>			<b>254,724</b>				<b>\$0</b>	<b>\$1.34</b>	<b>\$1,502</b>	<b>\$342,420</b>	<b>\$342,420</b>	<b>\$1,502</b>	<b>\$1.34</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0.00</b>	<b>(\$1,502)</b>
<b>ANNUAL POTENTIAL GROSS RENT:</b>												<b>\$4,109,040</b>	<b>\$4,109,040</b>						

**PRO FORMA ANALYSIS & DEVELOPMENT COSTS**

**POTENTIAL GROSS RENT**

				<b>TDHCA CC</b>	<b>TDHCA -Prior</b>	<b>% DIFF</b>	<b>APP - Orig</b>	<b>Owner CC</b>	<b>\$ DIFF</b>		
Secondary Income	Per Unit/Month	\$20.00		\$4,109,040	\$3,420,144	0%	\$3,420,144	\$4,109,040	\$0		
Other Income: Washer/Dryer Rentals - 38 sets @ \$45				\$54,720	\$54,720	-65%	\$0	\$19,200	(\$35,520)	\$7.02	Per Unit Per Month
Other Income:						#DIV/0!	\$0	\$20,520	\$20,520	\$7.50	Per Unit Per Month
						#DIV/0!	\$54,720	\$0	\$0	\$0.00	Per Unit Per Month
<b>POTENTIAL GROSS INCOME</b>				<b>\$4,163,760</b>	<b>\$3,474,864</b>	<b>0%</b>	<b>\$3,474,864</b>	<b>\$4,148,760</b>	<b>(\$15,000)</b>		
Vacancy & Collection Loss	% of PGI	-7.5%		(\$312,282)	(260,615)	-7%	(260,615)	(290,413)	\$21,869	-7.0%	% of PGI
EO/Non-Rental Units/Concessions				\$0	-	#DIV/0!	-	-	\$0		
<b>EFFECTIVE GROSS INCOME</b>				<b>\$3,851,478</b>	<b>\$3,214,249</b>	<b>0.18%</b>	<b>\$3,214,249</b>	<b>\$3,858,347</b>	<b>\$6,869</b>		

**EXPENSES**

	<b>% of EGI</b>	<b>Per Unit</b>	<b>Per SF</b>						<b>\$ DIFF</b>	<b>Per SF</b>	<b>Per Unit</b>	<b>% of EGI</b>
General & Administrative	3.66%	\$618	\$0.55	\$140,958	\$78,554	-10%	\$88,500	\$127,352	(\$13,606)	\$0.50	\$559	3.30%
Management	2.50%	\$422	\$0.38	\$96,287	\$112,499	40%	\$112,500	\$135,042	\$38,755	\$0.53	\$592	3.50%
Payroll & Payroll Tax	8.24%	\$1,391	\$1.25	\$317,217	\$299,254	22%	\$290,000	\$386,348	\$69,131	\$1.52	\$1,695	10.01%
Repairs & Maintenance	4.83%	\$816	\$0.73	\$186,003	\$136,800	-34%	\$180,500	\$123,560	(\$62,443)	\$0.49	\$542	3.20%
Electric/Gas	2.05%	\$347	\$0.31	\$79,092	\$26,611	-43%	\$56,000	\$45,200	(\$33,892)	\$0.18	\$198	1.17%
Water, Sewer, & Trash	5.19%	\$877	\$0.78	\$199,934	\$263,122	-57%	\$172,000	\$85,200	(\$114,734)	\$0.33	\$374	2.21%
Property Insurance	1.78%	\$300	\$0.27	\$68,400	\$73,680	0%	\$62,700	\$68,400	\$0	\$0.27	\$300	1.77%
Property Tax	0%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0.00	\$0	0.00%
Reserve for Replacements	1.78%	\$300	\$0.27	\$68,400	\$57,000	0%	\$57,000	\$68,400	\$0	\$0.27	\$300	1.77%
Cable TV	0.13%	\$23	\$0.02	\$5,169	\$0	0%	\$0	\$5,169	\$0	\$0.02	\$23	0.13%
Supportive service contract fees	0.60%	\$102	\$0.09	\$23,220	\$9,120	0%	\$9,120	\$23,220	\$0	\$0.09	\$102	0.60%
TDHCA Compliance fees	0.24%	\$40	\$0.04	\$9,120	\$9,120	0%	\$9,120	\$9,120	\$0	\$0.04	\$40	0.24%
TDHCA Bond Administration Fees (TDHCA as Bond I	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0.00	\$0	0.00%
Security	0.34%	\$57	\$0.05	\$12,977	\$19,400	0%	\$19,400	\$12,977	\$0	\$0.05	\$57	0.34%
Other	0.12%	\$20	\$0.02	\$4,500	\$0	0%	\$0	\$4,500	\$0	\$0.02	\$20	0.12%
<b>TOTAL EXPENSES</b>	<b>31.45%</b>	<b>\$5,313</b>	<b>\$4.76</b>	<b>\$1,211,277</b>	<b>\$1,085,159</b>	<b>-10%</b>	<b>\$1,056,840</b>	<b>\$1,094,488</b>	<b>(\$116,789)</b>	<b>\$4.30</b>	<b>\$4,800</b>	<b>28.37%</b>
<b>NET OPERATING INCOME</b>	<b>68.55%</b>	<b>\$11,580</b>	<b>\$10.36</b>	<b>\$2,640,201</b>	<b>\$2,129,090</b>	<b>5%</b>	<b>\$2,157,409</b>	<b>\$2,763,859</b>	<b>\$123,658</b>	<b>\$10.85</b>	<b>\$12,122</b>	<b>71.63%</b>

**DEBT**

First Lien: Citibank, N.A.		\$1,797,201	\$1,723,756	0%	\$1,728,259	\$1,797,201	\$0
TOTAL DEBT SERVICE		\$1,797,201	\$1,723,756	0%	\$1,728,259	\$1,797,201	\$0
NET CASH FLOW		\$843,000	\$405,334	15%	\$429,150	\$966,658	\$123,658
AGGREGATE DEBT COVERAGE RATIO		1.47	1.24		1.25	1.54	
RECOMMENDED DEBT COVERAGE RATIO		1.47					

**CONSTRUCTION COST**

	<b>% of TOTAL</b>	<b>Per Unit</b>	<b>Per SF</b>	<b>TDHCA CC</b>	<b>TDHCA -Prior</b>		<b>APP - Orig</b>	<b>Owner CC</b>	<b>\$ DIFF</b>	<b>Per SF</b>	<b>Per Unit</b>	<b>% of TOTAL</b>
Land Acquisition	8.34%	\$20,616	\$18.45	\$4,700,500	\$4,500,000	0%	\$4,500,000	\$4,700,500	\$0	\$18	\$20,616	8.34%
Building Acquisition	0.00%	\$0	\$0.00	\$0	\$0	#DIV/0!	\$0	\$0	\$0	\$0	\$0	0.00%
Closing costs & acq. legal fees	0.07%	\$175	\$0.16	\$40,000	\$0	0%	\$0	\$40,000	\$0	\$0	\$175	0.07%
Off-Sites	0.22%	\$551	\$0.49	\$125,593	\$0	0%	\$0	\$125,593	\$0	\$0	\$551	0.22%
Sitework	9.21%	\$22,777	\$20.39	\$5,193,214	\$2,734,000	0%	\$2,734,000	\$5,193,214	(\$0)	\$20	\$22,777	9.21%
Site Amenities				\$405,000	\$0		\$405,000	\$0				
Other Construction Cost				\$0	\$0	#DIV/0!	\$0	\$0	\$0			
Building Costs	41.56%	\$102,758	\$91.98	\$23,428,886	\$17,566,741	0%	\$19,284,000	\$23,428,886	\$0	\$92	\$102,758	41.56%
Contingency				\$1,171,150	\$0	#DIV/0!	\$1,171,150	\$0	\$0			
Contractor's Fees	7.14%	\$17,652	\$15.80	\$4,024,675	\$3,062,765	0%	\$3,139,220	\$4,024,675	\$0	\$16	\$17,652	7.14%
Indirect Construction	5.62%	\$13,907	\$12.45	\$3,170,766	\$1,432,750	0%	\$1,432,750	\$3,170,766	\$0	\$12	\$13,907	5.62%
Developer's Fees	13.39%	\$24,214	\$21.67	\$5,520,814	\$4,302,845	0%	\$4,531,777	\$5,520,814	\$0	\$22	\$24,214	9.79%
Financing	16.28%	\$40,243	\$36.02	\$9,175,315	\$5,787,203	0%	\$5,787,203	\$9,175,315	\$0	\$36	\$40,243	16.28%
Reserves	1.76%	\$4,361	\$3.90	\$994,270	\$888,270	0%	\$888,270	\$994,270	\$0	\$4	\$4,361	1.76%
<b>TOTAL COST</b>	<b>100%</b>	<b>\$247,255</b>	<b>\$221</b>	<b>\$56,374,033</b>	<b>\$41,850,724</b>	<b>0%</b>	<b>\$43,873,370</b>	<b>\$56,374,033</b>	<b>\$0</b>	<b>\$221</b>	<b>\$247,255</b>	<b>100%</b>
<b>Construction Cost Recap</b>	<b>50.99%</b>	<b>\$126,086</b>	<b>\$112.86</b>	<b>\$28,747,693</b>			<b>\$28,747,693</b>			<b>\$112.86</b>	<b>\$126,086</b>	<b>50.99%</b>

**SOURCES OF FUNDS**

						<b>% TDC</b>	<b>RECOMMENDED</b>	
First Lien: Citibank, N.A.	62%	\$153,509	\$137	\$35,000,000	\$29,790,000	-17%	\$29,790,000	\$35,000,000
Other:	0%	\$0	\$0	\$0	\$0	#DIV/0!	\$0	\$0
HTC Equity: Enterprise Neighborhood Impact Fund	38%	\$92,960	\$83	\$21,194,933	\$13,355,384	-56%	\$13,355,384	\$20,804,413
- LDG Estates at Norwood GP, LLC	0%	\$0	\$0	\$100	\$0	#DIV/0!	\$0	\$0
- LDG Estates at Norwood SLP, LLC	0%	\$0	\$0	\$100	\$0	#DIV/0!	\$0	\$0
Deferred Developer Fee: LDG Multifamily, LLC	0%	\$785	\$1	\$178,900	\$727,986	22%	\$903,333	\$569,620
Additional (Excess) Funds Req'd	0%	\$0	\$0	\$0	(\$2,022,646)	100%	(\$175,347)	\$0
<b>TOTAL SOURCES</b>				<b>\$56,374,033</b>	<b>\$41,850,724</b>	<b>-35%</b>	<b>\$43,873,370</b>	<b>\$56,374,033</b>
							<b>\$35,000,000</b>	Developer Fee Available
							<b>0</b>	\$5,520,814
							<b>21,194,933</b>	
							<b>100</b>	
							<b>100</b>	% of Dev. Fee Deferred
							<b>178,900</b>	3%
							<b>0</b>	15-Yr Cumulative Cash Flow
							<b>\$56,374,033</b>	\$17,575,187

**MULTIFAMILY COMPARATIVE ANALYSIS (continued)**

*Norwood Estates, Austin, Texas, # 19407*

**PROPOSED PAYMENT COMPUTATION**

<b>First Lien: Citibank, N.A.</b>	\$35,000,000	Amort	420
Int Rate	3.75%	DCR	1.47
<b>Other:</b>	\$0	Amort	0
Int Rate	0.00%	DCR	1.47

**RECOMMENDED FINANCING STRUCTURE: TDHCA NOI**

First Lien: Citibank, N.A.	\$1,797,201
Other:	0
<b>TOTAL DEBT SERVICE</b>	<b>\$1,797,201</b>

<b>First Lien: Citibank, N.A.</b>	\$35,000,000	Amort	420
Int Rate	3.75%	DCR	1.47
<b>Other:</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.47

**LONG TERM OPERATING PRO FORMA**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
<b>EFFECTIVE GROSS INCOME</b>	\$3,851,478	\$3,949,743	\$4,028,738	\$4,109,312	\$4,191,499	\$4,627,753	\$5,109,413	\$5,641,205	\$6,228,346	\$6,876,598	\$7,592,320	\$8,382,534
LESS: TOTAL EXPENSES	1,211,277	1,247,184	1,283,612	1,321,113	\$1,359,719	1,570,503	\$1,814,258	2,096,173	2,422,255	2,799,463	3,235,856	3,740,768
<b>NET OPERATING INCOME</b>	<b>\$2,640,201</b>	<b>\$2,702,559</b>	<b>\$2,745,126</b>	<b>\$2,788,199</b>	<b>\$2,831,780</b>	<b>\$3,057,250</b>	<b>\$3,295,155</b>	<b>\$3,545,033</b>	<b>\$3,806,092</b>	<b>\$4,077,135</b>	<b>\$4,356,463</b>	<b>\$4,641,766</b>
LESS: DEBT SERVICE	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201	1,797,201
<b>NET CASH FLOW</b>	<b>\$843,000</b>	<b>\$905,358</b>	<b>\$947,925</b>	<b>\$990,998</b>	<b>\$1,034,579</b>	<b>\$1,260,049</b>	<b>\$1,497,954</b>	<b>\$1,747,832</b>	<b>\$2,008,891</b>	<b>\$2,279,934</b>	<b>\$2,559,262</b>	<b>\$2,844,565</b>
<b>CUMULATIVE NET CASH FLOW</b>	\$843,000	\$1,748,358	\$2,696,282	\$3,687,281	\$4,721,859	\$10,566,131	\$17,575,187	\$25,809,932	\$35,328,001	\$46,181,889	\$58,416,641	\$72,067,022
<b>DEFERRED DEVELOPER FEE BALANCE</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>DCR ON UNDERWRITTEN DEBT (Must-Pay)</b>	1.47	1.50	1.53	1.55	1.58	1.70	1.83	1.97	2.12	2.27	2.42	2.58
<b>EXPENSE/EGI RATIO</b>	31.45%	31.58%	31.86%	32.15%	32.44%	33.94%	35.51%	37.16%	38.89%	40.71%	42.62%	44.63%

**HTC ALLOCATION ANALYSIS - Norwood Estates, Austin, Texas, # 19407**

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S ACQUISITION ELIGIBLE BASIS	TDHCA ACQUISITION ELIGIBLE BASIS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
<b>Acquisition Cost</b>						
Purchase of land	\$4,700,500	\$4,700,500				
Purchase of buildings	\$0	\$0				
Closing costs & Acq. Legal Fees	\$40,000	\$40,000				
<b>Off-Site Improvements</b>	\$125,593	\$125,593			\$125,593	\$125,593
<b>Sitework</b>	\$5,193,214	\$5,193,214			\$5,039,892	\$5,039,892
<b>Building Costs</b>	\$23,428,886	\$23,428,886			\$23,343,324	\$23,343,324
<b>Contingency</b>	\$0	\$0				
<b>Contractor's Fees</b>	\$4,024,675	\$4,024,675			\$3,991,233	\$3,991,233
<b>Indirect Construction</b>	\$3,170,766	\$3,170,766	\$0	\$0	\$2,976,568	\$2,976,568
<b>Interim Financing</b>	\$9,175,315	\$9,175,315	\$0	\$0	\$5,757,999	\$5,757,999
<b>Developer Fees</b>						
Developer Fees	\$5,520,814	\$5,520,814	\$0	\$0	\$5,520,814	\$5,520,814
<b>Development Reserves</b>	\$994,270	\$994,270				
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$56,374,033</b>	<b>\$56,374,033</b>	<b>\$0</b>	<b>\$0</b>	<b>\$46,755,423</b>	<b>\$46,755,423</b>

<b>Deduct from Basis:</b>						
Describe:						
Describe:						
Describe:						
Describe:						
Describe:					\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>			\$0	\$0	\$46,755,423	\$46,755,423
High Cost Area Adjustment					130%	130%
<b>TOTAL ADJUSTED BASIS</b>			\$0	\$0	\$60,782,050	\$60,782,050
Applicable Fraction			100%	100%	100%	100%
<b>TOTAL QUALIFIED BASIS</b>			\$0	\$0	\$60,782,050	\$60,782,050
Applicable Percentage			0.00%	0.00%	4.00%	4.00%
<b>TOTAL AMOUNT OF TAX CREDITS</b>			\$0	\$0	\$2,431,282	\$2,431,282

**Syndication Rate                      0.8718                      \$0                      \$0                      \$21,194,932                      \$21,194,933**

**Total Tax Credits (Eligible Basis Method)                      \$2,431,282                      \$2,431,282**  
**Syndication Proceeds                      \$21,194,932                      \$21,194,933**

**Requested Tax Credits                      \$2,431,282**  
**Syndication Proceeds                      \$21,194,932**

**Gap of Syndication Proceeds Needed                      \$21,373,833**  
**Total Tax Credits (Gap Method)                      \$2,451,804**

<b>Recommended Tax Credits</b>	<b>2,431,282</b>
<b>Syndication Proceeds</b>	<b>\$21,194,933</b>

3/27/2024

Rosalio Banuelos, Director of Multifamily Asset Management  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

Re: Norwood Estates #19407 – Request for Additional Tax Credits

Mr. Banuelos,

The Determination Notice issued on 10/19/2019 for the above referenced application reflected an Annual Tax Credit Amount of \$1,467,918. The final Eligible Basis of \$46,755,423 (Adjusted \$60,782,049) now calculates an Annual Tax Credit amount of \$2,431,282 which is approximately 65% higher. Per TDHCA rules any increase over 20% from the initial must be approved by the board. Therefore, LDG is formally requesting the additional credits due to unavoidable obstacles and increased costs during the construction of this development.

Below are some of the main reasons for the cost increases since the time of the initial application:

**Construction Costs:**

- Direct construction costs were underestimated at the time of application as we did not have actual construction bids at that time. Therefore, Building Costs and Site Work Costs had significant variances from the time of initial application. Additionally, there were several change orders which also increased the direct construction costs. These change orders are included within the Cost Cert package.
- Lumber/Trim had a significant price escalation during this timeframe.
- Revised Grading Plan: Additional grading, imported soils to level the site, and the addition of concrete stem walls to accommodate the revised grading plan.
- Offsite Costs: The addition of previously unanticipated Offsite Costs to include retaining walls, grading, and concrete flatwork.
- General Conditions and Overhead costs increased due to lengthened schedule/construction delays from issues described in the following paragraph:

**Construction Delays:**

- The City of Austin added unanticipated offsite construction work to the permit prior to issuance. (+2 months delay)
- The City of Austin refused to issue a permanent water meter until the unexpected offsite construction was complete. (+5 months delay)
- Delay from Austin Energy as they were unable to provide transformers and meters. (+4 months delay)



- Engineering had to reissue grading plans for the project as errant grades were discovered during construction causing additional concrete for retaining walls and additional dirt haul off. (+5 months delay)
- Engineering encountered an extended delay in getting the detention pond details approved by the City of Austin. (+4 months delay)

**Financing Costs:**

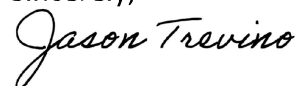
- Construction delays caused an increase to financing costs such as construction interest and financing fees.

**Developer Fees:**

- Developer fees are calculated at 15% of the project's eligible costs and this increase is a direct result of the increases detailed above.

Please let us know if you need any further information to process this request.

Sincerely,



Jason Trevino  
LDG Development, LLC  
512-578-8488



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 658**

**Agenda Date: 6/13/2024**

**Agenda #: 21.**

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Presentation, discussion, and possible action regarding a waiver and extension of the 10% Test submission deadline in 10 TAC §10.401(a) and 10 TAC §11.2(a) for 3300 Caroline Street (HTC #20114/21711/22802)

**RECOMMENDED ACTION**

**WHEREAS**, 3300 Caroline Street (Development) received a 9% Housing Tax Credit (HTC) award in 2020 out of the nonprofit set-aside, and was approved for reallocations of credits under Force Majeure in 2021 (HTC #21711) and in 2022 (HTC #22802), for the construction of 149 multifamily supportive housing units, designated to assist previously homeless persons in Houston, Harris County;

**WHEREAS**, after the approval of the second Force Majeure, the Development was reissued a Carryover Allocation Agreement on July 8, 2022, that specifies that the 10% Test requirements identified in §11.2(a) of the 2022 Qualified Allocation Plan (QAP) and in §10.401(a) of the Post Award and Asset Management Requirements (AM Rules) must be met by July 1, 2023, or such later date as is specifically granted by the Department pursuant to a written extension;

**WHEREAS**, pursuant to §42(h)(1)(E)(ii) of the Internal Revenue Code (Code), the Owner's basis in the Development as of the date which is one year after the date that the allocation was made must be more than 10% of the Owner's reasonably expected basis in the Development;

**WHEREAS**, Magnificat Permanent Affordable, LLC (Development Owner or Owner) submitted documentation to the Department on May 28, 2024, confirming that the Owner met the 10% expenditure threshold required by the Code by June 30, 2023, but the Owner did not meet the July 1, 2023, submission deadline requirements specified in the 2022 QAP and AM Rules;

**WHEREAS**, the Owner now requests approval for a waiver of the 10% Test Documentation Delivery Date specified in the 2022 QAP and AM Rules and to extend the submission deadline from July 1, 2023, to May 28, 2024;

**WHEREAS**, §11.9(f) of the QAP states that, for failure to meet a 10% Test deadline, staff may recommend that an Applicant or Affiliate should be found ineligible to compete in the following year's competitive Application Round or that they should be assigned a penalty point deduction in the following year's competitive Application Round of no more than two points for each submitted Application; and

**WHEREAS**, the requested waiver does not negatively affect the Development, impact the viability of the transaction, impact Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and

2306.6701, or affect the amount of the tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested waiver of the 10% Test submission deadline in 10 TAC §10.401(a) and 10 TAC §11.2(a) and the extension of the deadline from July 1, 2023, to May 28, 2024, for 3300 Caroline Street are approved as presented at this meeting, with the maximum two-point penalty deduction to Applications submitted by the Owner or their Affiliates in the 2025 competitive Application Round, and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

**BACKGROUND**

3300 Caroline Street received a 9% HTC award in 2020 and reallocations of credits under Force Majeure in 2021 and in 2022 for the construction of 149 multifamily supportive housing units in Houston, Harris County. All units are designed as single-room occupancy (SRO) units that will provide housing for previously homeless persons. In a letter dated May 28, 2024, Michelle J. Snedden, the representative for the Owner, requests a waiver of the 10% Test Documentation Delivery date identified in 10 TAC §11.2(a) of the 2022 Qualified Allocation Plan (QAP) and as specified in 10 TAC §10.401(a) of the Post Award and Asset Management Requirements (AM Rules). Ms. Snedden states that due to human oversight, the required 10% Test package was not submitted to the Department until May 28, 2024. Consequently, the Owner did not meet the Department's 10% Test Documentation Delivery Date of July 1, 2023. The letter from Ms. Snedden states that the 10% Test submitted to the Department substantiates the Owner met the 10% Test expenditure requirement and deadline under §42(h)(1)(E)(ii) of the Code.

Ms. Snedden states that the Owner and its Affiliates are experienced operators in affordable housing in Texas and that this is the first time an oversight of this kind has occurred. She further states that the Owner has implemented safeguards for all their projects to avoid a recurrence of this incident. Therefore, as allowed under 10 TAC §11.207, the Owner requests a waiver of the QAP and AM Rules to allow the 10% Test Documentation Delivery Date submission deadline to be extended from July 1, 2023, to the date the Department received the 10% Test package, which is May 28, 2024. Ms. Snedden states that granting this waiver better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701. The Development is a project focused on serving the homeless and will provide affordable housing to meet the needs of individuals and families. Without the waiver, the Development would be jeopardized. Therefore, by granting the requested waiver, the Owner can continue to develop the project as the Owner represented in the Application.

Staff reviewed the Report of Independent Auditors issued May 24, 2024, that was submitted with the 10% Test package on May 28, 2024. The report confirms the basis incurred by the Owner as of June 30, 2023, was \$15,495,796, representing 34.53% of the \$44,873,292 total reasonably expected basis for the Development, which meets the Code requirements. Furthermore, the 10% Test package indicates that the site acquisition cost of \$6.96MM, which

is counted as part of the incurred basis for the 10% Test, was incurred on October 3, 2022. It should also be noted that the third party inspection report dated April 30, 2024, included in the latest quarterly Construction Status Report, indicates the Development is 74% complete as of March 25, 2024, and is expected to achieve substantial completion by August 31, 2024.

Staff recommends approval of the waiver of the 10% Test submission deadline in 10 TAC §10.401(a) and 10 TAC §11.2(a) and the request to extend the 10% Test Documentation Delivery Date deadline from July 1, 2023, to May 28, 2024, as presented herein. Additionally, for failure to meet the 10% Test Documentation Deadline, staff recommends assessing the maximum two-point penalty deduction to Applications submitted by the Owner or their Affiliates in the 2025 competitive Application Round as allowed under 10 TAC §11.9(f).



A LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS & COUNSELORS

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Dallas, Texas 75231  
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msnedden@shackelford.law

May 28, 2024

**Via Email**

Board of Directors  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78711

RE: TDHCA #s: 20114 / 22802; 3300 Caroline, Houston, Texas ("**Project**");  
Our File No. 30233.1

Dear TDHCA Board of Directors:

This law firm represents Magnificat Permanent Affordable, LLC, a Texas limited liability company ("**Development Owner**"). I have been requested by NHPF Caroline MM, LLC, Managing Member of Development Owner, to request a waiver to allow for an extension of the 10% Test deadline.

**Background:**

This Project is a competitive 9% housing tax credit transaction. Development Owner submitted an application to TDHCA in 2020. Pursuant to Section 11.2 of the Qualified Allocation Plan ("**QAP**"), Development Owner was required to submit evidence to the Texas Department of Housing and Community Affairs ("**TDHCA**") that at least ten percent (10%) of the construction budget had been expended on the Project prior to 7/1/2022 (the "**10% Test Deadline**"). Due to the COVID Pandemic, the Project was granted a Force Majeure extension of one year, which extended the 10% Test Deadline to 7/1/23.

Development Owner and its affiliates are experienced operators in the affordable housing industry, with substantial experience constructing and managing Tax Credit Properties. Development Owner complied with the spending requirements of the 10% Test, as evidenced by the report (the "**Report**") submitted to TDHCA on May 28, 2024, which substantiates Development Owner's expenditures on the Project prior to the 10% Test Deadline. The Report shows that as of the 10% Test Deadline the Project satisfied the requirements of the 10% Test. However, due to human oversight, Development Owner mistakenly failed to submit the required information prior to the 10% Test Deadline.

Development Owner and its affiliates operate hundreds of comparable projects in Texas and across the United States and this is the first time an oversight of this kind has occurred. Further, Development Owner has implemented safeguards to avoid the recurrence of such an incident at all of their projects.

**Requested Waiver:**

We respectfully request that the Board waive the provisions of Sections 10 TAC §10.401(a) and 10 TAC §11.2(a) and grant an extension of the 10% Test Deadline, as permitted by 10 TAC §10.405(c).

**Statutory Basis for Waiver:**

As provided by Section 11.207 of the QAP, it is within the discretion of the Board to grant the waiver requested herein. Furthermore, 10 TAC §10.405(c) does allow for the Board to grant an extension of the 10% Test Deadline.

**Policy Basis for Waiver:**

Granting the waiver better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701 (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver. This project is 100% dedicated to providing housing for homeless individuals, one of the most underserved populations in our State. However, the future of the Project will be jeopardized if the Board does not grant the waiver requested herein.

The Board granting this waiver allows the Project to continue on the same development path commenced in 2020. To do so better serves the purposes articulated in Tex. Gov't Code §2306.001(2) by providing affordable housing to meet the needs of individuals and families and Tex. Gov't Code §2306.001(3) by contributing to the development of neighborhoods and communities.

**Conclusion:**

Your consideration of this request for a waiver of Sections 10 TAC §10.401(a) and 10 TAC §11.2(a) pursuant to 10 TAC §11.207 of the QAP with respect to the deadline to submit the 10% Test is greatly appreciated. Please let us know if you have questions regarding this matter or if there is any specific information we can provide.

Very truly yours,



Michelle J. Snedden

cc: John Welsh (*via email*)  
Mark Nightingale (*via email*)



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 631

**Agenda Date:** 6/13/2024

**Agenda #:** 22.

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Presentation, discussion, and possible action on approval of the 2025 Low Income Home Energy Assistance Program State Plan for submission to the U.S. Department of Health and Human Services and approval of the associated 2025 awards

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) develops and submits a State Plan to the U.S. Department of Health and Human Services (USHHS) each year to administer the Low Income Home Energy Assistance Program (LIHEAP);

**WHEREAS**, the Board approved a draft 2025 LIHEAP State Plan on April 11, 2024, which was then made available for public comment and that public comment is addressed in Attachment A;

**WHEREAS**, the final 2025 LIHEAP State Plan (the Plan) includes the awards to Subrecipients of 2025 LIHEAP funds as recommended through the Previous Participation Review and Approval Process (PPRAP) in Attachment B; and

**WHEREAS**, USHHS has made substantive changes to the 2025 LIHEAP Model Plan since the approval of the Draft Plan for public comment to provide additional clarification and request further details on program administration;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director or his designee are hereby authorized, empowered, and directed, for and on behalf of this Board to submit the Plan to USHHS and upon USHSS approval of such Plan to contract for the awards represented in the Plan and in connection therewith to execute, deliver, and cause to be performed such amendments, documents, and other writings such as anticipated grant guidance on development of the Plan from USHHS or to make such non-substantive technical corrections as they or any of them may deem necessary or advisable to effectuate the foregoing.

**BACKGROUND**

The Department develops and submits a LIHEAP Plan each year on or before September 1 to USHHS. USHHS provides a Model Plan to guide the format and content. The draft, upon approval by the Board on April 11, 2024, was released for public comment. The public comment period was open from April 26, 2024, to May 21, 2024, and public hearings were held at four locations around the state May 14-16, 2024. An individual representing one organization commented on the draft. A summary of this comment with a Department response is provided in Attachment A.

It should be noted that the Plan follows a template and series of required responses pre-determined by USHHS with character limitations and specific instructions. Also, the Plan has yet to be reviewed and approved by USHHS. In its review, it is common for USHHS to request corrections to the Plan. Earlier this year, after the Board approved the release of the Draft Plan for public comment, Department staff became aware of an Action Transmittal from USHHS explaining that USHHS had made substantive changes to the Model Plan for purposes of clarity and to request further details on how the program is administered. Staff recommends the Board authorize staff to make the necessary required changes to ensure USHHS approval.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter C, §1.302) requires a review of LIHEAP awards prior to recommendation to the Board. These LIHEAP awards are subject to this review and are listed in Attachment B. The review has been performed and all awards in Attachment B are recommended for award with no conditions except for South Texas Development Council which is recommended for award with the following condition:

Agency	Condition
South Texas Development Council	South Texas Development Council is required to provide all documentation relating to the FYE 2022 Single Audit on or before November 30, 2024. The compliant Single Audit must be uploaded to the Federal Audit Clearinghouse, with confirmation provided to the Department. Depending on the results of that Single Audit, the Department may impose additional conditions upon the Contract in accordance with 2 CFR §200.207. Additionally, South Texas Development Council is notified that failure to complete this condition may serve as good cause under 10 TAC 1.411(f) for nonrenewal or reduction of block grant funds.



**LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**

**MODEL PLAN**

**PUBLIC LAW 97-35, AS AMENDED**

**FEDERAL FISCAL YEAR 2025**

**GRANTEE:** Texas Department of Housing and Community Affairs

**EIN:** 17426105429

**ADDRESS:** P.O. Box 13941

Austin, Texas 78711-3941

**LIHEAP COORDINATOR:** Michael DeYoung

**EMAIL:** michael.deyoung@tdhca.state.tx.us

**TELEPHONE:** (512) 475-2125 **FAX:** (512) 475-3935

**CHECK ONE:** TRIBE / TRIBAL ORGANIZATION \_\_\_\_\_ STATE X \_\_\_\_\_ INSULAR AREA \_\_\_\_\_

**Department of Health and Human Services**

**Administration for Children and Families**

**Office of Community Services**

**Washington, DC 20447**

**August 1987, revised 05/92, 02/95, 03/96, 12/98, 11/01**

**OMB Approval No. 0970-0075**

THE PAPERWORK REDUCTION ACT OF 1995 (Pub. L. 104-13)

Use of this model plan is optional. However, the information requested is required in order to receive a Low Income Home Energy Assistance Program (LIHEAP) grant in years in which the grantee is not permitted to file an abbreviated plan. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Assurances

The Texas Department of Housing and Community Affairs agrees to:

(1) use the funds available under this title to--

(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);

(B) intervene in energy crisis situations;

(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and

(D) plan, develop, and administer the State's program under this title including leveraging programs, and the State agrees not to use such funds for any purposes other than those specified in this title;

(2) make payments under this title only with respect to--

(A) households in which one or more individuals are receiving--

(i) assistance under the State program funded under part A of title IV of the Social Security Act;

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed an amount equal to 150 percent of the poverty level for such State; or

(i) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a Federal fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income.

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(4) coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-

income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clauses 2(A) and 2(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this title, to give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 or any other provision of law on the day before the date of the enactment of this Act, except that--

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the Federal fiscal year preceding the Federal fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to--

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendor payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(8) provide assurances that--

(A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and

(B) the State will treat owners and renters equitably under the program assisted under this title;

(9) provide that--

(A) the State may use for planning and administering the use of funds under this title an amount not to exceed 10 percent of the funds payable to such State under this title for a Federal fiscal year; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this title and will not use Federal funds for such remaining cost (except for the costs of the activities described in paragraph (16));

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under this title, including procedures for monitoring the assistance provided under this title, and provide that the State will comply with the provisions of chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act");

(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c);

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness; and

(14) cooperate with the Secretary with respect to data collecting and reporting under section 2610.

(15) beginning in Federal fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs.

\* This assurance is applicable only to States, and to territories whose annual regular LIHEAP allotments exceed \$200,000. Neither territories with annual allotments of \$200,000 or less nor Indian tribes/tribal organizations are subject to Assurance 15.

(16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

Certification to the Assurances: As Chief Executive Officer, I agree to comply with the sixteen assurances contained in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended. By signing these assurances, I also agree to abide by the standard assurances on lobbying, debarment and suspension, and a drug-free workplace.

Signature of the Tribal or Board Chairperson or Chief Executive Officer of the State or Territory.

Signature: \_\_\_\_\_

Title: Executive Director, Texas Department of Housing and Community Affairs

Date: August 2025 (*The exact date to be notated in USHHS OLDC system at time of submission.*)

**The Governor of Texas has delegated the responsibility of signing this document to the Executive Director of the Texas Department of Housing and Community Affairs. A copy of the letter is attached.**

**The Unique Entity ID (SAM) of the Texas Department of Housing & Community Affairs, which receives the grant funds, appears on the cover of this application.**

In the above assurances which are quoted from the law, "State" means the 50 States, the District of Columbia, an Indian Tribe or Tribal Organization, or a Territory; "title" of the Act refers to Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (OBRA), as amended, the "Low Income Home Energy Assistance Act"; "section" means Section 2605 of OBRA; and, "subsection" refers to Section 2605(b) of OBRA.

**Section 1<sup>1</sup>**

**Program Components, 2605(a), 2605(b)(1) – Assurance 1, 2605(c)(1)(C)**

1.1 Check which components you will operate under the LIHEAP program. (Note: You must provide information for each component designated here as requested elsewhere in this plan.)

Dates of Operation<sup>2</sup>

- Heating assistance      Start date: 10/01/2024    End date: 09/30/2026
- Cooling assistance      Start date: 10/01/2024    End date: 09/30/2026
- Crisis assistance      Start date: 10/01/2024    End date: 09/30/2026
- Weatherization assistance    Start date: 10/01/2024    End date: 09/30/2026

**Estimated Funding Allocation, 2604(c), 2605(k)(1), 2605(b)(9), 2605(b)(16) – Assurances 9 and 16**

1.2 Estimate what amount of available LIHEAP funds will be used for each component that you will operate: **The total of all percentages must add up to 100%**

15% heating assistance

50% cooling assistance

10% crisis assistance

Up to 15% weatherization assistance<sup>3</sup>

0% carryover to the following Federal fiscal year

10% administrative and planning costs

0% services to reduce home energy needs including needs assessment (Assurance 16)

0% used to develop and implement leveraging activities

100% **TOTAL**

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<sup>1</sup> Capitalized terms are defined in Title 10, Chapters 1, 2, or 6 (as applicable) of the Texas Administrative Code or by federal law.

<sup>2</sup> Identification of these periods does not limit the payment of assistance on any “seasonal” basis.

<sup>3</sup> If 15% is not used for weatherization assistance, the balance will be added to heating, cooling, or crisis assistance as needed.

**Alternate Use of Crisis Assistance Funds, 2605(c)(1)(C)**

1.3 The funds reserved for winter crisis assistance that have not been expended by March 15 will be reprogrammed to:

- Heating assistance
- Weatherization assistance
- Cooling assistance
- Other (specify): funds are utilized for all eligible components

**Categorical Eligibility, 2605(b)(2)(A) – Assurance 2, 2605(c)(1)(A), 2605(b)(8A) – Assurance 8**

1.4 Do you consider households categorically eligible if one household member receives one of the following categories of benefits in the left column below?  Yes  No

Program	Cooling	Heating	Crisis	Weatherization
Temporary Assistance for Needy Families	Yes	Yes	Yes	Yes
Supplemental Security Income	Yes	Yes	Yes	Yes
Supplemental Nutrition Assistance Program	Yes	Yes	Yes	Yes
Means-tested Veterans Programs	Yes	Yes	Yes	Yes

1.5 Do you automatically enroll households without a direct annual application?  
 Yes  No

1.6 How do you ensure there is no difference in the treatment of categorically eligible households from those not receiving other public assistance when determining eligibility and benefit amounts?  
 Texas provides Categorical Eligibility for SNAP, TANF, SSI and Means-Tested Veterans Programs. State rules have a provision that there is to be no difference in the treatment of Categorically Eligible Households. The Department has a system for persons to submit complaints, and the monitoring reviews would also note any differences in treatment of persons that are or are not Categorically Eligible.

**SNAP Nominal Payments**

1.7 Do you allocate LIHEAP funds toward a nominal payment for SNAP households? If you answered “yes” to question 1.7a you must provide a response to 1.7b, 1.7c, 1.7d.

- a.  Yes  No
- b. Amount of Nominal Assistance: \$ \_\_\_ NA \_\_\_\_\_
- c. Frequency of Assistance:
  - Once per year
  - Once every five years
  - Other (describe): \_\_\_\_\_ NA \_\_\_\_\_

d. How do you confirm that the household receiving a nominal payment has an energy cost or need?

## Determination of Eligibility – Countable Income

1.8 In determining a household's income eligibility for LIHEAP, do you use gross income or net income?

- Gross Income (except for self-employment or farm income or gambling/lottery winnings)<sup>4</sup>  
 Net Income

1.9. Select all of the applicable forms of countable income used to determine a household's income eligibility for LIHEAP.<sup>5</sup>

- Wages (except as prohibited by the Workforce Investment Act of 1998)  
 Self-employment income  
 Contract income  
 Payments from mortgage or sales contracts  
 Unemployment Insurance  
 Strike pay  
 Social Security Administration (SSA) benefits  
     Including Medicare deduction       Excluding Medicare deduction  
 Supplemental Security Income (SSI)  
 Retirement / pension benefits  
 General Assistance benefits (except as excluded by federal law or 10 TAC §6.4)  
 Temporary Assistance for Needy Families (TANF) benefits (except for one-time payments)  
 Supplemental Nutrition Assistance Program (SNAP) benefits  
 Women, Infants, and Children Supplemental Nutrition Program (WIC) benefits  
 Loans that need to be repaid  
 Cash gifts  
 Savings account balance  
 One-time lump-sum payments, such as rebates/credits, refund deposits, etc.  
 Jury duty compensation  
 Rental income  
 Income from employment through Workforce Investment Act (WIA)  
 Income from work study programs  
 Alimony  
 Child support  
 Interest, dividends, or royalties  
 Commissions  
 Legal settlements  
 Insurance payments made directly to the insured  
 Insurance payments made specifically for the repayment of a bill, debt, or estimate  
 Veterans Administration (VA) benefits (except for 38 USC 1315, 1521, 1541, 1542)  
 Earned income of a child under the age of 18

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<sup>4</sup> Exceptions on use of net income are provided for in 10 TAC §6.4. 10 TAC §6.4 is anticipated to go through a proposed rulemaking to clarify that payments, including for supportive services and reimbursement of out-of-pocket expenses, for volunteers under the Domestic Volunteer Service Act of 1973 ([42 U.S.C. 5044\(f\)\(1\)](#), [42 U.S.C. 5058](#)), are excluded from income except that the exclusion shall not apply in the case of such payments when the Chief Executive Officer of the Corporation for National and Community Service appointed under [42 U.S.C. 12651c](#) determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 ([29 U.S.C. 201 et seq.](#)) or the minimum wage in Texas, whichever is the greater ([42 U.S.C. 5044\(f\)\(1\)](#)), and to exclude allowances paid to certain children of certain Thailand service veterans born with spina bifida (38 U.S.C. 1822).

<sup>5</sup> Any income received by a household that is received from a federal, State, local government, or disaster relief agency that is in excess of the amounts of what would be received if not for pandemic related or other disaster related legislation, will be excluded per 10 TAC §6.4(c)(28).



- Balance of retirement, pension, or annuity accounts where funds cannot be withdrawn without a penalty.
- Income tax refunds
- Stipends from senior companion programs, such as VISTA
- Funds received by household for the care of a foster child
- AmeriCorps Program payments for living allowances, earnings, and in-kind aid (except if the CEO of the CNCS has made a determination that it be included income).
- Reimbursements (for mileage, gas, lodging, meals, etc.)
- Other Any item not excluded in 10 TAC §6.4 or by other federal law

**Section 2 - HEATING ASSISTANCE**

**Eligibility, 2605(b)(2) – Assurance 2**

2.1 Designate the income eligibility threshold used for the heating component:

<i>Household Size</i>	<i>Eligibility Guidelines</i>	<i>Eligibility Threshold</i>
All Household Sizes	USHHS Poverty Guidelines	150%
All Household Sizes	State Median Income	60% <sup>6</sup>

2.2 Do you have additional eligibility requirements for **HEATING ASSISTANCE**?

- Yes       No <sup>7</sup>

2.3 Check the appropriate boxes below and describe the policies for each.

- |  | <u>Yes</u>               | <u>No</u>                           |
|--|--------------------------|-------------------------------------|
| ● Do you require an assets test?                             | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you have additional/differing eligibility policies for: |                          |                                     |
| ● Renters?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters living in subsidized housing?                      | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters with utilities included in the rent? <sup>8</sup>  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you give priority in eligibility to:                    |                          |                                     |

<sup>6</sup> In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas will use the highest of 150% of the poverty guidelines or 60% of the State’s median income (SMI). The State may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. Texas will communicate this designation to affected Subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

<sup>7</sup> 10 TAC §6.307(f) states: “A Dwelling Unit cannot be served if the meter is utilized by another Household that is not part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if: (1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter (relating to Definitions); (2) the members of the separate structures that share a meter submit one application as one Household; and (3) all persons and applicable income from each structure are counted when determining eligibility.”

<sup>8</sup> Per 10 TAC §6.309(h)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent.

- Elderly?
  - Disabled?
  - Young children?
  - Households with high energy burdens?
  - Other?
- Households with high energy consumption

**Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

2.4 Describe how you prioritize the provision of heating assistance to vulnerable households, e.g., benefit amounts, application period, etc.

Subrecipients and statewide or regional contractors use a rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Households with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Benefit amounts are determined on a sliding scale based on the Household’s income. Households with the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children do not have a limit on the number of benefit payments, but adhere to the same benefit amounts. The maximum benefit amount is determined per program year based on the Household’s heating and cooling need and is not required to be applied equally to heating and cooling costs.

2.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- Income
- Family (household) size
- Home energy cost or need:
  - Fuel type
  - Climate/region
  - Individual bill
  - Dwelling type
  - Energy burden (% of income spent on home energy)
  - Energy need
  - Other (Describe:)

Other: Households who have a disconnect notice or have had their service disconnected will receive assistance based on the energy bill. For future month’s utility assistance, the amount that will be paid on the account is based on the previous twelve (12) month’s home energy consumption history. If the household has incomplete billing history, then payments are determined utilizing an alternative billing method (ABM). The Department recommends an ABM where the Subrecipient determines the average consumption amount (kWh, therms, MCF, gallons, etc.) per month, for each household size and type based on a minimum sample size of 30 files that contain complete billing histories; however, if it is not possible for subrecipients to obtain the recommended 30 file per household sample size to create an average consumption amount, Subrecipients should use all the applicable files to determine the average consumption and document the lack of files for that household size. Subrecipients can propose other types of ABMs. The state will provide statewide or regional contractors other types of ABMs, if required. The ABM proposed by the Subrecipient must be approved by the Department prior to utilization. Subrecipients must establish a written procedure to serve Households that have a Vulnerable

Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden is the highest rated item in sliding scale priority determinations. The state will provide a written procedure to a statewide or regional contractor.

**Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

2.6 Describe estimated benefit levels for FY 2024:

\$1 Minimum benefit      \$12,300 Maximum benefit

Note: The State of Texas does not have a minimum benefit amount. The amount of benefit/assistance indicates \$1.00 because the OLDC system requires that a figure be inserted in the minimum amount.

The maximum benefit amount per household is \$12,300 per program year and could be reached if a household received up to \$2,400 in Crisis Assistance, \$2,400 in Utility Assistance, and a \$7,500 purchase, repair or replacement of a heating or cooling unit or crisis-related purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits. The initial assistance payment that would include arrears does not count towards the annual benefit cap for a household.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Per 10 TAC §6.309(e), Households with incomes 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$2,400 for the Utility Assistance Component and the Crisis Assistance Component; Households with incomes more than 50% but at or below 75% FPIG have a maximum of \$2,300 per Component; Households with incomes more than 75% but at or below 150% FPIG have a maximum of \$2,200 per Component; and there is a maximum of up to \$7,500 for the purchase, service or repair of heating and cooling units or the purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits depending on the classification of the household as vulnerable or non-vulnerable and whether a crisis exists. The Department allows payment of 100% of a customer's annual usage in one lump sum payment. See 10 TAC §6.309, §6.310, and §6.311 for details.

2.7 Do you provide in-kind (e.g., blankets, space heaters) and/or other forms of benefits?

Yes       No -- If yes, describe.

Eligible Households may receive temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances when natural disasters result in energy supply shortages or other energy-related emergencies. Eligible Households may receive emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310 (c), which include blankets, fans, air conditioners, and generators.

**Section 3: COOLING ASSISTANCE**

**Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2**

3.1 Designate the income eligibility threshold used for the cooling component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold
1	All Household Sizes	USHHS Poverty Guidelines	150%
2	All Household Sizes	State Median Income	60% <sup>9</sup>

3.2 Do you have additional eligibility requirements for **COOLING ASSISTANCE**

Yes  No<sup>10</sup>

3.3 Check the appropriate boxes below and describe the policies for each.

- |  | <u>Yes</u>                          | <u>No</u>                           |
|--|-------------------------------------|-------------------------------------|
| ● Do you require an assets test?                             | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Do you have additional/differing eligibility policies for: |                                     |                                     |
| ● Renters?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Renters living in subsidized housing?                      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Renters with utilities included in the rent? <sup>11</sup> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Do you give priority in eligibility to:                    |                                     |                                     |
| ● Elderly?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Disabled?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Young children?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Households with high energy burdens?                       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Other?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Households with high energy consumption                      |                                     |                                     |

Explanations of policies for each “yes” checked above:

<sup>9</sup> In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas will use the highest of 150% of the poverty guidelines or 60% of the State’s median income. Texas may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. The State will communicate this designation to affected Subrecipients through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

<sup>10</sup> 10 TAC §6.307(f) states: “A Dwelling Unit cannot be served if the meter is utilized by another Household that is not part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if: (1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter (relating to Definitions); (2) the members of the separate structures that share a meter submit one application as one Household; and (3) all persons and applicable income from each structure are counted when determining eligibility.”

<sup>11</sup> Per 10 TAC §6.309(h)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer’s rent.

10 TAC §6.307(e) states “Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.” The state will provide a written procedure to a statewide or regional contractor.

Priority must be given to Elderly, Disabled, Households with Young Children, and Households with High Energy Burden and High Energy Consumption.

3.4 Describe how you prioritize the provision of cooling assistance to vulnerable households, e.g., benefit amounts, application periods, etc.

Subrecipients and statewide or regional contractors use a rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Benefit amounts are determined on a sliding scale based on the Household’s income. Households with the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children do not have a limit on the number of benefit payments, but adhere to the same benefit amounts. The maximum benefit amount is determined per-program year based on Household’s heating and cooling needs and is not required to be applied equally to heating and cooling costs.

**Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

3.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- Income
- Family (household) size
- Home energy cost or need
  - Fuel type
  - Climate/region
  - Individual bill
  - Dwelling type
  - Energy burden (% of income spent on home energy)
  - Energy need
  - Other (describe)

Other: Households who have a disconnect notice or have had their service disconnected will receive assistance based on the energy bill. For future month’s utility assistance, the amount that will be paid on the account is based on the previous twelve (12) month’s home energy consumption history. If the household has incomplete billing history, then payments are determined utilizing an alternative billing method (ABM). The Department recommends an ABM where the Subrecipient determines the average consumption amount (kWh, therms, MCF, gallons, etc.) per month, for each household size and type based on a minimum sample size of 30 files that contain complete billing histories; however, if it is not possible for Subrecipients to obtain the recommended 30 file per household sample size to create an average consumption amount, Subrecipients should use all the applicable files to determine the average consumption

and document the lack of files for that household size. Subrecipients can propose other types of ABMs. The ABM proposed by the Subrecipient must be approved by the Department prior to utilization. The state will provide statewide or regional contractor other types of ABMs if required. Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden is the highest rated item in sliding scale priority determinations. The state will provide a written procedure to a statewide or regional contractor.

### **Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

#### 3.6 Describe benefit levels:

\$1 Minimum benefit \$12,300 Maximum benefit

Note: The State of Texas does not have a minimum benefit amount. The amount of benefit/assistance indicates \$1.00 because the OLDC system requires that a figure be inserted in the minimum amount.

The maximum benefit amount per household is \$12,300 per program year and could be reached if a household received up to \$2,400 in Crisis Assistance, \$2,400 in Utility Assistance, and a \$7,500 purchase, repair or replacement of a heating or cooling unit or crisis-related purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits. The initial assistance payment that would include arrears does not count towards the annual benefit cap for a household.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Per 10 TAC §6.309(e), Households with incomes 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$2,400 for the Utility Assistance Component and the Crisis Assistance Component; Households with incomes more than 50% but at or below 75% FPIG have a maximum of \$2,300 per Component; Households with incomes more than 75% but at or below 150% FPIG have a maximum of \$2,200 per Component; and there is a maximum of up to \$7,500 for the purchase, service or repair of heating and cooling units or the purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits depending on the classification of the household as vulnerable or non-vulnerable and whether a crisis exists. The Department allows payment of 100% of a customer's annual usage in one lump sum payment. See 10 TAC §6.309, §6.310, and §6.311 for details.

#### 3.7 Do you provide in-kind (e.g., fans, air conditioners) and/or other forms of benefits?

Yes  No -- If yes, describe.

Eligible Households may receive temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances when natural disasters result in energy supply shortages or other energy-related emergencies. Eligible Households may receive emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310 (c), which include blankets, fans, air conditioners, and generators.

## Section 4: CRISIS ASSISTANCE

### Eligibility - 2604(c), 2605(c)(1)(A)

4.1 Designate the income eligibility threshold used for the crisis component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold
1	All Household Sizes	USHHS Poverty Guidelines	150%
2	All Household Sizes	State Median Income	60% <sup>12</sup>

4.2 Provide your LIHEAP program's definition for determining a crisis.

Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the following conditions, as defined in 10 TAC §6.301 (relating to Background and Definitions):

- (1) Extreme Weather Conditions, with assistance provided within 48 hours;
- (2) Disaster, with assistance provided within 48 hours; or
- (3) Life Threatening Crisis, with assistance provided within 18 hours.

4.3 What constitutes a life-threatening crisis?

A Life Threatening Crisis exists when the life of at least one person in the applicant Household who is a U.S. Citizen, U.S. National, or a Qualified Alien would likely, in the opinion of a reasonable person, be endangered if utility assistance or heating and cooling assistance is not provided. Examples of life endangerment include, but are not limited to, a Household member who needs electricity for life-sustaining equipment (e.g., kidney dialysis machines, oxygen concentrators, medicinal refrigeration and cardiac monitors); a Household member whose medical professional has prescribed that the ambient air temperature be maintained at a certain temperature; a Household member whose life is endangered if absence of heating or cooling were to continue; or the presence of noxious gases as a result of heating or cooling the Dwelling Unit. In cases concerning an applicant's medical condition or need for life-sustaining equipment, documentation must not be requested about the medical condition of the applicant but the applicant must affirm that such a device is required in the Dwelling Unit because of a life threatening illness or risk of death.

### Crisis Requirements, 2604(c)

4.4 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households? 48 Hours

4.5 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households in life-threatening situations? 18 Hours<sup>13</sup>

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<sup>12</sup> In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas may use the highest of 150% of the poverty guidelines or 60% of the State's median income ("SMI"). Texas may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department's Executive Director. Texas will communicate this designation to affected Subrecipients and statewide or regional contractors through email and by website posting. Subrecipients must receive prior written approval before using 60% SMI and statewide or regional contractors will receive a contract amendment. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

<sup>13</sup> Pursuant to §2604(c)(2) of the LIHEAP Statute, the Department provides "some form of assistance that will resolve the energy crisis" not later than 18 hours after a household applies for crisis benefits if such household is eligible to receive such benefits and is in a life-threatening situation.

**Crisis Eligibility, 2605(c)(1)(A)?**

4.6 Do you have additional eligibility requirements for **CRISIS ASSISTANCE?**

Yes  No

4.7 Check the appropriate boxes below and describe the policies for each.

- |  | <u>Yes</u>                          | <u>No</u>                           |
|--|-------------------------------------|-------------------------------------|
| ● Do you require an assets test?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Do you give priority in eligibility to:  |                                     |                                     |
| ● Elderly?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Disabled?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Young children?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Households with high energy burdens?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Other?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Households with high energy consumption  |                                     |                                     |
| ● In order to receive crisis assistance: <sup>14</sup>                                     |                                     |                                     |
| ● Must the household have received a shut-off notice or have a near empty tank?            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Must the household have been shut off or have an empty tank?                             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Must the household have exhausted their regular heating benefit?                         | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Must renters with heating costs included in their rent have received an eviction notice? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Must heating/cooling be medically necessary?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Must the household have non-working heating or cooling equipment?                        | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| ● Other?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

Explanation for Other: Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the following conditions, as defined in 10 TAC §6.301 (relating to Background and Definitions):

- (1) Extreme Weather Conditions, with assistance provided within 48 hours;
- (2) Disaster, with assistance provided within 48 hours; or
- (3) Life Threatening Crisis, with assistance provided within 18 hours.

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<sup>14</sup> The program has different requirements depending on whether the household contains a member of a priority group.



● Do you have additional/differing eligibility policies for:

- Renters?
- Renters living in subsidized housing?
- Renters with utilities included in the rent? <sup>15</sup>

### Determination of Benefits

4.8 How do you handle crisis situations?

- Separate component
- Fast Track
- Other

4.9 If you have a separate component, how do you determine crisis assistance benefits?

- Amount to resolve crisis, up to a maximum of \$2,400
- Other  
Heating and cooling equipment repair or replace up to \$7,500

### Crisis Requirements, 2604(c)

4.10 Do you accept applications for energy crisis assistance at sites that are geographically accessible to all households in the area to be served?

- Yes  No

Explain: In addition to what is already stated in Section 2604(c)(3) regarding the requirement that each Subrecipient accept applications at sites that are geographically accessible to all Households in the area to be served, 10 TAC §6.313(c) states "Subrecipient shall handle Reasonable Accommodation requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations)." 10 TAC §1.204 (b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed."

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<sup>15</sup> Per 10 TAC §6.309(h)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from client's rent.

4.11 Do you provide individuals who have physical disabilities the means to:

■ Submit applications for crisis benefits without leaving their homes?

Yes  No If no, explain.

Applications can be mailed in. In some cases, applications may be completed online or the organization will go to the applicant's home to take the application.

■ Travel to the sites at which applications for crisis assistance are accepted?

Yes  No If yes, explain.

If you answered "No" to both questions 4.11, please explain alternative means of intake to those who are homebound or physically disabled.

### **Benefit Levels, 2605(c)(1)(B)**

4.12 Indicate the maximum benefit for each type of crisis assistance offered.

Winter Crisis      \$ 0 maximum benefit

Summer Crisis      \$ 0 maximum benefit

Year-round Crisis      \$2,400 maximum benefit

4.13 Do you provide in-kind (e.g., blankets, space heaters, fans) and/or other forms of benefits?

Yes  No If yes, describe.

If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient and statewide or regional contractors can replace the component(s) in order to repair the heating or cooling system under the Utility Assistance Component for Vulnerable Households or Crisis Assistance Component for Non-Vulnerable Households. Where replacement is required, use of Energy Star heating and/or cooling units must be prioritized. That the units are appropriately sized will be confirmed using standard Manual J procedures.

LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310(c).

All Households experiencing a Life Threatening Crisis may be eligible to receive portable cooling and/or heating units/window units/evaporative coolers/mini splits (portable electric heaters are allowable only as a last resort).

Eligible Households may receive temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances when natural disasters result in energy supply shortages or other energy-related emergencies. Eligible Households may receive emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing. When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310(c), which include blankets, fans, air conditioners, and generators.

4.14 Do you provide for equipment repair or replacement using crisis funds?

Yes  No

4.15 Check appropriate boxes below to indicate type(s) of assistance provided:

Type of Assistance	Winter Crisis	Summer Crisis	Year-round Crisis
Heating system repair			X
Heating system replacement (only components of a central HVAC system)			X
Cooling system repair			X
Cooling system replacement (only components of a central HVAC system)			X
Wood stove purchase			
Pellet stove purchase			
Solar panel(s)			
Utility poles / Gas line hook-ups			
Other (Specify: Households which include a member of a Vulnerable Population with an inoperable heating or cooling units may be eligible for service and repair of their existing heating or cooling unit. Purchase of a heating and/or cooling unit up to \$7,500 is allowable if a heating or cooling system is nonexistent. For Households who do not have a member of a Vulnerable Population, such assistance is limited to times when a Crisis exists as defined in 10 TAC §6.310(a). In a Life Threatening Crisis, all Households may be eligible to receive portable cooling and/or heating units/window units/evaporative coolers/mini splits (portable electric heaters are allowable only as a last resort).			X

4.16 Do any of the utility vendors you work with enforce a winter moratorium on shut offs? If you respond "Yes" to question 4.16, you must respond to question 4.17.  Yes  No

4.17 Describe the terms of the moratorium and any special dispensation received by LIHEAP clients during or after the moratorium period.

Specific to energy assistance clients, §25.483(i) of the Texas Public Utilities Commission rules provides that a Retail Electric Provider (REP) shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent,

purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider. Additionally, the rule provides that if an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) (relating to Privacy of Customer Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided; and that a REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.

There are protections for several other categories of clients and situations applicable to LIHEAP clients served:

§25.483(g) provides that a REP shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.

§25.483(h) provides that a REP shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to 25.497 with noted rule exceptions.

§25.483(j) provides that a REP shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of 25.480 (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term “extreme weather emergency” shall mean a day when:

(A) the previous day’s highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(B) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

## **Section 5: WEATHERIZATION ASSISTANCE**

### **Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2**

5.1 Designate the income eligibility threshold used for the weatherization component:

<b>#</b>	<b>Household Size</b>	<b>Eligibility Guidelines</b>	<b>Eligibility Threshold</b>
1	All Household Sizes	USHHS Poverty Guidelines	150%
2	All Household Sizes	State Median Income	60% <sup>16</sup>

<sup>16</sup> In the county of a major disaster or emergency designated by the Secretary of the Department of Health and Human Services or by the President under the Disaster Relief Act of 1974, Texas will use the highest of 150% of the poverty guidelines or 60% of the State’s median income (“SMI”). Texas may also use this flexibility to set poverty guidelines in a local crisis as defined by the Department’s Executive Director. TDHCA will communicate this designation to affected Subrecipients and statewide or regional contractors through email and by website posting. Subrecipients and statewide or regional contractors must receive prior written approval before using 60% SMI. Place based assistance must be performed in the county, but person based assistance for those displaced by a disaster or emergency may be in other counties.

5.2 Do you enter into an interagency agreement to have another government agency administer a **WEATHERIZATION component?**  Yes  No

5.3 If yes, name the agency. N/A

5.4 Is there a separate monitoring protocol for weatherization?  Yes  No

**WEATHERIZATION - Types of Rules**

5.5 Under what rules do you administer LIHEAP weatherization? (Check only one.)

Entirely under LIHEAP (not DOE) rules

Entirely under DOE WAP (not LIHEAP) rules

Mostly under LIHEAP rules with the following DOE WAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

Income Threshold

Weatherization of entire multi-family housing structure is permitted if at least 66% of units (50% in 2- & 4-unit buildings) are eligible units or will become eligible within 180 days.

Weatherization of shelters temporarily housing primarily low income persons (excluding nursing homes, prisons, and similar institutional care facilities).

Other (describe):

- Adhere to language from the Consolidated Appropriations Act of 2021 that Paragraph (2) of Section 415(c) of the Energy Conservation and Production Act (42 USC 6865(c)) is amended to allow re-weatherization for a dwelling unit not previously weatherized using federal funds until the date that is 15 years after the date such previous weatherization has passed.
- 10 TAC Part 1, Chapter 6, Subchapter D, Weatherization Assistance Program, is one area where the LIHEAP funded weatherization program adheres to DOE regulations.
- TDHCA uses a priority list for LIHEAP households at 150% or below USHHS poverty income level.
- Energy-related home repair: TDHCA will allow the use of LIHEAP weatherization funds for incidental repairs only if required to enable effective weatherization.
- If LIHEAP funds are included in a DOE unit, the energy audit, or applicable priority list(s), must be used to justify all measures.
- TDHCA will allow, with written permission, LIHEAP WAP funds to be used in the weatherization of DOE Identified HUD and USDA properties using DOE income calculation requirements and Income Determination (i.e., 200% Federal Poverty Income Guidelines).

- If Subrecipient leverages LIHEAP with any DOE weatherization funds, all federal and state rules and current Weatherization Program Notice (WPN) requirements will apply, including but not limited to: income calculation requirements as outlined in applicable DOE WPNs or updated Income Determination Notices in accordance with State Rules.

Mostly under DOE WAP rules, with the following LIHEAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

- Income Threshold.
- Weatherization not subject to DOE WAP maximum statewide average cost per dwelling unit.
- Weatherization measures are not subject to DOE Savings to Investment Ratio (SIR) standards.
- Other (describe)

**Eligibility, 2605(b)(5) – Assurance 5**

5.6 Do you require an assets test? Yes No

5.7 Do you have additional/differing eligibility policies for:

- Renters?
- Renters living in subsidized housing?

5.8 Do you give priority in eligibility to:

- Elderly?
- Disabled?
- Young children?
- Households with high energy burdens?
- Other?

Explanation: Households with high energy consumption

**Benefit Levels**

5.9 Do you have a maximum LIHEAP weatherization benefit/expenditure per household?

5.10 If yes, what is the maximum amount? \$12,000  
 NOTE: unless additional expenditure is authorized in writing by the Department.

## Types of Assistance, 2605(c)(1), (B) & (D)

5.11 What LIHEAP weatherization measures do you provide? (Check all categories that apply.)

- Weatherization needs/assessments/audits
- Caulking and insulation
- Storm windows
- Furnace/heating system modifications/repairs
- Furnace replacement
- Cooling system modifications/repairs
- Water conservation measures
- Compact fluorescent light bulbs
- Energy related roof repair
- Major appliance repairs
- Major appliance replacement
- Windows/sliding glass doors
- Doors
- Water Heater
- Cooling system replacement
- Other (describe)  
Solar screens or window film. Smart thermostats, incidental repairs up to \$500 only if required to enable effective weatherization; Window screens to help prevent exposure to the Zika virus for Households with pregnant women.

If an appropriate measurable savings in energy expenditures by Low-Income Households can be achieved, LIHEAP weatherization funds may be used for the installation of solar panels for eligible Households.

If any of the questions require further explanation or clarification that could not be made in the fields provided, attach a document with said explanation here.

## Section 6: Outreach, 2605(b)(3) – Assurance 3, 2605(c)(3)(A)

6.1 Select all outreach activities that you conduct that are designed to assure that eligible households are made aware of all LIHEAP assistance available:

- Place posters/flyers in local and county social service offices, offices of aging, Social Security offices, VA, etc.
- Publish articles in local newspapers or broadcast media announcements.
- Include inserts in energy vendor billings to inform individuals of the availability of all types of LIHEAP assistance.
- Mass mailing(s) to prior-year LIHEAP recipients.
- Inform low income applicants of the availability of all types of LIHEAP assistance at application intake for other low-income programs.
- Execute interagency agreements with other low-income program offices to perform outreach to target groups.
- Other (specify): LIHEAP Subrecipients are to conduct outreach related to the utility assistance program and other assistance provided with the LIHEAP grant. The Department encourages Subrecipients to conduct outreach through various methods to inform people without internet services about the LIHEAP utility assistance program. Entities to be informed include, but is not limited to, units of government, local non-profits, charitable organizations, and churches. Other ways that persons are to be informed is through utility vendors who include information in client bills about the LIHEAP utility assistance program and the State's phone number to contact if they need utility assistance. Some utility vendors may inform customers and persons who are pending disconnection or who have had their services disconnected about the LIHEAP provider serving their area or provide them with the State phone number to contact. LIHEAP Subrecipients also are to use social media and periodically run radio announcements and newspaper ads.

## Section 7: Coordination, 2605(b)(4) – Assurance 4

7.1 Describe how you will ensure that the LIHEAP program is coordinated with other programs available to low-income households (TANF, SSI, WAP, etc.)

- Joint application for multiple programs
- Intake referrals to/from other programs
- One-stop intake centers
- Other – describe:



**Section 8: Agency Designation, 2605(b)(6) – Assurance 6**

8.1 How would you categorize the primary responsibility of your State agency?

- Administration Agency
- Commerce Agency
- Community Services Agency
- Energy/Environment Agency
- Housing Agency
- Welfare Agency
- Other – describe:

**Alternate Outreach and Intake, 2605(b)(15) – Assurance 15**

8.2 How do you provide alternate outreach and intake for **HEATING ASSISTANCE**?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

8.3 How do you provide alternate outreach and intake for **COOLING ASSISTANCE**?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

8.4 How do you provide alternate outreach and intake for **CRISIS ASSISTANCE**?

In instances of natural disaster, subrecipients and statewide or regional contractors coordinate with other assistance organizations (shelters, Red Cross, etc.). Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

<b>Question 8.5</b>	<b><u>Heating</u></b>	<b><u>Cooling</u></b>	<b><u>Crisis</u></b>	<b><u>Weatherization</u></b>
8.5a. Who determines client eligibility?	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Non-profits, Statewide or Regional Contractors
8.5b. Who processes benefit payments to gas and electric vendors?	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	N/A

<b>Question 8.5</b>	<b><u>Heating</u></b>	<b><u>Cooling</u></b>	<b><u>Crisis</u></b>	<b><u>Weatherization</u></b>
8.5c. Who processes benefit payments to bulk fuel vendors?	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments , CAAs and Other Nonprofits, Statewide or Regional Contractors	N/A
8.5d. Who performs installation of weatherization measures?	N/A	N/A	N/A	Local governments, CAAs and Other Nonprofits-most subcontract with local contractors, Statewide or Regional Contractors

Note for 8.5: In the USHHS-OLDC system where the State Plan is entered, it only allows states to select one type of entity. The Department will select Nonprofits; although we will also contract with Units of government and CAAs.

8.6 What is your process for selecting local administering agencies?

The Department ensures that to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of Title 42 U.S.C. §§8621, et seq. special consideration is given to any local public or private nonprofit agency which was receiving CSBG or LIHEAP funds.

(1) The Department before giving such special consideration, determines that the agency involved meets program and fiscal requirements established by law and by the Department; and

(2) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Department gives special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made.

Currently, the Department administers all aspects of program delivery through subrecipients and statewide/regional contractors that have demonstrated they are operating the program in accordance with the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and Department rules. If subrecipients and statewide/regional contractors are successfully administering the program, the Department may offer to renew the contract. However, in order to achieve full expenditure of funding, the Department may reallocate funds that have been voluntarily relinquished or deobligated in compliance with TAC rule §6.304. Additionally, if the State receives a large supplemental appropriation for LIHEAP, the Department may allocate some or all of the funds to a statewide or regional contractor.

If the Department determines that an organization is not administering the program satisfactorily, corrective actions are taken to remedy the problem. Thereafter, if a Subrecipient fails to administer the program correctly, the Department may proceed with the process provided for in Department rules of removing funds and reassign the service area or a portion to another existing Subrecipient or conduct solicitation or selection of a new Subrecipient in accordance with the Low-Income Home Energy Assistance Act of 1981. The affected Subrecipient may request a hearing in accordance with §2105.204 of the Texas Government Code.

However, the Department retains the right to go through a procurement process for some or all aspects of the LIHEAP program.

8.7 How many local administering agencies do you use? 35

8.8 Have you changed any local administering agencies from last year?  Yes  No

8.9 If so, why?

- Agency was in noncompliance with grantee requirements for LIHEAP
- Agency is under criminal investigation
- Added agency
- Agency closed
- Other – describe – voluntary relinquishment

Explanation:

NA

**Section 9: Energy Suppliers, 2605(b)(7) – Assurance 7**

9.1 Do you make payments directly to home energy suppliers?

Heating  Yes  No

Cooling  Yes  No

Crisis  Yes  No

Are there exceptions?  Yes  No

If yes, describe: Per 10 TAC §6.309(h)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from client's rent.

9.2 How do you notify the client of the amount of assistance paid?

The administering Subrecipient/contractor informs them once the determination is made.

9.3 How do you assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment?

Vendor agreements are used in all components. The Department provides Subrecipients and statewide or regional contractors with a Department approved Vendor Agreement to utilize. The document can be found at the Department's website at <https://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm>

9.4 How do you assure that no household receiving assistance under this title will be treated adversely because of their receipt of LIHEAP assistance?

Vendor Agreements are used in all components. The Department provides Subrecipients and statewide or regional contractors with a Department approved Vendor Agreement to utilize. The document can be found at the Department's website at <https://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm>

9.5 Do you make payments contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households?  Yes  No. If so, describe the measures unregulated vendors may take.

**Section 10: Program, Fiscal Monitoring, and Audit, 2605(b)(10) – Assurance 10**

10.1. How do you ensure good fiscal accounting and tracking of LIHEAP funds?

1. Review annual audits
2. Monitor fiscal records
3. Review current and prior year monthly expenditure and performance reports

**Audit Process**

10.2. Is your LIHEAP program audited annually under the Single Audit Act and OMB Circular A-133?  Yes  No

Describe any audit findings rising to the level of material weakness or reportable condition cited in the A-133 audits, Grantee monitoring assessments, inspector general reviews, or other government agency reviews of the LIHEAP agency from the most recently audited federal fiscal year. (Document referenced: Statewide Single Audit Report for the Year Ended August 31, 2022 (issued Feb 2023 – Report No. 23-315)

Finding <sup>17</sup>	Type	Brief Summary	Resolved?	Action Taken
2022-024	Significant Deficiency in Internal Control over Compliance and Noncompliance	During our testing of special reporting for FFATA, we noted there is no review and approval process in place over the submitted reports to ensure accuracy and completeness. Additionally, we noted the following instances of noncompliance: TDHCA submits the Annual Report on Households Assisted by LIHEAP (Annual Report), which includes key line items in Section 1 and 2 of the report. During our testing of Annual Report submitted for Federal Fiscal Year 2021, we noted several variances between the Annual Report and supporting detail provided.	The household report portion of the internal control deficiency was resolved. The Department is still working on resolving the other internal control deficiencies.	Corrective Action Plan: For FFATA, Community Affairs Division (CAD) <b>CAD Response:</b> The noted Reporting control deficiency is accurate. Community Affairs Division (CAD) is currently updating Standard Operating Procedure (SOP) to include two review and approval processes that will take place prior to the submission in the FSFR system. The two additional review and approval processes will be performed by the Team Lead, Laura White in CAD and Elizabeth Yevich in the Housing Resource

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				<p>Center (HRC). The two additional reviews will aid in the process to ensure accurate and timely submission of monthly FFATA reporting. An updated SOP will be in place by the March 2023 FFATA submission.</p> <p>Corrective Action Plan:  The noted Reporting control deficiency is accurate. CAD is currently working with the Information System Division (IS) to correct issues identified in the data pulls to the summary sheets. CAD has identified that issues began when separating the information by the different grants types. In order to address the identified issues, CAD and IS will continue to correct the data queries and formulas to ensure accurate reporting is achieved.</p>
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10.3. Audits of Local Administering Agencies

What types of annual audit requirements do you have in place for local administering agencies/district offices?

Local agencies/district offices are required to have an annual audit in compliance with 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).<sup>18</sup>

Local agencies/district offices are required to have an annual audit (other than 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)).

10.4 (continued)

Local agencies/district offices 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) or other independent audits are reviewed by Grantee as part of compliance process.

Grantee conducts fiscal and program monitoring of local agencies/district offices.

## Compliance Monitoring

10.4. Describe the Grantee’s strategies for monitoring compliance with the Grantee’s and Federal LIHEAP policies and procedures by:

Grantee employees:

Internal program review

Departmental oversight

Secondary review of invoices and payments

Other program review mechanisms are in place. Describe: Cross Division peer review of documents

Local Administering Agencies/District Offices:

On-site evaluation

Annual program review

Monitoring through Central Database

Desk reviews

Client File Testing/Sampling

Other program review mechanisms are in place. Describe: Desk review of 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); A review of the Subrecipient’s resolution of prior monitoring or Single Audit reports is performed prior to awarding new contracts.

10.5. Explain, or attach a copy of, your local agency monitoring schedule and protocol.

See attached monitoring schedule and monitoring instruments.

Describe how you select local agencies for monitoring reviews?

On-site monitoring visits and desk reviews are mechanisms used for in-depth investigation and overall assessment, respectively. The Department will conduct on-site monitoring reviews and desk reviews of contracts based on an assessment of risk of non-compliance with program requirements. Monitors review necessary program documents and financial records through desk reviews and on-site reviews.

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<sup>18</sup> Subrecipients will follow the audit requirements in 45 CFR 75 Subpart F, as applicable, and the requirements in the Texas Single Audit Act.

LIHEAP Subrecipients and statewide or regional contractors are monitored (for prior year funding) at least once every three years. This is a component of the risk assessment score. If a Subrecipient also has Community Service Block Grant funds, the LIHEAP monitoring may be done at the same time. Subrecipients and statewide or regional contractors that leverage LIHEAP funds with DOE funds for weatherization are subject to a programmatic, fiscal, and unit inspection review according to the DOE monitoring schedule (once a year). Contracts may also be selected for monitoring based on other factors, such as prior monitoring findings, issues noted in the Single Audit, complaints, and/or special requests.

- 10.6. Site Visits: Onsite monitoring visits are conducted at least once every three years. The Department will inspect a minimum of 5% of all LIHEAP weatherized units reported as complete.  
Desk Reviews: Some materials are requested and reviewed at the Department's office prior to the onsite visit.
- 10.7. How often is each local agency monitored? At least once every three years.
- 10.8. What is the combined error rate for eligibility determinations? (Optional question) Optional
- 10.9. What is the combined error rate for benefit determinations? (Optional question)  
Optional
- 10.10. How many local agencies are currently on corrective action plans for eligibility and/or benefit determination issues? (Number only) -0
- 10.11. How many local agencies are currently on corrective action plans for financial accounting or administrative issues? (Number only) -0

**Section 11: Timely and Meaningful Public Participation, 2605(b)(12) – Assurance 12, 2605(c)(2)**

11.1 How did you obtain input from the public in the development of your LIHEAP plan?

Check all that apply:

- Tribal Council meeting(s)
- Public Hearing(s)
- Draft Plan posted to website and available for comment
- Hard copy of plan is available for public view and comment
- Comments from applicants are recorded
- Request for comments on draft Plan is advertised
- Stakeholder consultation meeting(s)
- Comments are solicited during outreach activities
- Other, describe:

11.2 What changes did you make to your LIHEAP plan as a result of this participation?

None



**Public Hearings, 2605(a)(2)**

11.3 List the date(s) and location(s) that you held public hearing(s) on the proposed use and distribution of your LIHEAP funds?

Date	Event Description
Tuesday, May 14, 2024, at 5:30PM– 6PM	Texas Department of Housing and Community Affairs 221 East 11 <sup>th</sup> Street, 1 <sup>st</sup> Floor Austin, TX 78701
Thursday, May 16, 2024, at 2:00PM - 2:30PM	BakerRipley First Floor Education Center 3838 Aberdeen Way Houston, TX 77025
Thursday, May 16, 2024, at 10:00AM- 10:30AM	Northside Community Center 1100 NW 18 <sup>th</sup> Str Fort Worth, TX 76164
Date	Event Description
Thursday, May 16, 2024, at 5:30PM- 6PM	West Texas Opportunities 1415 East 2 <sup>nd</sup> Street Odessa, TX 79761

11.4 How many parties commented on your plan at the hearing(s)? One

11.5 Summarize the comments you received at the hearing(s).  
BakerRipley requests that their LIHEAP WAP contract term be 15 months rather than 12 months so they can leverage both Department of Energy (DOE) WAP and LIHEAP WAP funding for the full calendar year in order to install more comprehensive measures on a home. Because contract terms are not addressed in the LIHEAP Plan and better addressed outside the Plan, no changes to the Plan were made.

11.6 What changes did you make to your LIHEAP plan as a result of the comments received at the public hearing(s)? None

**Section 12: Fair Hearings, 2605(b)(13) – Assurance 13**

12.1 How many fair hearings did the grantee have in the prior Federal fiscal year?  
None

12.2 How many of those fair hearings resulted in the initial decision being reversed? N/A

- 12.3 Describe any policy and/or procedural changes made in the last Federal fiscal year as a result of fair hearings? None
- 12.4 Describe your fair hearing procedures for **households whose applications are denied**. Subrecipient contracts include the following section:

### **APPEALS PROCESS**

In compliance with the LIHEAP Act, Subrecipient must provide an opportunity for a fair administrative hearing to individuals whose application for assistance is denied, terminated or not acted upon in a timely manner. Subrecipient must establish a denial of service complaint procedure in accordance with 10 TAC §6.8 of the State Rules. The rule states:

(b) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (b)(1) - (8) of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipients shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

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

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

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three day turn-around).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing.

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

(d) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(e) The hearing under subsection (d) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13, relating to Contested Case Hearing Procedures, of this title.

(f) If the applicant/customer appeals to the Department, the funds should remain encumbered until the Department completes its decision.

These requirements will also be incorporated into statewide or regional contractor Contracts.

12.5 When and how are applicants informed of these rights?

Within ten days of the determination, the Subrecipient must provide written notification to the applicant.

12.6 Describe your fair hearing procedures for **households whose applications are not acted on in a timely manner.**

An Applicant requests a hearing with the Subrecipient and statewide or regional contractors initially. If not satisfied with the results of the Subrecipient's and statewide or regional contractor's hearing, the Applicant then appeals to the Texas Department of Housing and Community Affairs. The Department then schedules a fair administrative hearing.

12.7 When and how are applicants informed of these rights?

Applicants are informed of their rights either by 1) informing them on the application itself, 2) handing them a document with such information at the time of application, 3) displaying posters at intake offices, or 4) providing them the information in the denial of LIHEAP assistance letter that is mailed to the applicant.

### **Section 13: Reduction of home energy needs, 2605(b)(16) – Assurance 16**

13.1 Describe how you use LIHEAP funds to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance?

N/A-The State does not use funds under Assurance 16.

13.2 How do you ensure that you don't use more than 5% of your LIHEAP funds for these activities?

NA-The State does not use funds under Assurance 16.

13.3 Describe the impact of such activities on the number of households served in the previous Federal fiscal year.

NA-The State does not use funds under Assurance 16.

13.4 Describe the level of direct benefits provided to those households in the previous Federal fiscal year.

NA-The State does not use funds under Assurance 16.

13.5 How many households applied for these services?

NA-The State does not use funds under Assurance 16.

13.6 How many households received these services?

NA-The State does not use funds under Assurance 16.

**Section 14: Leveraging Incentive Program, 2607A**

14.1 Do you plan to submit an application for the leveraging incentive program?

Yes       No

14.2 Describe instructions to any third parties and/or local agencies for submitting LIHEAP leveraging resource information and retaining records.      NA

14.3 For each type of resource and/or benefit to be leveraged in the upcoming year that will meet the requirements of 45 C.F.R. § 96.87(d)(2)(iii), describe the following:

Resource	What is the type of resource or benefit?	What is the source(s) of the resource?	How will the resource be integrated and coordinated with LIHEAP?
NA	NA	NA	NA

**Section 15: Training**

15.1 Describe the training you provide for each of the following groups:

a. Grantee Staff:

Formal training on grantee policies and procedures

How often?

Annually

Biannually

As needed

Other – Describe:

Employees are provided with policy manual

Other – Describe:

Employees are provided with all the information necessary to administer the LIHEAP. The Department training team provides new staff with programmatic orientation training and are invited to observe and participate in Subrecipient trainings as well.

b. Local Agencies:

Formal training conference

How often?

Annually

Biannually

As needed

Other – Describe: The Department offers a manager training for newly hired managers or Executive Directors, as needed, which is then followed up with individualized technical assistance. The Department hosts meetings and training

events on an as needed basis with Subrecipients and statewide or regional contractors to conduct necessary training and/or make announcements. The Department collaborates with the Texas Association of Community Action Agencies to coordinate training for Subrecipients. Training for Subrecipients occurs at an annual conference sponsored by the Texas Association of Community Action Agencies each year. The Department provides a template for developing the Annual Service Delivery Plan and a guide for developing it. The Department develops data tools and trains agencies as needed on how to analyze their data to improve efficiency and productivity. Emails, Go-To-Webinars, MS Teams for virtual TTA, and phone calls are common communication means with which the Department trains, assists, and communicates with LIHEAP Subrecipients and statewide or regional contractors.

On-site training

How often?

Annually

Biannually

As needed

Other –

The Department identifies key areas for training needs based upon monitoring reports, new regulations, and Subrecipient and statewide or regional contractors requests. Since COVID, the Department has developed robust and effective virtual training courses to address Subrecipient TTA needs. The Department provides training as needed to individual agencies and network wide trainings on a variety of topics such as: process mapping, production, data analysis, intake, client file documentation, weatherization assessments, audits, final inspections, working with contractors, reporting, and technical assistance for service delivery. Onsite training is provided as warranted. The Department also supplies Subrecipients with online resources, training centers, and conference information to obtain skills and certifications.

Employees are provided with policy manual

Other – Describe: The Department uses an online portal (i.e., Wufoo) that agencies use daily for quick responses to questions or for requesting training. As needed, the Department schedules meetings to provide information, training, and technical assistance to the local agencies. Emails, the online portal, Go-To-Webinar, MS Teams for virtual TTA, and phone calls are the common methods used by the Department to train, assist, and communicate with LIHEAP Subrecipients and statewide or regional contractors. The Department creates tools, guides, best practices, and FAQs that are posted on program webpages. The Department hosts quarterly Go-To-Webinar calls for the LIHEAP Subrecipients to provide relevant training on an ongoing basis.

c. Vendors

Formal training conference

How often?

Annually

Biannually

As needed

Other – Describe:

Policies communicated through vendor agreements

Policies are outlined in a vendor manual

Other – Describe:

15.2 Does your training program address fraud reporting and prevention?

Yes

No

**Section 16: Performance Goals and Measures, 2605(b)**

16.1 Describe your progress toward meeting the data collection and reporting requirements of the four required LIHEAP performance measures. Include timeframes and plans for meeting these requirements and what you believe will be accomplished in the coming federal fiscal year.

The Department was able to meet the four LIHEAP performance measures.

The Department currently requires Subrecipients and statewide or regional contractors to upload data related to the four performance measures into our State reporting system. The Department has made this reporting a contractual requirement for all LIHEAP Subrecipients and statewide or regional contractors. The Department periodically reviews uploaded summary reports and offers technical assistance to Subrecipients and statewide or regional contractors who may not understand what to report or may not upload the data in a timely fashion.

The Department will review the outcomes of the performance data reports to determine any training needs or changes to programs design that are needed.

**Section 17: Program Integrity, 2605(b)(10)**

17.1 Fraud Reporting Mechanisms

a. Describe all mechanisms available to the public for reporting cases of suspected waste, fraud, and abuse. Select all that apply.

Online Fraud Reporting

Dedicated Fraud Reporting Hotline

Report directly to local agency/district office or Grantee office

Report to State Inspector General or Attorney General

Forms and procedures in place for local agencies/district offices and vendors to report fraud, waste, and abuse.

Other – describe:

Note: TDHCA’s website has a webpage named “Report Fraud, Waste, and Abuse by TDHCA Management and Staff” directing persons who suspect fraud, waste, and abuse by TDHCA management and staff to report to the State Auditor’s Office at <https://sao.fraud.texas.gov/ReportFraud/>. Subrecipients are required to establish fraud, waste, and abuse procedures. The state will provide a fraud, waste, and abuse procedures to statewide or regional contractors.

b. Describe strategies in place for advertising the above-referenced resources. Select all that apply.

- Printed outreach materials
- Addressed on LIHEAP application
- Website

17.2 Identification Documentation Requirements

a. Indicate which of the following forms of identification are required or requested to be collected from LIHEAP applicants or their household members.

Type of Identification Collected	Collected from Whom?		
	Applicant Only	All Adults in HH	HH Members Seeking Assistance*
Social Security Card is photocopied and retained	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Social Security Number (without actual card)	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Government-issued identification card (e.g.,: driver’s license, state ID, Tribal ID, passport, etc.)	Required <input checked="" type="checkbox"/>	Required <input checked="" type="checkbox"/>	Required <input checked="" type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>

#	Other	Applicant Only Required	Applicant Only Requested	All Adults in House hold Required	All Adults in Household Requested	All Household Members Required	All Household Members Requested
1	Other: clients provide identification to the subrecipients and statewide or regional contractors at the time of application. See attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

\*Households may include members who are not seeking assistance and may not be included in the household count. A live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household.

b. Describe any exceptions to the above policies: NA

17.3 Identification Verification

Describe what methods are used to verify the authenticity of identification documents provided by clients or household members. Select all that apply.

- Verify SSNs with Social Security Administration
- Match SSNs with death records from Social Security Administration or state agency
- Match SSNs with state eligibility/management system (e.g., SNAP, TANF)
- Match with state Department of Labor system
- Match with state and/or federal corrections system
- Match with state child support system
- Verification using private software (e.g., The Work Number)
- In-person certification by staff (for tribal grantees only)
- Match SSN/Tribal ID number with tribal database or enrollment records (for tribal grantees only)
- Other – describe:

Subrecipients or statewide/regional contractors verify the authenticity of identification documents provided by clients who are not U.S. citizens or nationals. That verification is made through the Systematic Alien Verification for Entitlements (SAVE) system.

17.4 Citizenship/Legal Residency Verification

What are your procedures for ensuring that household members are U.S. citizens or aliens who are qualified to receive LIHEAP benefits?

- Clients sign an attestation of citizenship or legal residency
- Clients' submission of Social Security cards is accepted as proof of legal residency
- Noncitizens must provide documentation of immigration status
- Citizens must provide a copy of their birth certificate, naturalization papers, or passport
- Noncitizens are verified through the SAVE system
- Tribal members are verified through Tribal database/Tribal ID card
- Other – describe: U.S. Nationals will have to provide documentation of that status.



17.5 Income Verification

What methods does your agency utilize to verify household income?

- Require documentation of income for all adult household members
- Pay stubs
- Social Security award letters
- Bank statements
- Tax statements
- Zero-income statements
- Unemployment Insurance letters
- Other – describe: Court Documents or government benefit statements as applicable.

Computer data matches:

- Income information matched against state computer system (e.g., SNAP, TANF)
- Proof of unemployment benefits verified with state Department of Labor
- Social Security income verified with SSA
- Utilize state directory of new hires

Other – describe:

17.6 Protection of Privacy and Confidentiality

Describe the financial and operating controls in place to protect client information against improper use or disclosure.

- Policy in place prohibiting release of information without written consent
- Grantee LIHEAP database includes privacy/confidentiality safeguards
- Employee training on confidentiality for:
  - Grantee employees
  - local agencies/district offices
- Employees must sign confidentiality agreement
  - Grantee employees
  - local agencies/district offices
- Physical files are stored in a secure location
- Other – describe: Grantee contracts include the following section:

**RECORD KEEPING REQUIREMENTS**

Subrecipients and statewide or regional contractors acknowledge that any information created or exchanged with the State of Texas pursuant to this Contract, must be available in a format that is accessible by the public at no additional charge to the State of Texas. A request for public information shall be communicated to the Department's contact identified in this Contract, by the close of business on the following business day after the request is received. Subrecipient/Vendor shall not provide to the requestor any information that was written, produced, collected, assembled, or maintained under this Contract, but shall respond to the requestor that the request has been forwarded to the Department for processing. After gathering all information that is responsive to the request, but in no event later than five (5) business days after receiving the information request, Subrecipient/Vendor shall send the information to the Department and shall timely contact the Department if there will be any delay in sending the information request or responsive documents to the Department.

**Texas Administrative Code, Title 10 Chapter 1, Subchapter D §1.409 requires that:**

(a) Client Records including Multifamily Development Owners. The Department requires subrecipient organizations to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient a headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five (5) years starting from the date the Household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

These requirements will also be incorporated into statewide and regional contractor Contracts.

**17.7 Verifying the Authenticity of Energy Vendors**

What policies are in place for verifying vendor authenticity?

- All vendors must register with the State/Tribe
- All vendors must supply a valid SSN or TIN/W-9 form
- Vendors are verified through energy bills provided by the household
- Grantee and/or local agencies/district offices perform physical monitoring of vendors
- Other – describe, and note any exceptions to policies above:

**17.8 Benefits Policy – Gas and Electric Utilities**

What policies are in place to protect against fraud when making benefit payments to gas and electric utilities on behalf of clients? Select all that apply.

- Applicants required to submit proof of physical residency
- Applicants must submit current utility bill
- Data exchange with utilities that verifies:
  - Account ownership
  - Consumption
  - Balances
  - Payment history
  - Account is properly credited with benefit
  - Other – describe:
- Centralized computer system/database tracks payments to all utilities
- Centralized computer system automatically generates benefit level
- Separation of duties between intake and payment approval
- Payments coordinated among other heating assistance programs to avoid duplication of payments
- Payments to utilities and invoices from utilities are reviewed for accuracy
- Computer databases are periodically reviewed to verify accuracy and timeliness of payments made to utilities
- Direct payment to households are made in limited cases only
- Procedures are in place to require prompt refunds from utilities in cases of account closure

- Vendor agreements specify requirements selected above, and provide enforcement mechanism
- Other – describe:

#### 17.9 Benefits Policy — Bulk Fuel Vendors

What procedures are in place for averting fraud and improper payments when dealing with bulk fuel suppliers of heating oil, propane, wood, and other bulk fuel vendors? Select all that apply.

- Vendors are checked against an approved vendors list
- Centralized computer system/database is used to track payments to all vendors
- Clients are relied on for reports of non-delivery or partial delivery
- Two-party checks are issued naming client and vendor
- Direct payment to households are made in limited cases only
- Vendors are only paid once they provide a delivery receipt signed by the client
- Conduct monitoring of bulk fuel vendors
- Bulk fuel vendors are required to submit reports to the Grantee
- Vendor agreements specify requirements selected above, and provide enforcement mechanism
- Other – describe:

#### 17.10 Investigations and Prosecutions

Describe the Grantee's procedures for investigating and prosecuting reports of fraud, and any sanctions placed on clients/staff/vendors found to have committed fraud. Select all that apply.

- Refer to state Inspector General
- Refer to local prosecutor or state Attorney General
- Refer to US DHHS Inspector General (including referral to OIG hotline)
- Local agencies/district offices or Grantee conduct investigation of fraud complaints from public
- Grantee attempts collection of improper payments. If so, describe the recoupment process.
- Clients found to have committed fraud are banned from LIHEAP assistance. For how long is a household banned?
- Contracts with local agencies require that employees found to have committed fraud are reprimanded and/or terminated
- Vendors found to have committed fraud may no longer participate in LIHEAP
- Other — describe: A Subrecipient and statewide or regional contractors may be referred to the Department's Enforcement Committee or proposed for debarment.

### **Section 18: Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

#### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

## **Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### **Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

By checking this box, the prospective primary participant is providing the certification set out above.

## Section 19: Certification Regarding Drug-Free Workforce Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

### Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of Subrecipients or subcontractors in covered workplaces).

## Certification Regarding Drug-Free Workplace Requirements

### Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about --(1)The dangers of drug abuse in the workplace;  
(2) The grantee's policy of maintaining a drug-free workplace;  
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and  
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted -



- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
- (B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

221 East 11<sup>th</sup> Street

Austin, Travis County, Texas, 78701

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

By checking this box, the prospective primary participant is providing the certification set out above.

## Section 20: Certification Regarding Lobbying

The submitter of this application certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By checking this box, the prospective primary participant is providing the certification set out above.

## **REQUIRED ATTACHMENTS**

The following documents must be attached to this application:

- Assurances signature page (submitted as separate document)
- Designation letter for signature to Assurances is required if someone other than the Governor or Tribal Chairperson signs the Assurances. (submitted as separate document)
- Heating component benefit matrix. (Attachment 3)
- Cooling component benefit matrix. (Attachment 3)
- Local Agency Monitoring Schedule (Attachment 4)

## **Attachment 3**

### **Benefit Matrix**

Program rules found at 10 Texas Administrative Code, §6.309(e):

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=6&rl=309](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=309) . .

All benefits are determined based on a sliding scale.

(e) Benefit determinations for the Utility Assistance Component and the Crisis Assistance Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this subsection:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$2,400 per Component;

(2) Households with Incomes more than 50% but at or below 75% of Federal Poverty Guidelines may receive an amount not to exceed \$2,300 per Component; and

(3) Households with Incomes more than 75% but at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$2,200 per Component; and

(f) Service and Repair of existing heating and cooling units: Households may receive up to \$7,500 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310 and §6.311.

(g) Purchase of heating and cooling units. Households may receive up to \$7,500 for the purchase of a heating and cooling unit when a heating or cooling system is nonexistent based on requirements in §6.310 of this subchapter (relating to Crisis Assistance Component) for Non-Vulnerable Population Households and §6.311 of this subchapter (relating to Utility Assistance Component) for Vulnerable Population Households.

(h) Assistance with purchase of portable cooling and/or heating units, window units, evaporative coolers, and mini splits cannot exceed \$7,500. Refer to §6.310(c)(6) of this subchapter for requirements relating to purchase of these types of units.

## Attachment 4

### Monitoring Schedule for FY 2025

	SUBRECIPIENT	REVIEW TYPE	FY Date of Next Monitoring Review	DATE OF LAST FULL ONSITE REVIEW (IF APPLICABLE)
1	Alamo Area Council of Governments	On-Site	2024	October 2023
2	Aspermont Small Business Development Center, Inc.	On-Site	2025	December 2022
3	BakerRipley	On-Site	2024	August 2023
4	Bexar County Community and Development Programs	On-Site	2026	January 2023
5	Brazos Valley Community Action Programs	On-Site	2024	February 2023
6	Central Texas Opportunities/DBA Cornerstone Community Action Agency	On-Site	2027	March 2024
7	City of Fort Worth Neighborhood Services Department	On-Site	2024	November 2023
8	City of Lubbock Community Development Department	On-Site	2024	August 2021
9	Combined Community Action, Inc.	On-Site	2025	January 2024
10	Community Action Committee of Victoria, Texas	On-Site	2024	July 2023
11	Community Action Corporation of South Texas	On-Site	2025	January 2024
12	Community Action Inc. of Central Texas	On-Site	2026	March 2023
13	Community Council of South Central Texas, Inc.	On-Site	2024	August 2023
14	Community Services Northeast Texas, Inc.	On-Site	2027	March 2024
15	Concho Valley Community Action Agency	On-Site	2025	February 2024
16	County of Hidalgo Community Services Agency	On-Site	2024	June 2021
17	Dallas County Health and Human Services	On-Site	2024	April 2023
18	Economic Action Committee of the Gulf Coast	On-Site	2026	January 2023
19	Economic Opportunities Advancement Corporation of Planning Region XI	On-Site	2024	November 2023
20	El Paso Community Action Program-Project BRAVO	On-Site	2024	July 2023
21	Greater East Texas Community Action Program	On-Site	2024	April 2023
22	Hill Country Community Action Association, Inc.	On-Site	2024	October 2023
23	Kleberg County Human Services	On-Site	2024	October 2021
24	Nueces County Community Action Agency	On-Site	2025	January 2024
25	Panhandle Community Services	On-Site	2024	July 2023
26	Pecos County Community Action Agency	On-Site	2024	January 2021
27	Rolling Plains Management Corporation	On-Site	2024	October 2023
28	South Plains Community Action Association, Inc.	On-Site	2025	February 2024
29	South Texas Development Council	On-Site	2025	October 2022
30	Texas Neighborhood Services	On-Site	2025	March 2022
31	Texoma Council Of Governments	On-Site	2024	June 2023
32	Travis County Health and Human Services	On-Site	2024	July 2023
33	Tri-County Community Action, Inc.	On-Site	2024	March 2021
34	Webb County Community Action Agency	On-Site	2025	May 2022
35	West Texas Opportunities, Inc.	On-Site	2024	May 2023
36	Yardi Systems, Inc. (2022-2023 Statewide Contractor)	On-Site	2026	February 2023

**ATTACHMENT A: SUMMARY OF PUBLIC COMMENT AND STAFF RESPONSE**

The Department accepted public comment from April 26, 2024, through May 21, 2024, and conducted four public hearings between May 14 and May 16, 2024, in Austin, Fort Worth, Houston and Odessa. Comment was received from one individual representing one organization. That individual’s comment and the Department’s response is presented in the table below.

<b>Commenter</b>	<b>Comment Summary</b>	<b>Staff Response</b>	<b>Proposed Changes to the Plan</b>
<p>Sommer Harrison, Weatherization Assistance Program Director for BakerRipley</p>	<p>Commenter requests that their LIHEAP WAP contract term be 15 months rather than 12 months so they can leverage both Department of Energy (DOE) WAP and LIHEAP WAP funding for the full calendar year in order to install more comprehensive measures on a home. BakerRipley leverages funds from both DOE and LIHEAP so that all the weatherization measures a home qualifies for can be completed. However, due to the LIHEAP contract being a 12 month calendar year contract, BakerRipley can only leverage both DOE and LIHEAP funds from January to September in order to meet contract close out requirements by the end of the calendar year. Leveraging LIHEAP on top of DOE funding on a home allows BakerRipley to complete more of the weatherization measures needed on a home. To complete the weatherization work by end of the calendar year, the work must be assigned to contractors no later than September so that the project can be completed by December 31<sup>st</sup> and meet close out requirements. Weatherization work assigned between October and December cannot be leveraged with both LIHEAP and DOE funds because contractors may not be able to complete those projects until January or February of the next year. This limitation often results in clients whose</p>	<p>The Department appreciates the comment, but this comment relates to length of contract term and is outside the scope of the LIHEAP Plan. The LIHEAP Plan provides flexibility where it can and therefore does not set parameters for length of contract term. The Department recommends that requests to extend a contract be addressed through communication with the Department’s Community Affairs Contract Section in advance of contract expiration.</p>	<p>No change.</p>

	<p>homes are weatherized during the last quarter only receiving DOE funded measures and not LIHEAP funded measures. TDHCA usually grants extensions on LIHEAP contracts for 90 days; however, it would be helpful if the contract is originally a 15 month contract term. This would allow BakerRipley to release work orders allowing LIHEAP funds to be leveraged with DOE funds all year long, without an interruption in the last quarter of the calendar year thereby removing the possibility of a home not receiving the additional weatherization measures needed it would otherwise be able to receive.</p> <p>Another impact is that the weatherization on some homes is sometimes delayed until both DOE and LIHEAP can be utilized in the next calendar year which puts BakerRipley behind on meeting weatherization production and benchmarks required in the DOE contract.</p> <p>BakerRipley strives to provide homes with all the potential weatherization measures but can best be done when using both funding sources. Initiating LIHEAP WAP contracts for 15 months versus 12 months would allow us to do this.</p>		
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**ATTACHMENT B: LIST OF SUBRECIPIENTS AND ALLOCATIONS**

**2025 LIHEAP CEAP ALLOCATIONS**

Contract Period: January 1, 2025 - December 31, 2025

	<b>SUBRECIPIENT</b>	<b>ALLOCATION</b>
1	Aspermont Small Business Development Council	\$ 1,188,680
2	BakerRipley	\$ 21,752,763
3	Bexar County Community and Development Services	\$ 9,966,805
4	Brazos Valley Community Action Programs	\$ 4,991,070
5	City of Fort Worth	\$ 8,363,245
6	City of Lubbock	\$ 1,745,526
7	Combined Community Action Agency	\$ 2,464,321
8	Community Action Committee of Victoria, Texas	\$ 2,133,858
9	Community Action Corporation of South Texas	\$ 7,072,486
10	Community Action Inc. of Central Texas	\$ 1,040,284
11	Community Council of South Central Texas	\$ 7,507,856
12	Community Services of Northeast Texas	\$ 3,647,918
13	Concho Valley Community Action Agency	\$ 2,330,061
14	Cornerstone Community Action Agency	\$ 1,834,493
15	Dallas County Department of Health and Human Services	\$ 7,316,760
16	Economic Action Committee of the Gulf Coast	\$ 721,429
17	Economic Opportunities Advancement Corporation of PR XI	\$ 3,705,159
18	El Paso Community Action Program-Project Bravo	\$ 7,769,636
19	Greater East Texas Community Action Program	\$ 10,416,963
20	Hidalgo County Community Services Agency	\$ 7,163,997
21	Hill Country Community Action Association	\$ 2,906,127
22	Kleberg County Human Services	\$ 830,889
23	Nueces County Community Action Agency	\$ 2,376,015
24	Opportunities for Williamson & Burnet Counties	\$ 1,048,144
25	Panhandle Community Services	\$ 4,101,363
26	Pecos County Community Action Agency	\$ 913,162
27	Rolling Plains Management Corporation	\$ 3,816,965
28	South Plains Community Action Association	\$ 1,963,297
29	South Texas Development Council*	\$ 1,277,889
30	Texas Neighborhood Services	\$ 2,173,876
31	Texoma Council Of Governments	\$ 5,417,507
32	Travis County Health and Human Services	\$ 2,718,578
33	Tri-County Community Action Inc.	\$ 2,462,851
34	Webb County Community Action Agency	\$ 2,029,483
35	West Texas Opportunities	\$ 4,056,269
	<b>Total</b>	<b>\$ 151,225,725</b>

Note: All figures are estimates and based on 2024 allocations. Staff will proportionally revise the award amounts according to formula upon Congressional approval and receipt of grant notifications from the U.S. Department of Health and Human Services.

\*The Board has placed a condition on this award that must be met before a contract is executed.



## 2025 LIHEAP WAP ALLOCATIONS

Contract Period: January 1, 2025 - December 31, 2025

	SUBRECIPIENT	ALLOCATION
1	Alamo Area Council of Governments	\$ 919,614
2	BakerRipley	\$ 1,408,077
3	Brazos Valley Community Action Programs	\$ 363,330
4	City of Fort Worth	\$ 539,456
5	Combined Community Action Agency	\$ 235,422
6	Community Action Committee of Victoria, Texas	\$ 327,901
7	Community Action Corporation of South Texas	\$ 1,255,097
8	Community Council of South Central Texas	\$ 362,716
9	Concho Valley Community Action Agency	\$ 194,799
10	Dallas County Department of Health and Human Services	\$ 885,745
11	Economic Opportunities Advancement Corporation of Planning Region XI	\$ 308,464
12	El Paso Community Action Program-Project Bravo	\$ 501,296
13	Greater East Texas Community Action Program	\$ 1,031,923
14	Hill Country Community Action Association	\$ 293,281
15	Nueces County Community Action Agency	\$ 173,918
16	Panhandle Community Services	\$ 298,887
17	Rolling Plains Management Corporation	\$ 470,468
18	South Plains Community Action Association	\$ 270,274
19	Texoma Council of Governments	\$ 584,433
20	Travis County Health and Human Services	\$ 330,170
21	West Texas Opportunities	\$ 295,621
	<b>Total</b>	<b>\$ 11,050,892</b>

Note: All figures are estimates and based on 2024 allocations. Staff will proportionally revise the award amounts according to formula upon Congressional approval and receipt of grant notifications from the U.S. Department of Health and Human Services.



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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File #: 632

Agenda Date: 6/13/2024

Agenda #: 23.

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Presentation, discussion, and possible action on the selection of International Center for Appropriate and Sustainable Technology to administer the Bipartisan Infrastructure Law Department of Energy Weatherization Assistance Program in Travis, Hays, Comal, Guadalupe, and Bexar counties

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) administers the Weatherization Assistance Program (WAP) in Texas through a network of 21 subgrantees using U.S. Department of Energy (DOE) WAP funds;

**WHEREAS**, on November 15, 2021, the President of the United States signed the Infrastructure Investment and Jobs Act (i.e., Bipartisan Infrastructure Law (BIL)) into law which provided the Department with an additional \$173 million in DOE weatherization funding;

**WHEREAS**, on December 9, 2021, the Board authorized staff to procure a statewide/regional multifamily BIL DOE WAP provider to assist the current WAP subgrantee network in providing weatherization assistance throughout Texas to assist in effectively expending and utilizing the funding allocated to Texas in the BIL;

**WHEREAS**, on August 16, 2023, Department staff released a Request for Applications (RFA) seeking qualified organizations to submit an application to administer BIL DOE WAP in the state of Texas;

**WHEREAS**, International Center for Appropriate and Sustainable Technology (ICAST) was the only qualified applicant to respond to the RFA and they were approved for an award by the Board on December 7, 2023, to administer BIL DOE WAP in El Paso and Hudspeth counties;

**WHEREAS**, because the Department did not receive a sufficient number of applications from qualified organizations to administer BIL DOE WAP in other regions of Texas and the RFA originally released was closed, staff also gained Board approval on December 7, 2023, to issue another, slightly modified, RFA;

**WHEREAS**, on March 18, 2024, Department staff released a second RFA seeking qualified organizations to administer BIL DOE WAP that will remain open on an ongoing basis until a sufficient number of viable applications for the remaining regions of Texas have been received;

**WHEREAS**, in response to the second RFA, two applications were received, only one of which was able to demonstrate positive past performance with DOE WAP, which is ICAST; and

**WHEREAS**, ICAST has satisfied the threshold requirements and the Previous Participation Review Approval Process and is being recommended for a second award of approximately \$9.5 million to administer BIL DOE WAP in Travis, Hays, Comal, Guadalupe, and Bexar counties;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to designate ICAST as a BIL DOE WAP service provider for Travis, Hays, Comal, Guadalupe, and Bexar counties and to be issued a contract for a BILWAP award according to the formula in 10 TAC §6.404 as described in the RFA, and to be augmented with additional BILWAP funding should production and performance warrant it, and to remain the BILWAP service provider in such counties thereafter as long as there is not good cause to terminate or until there is insufficient funding to justify their need.

#### **BACKGROUND**

The Department administers DOE WAP in Texas which is operated by a network of 21 private nonprofits and local government entities (i.e., subgrantees). Weatherization funding makes homes more energy efficient, safer and healthier for low income Texans. Each year the Department receives an annual allocation of WAP funds from DOE in the amount of approximately \$8 million. In addition to the annual allocation, the BIL was signed into law on November 15, 2021, injecting an additional \$173 million into Texas' WAP, a twenty fold increase in funding.

Because subgrantees have had difficulty in the past expending their yearly allocation of DOE WAP funding, in part due to DOE WAP requirements being quite stringent, the Department recognized that additional help was needed and sought Board approval to issue an RFA seeking qualified organizations to assist in the administration of the new BIL DOE WAP funding. On December 9, 2021, the Board granted staff the authority to release such an RFA hoping to receive either a viable statewide application to administer BILWAP or a sufficient number of viable regional applications to administer BILWAP in the major metropolitan regions of Texas (i.e., Houston, Dallas-Fort Worth, San Antonio, Austin, El Paso). There was significant delay between the Board's initial approval and the actual issuance of the first RFA on August 16, 2023, because staff was awaiting further guidance from DOE on basic requirements of the BILWAP program. ICAST was the only qualified applicant to respond to the first RFA and they were approved for an award by the Board on December 7, 2023, to administer BIL DOE WAP in El Paso and Hudspeth counties.

At the same Board meeting on December 7, 2023, the Board approved the release of another RFA to identify additional qualified providers and which would remain open in regions where there are no qualified applicants, to allow such applicants to respond at any time. In response to this RFA, staff received two applications to provide regional weatherization services. Staff evaluated each application and found only one, ICAST, that satisfied the RFA requirement that the applicant have experience with administering DOE WAP.

A notice of denial and appeal rights was sent to the applicant not recommended for award (i.e., Adults and Youth United Development Association) due to their application's failure to demonstrate experience administering DOE WAP. No request to appeal was received. Please refer to the table below for a list of applicants, counties for which they applied and initial approximate award amount for the recommended

awardee. This initial award may be augmented with additional funds by the Department should production and performance warrant it. These funds will be utilized to cover costs related to administration, direct program staff costs, and for the provision of direct client services and assistance.

<b>Applicant</b>	<b>Counties</b>	<b>Approximate Initial BILWAP Award Amount</b>
Adults and Youth United Development Association, Inc. (AYUDA)	Ector, Midland	NA
International Center for Appropriate and Sustainable Technology (ICAST)	Travis, Hays, Comal, Guadalupe, Bexar	\$9,503,489

The Previous Participation Review Approval Process includes a review of DOE awards prior to contract execution. This award is subject to this review and the review has been performed. ICAST has been recommended for award with no conditions.

Staff recommends that ICAST be designated as a BILWAP service provider and awarded a BILWAP contract for Travis, Hays, Comal, Guadalupe, and Bexar counties. They will remain a BILWAP service provider for Travis, Hays, Comal, Guadalupe, and Bexar counties as long as they remain in good standing or until there is insufficient funding to justify their need.

ICAST is a highly qualified organization and capable of successfully administering BILWAP as demonstrated in their application. Not only has ICAST already been awarded to administer BILWAP in El Paso and Hudspeth counties, they have also managed the multifamily WAP for the state of New Mexico since 2013 and manage Tennessee’s multifamily WAP. If the Board approves, actions will be taken by Department staff in collaboration with ICAST to provide multifamily weatherization services to eligible households in Travis, Hays, Comal, Guadalupe, and Bexar counties.



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 643

**Agenda Date:** 6/13/2024

**Agenda #:** 24.

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Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Program to allocate unutilized funds

**RECOMMENDED ACTION**

**WHEREAS**, on March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law which provides relief for individuals and businesses negatively impacted by COVID-19;

**WHEREAS**, Title XII of the CARES Act provides supplemental formula funding of at least \$5 billion to states to carry out activities under the Community Development Block Grant program (CDBG CARES) or CDBG-Coronavirus (CDBG-CV) among other programs to prevent, prepare for, and respond to COVID-19;

**WHEREAS**, the Department received \$141,846,258 in three allocations of CDBG CARES funding from the U.S. Department of Housing and Urban Development (HUD), to prevent, prepare for, and respond to COVID-19;

**WHEREAS**, on April 14, 2022, the Board approved awards totaling \$43,389,567 in CDBG CARES to 15 Community Resiliency Program (CRP) projects;

**WHEREAS**, since the time of the CRP Notice of Funding Availability (NOFA) release, \$5,592,882 was identified as unutilized funds to be reallocated during the timeframe outlined in the Board Action Request, increasing the total amount of awarded CRP funds to \$48,982,450;

**WHEREAS**, an additional \$729,369 has been identified as unutilized CDBG CARES funding available to be reprogrammed and staff expects that additional funds may become available;

**WHEREAS**, staff is now recommending the Board allow the allocation of CDBG CARES funds totaling \$729,369 into CDBG CARES eligible activities for existing and previous contracts with unmet needs; and

**WHEREAS**, staff is also recommending that the Board authorize staff to reallocate any additional CDBG CARES funds to existing and previous eligible CDBG CARES projects, or other activities allowable in the plan approved by HUD, as funding becomes available, without returning to the Board;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director, and his designees, are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the award of \$729,369 of unutilized CDBG CARES funding, conditioned on Previous Performance Review and approval or approval with conditions; and

**FURTHER RESOLVED**, should any other current or remaining CDBG CARES funds from CRP or other CDBG CARES activities be returned, deobligated, allocated by HUD, or otherwise made available, staff is authorized to allocate the funding to existing or previous awardees for identified unmet needs, in the Executive Director’s sole determination, with a total CDBG CARES awarded funds for CRP projects not to exceed \$5,000,000, or for other activities the amounts allowable in the plan approved by HUD.

**BACKGROUND**

On March 27, 2020, the CARES Act was signed into law. The CARES Act provides for \$5 billion to be distributed through the CDBG Program nationally and includes waivers of certain provisions of the CDBG regulations. The CDBG Program is a HUD-funded program designed to provide decent housing and a suitable living environment, and expand economic opportunities, principally for low- and moderate-income persons. The response by HUD to address the Coronavirus Pandemic under CDBG CARES allows the funding to be used for a range of eligible activities which prevent, prepare for, or respond to the spread of infectious diseases such as the coronavirus disease 2019 (COVID-19).

The Department’s Third Substantial Amendment to the 2019 State of Texas Consolidated Plan One Year Action Plan was approved on July 8, 2021. Six CDBG CARES programs were since established and implemented: Texas Emergency Rental Assistance Program, Texas Emergency Mortgage Assistance Program, Legal Services to Persons with Disabilities, Relief to Service Providers for Persons with Disabilities, Food Distribution Program, and the Community Resiliency Program.

In order to utilize all CDBG CARES funds prior to the end of the Department’s contractual deadline with HUD by September 2026, the Department has identified \$729,369 in unutilized CDBG CARES funding, as indicated in the table below. As the Department begins to ramp down the CDBG CARES Program, additional unutilized funds may continue to be identified.

<b>Program Activity</b>	<b>Recommended Allocation to future CRP</b>
Projected unused State Admin funds	\$ 729,369
<b>TOTAL AVAILABLE FOR CRP</b>	<b>\$ 729,369</b>

Staff reviewed each of the existing 18 CRP contracted projects previously awarded by the

Board, as well as prior successful CDBG CARES programs and used the following criteria to determine unmet needs:

- Subrecipients who did not originally receive an award for the full amount they requested under the NOFA application
- Subrecipients who did not request or receive the \$5,000,000 maximum allowable funding per project from the CRP NOFA
- Subrecipients which are “shovel ready”, but for which additional funding is needed to begin construction of the CRP project
- Subrecipients whose project has gone out for bid and the bid came in over budget
- Non-CRP Subrecipients who previously and successfully administered a CDBG CARES program and could continue the activity type if additional funding was available

After reviewing for the above criteria, staff identified:

- Five projects received an award very near to or at \$5,000,000 which was the CRP NOFA maximum cap, so are not eligible to receive additional funds because of the NOFA’s award cap;
- Four projects have been completed, and therefore do not require further assistance;
- Four projects are fully underway and do not need additional funds;
- One project has gone out to bid and the bid process has not closed;
- One project has received bids, however the bids came in higher than the available funds and the project will need to be redesigned;
- One project has gone out to bid twice, however the bid came in substantially higher than the available funds and the City is preparing to rebid;
- One project (City of Hillsboro) is underway, however it did not receive its full application request amount due to a shortage of funds at that time and is still interested in receiving their full award;
- One project (Matagorda County) has received a bid and is “shovel ready”, but needs additional funding to begin construction; and
- One previously successful CDBG CARES program (Legal services for persons with disabilities performed by Disability Rights Texas) is able to continue the activity type, however has no additional funding to continue.

Based on the criteria above and in order to fully utilize the funding, CDBG CARES staff has identified two current CRP subrecipients and one previous subrecipient, which successfully implemented their CDBG CARES project, as subrecipients which currently meet an immediate unmet need and will utilize the available unallocated funding. Several additional subrecipients have the potential to meet the criteria of having an unmet need once final construction bids are received, and should additional funds become available.

Subrecipient	Unmet Need	Funding Amount
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City of Hillsboro	Original CRP application requested 2 ambulances. Funding was available for 1 ambulance at the time of award. This award provides funds for the second ambulance.	\$ 267,159
Matagorda County	Project came in overbid and additional funding will go towards filling the gap as the unmet need portion of the project	\$ 387,210
Disability Rights Texas	Continued unmet need to provide Legal services to persons with disabilities	\$ 75,000
<b>TOTAL AVAILABLE</b>		<b>\$ 729,369</b>

With this action item, TDHCA will reallocate \$729,369 to three CDBG CARES subrecipients. Should any other CDBG CARES funds from CRP or other CDBG CARES activities be returned, deobligated, allocated by HUD, or otherwise made available, staff shall reallocate those funds to subrecipients with an unmet need with a total CRP project maximum not to exceed \$5,000,000 or for other activities, in the amounts authorized by the plan approved by HUD.

In the interest of time, any further reallocation of funds from CDBG CARES funds will not be presented to the Board, but will be reallocated as soon as a sufficient amount of funds are available to award until April 30, 2026, or as may be extended by the Executive Director. Any such awards will be reported to the Board at the next ensuing Board meeting.

Staff recommends the awards conditioned on PPR recommendation or recommendation with conditions, as reflected herein.





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 608

**Agenda Date:** 6/13/2024

**Agenda #:** 25.

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Presentation, discussion, and possible action on an order adopting the repeal and proposed new rule of 10 TAC Chapter 90, Migrant Labor Housing Facilities; and directing their publication 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**, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with Tex. Gov't Code Chapter 2306, Subchapter LL, for which these rules established the administrative procedures and substantive requirements, as required by statute;

**WHEREAS**, at the February 6, 2024, the Board approved an order proposing the repeal of, and new replacement rule for, 10 TAC Chapter 90, Migrant Labor Housing Facilities for publication and public comment in the *Texas Register*;

**WHEREAS**, public comment was accepted from February 23, 2024 to March 22, 2024, and staff received comment from three entities and has prepared a reasoned response; and

**WHEREAS**, the adoption of this new rule will be published in the *Texas Register*;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adopted repeal and adopted new rule 10 TAC Chapter 90, Migrant Labor Housing Facilities, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

**BACKGROUND**

Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921-2306.930), provides for the Department to serve as the agency that provides Licenses to any person or entity that establishes, maintains or operates at Migrant Labor Housing Facility, and outlines requirements relating to license applications, inspections, failing to meet standards, re-inspection, License issuance and term, License posting, fees, and suspension or revocation of

License.

While Tex. Gov't Code Chapter 2306, Subchapter LL, provides for the direction and authority of the licensing activity of Migrant Labor Housing Facilities, it does not provide the administrative specificity to fully implement this activity. As such, these rules set Department policy only so far as they provide the administrative implementation of the statutory activity.

At the Board meeting on February 6, 2024, the Board approved the publication of the proposed repeal and new rule for the Migrant Labor Housing Facilities. Three comments were received related to the proposed changes and are included as Attachment C to this item. Staff has reviewed all comments and provided a reasoned response to these comments in the following preamble.

Behind the preamble for the proposed new rule for adoption action, a draft of the rule is shown. The original blackline version of the rule with proposed updates will be posted in the *Texas Register*, as proposed by the Department after consideration of public comment.

**Attachment A: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities §§90.1 – 90.9**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities. 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. Wilkinson 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 an existing activity, adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to 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. The same required fee amounts for a license are being retained in the new rule.

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 an existing activity, including adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or 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 or 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. Bobby Wilkinson, Executive Director, 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 to eliminate an outdated rule while adopting a new updated rule under separate action. There will not be 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. Wilkinson 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 February 23, 2024, and March 22, 2024. Comments regarding the proposed repeal were accepted in writing and by email. No comment on the repeal was received.

The Board adopted the final order adopting the repeal on February 6, 2024.

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.

## **10 TAC Chapter 90, Migrant Labor Housing Facilities**

### **§90.1 Purpose**

### **§90.2 Definitions**

### **§90.3 Applicability**

### **§90.4 Standards and Inspections**

### **§90.5 Licensing**

### **§90.6 Records**

### **§90.7 Complaints**

### **§90.8 Administrative Penalties and Sanctions**

### **§90.9 Dispute Resolution, Appeals, and Hearings**

## **Attachment B: Preamble for adopting new 10 TAC Chapter 90, Migrant Labor Housing Facilities §§90.1 – 90.9**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 90, Migrant labor Housing Facilities §§90.1 – 90.9 with changes to the proposed text as published in the February 23, 2024, issue of the Texas Register (49 Tex Reg 941). The purpose of the new rule is to provide compliance with Tex. Gov't Code §2306, Subchapter LL and to update the rule to: clarify staff roles, acceptable inspection standards, Department contact methods and website changes. This rule will also update the number of showerheads and lavatory sinks required to be provided, mandate the presence of a working carbon monoxide detector when a combustible fuel is in use, update laundry machine requirements, and require a separate bed to be provided for all workers or couples. The procedures for refunds, follow up inspections, and license and application validity are clarified. Inspections where access to the facility is not allowed will be considered failed. License posting requirements are updated to address housing in hotels, and complaint procedures have been updated to include additional protections for the complainant.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being 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. Wilkinson has determined that, for the first five years the new rule will be in effect:

The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes 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 proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, including adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the 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, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter LL.

1. The Department has evaluated this new rule and determined that none of the strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for Migrant Labor Housing Facilities. Other than in the case of a small or micro-business that is an applicant for a new or renewal license, no small or micro business are subject to the rule. It is estimated that approximately 700 small or micro-businesses are such applicants; for those entities the new rule provides for clear and more transparent process for applying for a license for Migrant Labor Housing Facilities and does not result in a negative impact for those small or micro businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to applicants seeking to license a Migrant Labor Housing Facility. The fee for applying for a license is either \$75 or \$250 depending on if the applicant is able to provide an inspection report that is less than 90 days old from an acceptable state or federal agency such as the Texas Workforce Commission (TWC) or not. The higher fee is required if the Department must send its own inspectors.

There are approximately 1,100 rural communities in Texas potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 90 does not implement financial burdens on rural communities, as the cost are associated with submitting an application for a license are completed entirely by private parties. The approximate number of applications for Migrant Labor Housing Facilities located in rural areas are about 80%.

3. The Department has determined that because there are facilities that are in rural areas, this rule will help ensure housing provided to Migrant workers will be safe and in good condition. Besides the collection of fees associated with submitting an application, there are probable positive economic effects on small or micro-businesses or rural communities that house Migrant workers, although the specific impact is not able to be quantified.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or 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 new 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 the rule only addresses the procedures for applicants applying for Migrant Labor Housing Facilities license; therefore, no local employment impact statement is required to be prepared for the new 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 only provides procedures for an applicant to obtain a Migrant Labor

Housing Facility license, 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. Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be codifying current policies and procedures to the Migrant Labor Housing Facility rule. There will not be any significant economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been substantially in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any requirements that would cause additional costs to applicants.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between February 23, 2024, and March 22, 2024. Comments regarding the proposed rule were accepted in writing with comments received from:

1. Duncan McCook, Texas Cotton Ginners’ Association
2. Dave Mauch, Attorney, Texas RioGrande Legal Aid, Inc.
3. Sidney Beaty, Research Analysis, Texas Housers

#### **Rule Section §90.1**

**Comment Summary:** No comments received.

#### **Rule Section §90.2**

**Comment Summary:** Commenter 3 supports the language to define couple.

**Staff Response:** Staff appreciates the support of commenter 3 on the language used in the rule.

#### **Rule Section §90.3**

**Comment Summary:** Commenters 2 and 3 support the requirement that the applicant must facilitate the inspection of the housing or have the inspection automatically fail.

Commenter 2 expressed concern on the increasing use of hotels and motels for long-term worker housing and the suitability of these facilities for this purpose based on the cooking and laundry facilities provided, available space to those housed, and prior absence of are require pre-occupancy inspection.

**Staff Response:** Staff appreciates the support of commenters 2 and 3. Concerning public accommodation use, the previous comment appears to have been written prior to Texas Workforce Commission (TWC) requiring employers to obtain a Department Migrant Labor Housing Facility (MLHF) license for all employers meeting the licensing requirement. This

requirement to obtain the TDHCA MLHF license includes employers using public accommodation housing. Part of obtaining a MLHF license for public accommodation housing is first obtaining a passing preoccupancy TDHCA inspection of the housing facility, which is beholden to the same standards as employer-owned housing. This has caused an increase in the number of public accommodations being inspected.

Concerning laundry facility access, as mentioned above, public accommodation housing that is subject to this rule has the same requirements as above, so these licensees are required to provide access to laundry facilities as specified in 10 TAC §90.4(10).

Concerning kitchen facilities, licensees are required to abide by the square footage requirements mentioned in 10 TAC §90.4(2). The Department is aware that public accommodations housing is often used without kitchen facilities that would meet the Occupation Health and Safety Administration (OSHA) standards cited in the Texas rule. The Department mirrors the TWC enforcement of the cited federal regulations in its enforcement of the Texas rule.

Concerning who is liable to obtain a license, the Department requires employers that “provide” Migrant Farmworker Housing to obtain the license for the housing of their employees. The comment mentions difficulty of determining the true owners of the housing in some instances due to a variety of arrangements of varying degrees of formality. This rule does not exclude any housing from these responsibilities due to the formality or lack thereof of how it was obtained, so the phrase “or obtain[ed] under other working arrangements,” was added to address these situations.

#### **Rule Section §90.4**

**Comment Summary:** Commenter 2 was concerned about the misapplication of the Range Housing Standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304 with Department’s addition of these acceptable federal standards for inspection.

Commenter 2 and 3 support the carbon monoxide detector being required in facilities that use gas or other combustible fuel. Commenter 3 further suggested this be applied to all housing facilities.

Commenter 1 requests clarification if the change to require individual beds be provided to each worker couple includes bedding. Commenters 2 and 3 supports the minimum bed requirement, but suggest a mattress and minimum size requirement for couples.

Commenters 2 and 3 request that the Department reinstate the previous TDHCA requirement of 4 burner stoves in all housing.

**Staff Response:** The Departments lists these as the acceptable standards for clarity, but omitted to specify that the Range Housing Standard, as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304, are only applicable when the Department accepts an inspection conducted by another state or federal agency such as TWC. When accepting these inspections the Department cannot dictate another agency’s procedures, however when another agency’s inspection is not used the Department will conduct its own inspection. All TDHCA



inspection are based on the OSHA Employment, and Training Administration (ETA) standard, and TDHCA requirements. The proposed rule has been updated to clarify this.

The Department deems the addition of carbon monoxide detectors would unnecessarily reduce the supply of otherwise acceptable housing if imposed on facilities using only electric appliances.

Staff concurs the proposed wording of should be clarified and has updated the change to require a bed and clean mattress instead of the term “bedding.” The minimum size for a bed shared by a couple was also added. The requirement to provide a four-burner stove, instead of other currently allowable alternatives, exceeds the federal minimum standards, and could be limiting for otherwise acceptable housing. Thus, the Department is not recommending further change based on this comment.

### **Rule Section §90.5**

**Comment Summary:** Commenter 3 raises the question on the lower fee payment for applications that do not require a TDHCA inspection, and requests that the language allowing Department discretion in issuing a higher fee be removed.

Commenter 2 and 3 request that the Department codify what supplemental documentation would be requested in addition to an employer’s self-certification of compliance with the requests of 10 TAC §90.4(c).

Commenter 2 supports the changes in §90.5(i and m).

Commenter 3 requests a stricter penalty schedule.

**Staff Response:** The Department does not agree that raising the application fees is appropriate at this time. The higher fee is charged since an on-site inspection will be conducted by the Department. The fees were originally lowered since the Department did not conduct an on-site inspection, and to incentivize compliance with the licensing requirement. This is having the desired effect, and will need to continue for now.

The items listed on the attestation are the same as the Department requirements from 10 TAC §90.4(c). This attestation was originally required so that the Department would be able to accept other state and federal inspections. These items are checked for during TDHCA inspections. Requiring specific additional checklist items would prove to be difficult due to these requirements not applying to all types of housing and would prove to be an administrative burden to the Department at current staffing levels. Currently the Department requests additional documentation from employers based on risk of noncompliance and these requests are situation specific. The Department will add a penalty of perjury statement to the attestation form within 120 days.

Staff appreciates the support of commenter 2.

The penalty rate is specified in statute along with the procedures for enforcement, so at this time the Department cannot make any changes.

#### **Rule Section §90.6**

**Comment Summary:** Commenter 2 is concerned that the language allowing hotels to post the license and complaint line poster in the lobby may result in it being posted where workers will not see it.

**Staff Response:** The language of the change was updated to require that if this option is chosen the poster must be in a common area and easily visible.

#### **Rule Section §90.7**

**Comment Summary:** Commenters 2 and 3 supports the changes in §90.7(b) and (b)(4).

**Staff Response:** Staff appreciates the support of commenters 2 and 3.

#### **Rule Section §90.8**

**Comment Summary:** No comments received.

#### **Rule Section §90.9**

**Comment Summary:** No comments received.

### **CHAPTER 90 MIGRANT LABOR HOUSING FACILITIES**

#### **§90.1 Purpose**

The purpose of Chapter 90 is to establish rules governing Migrant Labor Housing Facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921 - 2306.933). It is recognized that aligning state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs, such as with the U.S. Department of Labor's H2-A visa program, allows for cooperative efforts between the Department and other state and federal entities to share information. This will reduce redundancies and improve the effectiveness of the required licensing.

#### **§90.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921 - 2306.933, are capitalized. Other terms in 29 CFR §§500.130 - 500.135, 20 CFR §§654.404 et seq., and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) Act--The state law that governs the operation and licensure of Migrant Labor Housing Facilities in the state of Texas, found at Tex. Gov't Code, §§2306.921 - 2306.933.

(2) Board--The governing board of the Texas Department of Housing and Community Affairs.

(3) Business Day--Any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) Business hours--8:00 a.m. to 5:00 p.m., local time.

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

(6) Director--The Executive Director of the Department ~~or its~~ their designated staff.

(7) Family--A group of people, whether legally related or not, that act as and hold themselves out to be a Family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

(8) Couple--A pair of individuals, people, whether legally related or not, that act as and hold themselves out to be a couple; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement.

(98) License--The document issued to a Licensee in accordance with the Act.

(109) Licensee--Any Person that holds a valid License issued in accordance with the Act.

(110) Occupant--Any Person, including a Worker, who uses a Migrant Labor Housing Facility for housing purposes.

(124) Provider--Any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained (or otherwise established) by the Provider. An agricultural industry employer or a contracted or affiliated entity may be a Provider if it owns, contracts, or pays for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, regardless of whether any rent or fee is required to be paid by a Worker. A common short-term property rental owner or operator that does not exclusively rent to Migrant Agricultural Workers is not a Provider solely because they have rented to Migrant Agricultural Workers. The Provider is the operator under Tex. Gov't Code §2306.928.

(132) Worker--A Migrant Agricultural Worker, being an individual who is:

(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

### **§90.3 Applicability**

(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by Providers must be inspected and comply

with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.

(b) Where agricultural employers own, lease, rent, ~~or~~ otherwise contract for, or obtain under other working arrangements, Facilities "used" by individuals or Families that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a Migrant Labor Housing Facility, and is the responsible entity for obtaining and "maintaining" the License on such Facility, as those terms are used in Tex. Gov't Code §2306.921 --.922.

(c) An applicant for a License must facilitate an inspection by the Department with the owner of the property(ies) at which the Migrant Labor Housing Facility is located, or the inspection will be considered failed.

(d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with Providers to house Workers are not required to be licensed.

(e) No License would be required where a Worker is housed exclusively with his/her Family using their own structure, trailer, or vehicle, but temporarily residing on the land of another.

(f) A Facility may include multiple buildings on scattered or noncontiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

#### **§90.4 Standards and Inspections**

(a) Facilities must follow the appropriate housing standard as defined in 29 CFR §500.132, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the "ETA and OSHA Housing Standards"), or if applicable the Range Housing standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304. The inspection checklists setting forth those standards are available on the Department's website at <https://www.tdhca.texas.gov/migrant-labor-housing-facilities><https://www.tdhca.state.tx.us/migrant-housing/index.htm>.

(b) Inspections of the Facilities of applicants for a License and Licensees may be conducted by the Department under the authority of Tex. Gov't Code §2306.928 upon reasonable notice and using the appropriate inspection forms noted in subsection (a) of this section. Inspections may be conducted by other State or Federal agencies, on behalf of the Department, on forms promulgated by those agencies.

(c) In addition to the standards noted in subsection (a) of this section, all Facilities must comply with the following additional state standards:

(1) Facilities shall be constructed in a manner to insure the protection of Occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition. All doors to the exterior shall have working locks and all windows shall have working interior latches. Each

unit shall have a working smoke detector. Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each Facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher. [A working carbon monoxide detector must be present in all units that use gas or other combustible fuel.](#)

(2) Combined cooking, eating, and sleeping arrangements must have at least 100 SF per person (aged 18 months and older); the portion of the Facility for sleeping areas must include at least [a designated 50 square feet](#) SF per person.

(3) Facilities for Families with children must have a separate room or partitioned area for adult Family members.

(4) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In Family housing units, separate sleeping accommodations shall be provided for each Family unit.

(5) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.

(6) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with any applicable local or state rules on food services sanitation.

(7) Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck bunks shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.

(8) ~~Communal~~ Bathrooms [in aggregate](#) shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.

(9) In all communal bathrooms separate shower stalls shall be provided.

(10) Mechanical clothes washers [with dryers or clothes lines](#) shall be provided in a ratio of one per 50 persons. ~~In addition to mechanical clothes washers, one laundry tray per 100 persons shall be provided.~~ In lieu of mechanical clothes washers, one laundry tray [\(which is a fixed tub \(made of slate, earthenware, soapstone, enameled iron, stainless steel, heavy duty plastic, or porcelain\) with running water and drainpipe for washing clothes and other household linens\)](#) or tub per 25 persons may be provided.

(11) All Facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water

heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.

(12) A separate bed and clean mattress bedding must be provided for each individual worker or Couple. If a single bed is provided to a couple, it may not be smaller than a full queen size.

### **§90.5 Licensing**

(a) Tex. Gov't Code, §2306.922 requires the licensing of Migrant Labor Housing Facilities.

(b) Any Person who wants to apply for a License to operate a Facility may obtain the application form from the Department. The required form is available on the Department's website at <https://www.tdhca.texas.gov/migrant-labor-housing-facilities><https://www.tdhca.state.tx.us/migrant-housing/index.htm>.

(c) An application must be submitted to the Department prior to the intended operation of the Facility, but no more than 60 days prior to said operation. Applications submitted to the Department that are not complete, due to missing items and/or information, expire 90 days from Department receipt. In this circumstance, the fees paid are ineligible for a refund.

(d) The fee for a License is \$250 per year, except in such cases where the Facility was previously inspected and approved to be utilized for housing under a State or Federal migrant labor housing program, and that such inspection conducted by a State or Federal agency is provided to the Department. Where a copy of such inspection conducted by a State or Federal agency is less than 90 days old, has no material deficiencies or exceptions, and is provided to the Department prior to the Department's scheduled inspection, the application fee shall be reduced to \$75. However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee ~~may~~ apply.

(e) The License is valid for one year from the date of issuance unless sooner revoked or suspended. Receipt of a renewal application that is fully processed resulting in the issuance of a renewed license shall be considered as revoking the previous license, with the effective and expiration dates reflecting the renewal. All licenses have the same effective date as their issuance.

(f) Fees shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any License that has been issued in reliance upon such payment being made is null and void.

(g) A fee, when received in connection with an application is earned and is not subject to refund. At the sole discretion of the Department, refunds may be requested provided the fee payment or portion of a payment was not used toward the issuance of a License or conducting of an inspection.

(h) Upon receipt of a complete application and fee, the Department shall review the existing inspection conducted by a State or Federal agency, if applicable and/or schedule an inspection

of the Facility by an authorized representative of the Department. Inspections shall be conducted during Business Hours on weekdays that the Department is open, and shall cover all units that are subject to being occupied. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this License, only if notice is given to the Department prior to the inspection in order for the Department to consider the inspection as being conducted by an authorized representative of the Department in accordance with Tex. Gov't Code §2306.928. In addition, a certification of the additional state standards described in 10 TAC §90.4(c), relating to Standards and Inspections, must be provided by the applicant, along with any supplemental documentation requested by the Department, such as photographs.

(j) The Person performing the inspection on behalf of the Department shall prepare a written report of findings of that inspection. [The Department, when it determines it is necessary based on risk, complaint, or information needed at time of application, may conduct follow-up inspections.](#)

(1) If the Person performing the inspection finds that the Migrant Labor Housing Facility, based on the inspection, is in compliance with 10 TAC §90.4, relating to Standards and Inspections, and the Director finds that there is no other impediment to licensure, the License will be issued.

(2) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the License will be issued subject to such conditions as the Director may specify. The applicant may, [in writing by signed letter](#), agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department, or treat the Director's imposing of conditions as a denial of the application.

(3) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action, the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise [the inspector or the Department](#), within 60 days from the date of written notice of the findings, of a time when the Facility may be re-inspected. If a re-inspection is required, the License [may will](#) not be eligible for the reduced fee described in subsection (d) of this section and the balance of the \$250 fee must be remitted to the Department prior to the re-inspection. If Occupants are allowed to use the Facility prior to the re-inspection the applicant must acknowledge the operation of the Facility in violation of these rules, and pay a fee to the Department of up to \$200 per day of operation through the date the Facility is approved by the inspector, and eligible for licensing. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the License will be issued. If it is the determination of the Director that the applicant made all reasonable efforts to complete any repairs and have the property re-inspected in a timely manner, the penalty for operating a Facility without a License may be reduced to an amount determined by the Director, but not less than \$200.

(4) If the person performing the inspection finds that the Migrant Labor Housing Facility is in material noncompliance with §90.4 of this chapter, relating to Standards and Inspections, or that one or more imminent threats to health or safety are present, the Director may deny the application. In addition, the Department may also take action in accordance with §90.8, relating to Administrative Penalties and Sanctions.

(5) If access to all units subject to inspection is not provided or available at time of inspection, the inspection will automatically fail.

(j) If the Director determines that an application for a License ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the License, and such order shall:

(1) Be clearly incorporated by reference on the face of the License;

(2) Specify the conditions and the basis in law or rule for each of them; and

(3) Such conditions may include limitations whereby parts of a Migrant Labor Housing Facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(k) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs, Attention: Migrant Labor Housing Facilities, P.O. Box 12489, Austin, TX 78711-2489 [or migrantlaborhousing@tdhca.texas.gov](mailto:migrantlaborhousing@tdhca.texas.gov).

(l) The Department shall ~~issue a letter informing~~ inform the applicant in writing of what is needed to complete the application and/or if a deviation found during the inspection requires a correction in order to qualify for issuance of a License.

(m) Any changes to an issued License (such as increasing occupancy and/or adding a building or unit) may be made at the sole determination of the Department, based on current rules and policy, within 30 days of the License issuance. Any changes requested more than 30 days after License issuance will require the submission of an application for renewal, new inspection, and new fee payment, per the applicable rate.

(n) An applicant or Licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a License or an election to appeal the imposing of conditions upon a License, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

#### **§90.6 Records**

(a) Each Licensee shall maintain and upon request make available for inspection by the Department, the following records:

(1) Copies of all correspondence to and from the Department. This shall include the current designation of each Provider;



- (2) A current list of the Occupants of the Facility and the date that the occupancy of each commenced;
  - (3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and
  - (4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence to or from such approving or permitting authorities.
- (b) All such records shall be maintained for a period of at least three years.
- (c) A Licensee shall post in at least one conspicuous location in a Facility or in at least one building per site for a scattered site Facility:

(1) A copy of the License;

(2) A decal provided by the Department with the licensing program logo and the year for which the License was granted; and

(3) A poster provided by the Department or the following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this Facility or your unit, the Texas Department of Housing and Community Affairs (the Department) is the state agency that licenses and oversees this Facility. You may make a complaint to the Department by calling, toll-free, 1-833-522-7028, or by writing to Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any Facility or Provider from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condición u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalación. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-833-522-7028 o escribiendo a Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. La oficina tiene personas que hablan español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación por el operador contra personas que se quejen contra ellos.

(4) For hotels, the License and poster described in §90.6(4)(c)(3) may be posted in the lobby or front desk area only if this area is clearly visible, allows for easy reading of the aforementioned documents, and is readily accessible to the hotel guests and general public. If the hotel refuses to allow this posting, the License and poster described in §90.6(4)(c)(3) then must be posted in each room used to house the workers.

### **§90.7 Complaints**

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted

after giving the Provider notice of the inspection and an opportunity to be present. The complainant will be contacted by the Department as soon as possible but no later than 10 days ~~after~~ making a complaint and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved.

(b) A Licensee, through its Provider, shall be provided a copy of the substance of any complaint (or, if the complaint was made verbally, a summary of the matter) and given a reasonable opportunity to respond. Generally, this shall be 10 business days.

(1) Complaints may be made in writing or by telephone to 1-833-522-7028.

(2) Complaints may be made in English, Spanish, or other language.

(3) To the fullest extent permitted by applicable law, the identity of any complainant shall be maintained as confidential (unless the complainant specifically consents to the disclosure of their identity or requests that the Department disclose their identity).

(4) Licensees and Providers shall not engage in any retaliatory action against an Occupant for making a complaint in good faith. Any retaliatory action may be subject to administrative penalties and sanctions per §90.8 of this chapter.

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

(d) The Department may conduct interviews, including interviews of Providers and Occupants, and review such records as it deems necessary to investigate a complaint.

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the Provider.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions, or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;

- (2) The findings of fact;
  - (3) The specific provisions of the Act and/or these rules found to have been violated;
  - (4) The required corrective action;
  - (5) Any administrative penalty or other sanction assessed; and
  - (6) The date on which the order becomes effective if not appealed or otherwise resolved.
- (i) Complaints regarding Migrant Labor Housing Facilities will be addressed under this section, and not §1.2 of this title, relating to Department Complaint System to the Department.

#### **§90.8 Administrative Penalties and Sanctions**

- (a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess administrative penalties or impose other sanctions as set forth in subsections (b) - (d) of this section. Nothing herein limits the right, as set forth in the Act, to seek injunctive and monetary relief through a court of competent jurisdiction.
- (b) For each violation of the Act or rules a penalty of up to \$200 per day per violation may be assessed.
- (c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected License.
- (d) Administrative penalties assessed regarding Migrant Labor Housing Facilities will be addressed exclusively under this section, and are not subject to 10 TAC Chapter 2, relating to Enforcement.

#### **§90.9 Dispute Resolution, Appeals, and Hearings**

- (a) A licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a license or issuing a license subject to specified conditions.
- (b) In lieu of or during the pendency of any appeal, a licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the migrant labor housing facility affected is located, unless the licensee agrees otherwise.
- (c) A licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (relating to Alternative Dispute Resolution).
- (d) All administrative appeals are contested cases subject to and to be handled in accordance with Chapters 2306 and 2001, Tex. Gov't Code.





## Texas Cotton Ginners' Association

211 West Bagdad Avenue  
Round Rock, Texas 78664  
512.476.8388  
Fax 512.476.8215  
Website [tcga.org](http://tcga.org)

### Officers and Executive Committee

**Mike Thompson**  
*President*  
Bishop, Texas

**Phillip Kidd**  
*Vice President*  
Edmonson, Texas

**Rex Ford**  
*Secretary*  
Stamford, Texas

**Chris Berry**  
*Immediate Past President*  
Wellman, Texas

**John Steelhammer**  
*Mathis, Texas*

**John Engel**  
*Palacios, Texas*

**Willis Taubert**  
*Miles, Texas*

**Michael Yeary**  
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**Dan Jackson**  
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**Tony Newton**  
*Slaton, Texas*

**Curtis Stewart**  
*Spade, Texas*

**J. Kelley Green**  
*Executive Vice President  
and Treasurer*  
Round Rock, Texas

March 18, 2024

Texas Department of Housing and Community Affairs  
Attn: Wendy Quackenbush  
P.O. Box 13941  
Austin, Texas 78711-3941

[wendy.quackenbush@tdhca.texas.gov](mailto:wendy.quackenbush@tdhca.texas.gov) – emailed 3/18/24

Re: Comments on New 10 TAC Chapter 90, Migrant Labor Housing Facilities

Dear Ms. Quackenbush,

Texas Cotton Ginners' Association (TCGA) appreciates the opportunity to comment on this important rule. TCGA represents over 99% of the approximately 180 cotton ginning facilities in the state of Texas, ginning about 6 million bales of a typical United States crop of 16 million bales. TCGA's members typically employ five to 20 seasonal agricultural employees. Many of these employers provide Migrant Labor Housing and we anticipate this number will increase in the future. We reviewed the above referenced proposed rule, and would respectfully offer the following comments:

In the new rule, section 90.4(c)(12) states "A separate bed and bedding must be provided for each individual worker or Couple." This implies housing operators must provide "bedding" as well as the actual bed. Our members all supply the beds as specified in the rule. However, many do not provide bedding (i.e., sheets, blankets, pillows, etc.). The federal rules for Sleeping Facilities do not require housing operators to provide bedding. Title 20 CFR Part 654.416 requires that beds be provided with clean mattresses, but also states "Any bedding provided by the housing operator be clean and sanitary."

Requiring employers to provide bedding along with the bed is a large expense. Some housing facilities are quite large and will require a high volume of bedding items that the housing operator must maintain, wash, and rotate as employees come and go during the season. This bedding will also require replacement on a routine basis from wear.

This new specification in the proposed rule exceeds current federal standards for sleeping facilities. TCGA suggests that TDHCA reword Section 90.4(c)(12) as follows: "A separate bed must be provided for each individual worker or Couple. Any bedding, if furnished by the housing operator, must be provided on the same basis".

Thank you for allowing us to comment on this rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Duncan B. McCook".

Duncan B. McCook  
Manager of Regulatory Affairs



121 S. Main St., Ste. 100  
Victoria, TX 77901  
Phone: (361) 226-5542  
Fax: (956) 591-8752  
www.trla.org

March 22, 2024

Wendy Quackenbush  
Texas Department of Housing and Community Affairs  
Rule Comments  
via email to: wendy.quackenbush@tdhca.texas.gov

*Re: Comments regarding proposed changes to 10 TAC § 90*

Texas RioGrande Legal Aid, Inc. (“TRLA”), is a non-profit law firm which provides free legal services to low-income Texans. TRLA’s farmworker team has decades of experience providing services to migrant farmworkers in Texas and several other states, and has engaged with TDHCA for years regarding the agency’s enforcement of migrant housing regulations. We conduct outreach statewide to H-2A and non-H-2A farmworkers and are familiar with the general state of farmworker housing in Texas. We write to comment on the Department’s proposed changes to 10 TAC § 90.

**I. Comments regarding the Department’s proposed changes**

**a. § 90.3(c) and § 90.5(i)(5) – Applicability**

The Department has proposed amendments to §§ 90.3(c) and 90.5(i)(5) which clarify that housing providers must make the housing available for inspection, including all units being certified. This will improve the condition of migrant farmworker housing by clarifying that the Department should conduct an inspection of the entire facility, ensuring compliance for all units.

**b. § 90.4(a) – Range Housing Standards**

The Department has proposed an amendment to § 90.4(a) to include the “range housing” standards for H-2A workers certified in open range livestock jobs. While this change will ensure compliance with the open range livestock housing provisions, we caution the Department to clarify when these regulations are “applicable”.

The range housing regulations are intended to recognize the reality of open range livestock work. In these jobs, workers travel over an open range with livestock over the course of the season. Because they are traveling over large distances and sleeping in different locations, fixed-site housing is replaced by campers and, in some cases, tents.

In our experience, employers frequently miscategorize employees as open range livestock herders when they are not performing open range work. Employers are incentivized to do so, as the required pay levels for open range herders are significantly lower than those for

fixed-site livestock workers.<sup>1</sup> Unfortunately, state and federal regulators frequently certify H-2A jobs as open range when the workers are actually performing fixed-site work.<sup>2</sup>

The TDHCA plays an important role in this regulatory scheme. To the extent that the Department conducts inspections of housing and finds that the housing is fixed-site rather than open range housing, the Department could better enforce the law by making its own determination as to whether the work is actually open range herding. The Department could clarify this by adding an explicit statement that it will only consider the open range housing requirements to be applicable when the work performed is actually open range housing.

c. § 90.4(c)(1) – Carbon Monoxide Detectors

The Department has proposed amending § 90.4(c)(1) to add a requirement for carbon monoxide detectors to be provided where units use gas or other combustible fuel. This requirement will make farmworker housing safer.

Farmworkers – like all Texans – often use combustible heat sources in cold weather. There is no requirement in state or federal law that housing be equipped with central heating or electrical heating. Frequent and long-lasting power grid failures have led to an epidemic of carbon monoxide poisoning. During the 2021 winter storms, at least 19 Texans died of carbon monoxide poisoning<sup>3</sup> and more than 1,400 sought care from emergency rooms and urgent care clinics for exposure.<sup>4</sup> Carbon monoxide detectors significantly reduce these risks; one study found that mandatory carbon monoxide detectors in New York were a factor in the 25-50% decrease in overall instances of CO poisoning.<sup>5</sup>

Additionally, farmworkers often use combustible fuel for cooking in small, enclosed spaces. This is particularly concerning in hotel rooms, which are increasingly being used as housing and which frequently do not have openable windows. Carbon monoxide exposure is a risk in such environments.

d. § 90.4(c)(12) – individual bed requirement

The Department proposes adding § 90.4(c)(12), clarifying the requirement that workers be provided with individual beds. This requirement will contribute to the safety and dignity of farmworker's living conditions. The Department may also wish to take this opportunity to clarify the requirements regarding bedding.

In our experience, forced bed sharing is a significant issue in farmworker housing. Our experience is that employers frequently require workers to share beds. This practice is

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<sup>1</sup> See <https://flag.dol.gov/wage-data/adverse-effect-wage-rates>

<sup>2</sup> TRLA has litigated at least one such case in recent years. See the attached complaint in *Rodriguez de Luna v. Childress*. See also *Saenz-Mencia v. Allred*, 808 F.3d 463 (10<sup>th</sup> Cir. 2015).

<sup>3</sup> See

[https://www.dshs.texas.gov/sites/default/files/news/updates/SMOC\\_FebWinterStormMortalitySurvReport\\_12-30-21.pdf](https://www.dshs.texas.gov/sites/default/files/news/updates/SMOC_FebWinterStormMortalitySurvReport_12-30-21.pdf), at 3.

<sup>4</sup> See <https://www.texastribune.org/2021/04/29/texas-carbon-monoxide-poisoning/>

<sup>5</sup> See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4504304/>

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particularly common in hotel and motel housing; TRLA outreach staff have observed that housing providers commonly bait-and-switch regulators by reducing the total number of hotel rooms they have reserved for workers once the hotel has been certified, choosing to force workers into cramped quarters where they must share beds. Requiring workers to share beds for months at a time is undignified – professional workers would consider such conditions beneath them; why should farmworkers be any different?

The Department may also use this as an opportunity to clarify specific requirements for bedding. Proposed (c)(12) requires employers to provide a “bed and bedding” for each worker, but “bed” and “bedding” are not defined. The Department could improve farmworker health by clarifying that a bed requires a mattress. Housing providers sometimes provide workers with folding cots that have no mattresses, which are unsuitable for several months of continued use. Several other states have mattress requirements for farmworker housing.<sup>6</sup>

Additionally, the Department could tighten this language by clarifying that beds provided to couples be at least queen size. As currently proposed, the regulations would permit a housing provider to provide a single twin mattress to a couple, which is obviously inadequate sleeping space.

e. § 90.5(i) and (m) – Licensing

Proposed § 90.5(i) clarifies that the Department has the authority to perform follow-up inspections if necessary. Proposed § 90.5(m) clarifies that changes to the license more than 30 days after the initial inspection will require an additional inspection. These will further the statute’s goal of providing safe and dignified housing for farmworkers.

Compliance issues in farmworker housing often arise after the inspection: accidents can damage the structure of the housing, plumbing systems can become overstressed, and employers can bring in more workers than there are beds, just to give a few examples. To give one recent example, the Department’s recent investigation of Cantu Harvesting involved housing violations that did not arise until mid-season. Clarifying that the Department can conduct in-season inspections, and requiring a new inspection for substantial changes, will enable the Department to address these issues as they arise.

f. § 90.6(c)(4) – Posting in hotels

Proposed § 90.6(c)(4) allows hotels and motels to post the license in the “lobby or front desk area.” The vague language of this section may frustrate the purpose of the poster requirement.

The purpose of the posting requirement is to inform farmworkers and their families of the regulations governing worker housing and how they can make complaints. Requiring the poster to be in the “lobby or front desk area” will often likely result in the poster being

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<sup>6</sup> *E.g.* WAC 246-358-135 (Washington state), 10 N.Y.C.R.R. § 15.6 (New York), Attachment B (North Carolina state guidance interpreting OSHA guidance to require individual beds).

posted behind the front desk, in a position where it is not legible to workers. This would frustrate the purpose of the posting requirement. This could easily be resolved by prohibiting housing providers from hanging the poster behind the front desk, and by requiring the poster be in a location where all of the text is legible.

g. § 90.7(b) and (b)(4) - Complaints

The Department proposes revising § 90.7(b)(4) to provide penalties against employers who retaliate against housing occupants who file complaints in good faith. The Department also proposes amending § 90.7(b) to clarify that a copy of the substance of the complaint, rather than a copy of the complaint itself, shall be provided to the Provider. Both changes will further the goal of creating safe and secure farmworker housing by discouraging or preventing retaliation.

It is unfortunately common for employers to retaliate against low-wage workers who complain about working conditions. Other enforcement agencies, such as the U.S. Department of Labor, prioritize retaliation protections, finding that it is “of paramount importance” to enforce these provisions to ensure that other worker protection laws actually work.<sup>7</sup> TRLA currently represents a group of farmworkers who were retaliated against by an employer after they complained about their housing conditions.

§ 90.7(b) will also help protect housing occupants from retaliation by preserving their anonymity. We believe that these changes will lead to improved conditions in farmworker housing.

## **II. Additional changes**

In 2019, TRLA commented on the Department’s most recent proposal to amend these regulations. Several of those comments were not addressed in the regulations, and we re-urge them here.

a. § 90.3(a), (b), and (d) - public accommodations exemption

One major concern with farmworker housing is the increasing use of hotels and motels for long-term housing. While we understand the Department’s concern that an unwitting hotelier should not be liable simply for unknowingly housing a few migrant workers without obtaining a license, the overriding concern is that the current language regarding who is a “provider” and who must obtain a license could potentially leave a loophole for employers to evade regulation.

§§ 90.3(a) and (b) state that an employer becomes a provider if they “own, lease, rent, or otherwise contract for” housing to be provided for migrant workers. This language would protect more farmworkers if it were broadened. Employers often arrange for housing with third parties without contracting directly with those parties. In those situations, the housing

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<sup>7</sup> <https://www.dol.gov/sites/dolgov/files/WHD/fab/fab-2022-2.pdf>

provider is aware that workers are being housed, but it is unclear whether the housing provider and employer are required to obtain a license.

As discussed in our previous comment, and as the U.S. Department of Labor recently acknowledged in regulatory changes to the H-2A program, public accommodation housing is a particular concern when it comes to enforcement. *See generally* 84 Fed. Reg. 36168 (July 26, 2019).

Attached is a copy of TRLA's comments to the 2020 regulatory changes which discusses this issue in more depth.

b. § 90.5(h) – attestation process for additional state standards

New § 90.5(h), formerly § 90.5(g), provides that applicants must certify that the housing complies with the additional state standards, “along with any supplemental documentation requested by the Department, such as photographs.” This language could be clarified to ensure better compliance by requiring employers to submit some documentation other than a mere attestation.

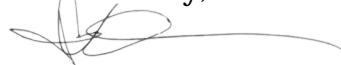
As discussed in our comment to the 2020 regulatory changes, mere attestations are demonstrably ineffective. H-2A employers are required to attest under penalty of perjury that they are complying with all applicable state and federal laws. Our experience is that employers simply sign these kinds of vague attestations without investigating whether they actually are in compliance. Prior to 2020, there were almost no H-2A housing units in the state that were licensed by TDHCA under state law. All the same, hundreds of H-2A employers signed attestations under penalty of perjury that they were complying with all applicable state laws. More effective enforcement would involve a standardized list of documentation requirements for each additional state standard – photos, receipts, invoices, etc.

Again, our attached 2020 comment discusses this issue in greater depth.

c. § 90.4 – cooking facilities

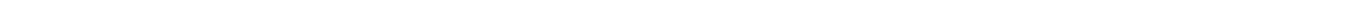
We re-urge our comment that the Department's decision to remove former § 90.2(e)(1)(A), which required four-burner stoves, has created fire hazards in worker housing. As noted in our 2020 comment and in the DOL's preamble to recent H-2A regulatory changes, this is particularly concerning. *See* 84 Fed. Reg. 36168, 36193 (July 26, 2019).

Sincerely,



Dave Mauch  
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November 22, 2019

Tom Gouris  
Texas Department of Housing and Community Affairs  
221 E. 11th St.  
Austin, TX 78701  
[via email to: tom.gouris@tdhca.state.tx.us](mailto:tom.gouris@tdhca.state.tx.us)

**Re: Comments regarding proposed changes to 10 TAC § 90**

Dear Mr. Gouris:

Texas RioGrande Legal Aid, Inc. (TRLA) writes to comment on the proposed regulatory changes to 10 T.A.C. Chapter 90. We thank the Texas Department of Housing and Community Affairs (TDHCA or the “Department”) for the invitation to comment on the proposed regulations.

TRLA is a federally-funded non-profit that provides free legal services to low-income Texans. Our farmworker program covers Texas and six southern states. We are active in the farmworker law community and regularly meet with farmworker advocates across the country to discuss issues that impact our clients.

It has been our experience that the quality of farmworker housing varies greatly from state to state and that states with stricter farmworker housing regulations and more enforcement resources see a resulting increase in the quality of farmworker housing. Simply put, employers often cut corners by providing substandard housing, and it is only through regulatory enforcement and oversight that bad actors are brought into compliance.

Unlike many states, Texas’s current standards for farmworker housing are quite protective of workers – even more so than federal standards. For instance, unlike the federal standards, the current TDHCA regulations do not exempt hotels, apartment complexes, and other public accommodations. In addition, the existing regulations provide several standards that are not contained in both sets of federal regulations, located at 10 TAC § 90.3 currently and § 90.4(c) in the proposed regulations. The current regulations, if fully enforced, would do much to improve the quality of farmworker housing in Texas.

Unfortunately, Texas does not dedicate the resources to enforcement of its farmworker housing regulations that other states do. Until 2018, not a single employer participating in the H-2A visa

program (a federal visa program in which employers can sponsor agricultural workers for temporary visas), pursuant to which an employer must provide free housing to workers, was licensed by the TDHCA. At present, less than 40% of the 364 employers that participate in the H-2A program and bring in at least three workers to Texas have a license from the TDHCA.<sup>1</sup>

It is the TDHCA's decision to accommodate H-2A employers' objections to complying with existing TDHCA regulations on migrant labor housing facilities that drives these proposed changes. As the Department notes in the purpose statement in § 90.1, the TDHCA's goal is to close the gap between the federal standards and the more stringent state standards by limiting the amount of TDHCA resources expended on inspections of facilities that obtain inspections under federal standards. Proposed 10 TAC § 90.1. This would have two major negative impacts on farmworker housing in Texas. First, it would decrease the quality of offered housing by reducing the number of inspections undertaken. Second, it would drastically decrease the already extremely low amount of resources the Department dedicates to enforcing these regulations.

Below are line-by-line comments on the proposed changes.

### **Proposed § 90.1 Purpose Statement**

The purpose statement, added in these regulations, does not accurately reflect the purposes underlying the statute, which requires that the Board “adopt rules to protect the health and safety of persons living in migrant labor housing facilities” – full stop. Tex. Gov't Code § 2306.931(b). The licensing system serves to ensure that migrant farmworkers and their dependents have access to safe and decent housing as a matter of their own health. Further, safe housing for migrant farmworkers is a broader public health concern. That is because farmworkers who are in unsafe or unsanitary conditions may transmit diseases that can be spread to consumers via our food supply, creating national epidemics. Minimum housing habitability standards play a vital role in this process. Inadequate facilities for cooking, showering, or washing clothes covered in pesticide residue could all exacerbate farmworkers' health issues, causing dangerous germs or pesticide residue to be transmitted onto food.

It is also inaccurate to state that the purpose of the statute and regulations is to bring the state regulations into line with federal regulations or to reduce redundancies between the state and federal regulations. *See* Tex. Gov't Code § 2306.931(b). Instead, that is only the purpose of these specific regulatory changes; it is not the animating legislative purpose for the pre-existing state protections.

It is undeniable that protecting the health and safety of migrant farmworkers remains an important concern. TRLA has represented several groups of migrant farmworkers in housing cases in Texas in recent years, including in lawsuits or federal administrative proceedings against the following employers:

- AJK Enterprises - Van Horn (workers housed in overcrowded cinderblock facility forced to sleep in shipping containers that had been used as ostrich pens and not cleaned)

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<sup>1</sup> The enabling statute for these regulations only applies to persons who provide housing for at least two families or three workers. *See* Tex. Gov't Code § 2306.921(3).

- Borders Melon – Eagle Pass (overcrowded, moldy housing without beds, with non-locking door near dangerous area of the Texas-Mexico border)
- Village Farms – Monahans (housing infested with bed bugs for years)
- Longoria Farms – Refugio (workers allegedly housed 6 to a small hotel room with 2 beds, no cooking facilities, no laundry facilities to wash clothes covered in pesticides) (federal administrative procedures are brought in lieu of a lawsuit, so a copy of the H-2A job order has been attached.)
- Wade Pennington & Sons, LLC (workers housed in abandoned cabin without adequate beds, toilet facilities, with leaky ceilings and holes in windows and walls, among other problems)

### **Proposed § 90.3 Applicability**

#### **i. § 90.3(a) and (d) - Public Accommodations Exemption**

We appreciate the Department’s clarification in § 90.3(a) that state law does apply regardless of whether the hotel/public accommodation exemption under federal law applies. *See* proposed 10 TAC § 90.3(a); *cf.* 29 U.S.C. § 1823(c), 20 C.F.R. § 655.122(d)(1)(ii). This is one of the greatest strengths of the Texas law’s ability to protect farmworkers. Our experience has been that compliance rates with substantive housing standards are low in public accommodation housing, particularly in the H-2A program.

However, § 90.3(a) and (d) impermissibly limit Tex. Gov’t Code § 2306.922 by excluding entities that do not contract directly with growers or farm labor contractors. The statute provides for strict liability for anyone who establishes, maintains, or operates a migrant labor housing facility; it does not limit liability to only one party. Tex. Gov’t Code § 2306.922. This includes owners of public accommodations, such as hotels or mobile home parks, that do not have a direct contractual relationship with employers or farm labor contractors. In many parts of the state, the custom is for workers to stay in low-rent mobile home parks or hotels that are in poor condition and wholly inadequate for long-term occupancy. The statute properly recognizes this reality and sweeps these entities into its ambit.

There are two primary drivers of low compliance rates in public accommodation housing. First, as the Department is aware, the H-2A regulations do not require a pre-occupancy inspection of public accommodation housing. 20 C.F.R. § 655.122(d)(1)(ii). Rather, the U.S. Department of Labor (USDOL) and the Texas Workforce Commission (TWC), which administer the H-2A program in Texas, rely on the employer’s attestation that housing meets the applicable local, state, or federal standards. It is exceedingly rare for either the TWC or USDOL to exercise any oversight of public accommodation housing beyond verifying that the employer has attested to the housing’s compliance with the applicable standards. These attestations have done nothing to actually ensure compliance with the law. As the Department is aware, less than two years ago, not a single H-2A employer was licensed by the Department. Still, every single H-2A employer in Texas attested under penalty of perjury that it complied with all applicable state laws, which would include the state migrant housing law. Zero of the several hundred H-2A employers in Texas had the required TDHCA housing license, and we are not aware of a single H-2A application being denied for lack of required housing licensure under state law.

The other primary driver of noncompliance in public accommodation housing is that most public accommodation housing is not designed for long-term occupancy and thus does not meet the requirements of a regulatory system that rightfully considers the reality that migrant farmworkers spend several months at a time moving between migrant labor housing facilities. Hotels often lack adequate laundry facilities or storage facilities for clothing, meaning that workers have to keep their pesticide-covered clothing in close proximity to their sleeping quarters, creating another vector of secondary pesticide exposure. Hotels also often lack dining or cooking facilities that are adequate for the number of workers being housed. Workers are thus forced to either live off of unhealthy pre-prepared food for months at a time or to cook in unsafe conditions. Many often bring hot plates into hotel rooms, which creates fire hazards and causes respiratory issues; often dishes and cooking utensils are washed in bathroom sinks or bathtubs, creating plumbing blockages.

The issues with poor conditions in public accommodation housing are well-documented. In the preamble to its current proposed regulatory changes to the H-2A program, for example, the USDOL notes that compliance in public accommodations housing is often nonexistent and uses this problem to justify the imposition of additional housing standards for public accommodation housing:

Despite these requirements, in WHD's enforcement experience, H-2A employers often fail to secure sufficient rooms and/or beds for workers. This results in unsafe and unsanitary conditions for workers. Overcrowding, which is among one of the most common issues the Department encounters in rental and/or public accommodations, may result in unsanitary conditions, pest infestations, and outbreaks of communicable diseases. In some cases, for example, employers required workers to share a bed, required workers to sleep on the floor in a sleeping bag, or converted laundry or living spaces into sleeping facilities by putting mattresses on the ground. In other situations, as many as eight workers have been housed in a single room. Moreover, in rooms where workers also cook, the failure to provide sufficient space for workers to cook and sleep and/or to provide sanitary facilities for preparing and cooking can lead to health issues from improperly cooked food and/or pest and rodent issues. WHD also often encounters employers that do not provide sufficient access to laundry facilities when housing workers in rental and/or public accommodations. Sufficient access to laundry is critical to ensure the health of workers, as workers often perform work in fields sprayed with pesticides, which comes in contact with workers' clothing. Further, WHD has encountered numerous instances of faulty or improperly installed heating, water heating, and cooking equipment in rental and/or public accommodations, posing serious safety risks to workers. In some instances, for example, electrical currents have run through water faucets. In other instances, workers have used hot



plates that were not plugged into a grounded electrical line, causing the hot plates to catch fire. *See* 84 Fed. Reg. 36,168, 36193 (July 26, 2019).

The experiences noted here by the USDOL track the experiences of TRLA staff in visiting public accommodation housing provided to farmworkers. For example, TRLA’s case against Longoria Farms in Refugio, Texas, discussed above, shows the conditions that exist even in the highly-regulated H-2A program.

Further, the existing regulatory framework already addresses the Department’s concern that it might be unfair to enforce the law against public accommodation owners who are unaware that their tenants are farmworkers. If the Department believes that an operator of a public accommodation is not an enforcement priority for any reason, the Department is free to exercise its discretion under existing law to decline to issue a fine.

ii. *§ 90.3(b) - Clarification Regarding Who Must Obtain License*

We appreciate the Department’s clarification in § 90.3(b) that employers, as “providers,” are properly considered to be persons who “establish, maintain, or operate” migrant labor housing within the meaning of Tex. Gov’t Code § 2306.922. As discussed above, we believe that the term “provider” is useful in that it encompasses the many different parties who may provide housing to migrant farmworkers – employers, farm labor contractors, private landlords, hotel operators, etc. However, the language in this section could be read as impermissibly narrowing the statute in several ways.

First, this section only allows that “agricultural employers” might become “providers” by owning, leasing, renting, or otherwise contracting for facilities used by workers. Proposed 10 TAC § 90.3(a). But, as the Department knows from its own experience, it is not only employers that may act as providers, but also farm labor contractors and other parties. The Department should eliminate this possible reading of the proposed regulation by adding the clause “or other persons” after “agricultural employers” in this section.

Second, this section implies that a contractual relationship must exist between the Provider and the owner/operator of the housing in order for the law to require that the Provider obtain a license. Proposed 10 TAC § 90.3(a). This would add an unnecessary and often difficult-to-prove element to the legal inquiry into whether a party is obligated to obtain a license for housing. It could also create an exploitable loophole that would allow employers to avoid liability under the statute altogether.

The agricultural labor market is notoriously informal; workers often travel long distances to work in unfamiliar places based on word of mouth or vague promises from labor contractors. Though federal law requires that employers and farm labor contractors provide workers with written disclosures detailing the wages and working conditions of the jobs they are offered, compliance with this requirement is low. In many instances, farmworkers do not even know the name of the farm on which they are working. As a result, formal contractual relationships memorialized in writing are few and far between. In recognition of the limits of contract law in a

farmworker context, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) introduces the concept of a “working arrangement” – a device to enforce agreements between parties where the formal elements of contract law may be impediments to holding parties to their word. *See* 29 U.S.C. § 1822(c).

Thus, in many instances a formal written contractual relationship may not exist between the agricultural employer and the owner/operator of the housing facility. Section 90.3(b) as drafted could be construed as eliminating liability in those instances. Agricultural employers could easily find ways to avoid the appearance of a direct contractual relationship with the owner/operator of a housing facility, such as by putting up a farm labor contractor to arrange for the housing or by requiring workers to book their own rooms individually and then simply paying the workers extra for the cost of the housing. Thus, this section as proposed would likely decrease the ability of the Department to enforce its regulations and to improve the quality of farmworker housing in Texas.

Finally, § 90.3(b) wrongly implies that only one party is responsible for maintaining licensure of a migrant labor housing facility. The section states that the “Provider . . . is *the* responsible entity for obtaining and ‘maintaining’ the License on such Facility” (emphasis added). The use of the exclusive “the” here wrongly implies that only one party is required to get a license. This cannot be squared with the plain language of Tex. Gov’t Code § 2306.922 and .933, both of which create joint and several liability for “a person” who violates the statute. Indeed, where multiple parties could be considered to “establish, maintain, or operate” the housing, the statute makes it clear that all parties are jointly and severally liable if none obtains a license.

*iii. § 90.3(d) – Exemption for Worker-Owned Mobile Housing*

This section provides that no license for housing would be required in the instance where a worker houses themselves or their family members in a trailer, recreational vehicle, or other mobile housing that they own but park on the land of another person. The Department has clarified during stakeholder calls that this language was only intended to provide for an exemption in the instance where a worker is bringing their family in their vehicle to reside temporarily on another party’s land. As TRLA noted in those stakeholder meetings, we believe that such an exemption should account for the reality that very often farm labor contractors who provide housing to workers are also workers themselves. This exemption could thus undermine the Department’s goal to ensure that employers and labor contractors provide safe and sanitary housing to workers in their employ.

**Proposed § 90.4 Standards and Inspections**

The Department proposes that the standards currently located at 10 TAC § 90.2 be simplified by requiring that a housing provider meet the federal Employment and Training Administration (ETA) or Occupational Safety and Health Administration (OSHA) standards and a list of state standards. These amendments simplify the language in the current regulations but would omit two major protections in the current regulations.

Four-burner stoves would no longer be required, as they are in the Department's current regulations. *See* 10 TAC § 90.2(e)(1)(A). Two-burner hot plates are allowed under the federal standards. However, hot plates are often inadequate for the number of workers in a facility. Further, hot plates are a particular risk in hotels with no other cooking facilities. It is common practice for workers in hotel rooms to use hot plates, which are a fire hazard and which often create smoke in the room, thereby causing a health risk due to the fact that hotel windows often cannot be opened.

Housing providers would also not be required to develop and execute a vector control plan for vermin infestation, as they are required to under the current regulations. 10 TAC § 90.2(m). Pest infestations are a massive problem in farmworker housing – TRLA clients report their sleeping facilities being infested with roaches, spiders, tarantulas, scorpions, and bedbugs. TRLA has recently brought major bedbug cases against housing providers in Texas and across the country, and bedbugs remain a large problem in Texas. Requiring providers to develop a vector control plan reduces the health risk posed by pest infestation.

Department staff have raised concerns that the phrase “vector control plan” is too vague to be enforceable. “Vector control” is a widely-used term in public health literature to reference plans to combat public health risks by controlling their means of ingress. *See, e.g.*, Centers for Disease Control page on vector control for public health risks, <https://www.cdc.gov/nceh/ehs/etp/vector.htm>. Should the Department be concerned that the requirement to have a “vector control plan” by itself is too vague, the Department is free to require specific elements to be included in the plan. *See, e.g.* 40 TAC § 19.1914 (detailing specific elements of emergency plans that assisted living facilities are required by regulation to have on site).

Finally, these revised standards omit the reference to the Texas Commission on Environmental Quality (TCEQ) Public Drinking Water Standard, which is currently located in 10 TAC § 90.2(b). While both sets of federal standards do require that water quality meet some standards, they are vague as to *which* standards apply. The OSHA regulations provide that the water supply must be “approved by the appropriate health authority,” 29 C.F.R. § 1910.142(c)(1), while the ETA regulations require that the water supply “meet[] the standards of the State health authority,” 20 C.F.R. § 654.405. While we believe that in Texas both the ETA and OSHA standards do require the employer to meet the TCEQ Public Drinking Water Standard, the explicit reference to the standard in the current regulation clarifies this issue. 10 TAC § 90.2(b). Should the Department omit this reference, the standard would be vague and difficult to enforce.

### **Proposed § 90.5 Licensing**

*i. § 90.5(d) – Reduced Fee for Facilities Inspected by Other Agencies*

The Department proposes a reduced licensing fee of \$75 for facilities that have been inspected by the TWC or another state or federal agency pursuant to federal regulations. This would drastically reduce funding for the Department's enforcement of the statute, decreasing the quality of farmworker housing across the state.

The revenue generated by the TDHCA's licensing fees is the only source of funding for the Department's enforcement of this statute. The Department has taken the position that it cannot use its general operating budget to enforce Tex. Gov't Code § 2306.921 *et seq.* and must instead rely on monies specifically appropriated for the migrant labor housing program. As a result, monies were appropriated specifically for the enforcement of the migrant labor housing program in both the 2017 and 2019 legislative sessions in the amount of the previous biennium's total revenues from licensing fees. Should the legislature continue to do so in future sessions, the Department's reduction of licensing fees would have a direct and negative impact on its funding for enforcing the law.

The decrease in cost from \$250 per license to \$75 would have a substantial impact on the Department's funding. As of September 2019, there were 364 H-2A employers in the state of Texas that employed at least three workers (and thus were legally obligated to obtain a license from the TDHCA). The total cost of the licensing fee reduction for these 364 facilities would be \$63,700 per year, which is equal to the amount appropriated to TDHCA for the current biennium. This would obviously have a deleterious effect on TDHCA's ability to fund enforcement of the law, especially when the TDHCA's primary argument for its lack of greater enforcement of existing law is the Department's lack of resources.

*ii. § 90.5(g) – Attestation Process for Facilities Already Inspected by Other Agencies*

We appreciate the Department's goal to reduce the use of its limited resources spent in inspecting facilities that are inspected under federal law. Nevertheless, the process for streamlining the licensing of such facilities, as laid out in § 90.5(g), would not adequately safeguard the interests of farmworkers. The Department proposes that housing providers that are inspected by the TWC pursuant to federal standards (most or all of whom participate in the H-2A guestworker program) need not obtain an inspection to confirm that they also comply with state standards. Instead, such providers can submit their federal inspection, an attestation that they meet those state standards that go beyond federal law, and whatever documentation the Department may choose to require.

As discussed above, the Department's reliance on attestations is demonstrably misplaced. Given that hundreds of H-2A employers currently violate the law while attesting under penalty of perjury that they do not, attestations are not a reasonable method with which to generate compliance.

The proposed regulations are also inconsistent with the TDHCA's own internal audit of the migrant labor housing program, which found severe deficiencies in the Department's enforcement of existing law. The audit found that TDHCA was failing to meet the existing standards at 10 TAC § 90 and that even facilities which received inspections were many times not in compliance with the Department's existing rules. It also found that documentation of inspections was scarce; where facilities did not meet standards they were subject to reinspection before licensure but were licensed with no evidence that any reinspection occurred or that the deficiencies had been rectified. The Department's proposed changes could have aimed to address the findings of the internal audit by strengthening the Department's inspection process and requirements for documentary evidence from housing providers. Unfortunately, they do the

exact opposite by creating a drastic reduction in the amount of inspections delivered and without any clear requirements for what documentary evidence the Department should require from employers to complete reinspections. A copy of the internal audit is attached for reference.

The Department's goal should be to ensure that housing providers truly comply with the additional state-level standards laid out in § 90.4. The Department should provide a standardized list of documentation acceptable to prove that a facility meets those standards and require employers to submit that documentation with their license application. Photographs, where applicable, should be submitted electronically with all original metadata, including EXIF metadata which can be used to verify where and when the photographs were taken. This is important to ensure that the photos that housing providers submit are photos of the current housing conditions at the same facility for which they seek a license. Housing providers could otherwise easily submit old photos of facilities which have since fallen into disrepair, or photos of different facilities altogether than the facilities actually being provided to workers. If the Department relies on attestations, the attestation should list each specific additional standard that housing providers must comply with in § 90.4. It should also provide a checkbox for each requirement, so that the housing provider must check each box to affirm that the offered housing meets the requirement. Finally, attestations should be required under penalty of perjury, as they are for the H-2A program.

Should the Department maintain the current proposal, it should clarify § 90.5(g) to provide that *only* an inspection conducted within the past 90 days shall be sufficient to issue a license at the reduced rate and without an inspection. We believe that this is the Department's intent, but the regulations as worded appear to provide that any entity that has been inspected by a state or federal agency once need never be inspected again.

### **Proposed § 90.6 Records**

The Department has added a requirement that the housing provider post at the housing site an informational poster and decal provided by the Department that verify that the facility has been inspected and advise workers of their rights. We commend this proposed change, since such a posting requirement will support the Department's goal of spreading awareness of the licensing program among workers.

### **Proposed § 90.8 Administrative Penalties and Sanctions**

The Department has proposed to clarify that penalties be assessed on a per-day, per-violation basis. This eliminates ambiguities regarding enforcement and empowers the Department to fine violators of the law appropriately. As discussed above, it has been our experience that active enforcement programs generate better outcomes for worker housing. We welcome the Department's efforts in enforcing these regulations.

Grower advocates have voiced concern that the Department should not assess fines for dates before the date with which a grower is given official notice by the Department of a violation. We believe that codifying such a proposal in the regulations would severely negatively impact the Department's enforcement of the statute, which would have a corresponding negative impact

on the quality of farmworker housing in Texas. As we have discussed above, in our experience delivering legal services to migrant farmworkers in seven states, as well as our familiarity with the state of farmworker housing nationwide, states that have a more aggressive enforcement regime see returns in a better overall quality of farmworker housing.

Further, we believe the growers' concerns are unfounded. The regulations as worded give the Department the discretion to reduce fines or to decide not to issue fines at all. Should the Department believe that a fine should not be assessed for a violation where the housing provider was not on notice, the Department need not write that into the rule – it can simply exercise its existing discretion. Writing that limitation expressly into the rule would hamstring the Department's ability to enforce the law in cases where the violation is plain (such as where structural deficiencies could not have developed overnight), or where violations have been properly documented by those living on the property (but where the TDHCA arrives to conduct an inspection sometime after having received the documentation). The proposed changes would have the contrary effect of decreasing housing providers' day-to-day concern about housing conditions, and hence, the housing's overall quality. Instead, the proposed revisions would incentivize housing providers to bury their heads in the sand with respect to violations in the housing that they provide, since the Department could only fine them after providing formal notice to them of the violative conditions (conditions often which exist on property which the Provider themselves control, including access thereto).

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We again thank the Department for the opportunity to provide public comment on these regulations as well as the opportunity to provide stakeholder feedback to the Department outside of the formal rulemaking process. Should you have any questions or wish to discuss these comments any further, please do not hesitate to contact us.

Sincerely,

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Encl.:

- Lawsuits filed by TRLA on behalf of migrant farmworkers subjected to poor housing conditions against AJK Enterprises, Borders Melon, Village Farms, and Wade Pennington & Sons.
- H-2A job order for Longoria Farms
- TDHCA internal audit of migrant farmworker housing program

March 22, 2024

Attn: Wendy Quackenbush  
Texas Department of Housing and Community Affairs  
Rule Comments  
P.O. Box 13941  
Austin, Texas 78711-3941

RE: Migrant Labor Housing Facilities Public Comment

To whom it may concern:

Thank you for the opportunity to comment on the Migrant Labor Housing Facilities rules. We offer the following comments.

Sincerely,

Texas Housers  
Sidney Beaty, Research Analyst

Motivation, Education, & Training, Inc. (MET)  
Stacey Taylor, Executive Director

Tierra del Sol Housing Corporation  
Rose Garcia, Executive Director

Kathy Tyler

Please contact Sidney Beaty at Texas Housers with any questions: [sidney@texashousing.org](mailto:sidney@texashousing.org)



We support proposed language that clarifies and strengthens the enforcement of state standards.

- §§90.3(c) and 90.5(i)(5): Automatic failure of an applicant that does not facilitate an inspection or allow access to all units during the inspection is an appropriate enforcement response.
- §§90.5(i) and 90.5(m): Clearly stating that TDHCA can conduct follow-up inspections or new inspections in cases where changes are made to an issued license will help address issues that arise mid-season or during occupancy.
- §§90.7(b) and 90.7(b)(4): Administrative penalties for retaliatory action and providing licensees that are the subject of complaints a copy “of the substance” of the complaint (as opposed to the complaint itself) will help protect workers’ anonymity and ability to advocate for themselves.

### §90.4(c)(1)

We support the addition of required carbon monoxide detectors in units with gas or other combustible fuel. However, we recommend that carbon monoxide detectors should be required for all units in line with US Consumer Product Safety Commission recommendations.<sup>1</sup> Carbon monoxide poisoning was a major cause of death during Winter Storm Uri as people used stoves, grills, and other dangerous means of heating their homes.<sup>2</sup> This is also a concern in the wake of hurricanes and other natural disasters, as people may try to use generators with improper ventilation when the power goes out.<sup>3</sup> In cases where misuse of equipment unintentionally leads to harm, such as during Winter Storm Uri or in the wake of natural disasters, carbon monoxide detectors can save lives.

### §§90.2(8) and 90.4(c)(12)

We support the proposed requirement that a separate bed and bedding be provided for each worker or couple, and we support the language used to define couple. However, TDHCA should add language to require a “bed **with a clean mattress** and bedding” to align with ETA standards at 20 CFR §654.416(a) and range housing standards at 20 CFR §655.235(l). TDHCA should also update the language so that each couple must be provided a queen size mattress, bed, and bedding.

### §90.4(c)13

TDHCA should add a new item under §90.4 to bring back a requirement for a four-burner stove. Former Migrant Labor Housing Facilities rules required a working four-burner stove when workers or their families cooked in their individual units and at least one working four-burner stove per 10 persons or two families when cooking and eating takes place in communal rooms or buildings separate from sleeping accommodations.<sup>4</sup> Current rules would allow the use of hot plates, which pose a major fire risk and are particularly prevalent in hotel or motel housing accommodations that lack cooking facilities.

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<sup>1</sup> US Consumer Product Safety Commission. (January 18, 2001). CPSC Recommends Carbon Monoxide Alarm for Every Home. [www.cpsc.gov/Recalls/2001/cpsc-recommends-carbon-monoxide-alarm-for-every-home](http://www.cpsc.gov/Recalls/2001/cpsc-recommends-carbon-monoxide-alarm-for-every-home)

<sup>2</sup> Texas Health and Human Services. (December 31, 2021). February 2021 Winter Storm-Related Deaths – Texas. [www.dshs.texas.gov/sites/default/files/news/updates/SMOC\\_FebWinterStorm\\_MortalitySurvReport\\_12-30-21.pdf](http://www.dshs.texas.gov/sites/default/files/news/updates/SMOC_FebWinterStorm_MortalitySurvReport_12-30-21.pdf)

<sup>3</sup> Iqbal, S., Clower, J.H., Hernandez, S.A., Damon, S.A., & Yip, F.Y. (October 2012). A Review of Disaster-Related Carbon Monoxide Poisoning: Surveillance, Epidemiology, and Opportunities for Prevention. *American Journal of Public Health*, 102(10), 1957-1963. [doi.org/10.2105/AJPH.2012.300674](https://doi.org/10.2105/AJPH.2012.300674)

Stevens, B.R., & Ashley, W.S. (April 2022). Fatal Weather-Related Carbon Monoxide Poisonings in the United States. *Weather, Climate, and Society*, 14, 373-386. [doi.org/10.1175/WCAS-D-21-0130.1](https://doi.org/10.1175/WCAS-D-21-0130.1)

<sup>4</sup> 10 TAC §90.2(e)(1)(A) and (2)(A), archived September 19, 2017.

[https://web.archive.org/web/20170919035700/https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_floc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=90&rl=2](https://web.archive.org/web/20170919035700/https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_floc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=90&rl=2)

### §90.5(d)

As has been discussed in public comment in prior years, a higher application fee would result in more funding for enforcement and better outcomes for workers and their families.<sup>5</sup> TDHCA should strike language that lowers the application for facilities that have been previously inspected and approved. If the language is to remain, we recommend removing the proposed change from “may” back to “will” to ensure that inspection actions result in appropriate application fees and enforcement funding.

### §90.5(h)

TDHCA should clearly describe what documentation can be used to ensure state standards are being followed. The current description of the self-certification process is vague, which makes it hard to establish how thorough that process might be or how it might be improved.

### §90.5(i)(3)

In line with past Texas Housers comments relating to Administrative Penalties and Debarment rules submitted in January 2024, we advocate for the inclusion of meaningful penalty floors to ensure that enforcement actions are impactful. The current rules allow the Director to reduce the penalty to "not less than \$200," the one-day maximum fine for a violation under §90.8(b). The minimum fee that the Director can require should not be such a low flat number, and TDHCA should consider enacting a separate minimum in cases where violations impact the health and safety of workers and their families.

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<sup>5</sup> Texas Department of Community Affairs. (October 10, 2019). *Governing Board Meeting*. [www.tdhca.texas.gov/sites/default/files/board/transcripts/191010-board.pdf](http://www.tdhca.texas.gov/sites/default/files/board/transcripts/191010-board.pdf) p. 87



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 665

**Agenda Date:** 6/13/2024

**Agenda #:** 26.

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Presentation, discussion, and possible action on approval of loans from the Departments 2024-1 National Housing Trust Fund Notice of Funding Availability

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 666

**Agenda Date:** 6/13/2024

**Agenda #:** 27.

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Presentation, discussion, and possible action on extensions of the development periods for Sierra Vista and Eastern Oaks

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 664

**Agenda Date:** 6/13/2024

**Agenda #:** 28.

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Report on Third Party Requests for Administrative Deficiency under 10 TAC §11.10

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 650

**Agenda Date:** 6/13/2024

**Agenda #:** 29.

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Presentation, discussion, and possible action regarding a 9% Housing Tax Credit scoring appeal for Anacua Senior Village

**RECOMMENDED ACTION**

**WHEREAS**, Anacua Senior Village is a 2024 competitive 9% Housing Tax Credit Application that requests \$2,000,000 in Housing Tax Credits to reconstruct 104 units, 92 of which as affordable, serving the elderly population in Mission;

**WHEREAS**, a pre-application was filed for this Application in January 2024 which indicated that the Application would include 90 Units;

**WHEREAS**, because the Units increased by more than 10% from pre-application to Application, the Application does not qualify for six points related to Pre-application Participation, and these points were deducted from the Application's score as indicated in the scoring notice issued on May 23, 2024;

**WHEREAS**, the Applicant appealed this scoring notice to the Executive Director, who denied the appeal; and

**WHEREAS**, the Applicant requested that this matter be presented to the Governing Board.

**NOW, therefore, it is hereby**

**RESOLVED**, that the appeal of the scoring notice for Anacua Senior Village is hereby denied.

**BACKGROUND**

Anacua Senior Village is a 2024 competitive 9% Housing Tax Credit Application that requests \$2,000,000 in Housing Tax Credits to reconstruct 104 units, 92 of which as affordable, serving the elderly population in Mission. A pre-application was submitted in January 2024, and the full Application was submitted on March 1, 2024. The pre-application indicated that the total number of Units in the Application would be 90, but the total included in the final Application was 104, which is approximately a 15% increase between the pre-application and the Application.

In accordance with 10 TAC §11.9(e)(3), an Application is eligible for six points related to Pre-application Participation so long as certain criteria are met, including that the total number of Units does not increase by more than 10% from pre-application to Application. Because this criteria was not met, staff issued a scoring notice on May 23, 2024, which reduced the Application's total score by six points. An appeal of that scoring notice was timely submitted on May 29, 2024.

The appeal asserts that the number of Units reported in the pre-application was an error, and that the presence of this error creates an inconsistency within this Application that should be

curable as an Administrative Deficiency, as defined at 10 TAC §11.1(d)(2). While the Qualified Allocation Plan (QAP) does allow for inconsistencies in an Application to be corrected, a variance between the units proposed at pre-application and the Units included in the final Application does not create an inconsistency that is necessary for staff's evaluation of the Application, which is the basis of the Administrative Deficiency process, as is established in the definition:

Administrative Deficiency - Information requested by Department staff to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application

Such variances in Unit count are expected, and are explicitly contemplated in the rule in question. Changes to the Application that are submitted only to qualify for points claimed in the Application are prohibited by 10 TAC §11.1(d)(2)(B)(ii), and because staff has identified no other purpose for the Units in the pre-application to be updated, the QAP appears to prohibit the requested change.

Additionally, in the event that an Administrative Deficiency were issued and the Unit count in the pre-application were changed, the Application would still not qualify for pre-application points, as the total number of Units would still have increased by more than 10% from the pre-application's submittal to the full Application.

Accordingly, the Executive Director denied the appeal on June 3, 2024. Staff recommends that the Board also deny the appeal for the reasons outlined above.





MHA Anacua Senior Village, Ltd.  
1300 E 8<sup>th</sup> Street  
Mission, TX 78572

May 29, 2024

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

Re: #24137 Anacua Senior Village – Scoring Notice Appeal

Dear Mr. Wilkinson,

MHA Anacua Senior Village, Ltd, (the “Partnership”) respectfully appeals the scoring notice received for Application #24137, Anacua Senior Village, in Mission, Texas. The Pre-Application Participation points (“pre-app points”) for the subject Application were deducted from the Application’s self-score because “the total number of units increase by more than 10% from pre-application to Application.” While this is technically true, it is the result of an error at pre-application: the pre-application was intended to be submitted with a unit count of 95; it was inadvertently submitted at 90 units.

Background

Anacua Senior Village is an At-Risk Reconstruction Application sponsored by the Mission Housing Authority in Mission, Texas. The subject Application replaces seventy-year-old Public Housing stock that has long passed its useful life – the new units are being built on the same site. The unit mix will include 26 Public Housing units which will serve the area’s lowest income tenants (proforma rents are just above 10% AMI, which will be supported by a Public Housing Operating Subsidy). The unit mix will also have 12 market rate units, although “market rate” is really a misnomer in this scenario. In reality, these unrestricted units will serve tenants who are over-income for the LIHTC program, but still can’t afford a true market rate rent. Proforma rents for these unrestricted units are below the 80% rent limit for the area (see attached Exhibit A). Furthermore, despite being exempt as an elderly development (55+ designation), all of the zoned schools have satisfactory TEA ratings, which is beneficial for the few tenants who may be guardians to minor children.

When the pre-application log was released, the Partnership confirmed the accuracy of the subject pre-application’s score and tiebreaker distance but did not notice that the unit count was listed incorrectly. Upon seeing that the pre-application was in a scoring position, the Partnership proceeded to develop the Application’s proforma.

During development of the proforma, it was determined that the Mission Housing Authority would forgo any acquisition cost on the land (which was being reused for the subject Application) in order to maximize the unit count. Knowing that the unit count could not increase more than 10%, the calculation was run based on the “correct” number of units: 95. A 10% increase on 95 units is 104.5, and thus the

unit count of 104 was used for the Application. If not for this rule, the Application would have been submitted at 108 units.

It was not until the Application was reviewed by Department staff that the initial pre-application error became evident. The Partnership believes that the QAP allows for this error to be cured via the Deficiency Process.

### Deficiency Process

It should be noted that the capitalized term “Application” is not defined in the QAP but is defined in statute. Pursuant to Tex. Gov’t Code 2306.6702(2) ““Application” means an application filed with the department by an applicant and includes any exhibits or other supporting materials.” Therefore, the capitalized term Application in the QAP includes the pre-application within its meaning; henceforth, this letter will denote ***Application*** in bold italics to denote this specific meaning (this meaning is reiterated in 10 TAC §11.8(a)(4), which states that the “pre-application becomes part of the full Application if the full Application claims pre-application points”).

Pursuant to 10 TAC §11.201(6), related to Deficiency Process, “the purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original ***Application*** (enfaces added)”. This paragraph goes on to state “because the review of an ***Application*** occurs in several phases, deficiency notices may be issued during any of these phases (enfaces added).”

In this case, the ***Application*** includes an inconsistency: the first phase of the ***Application*** (the pre-app) indicated 90 units and a self-score that included pre-app points. The second phase of the ***Application*** (what is commonly referred to as the “full” app) again indicated a self-score that included pre-app points but listed a unit count of 104, which would exceed the 10% unit increase threshold.

Staff identified this inconsistency but in issuing the following deficiency, did not allow for the noted error to be resolved.

“90 units are stated as the total number of units in the development in the Pre-Application. 104 are stated in the Rent Schedule, an increase of over 15%. Explain the request in the Application for Pre-Application points.”

Applicant response: “The pre-application was supposed to have been submitted with 95 units - see attached scoring analysis. The total number of units for full app were calculated to be an increase of less than 10% based on this analysis. It wasn’t until this review that the pre-application error was discovered.” (Noted attachment is included herein as Exhibit B)

There is nothing in the QAP that specifically says pre-application errors can’t be corrected. In fact, because the Deficiency Process allows for deficiencies to be issued during “any” of the ***Application*** phases, the Partnership believes that the QAP indeed allows for this error to be resolved.

Moreover, the Board allowed a very similar pre-application error to be corrected in the 2023 Application Round (23168 Majestic Villas submitted its pre-app in the Urban subregion but changed to Rural at full app; staff deducted pre-app points, but the Board reversed this deduction upon appeal). In that case, staff’s argument for denying the appeal was that the Applicant’s competitors weren’t given the

opportunity to assess the competitive nature of their own filings, in violation of statute. That isn't the case here.

### Preapplication Process

Pursuant to Tex. Gov't Code 2306.6704, related to Preapplication Process, the Statutory purpose of the preapplication process is "to prevent unnecessary filing costs" by establishing "a voluntary preapplication process to enable a preliminary assessment of an application proposed for filing" with the Department. This process allows Applicants to assess an *Application's* competitive standing within its particular subregion or set-aside. Consequently, the QAP specifies that certain criteria cannot change between pre-application and "full" application, because Applicants are making business decisions based on this information.

If an Applicant were to change the Rural or Urban designation or Set-Aside of the full application, it would mean a completely different group of competitors would be affected, and that group of competitors would not have had the benefit of assessing their competitive standing against the Applicant who made such a change. Similarly, if an Applicant were to change the Target Population, it would change the calculus for competing Applicants because there are scoring components affected by the choice of population (Underserved area for example), and certain subregions have caps on the number of credits that can be awarded to Elderly transactions. Certain scoring components cannot change at all, and the overall score cannot change by more than four (4) points. Again, this allows competitors to assess their own competitive standing, in order to determine whether or not to file a full application, which involves spending a significant amount of money.

The unit count of a pre-application does not factor into competitors' evaluation of the pre-application log, at all. In fact, an Applicant could submit a pre-application with a unit count of 500, and then come in at full application with a unit count of 75, and that would be perfectly acceptable under the QAP. Furthermore, a limit on increasing unit count seems contrary to the TDHCA Board's stated policy of increasing unit count production. It is truly unfortunate that a simple error would result in an effective death-penalty for this Application.

For these reasons, the Partnership respectfully requests that the appeal be granted, and that a deficiency be issued so that the pre-application unit count can be corrected. Should the appeal be denied at the Department level, the Partnership respectfully requests to appeal directly to the Board of Directors on June 13, 2024. Should you have any questions or need additional information, please contact Kathryn Saar at (512) 828-6413 or by email at [kathryn@tbsg.com](mailto:kathryn@tbsg.com).

Sincerely,



Arnold Padilla, Manager

**LIHTC Income Limits for 2023**  
(Based on 2023 MTSP Income Limits)

	Charts	60.00%	10.00%	15.00%	30.00%	50.00%	60.00%	80.00%	140.00%
<b>1 Person</b>		30,300	5,050	7,575	15,150	25,250	30,300	40,400	42,420
<b>2 Person</b>		34,620	5,770	8,655	17,310	28,850	34,620	46,160	48,468
<b>3 Person</b>		38,940	6,490	9,735	19,470	32,450	38,940	51,920	54,516
<b>4 Person</b>		43,260	7,210	10,815	21,630	36,050	43,260	57,680	60,564
<b>5 Person</b>		46,740	7,790	11,685	23,370	38,950	46,740	62,320	65,436
<b>6 Person</b>		50,220	8,370	12,555	25,110	41,850	50,220	66,960	70,308
<b>7 Person</b>		53,700	8,950	13,425	26,850	44,750	53,700	71,600	75,180
<b>8 Person</b>		57,120	9,520	14,280	28,560	47,600	57,120	76,160	79,968
<b>9 Person</b>		60,540	10,090	15,135	30,270	50,450	60,540	80,720	84,756
<b>10 Person</b>		64,020	10,670	16,005	32,010	53,350	64,020	85,360	89,628
<b>11 Person</b>		67,500	11,250	16,875	33,750	56,250	67,500	90,000	94,500
<b>12 Person</b>		70,920	11,820	17,730	35,460	59,100	70,920	94,560	99,288

**LIHTC Rent Limits for 2023**  
(Based on 2023 MTSP/VLI Income Limits)

Bedrooms (People)	Charts	60.00%	10.00%	15.00%	30.00%	50.00%	60.00%	80.00%	FMR
<b>1 Bedroom (1.5)</b>		811	135	202	405	676	811	1,082	693
<b>2 Bedrooms (3.0)</b>		973	162	243	486	811	973	1,298	877

Rent Designations (select from Drop down menu)															
HTC Units	MFDL HOME Units	MFDL NHTF Units	HOME ARP Units	Existing Restrictions	Other/ Subsidy Units	HOME Match Units	# of Units	# of Bed-rooms	# of Baths	Unit Size (Net Rentable Sq. Ft.)	Total Net Rentable Sq. Ft.	Program Rent Limit	Tenant Paid Utility Allow.	Rent Collected /Unit	Total Monthly Rent
							(A)			(B)	(A) x (B)			(E)	(A) x (E)
TC 30%					PH		17	1	1.0	677	11,509	215	75	140	2,380
TC 50%					PH		7	1	1.0	677	4,739	215	75	140	980
TC 50%							9	1	1.0	677	6,093	676	75	601	5,409
TC 60%							40	1	1.0	677	27,080	811	75	736	29,440
MR							8	1	1.0	677	5,416	975		975	7,800
TC 30%					PH		2	2	2.0	978	1,956	263	98	165	330
TC 50%							3	2	2.0	978	2,934	811	98	713	2,139
TC 60%							14	2	2.0	978	13,692	973	98	875	12,250
MR							4	2	2.0	978	3,912	1,075		1,075	4,300

Address Anacua Senior Village  
 Unit Count 95  
 Population 85,311  
 Census Tract 48215020403  
 Quartile 4th  
 Poverty Rate 31.7

2023 QCT

	MAX	
(b)(1) - unit size/quality	15	15
(b)(2) - sponsor	2	2
(b)(3) - quantity of LIHTC	3	0 not available in at-risk
(c)(1) - income levels	15	15
(c)(2) - rent levels	11	11
(c)(3) - services	11	11
(c)(4) - special needs	3	3 (4th pt available for supportive housing)
(c)(5) - opportunity index	7	0 4th Quartile; would have to go through CRP
(c)(6) - underserved area	5	4 no senior deals in ct, 5th pt cluster pt not available to at-risk
(c)(7) - proximity to job areas	6	0 at-risk not eligible
(d)(1) - local gov't support	17	17
(d)(2) - lps funding	1	1
(d)(3) - disaster area	10	10 all counties eligible
(d)(4) - qcp	4	4
(d)(5) - state rep	8	8
(d)(6) - community orgs	4	4
(d)(7) - crp	0	7 same crp from last year
(e)(1) - financial feasibility	26	26
(e)(2) - cost per foot	12	12
(e)(3) - pre-app	6	6
(e)(4) - leveraging	3	3
(e)(5) - extended affordability	4	4
(e)(6) - historic preservation	5	0
(e)(7) - RoFR	1	1
(e)(8) - funding request	1	1
(e)(9) - readiness to proceed	5	0 not available in at-risk
Total Score	180	165

self score 125



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

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June 3, 2024

*Writer's direct dial: (512) 475-3296*  
*Email: [bobby.wilkinson@tdhca.state.tx.us](mailto:bobby.wilkinson@tdhca.state.tx.us)*

Arnold Padilla  
Mission Housing Authority  
1300 E. 8th Street  
Mission, Texas 78572

RE: APPEAL OF SCORING OF 9% HOUSING TAX CREDIT APPLICATION  
#24137 – ANACUA SENIOR VILLAGE (DEVELOPMENT)

Mr. Padilla:

The Texas Department of Housing and Community Affairs (the Department) received the Application named above on March 1, 2024. The Application was submitted to compete within the At-Risk Set-Aside and requests \$2,000,000 in Housing Tax Credits to reconstruct 104 units, 92 of which as affordable, serving the elderly population in Mission.

A pre-application was submitted for this Application, which indicated that the Application would include a total of 90 Units. The total number of Units in the final Application is 104, which is an increase of over 13% from the pre-application. In accordance with 10 TAC §11.9(e)(3), an Application is eligible for six points related to Pre-application Participation so long as certain criteria are met, including that the total number of Units does not increase by more than 10% from pre-application to Application. Because this criteria was not met, staff issued a scoring notice on May 23, 2024, which reduced the Application's total score by six points. An appeal of that scoring notice was timely submitted on May 29, 2024.

The appeal asserts that the number of Units reported in the pre-application was an error, and that the presence of this error creates an inconsistency within this Application that should be curable as an Administrative Deficiency, as defined at 10 TAC §11.1(d)(2). While the Qualified Allocation Plan (QAP) does allow for inconsistencies in an Application to be corrected, a variance between the units proposed at pre-application and the Units included in the final Application does not create an inconsistency that is necessary for staff's evaluation of the Application, which is the basis of the Administrative Deficiency process, as is established in the definition:



Administrative Deficiency - Information requested by Department staff to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application.

Such variances in Unit count are expected, and are explicitly contemplated in the rule in question. Changes to the Application that are submitted only to qualify for points claimed in the Application are prohibited by 10 TAC §11.1(d)(2)(B)(ii), and because staff has identified no other purpose for the Units in the pre-application to be updated, the QAP appears to prohibit the requested change.

Additionally, in the event that an Administrative Deficiency were issued and the Unit count in the pre-application was allowed to be changed, the Application would still not qualify for pre-application points, as the total number of Units would still have increased by more than 10% from the pre-application's initial submittal to the full Application. Accordingly, your appeal is denied.

The appeal includes a request that the decision to deny your appeal be further appealed to the Department's Governing Board at its upcoming meeting on June 13, 2024, in accordance with 10 TAC §11.902. Please consider this letter as an acknowledgement of that request, which will accordingly be processed by staff.

If you have any questions or concerns, please contact Cody Campbell at 512-475-1676 or by email at [cody.campbell@tdhca.state.tx.us](mailto:cody.campbell@tdhca.state.tx.us).

Sincerely,

A handwritten signature in blue ink that reads "Bobby Wilkinson II". The signature is fluid and cursive, with the "II" at the end being clearly legible.

Bobby Wilkinson  
Executive Director



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 651

**Agenda Date:** 6/13/2024

**Agenda #:** 30.

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Presentation, discussion, and possible action to issue a list of approved Applications for 2024 Housing Tax Credits (HTC) in accordance with Tex. Gov't Code §2306.6724(e)

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 652

**Agenda Date:** 6/13/2024

**Agenda #:** 31.

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Presentation, discussion, and possible action related an amendment of the loan terms for Manson Place (22503)

**RECOMMENDED ACTION**

**WHEREAS**, Manson Place is a 76-unit development in Houston, Harris County, that has previously been awarded 9% Housing Tax Credits and a \$4,000,000 loan of National Housing Trust Fund (NHTF), which is structured as partially amortizing and partially deferred payable at an interest rate of 0.5%;

**WHEREAS**, the Department's loan is in second-lien position, and the borrower has requested to increase the first-lien loan by approximately \$3,700,000, while simultaneously eliminating the third-lien loan;

**WHEREAS**, this structure is not prohibited by the rules, but does require Board approval in accordance with 10 TAC §13.12(c), as more debt is being added ahead of the Department's loan;

**WHEREAS**, the Real Estate Analysis Division has not evaluated this proposed structure, and the Board's approval on this item would be conditioned upon the successful underwriting of the proposed structure in accordance with program rules; and

**WHEREAS**, the Department is in the process of closing on its loan, and this approval is necessary to complete that process.

**NOW, therefore, it is hereby**

**RESOLVED**, the amendment of the loan terms for Manson Place is hereby approved, conditioned upon successful underwriting of the proposed financing structure.

**BACKGROUND**

Manson Place is a 2021 9% Housing Tax Credit recipient that has since received supplemental Housing Tax Credits and has been approved for \$4,000,000 National Housing Trust Fund loan. The loan is structured as partially amortizing and partially deferred-payable with a 0.5% interest rate, as was allowed in the 2022-1 Notice of Funding Availability from which the funds were sourced.

The Department's loan is in second-lien position, and the current underwriting includes first and third-lien loan that are both administered by Amegy Bank. The first-lien loan is \$7,100,000, and the third-lien loan is \$3,700,000, as is outlined in the Real Estate Analysis Report attached to this item. This ordering is determined by Department rules, which require that the NHTF loan be ahead of any smaller source of funding. The Department is preparing to close on its loan, and the Applicant has requested to combine the first and third-lien loans into a single

source of funding, with a single deed of trust and subordination agreement. This would result in a first-lien loan of approximately \$10,800,000, while the NHTF loan would remain in second position.

Department rules do not prohibit this change, and it would have been allowed at initial Application; however, as the Board previously approved the award with \$7,100,000 of debt ahead of the NHTF loan, approval is required to proceed with putting additional funds ahead of ours.

The Department's Real Estate Analysis Division has not underwritten the proposed change. If the Board approves this request, it will be conditioned upon the successful completion of underwriting and meeting all financial feasibility rules using the proposed structure. Should the Development not underwrite as proposed, the Department will not move forward with closing the loan as proposed.

Staff recommends approval of this request.



**Addendum to Underwriting Report**

Application #: **22503\_23907\_21035** Program(s): **9% HTC**

**Manson Place**

Address/Location: SWQ of Reeves Stet & Scott Street

City: Houston County: Houston Zip: 77004

APPLICATION HISTORY	
Report Date	PURPOSE
<b>03/11/24</b>	<b>MDL Award Memo</b>
02/27/23	Supplemental Credit Memo
06/19/21	Original Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
MF DL Amortized Repayable					\$222,000	0.50%	35	18	2
MF DL Deferred Repayable					\$3,778,000	0.50%	0	18	2
<b>LIHTC (9% Credit)</b>	\$1,725,000				\$1,725,000				

\* The term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

\* Lien position after conversion to permanent.

**CONDITIONS STATUS**

- 0 Receipt and acceptance before Direct Loan Closing
  - a: Updated application exhibits: Rent Schedule, Utility Allowance, Operating Expenses, Long-Term Pro Forma, Development Cost Schedule, Schedule of Sources; and documentation necessary to support any changes from previous underwriting.
  - b: Substantially final construction contract with Schedule of Values.
  - c: Updated term sheets with substantially final terms from all lenders
  - d: Substantially final draft of limited partnership agreement.
  - e: Executed HAP Contract providing Project-Based Vouchers for 66 units, with clear indication of the Voucher Rents that will be paid by the Sponsor to the Development.
  - f: Senior loan documents (and/or partnership documents) must contain a provision that any resizing of senior debt at stabilization includes the debt service on the TDHCA MDL at a minimum 1.15 DCR.
  - g: Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.

2 Receipt and acceptance by Cost Certification:

a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

b: Certification that subsurface environmental investigation was performed as specified in the ESA, and if necessary, that any recommended mitigation measures were fully 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.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	8
50% of AMI	50% of AMI	30
60% of AMI	60% of AMI	32
80% of AMI	80% of AMI	4

**ANALYSIS**

Manson Place received a 9% Housing Tax Credit award and a 2023 Supplemental Housing Tax Credits Award, for a total allocation of \$1,725,000. The Development has applied for \$4M in NHTF funding (Partially Amortizing) under the 2022-1 Direct Loan NOFA.

In June 2023 the Board approved, subject to final underwriting:

***\$4,000,000 NHTF loan will be in second lien position with an interest rate of 0.50%, a 20-year term, and a 35-year amortization period. The Department will attempt to underwrite the entire loan as fully amortizing, but if it is not financially feasible may have a portion of the loan as deferred payable, as was allowed in the 2022-1 NOFA. The Application also proposes a first-lien loan of \$6,175,000 from Capital One, and the development previously received \$1,500,000 in Housing Tax Credits.***

Since original underwriting, unit sizes have increased from 925 sf and 1,122 sf, to 1,004 sf and 1,226 sf; Net Rentable Area has increased 9% from 73,058 sf to 79,412 sf. Current underwriting analysis of construction cost is based on a Construction Contract Schedule of Values that reflects the increased building area.

**Operating Pro Forma**

HTC and NHTF Rents are underwritten at 2023 Program Rents. Two Market Rate Units are underwritten at HTC 80% Gross Rents.

Houston Housing Authority provided a Commitment Letter for Project-Based Vouchers for 66 units. The commitment specifies "Contract Rents" of \$1,501 and \$1,973, Utility Allowances of \$64 and \$79, and "Net Rec'd" rent amounts of \$1,437 and \$1,894. Since the development now plans to operate as All Bills Paid, income is underwritten assuming the full pre-utility allowance rent amounts from the commitment letter. The Applicant has indicated that at Closing the utility structure may change back to tenant-paid electricity.

At MDL Closing, the executed HAP Contract needs to indicate whether the development is expected to operate with a utility allowance, and it should clearly indicate the amount of Voucher Rent that will be paid to the development.

Annual operating expense for Electricity has increased to \$60,144 (\$791/unit) due to the intended change to All Bills Paid Operation.

The Applicant's Operating Expense budget includes \$324 per unit for Replacement Reserves. This has been adjusted to \$250 based on the stated requirements in the debt and equity term sheets.

Underwritten Net Operating Income has increased \$442K to \$761,638.

**Development Cost**

Hard construction cost increased \$7M to \$16,293,580.

Total Developer Fee is unchanged.

Total Development Cost increased \$11.5M to \$30,242,409.

**Sources of Funds**

Since the Board approval in June 2023, proposed senior debt has increased to \$10,800,000. An Amegy Bank term sheet dated 10/30/23 specifies a permanent interest rate of SOFR plus 2.50%, with an 18-year term (commencing at stabilization) and 40-year amortization. The term sheet also states "A portion of the Mortgage Loan of up to \$3,700,000 will have a reduced interest rate of 2.00% throughout the Construction Loan Term and Permanent Term with interest only payments due monthly."

The Applicant's Schedule of Sources indicates \$7,100,000 amortized at 7.82%, and \$3,700,000 at 2.00% interest only.

The Amegy Bank debt will be structured as one note/one deed of trust/one superior lien for \$10,800,000, with one TDHCA-signed subordination agreement for the Multifamily Direct Loan.

The Debt Coverage Ratio for the senior debt (combined amortized and interest-only) is 1.163.

At the approved terms for the Multifamily Direct Loan (0.50% interest and 35-year amortization), \$222,000 is the maximum amount that can be amortized while maintaining the required 1.15 Debt Coverage Ratio. The remaining \$3,778,000 will be structured as Deferred Repayable.

Since the Board approval in June 2023, the Development received an award of 2023 Supplemental Housing Tax Credits. Equity proceeds have increased \$1M since original underwriting to \$15,005,999.

Deferred Developer Fee is unchanged.

REA recommends proceeding to close on a construction-to-permanent Multifamily Direct Loan in the amount of \$4,000,000 as a second lien secured by two Notes:

One Note in the amount of \$222,000 to be structured as an Amortized Repayable Loan, at 0.5% interest, with a 35-year amortization period and an 18-year term, and annualized monthly debt service of \$6,915.

A second Note in the amount of \$3,778,000 to be structured as a Deferred Repayable Loan at 0.5% interest with an 18-year term.

Any portion of the loan not repaid will be due the earlier of the end of the Loan Term or upon sale, refinance, or transfer of the Property.

The construction term is assumed at 36 months to match the senior interim construction loan. The MDL will be in a 2nd lien position during construction.

Underwriter:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Jeanna Adams</u>

**UNIT MIX/RENT SCHEDULE**

**Manson Place, Houston, 9% HTC #21035**

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
Area Median Income	\$93,200
PROGRAM REGION:	6
PROGRAM RENT YEAR:	2023

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	-	0.0%	0	0
2	62	81.6%	56	47
3	14	18.4%	10	3
4	-	0.0%	0	0
5	-	0.0%	0	0
<b>TOTAL</b>	<b>76</b>	<b>100.0%</b>	<b>66</b>	<b>50</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	97.19%
APP % Acquisition	4.00%
APP % Construction	9.00%
Average Unit Size	1,045 sf

54%	Income	20%	30%	40%	50%	60%	70%	80%	MR	TOTAL
Average	# Units	-	8	-	30	32	-	4	2	76
Income	% Total	0.0%	10.5%	0.0%	39.5%	42.1%	0.0%	5.3%	2.6%	100.0%

UNIT MIX / MONTHLY RENT SCHEDULE																								
HTC		TDHCA Direct Loan Program		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst		
TC 30%	\$629			PBV	\$1,501	7	2	2	1,004	\$1,501	\$0	\$1,501	\$0	\$1.50	\$1,501	\$10,507	\$10,507	\$1,501	\$1.50	\$0	\$1,678	\$1.67	\$1,900	
TC 50%	\$1,048	30%/30%	\$630	PBV	\$1,501	20	2	2	1,004	\$1,501	\$0	\$1,501	\$0	\$1.50	\$1,501	\$30,020	\$30,020	\$1,501	\$1.50	\$0	\$1,678	\$1.67	\$1,900	
TC 50%	\$1,048	30%/30%	\$630	PBV	\$1,501	9	2	2	1,004	\$1,501	\$0	\$1,501	\$0	\$1.50	\$1,501	\$13,509	\$13,509	\$1,501	\$1.50	\$0	\$1,678	\$1.67	\$1,900	
TC 60%	\$1,258	30%/30%	\$630	PBV	\$1,501	18	2	2	1,004	\$1,501	\$0	\$1,501	\$0	\$1.50	\$1,501	\$27,018	\$27,018	\$1,501	\$1.50	\$0	\$1,678	\$1.67	\$1,900	
TC 60%	\$1,258			PBV	\$1,501	2	2	2	1,004	\$1,501	\$0	\$1,501	\$0	\$1.50	\$1,501	\$3,002	\$3,002	\$1,501	\$1.50	\$0	\$1,678	\$1.67	\$1,900	
TC 60%	\$1,258			0		3	2	2	1,004	\$1,258	\$0	\$1,258	\$0	\$1.25	\$1,258	\$3,774	\$3,774	\$1,258	\$1.25	\$0	\$1,678	\$1.67	\$1,900	
TC 80%	\$1,678			0		2	2	2	1,004	\$1,678	\$0	\$1,678	\$0	\$1.67	\$1,678	\$3,356	\$3,356	\$1,678	\$1.67	\$0	\$1,678	\$1.67	\$1,900	
MR				0		1	2	2	1,004	\$0	\$0		NA	\$1.67	\$1,678	\$1,678	\$1,678	\$1,678	\$1.67	NA	\$1,678	\$1.67	\$1,900	
TC 30%	\$727	Match	\$814	PBV	\$1,973	1	3	2	1,226	\$1,973	\$0	\$1,973	\$0	\$1.61	\$1,973	\$1,973	\$1,973	\$1,973	\$1.61	\$0	\$1,939	\$1.58	\$2,100	
TC 50%	\$1,211	30%/30%	\$814	PBV	\$1,973	1	3	2	1,226	\$1,973	\$0	\$1,973	\$0	\$1.61	\$1,973	\$1,973	\$1,973	\$1,973	\$1.61	\$0	\$1,939	\$1.58	\$2,100	
TC 60%	\$1,454	30%/30%	\$820	PBV	\$1,973	2	3	2	1,226	\$1,973	\$0	\$1,973	\$0	\$1.61	\$1,973	\$3,946	\$3,946	\$1,973	\$1.61	\$0	\$1,939	\$1.58	\$2,100	
TC 60%	\$1,454			PBV	\$1,973	6	3	2	1,226	\$1,973	\$0	\$1,973	\$0	\$1.61	\$1,973	\$11,838	\$11,838	\$1,973	\$1.61	\$0	\$1,939	\$1.58	\$2,100	
TC 60%	\$1,454			0		1	3	2	1,226	\$1,454	\$0	\$1,454	\$0	\$1.19	\$1,454	\$1,454	\$1,454	\$1,454	\$1.19	\$0	\$1,939	\$1.58	\$2,100	
TC 80%	\$1,939			0		2	3	2	1,226	\$1,939	\$0	\$1,939	\$0	\$1.58	\$1,939	\$3,878	\$3,878	\$1,939	\$1.58	\$0	\$1,939	\$1.58	\$2,100	
MR				0		1	3	2	1,226	\$0	\$0		NA	\$1.58	\$1,939	\$1,939	\$1,939	\$1,939	\$1.58	NA	\$1,939	\$1.58	\$2,100	
<b>TOTALS/AVERAGES:</b>						<b>76</b>				<b>79,412</b>				<b>\$0</b>	<b>\$1.51</b>	<b>\$1,577</b>	<b>\$119,865</b>	<b>\$119,865</b>	<b>\$1,577</b>	<b>\$1.51</b>	<b>\$0</b>	<b>\$1,726</b>	<b>\$1.65</b>	<b>\$1,937</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$1,438,380</b>	<b>\$1,438,380</b>
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**STABILIZED PRO FORMA**

*Manson Place, Houston, 9% HTC #21035*

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database	Local Comps	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$1.51	\$1,577	\$1,438,380	\$789,396	\$789,396	\$1,438,380	\$1,577	\$1.51		0.0%	\$0
Pet deposits, Late fees						\$20.00	\$18,240	18,240						
Total Secondary Income						\$20.00		18,240	\$18,240	\$20.00			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$1,456,620	\$807,636	\$807,636	\$1,456,620				0.0%	\$0
Vacancy & Collection Loss						7.5% PGI	(109,247)	(60,573)	(60,573)	(109,247)	7.5% PGI		0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$1,347,374	\$747,063	\$747,063	\$1,347,374				0.0%	\$0

General & Administrative	\$36,810	\$484/Unit	\$58,423	\$769	4.01%	\$0.68	\$711	\$54,010	\$30,940	\$31,261	\$58,423	\$769	\$0.74	4.34%	-7.6%	(4,413)
Management	\$37,625	4.4% EGI	\$33,316	\$438	4.50%	\$0.76	\$798	\$60,632	\$37,353	\$37,353	\$60,632	\$798	\$0.76	4.50%	0.0%	0
Payroll & Payroll Tax	\$105,369	\$1,386/Unit	\$125,151	\$1,647	9.02%	\$1.53	\$1,599	\$121,500	\$102,600	\$105,369	\$121,500	\$1,599	\$1.53	9.02%	0.0%	-
Repairs & Maintenance	\$58,081	\$764/Unit	\$70,292	\$925	3.38%	\$0.57	\$600	\$45,600	\$45,600	\$49,400	\$49,400	\$650	\$0.62	3.67%	-7.7%	(3,800)
Electric/Gas	\$19,700	\$259/Unit	\$12,660	\$167	4.46%	\$0.76	\$791	\$60,144	\$5,320	\$18,776	\$60,144	\$791	\$0.76	4.46%	0.0%	-
Water, Sewer, & Trash	\$53,034	\$698/Unit	\$43,129	\$567	4.06%	\$0.69	\$719	\$54,644	\$47,880	\$52,982	\$43,129	\$567	\$0.54	3.20%	26.7%	11,515
Property Insurance	\$34,088	\$0.43 /sf	\$70,780	\$931	6.77%	\$1.15	\$1,200	\$91,200	\$30,400	\$34,088	\$91,200	\$1,200	\$1.15	6.77%	0.0%	-
Property Tax (@ 100%) 2.5144	\$70,620	\$929/Unit	\$65,881	\$867	5.11%	\$0.87	\$906	\$68,856	\$99,426	\$78,334	\$68,856	\$906	\$0.87	5.11%	0.0%	-
Reserve for Replacements					1.41%	\$0.24	\$250	\$19,000	\$19,000	\$19,000	\$19,000	\$250	\$0.24	1.41%	0.0%	-
Supportive Services					0.45%	\$0.08	\$79	\$6,000	\$6,000	\$6,000	\$6,000	\$79	\$0.08	0.45%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)					0.22%	\$0.04	\$39	\$2,960	\$2,960	\$2,960	\$2,960	\$39	\$0.04	0.22%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>43.47%</b>	<b>\$7.38</b>	<b>\$7,707</b>	<b>\$ 585,736</b>	<b>\$427,479</b>	<b>\$435,523</b>	<b>\$582,943</b>	<b>\$7,670</b>	<b>\$7.34</b>	<b>43.27%</b>	<b>0.5%</b>	<b>\$ 2,793</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>56.53%</b>	<b>\$9.59</b>	<b>\$10,022</b>	<b>\$761,638</b>	<b>\$319,584</b>	<b>\$311,540</b>	<b>\$764,430</b>	<b>\$10,058</b>	<b>\$9.63</b>	<b>56.73%</b>	<b>-0.4%</b>	<b>\$ (2,793)</b>

<b>CONTROLLABLE EXPENSES</b>		\$4,420/Unit		\$3,057/Unit	\$3,392/Unit		\$4,376/Unit
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Manson Place, Houston, 9% HTC #21035*

DEBT / GRANT SOURCES																		
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE								
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative		
		UW	App						Applicant	TDHCA						DCR	LTC	
Amegy Bank - Amortized		1.31	1.31	\$581,418	7.82%	40	18	\$7,100,000	\$4,397,000	\$4,397,000	\$7,100,000	18	40	7.82%	\$580,927	1.31	23.5%	
Amegy Bank - Interest Only Portion		1.17	1.16	\$74,000	2.00%	I/O	18	\$3,700,000			\$3,700,000	18	I/O	2.00%	\$74,000	1.16	12.2%	
MFDL Amortized Repayable		1.17	1.16		0.50%	35	18	\$4,000,000			\$222,000	18	35	0.50%	\$6,915	1.15	0.7%	
MFDL Deferred Repayable		1.17	1.16		0.00%	0	0	\$0			\$3,778,000	18	0	0.50%	\$0	1.15	12.5%	
<b>CASH FLOW DEBT / GRANTS</b>																		
City of Houston		1.17	1.16		0.00%	0	0	\$500	\$500	\$500	\$500	0	0	0.00%		1.15	0.0%	
				<b>\$655,418</b>	<b>TOTAL DEBT / GRANT SOURCES</b>				<b>\$4,397,500</b>	<b>\$4,397,500</b>	<b>\$14,800,500</b>	<b>TOTAL DEBT SERVICE</b>				<b>\$661,843</b>	<b>1.151</b>	<b>48.9%</b>
<b>NET CASH FLOW</b>		\$109,012	\$106,220					<b>APPLICANT</b>		<b>NET OPERATING INCOME</b>		\$761,638	\$99,795	<b>NET CASH FLOW</b>				

EQUITY SOURCES														
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE								
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method	
						Applicant	TDHCA							
Redstone	LIHTC Equity	49.6%	\$1,725,000	\$0.8699	\$15,005,999	\$13,948,605	\$13,948,605	\$15,005,999	\$0.8699	\$1,725,000	49.6%	\$22,697	Previous Allocation	
Manson Place Development, LLC	Deferred Developer Fees	1.4%	(21% Deferred)		\$435,909	\$435,910	\$435,909	\$435,910		(21% Deferred)	1.4%		Total Developer Fee: \$2,038,279	
Additional (Excess) Funds Req'd		0.0%			\$0	\$0	\$0	\$0			0.0%			
<b>TOTAL EQUITY SOURCES</b>		<b>51.1%</b>			<b>\$15,441,908</b>	<b>\$14,384,515</b>	<b>\$14,384,514</b>	<b>\$15,441,909</b>			<b>51.1%</b>			
<b>TOTAL CAPITALIZATION</b>					<b>\$30,242,408</b>	\$18,782,015	\$18,782,014	<b>\$30,242,409</b>					15-Yr Cash Flow after Deferred Fee:	<b>\$2,122,244</b>

DEVELOPMENT COST / ITEMIZED BASIS														
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS				COST VARIANCE					
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	Prior Underwriting	Applicant	TDHCA	Total Costs	Eligible Basis		%	\$			
								New Const. Rehab	Acquisition					
Land Acquisition			\$24,342 / Unit	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	\$24,342 / Unit			0.0%	\$0		
Interest Carry and Taxes				\$125,000	\$15,000	\$15,000	\$125,000				0.0%	\$0		
Site Work		\$1,136,000	\$14,947 / Unit	\$1,136,000	\$1,102,000	\$1,102,000	\$1,136,000	\$14,947 / Unit	\$1,136,000		0.0%	\$0		
Site Amenities		\$511,000	\$6,724 / Unit	\$511,000	\$435,000	\$435,000	\$511,000	\$6,724 / Unit	\$511,000		0.0%	\$0		
Building Cost		\$14,646,580	\$184.44 /sf	\$192,718/Unit	\$14,646,580	\$7,802,550	\$7,179,179	\$14,646,580	\$192,718/Unit	\$184.44 /sf	\$14,646,580	0.0%	\$0	
Contingency		\$956,985	5.87%	5.87%	\$956,985	\$466,978	\$466,978	\$956,985	5.87%	5.87%	\$956,985	0.0%	\$0	
Contractor Fees		\$2,395,157	13.88%	13.88%	\$2,395,157	\$1,372,915	\$1,285,642	\$2,395,157	13.88%	13.88%	\$2,395,157	0.0%	\$0	
Soft Costs	\$0	\$2,836,117	\$37,449 / Unit	\$2,846,117	\$2,189,641	\$2,189,641	\$2,846,117	\$37,449 / Unit	\$2,836,117	\$0	0.0%	\$0		
Financing	\$0	\$2,569,107	\$41,358 / Unit	\$3,143,181	\$1,162,767	\$1,162,767	\$3,143,181	\$41,358 / Unit	\$2,117,380	\$0	0.0%	\$0		
Developer Fee	\$0	\$2,038,279	8.14%	8.14%	\$2,038,279	\$2,038,279	\$1,965,541	\$2,038,279	8.29%	8.29%	\$2,038,279	\$0	0.0%	\$0
Reserves			6 Months	\$594,110	\$346,886	\$346,886	\$594,110	6 Months			0.0%	\$0		
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		<b>\$0</b>	<b>\$27,089,225</b>	<b>\$397,926 / Unit</b>	<b>\$30,242,409</b>	<b>\$18,782,015</b>	<b>\$17,998,634</b>	<b>\$30,242,409</b>	<b>\$397,926 / Unit</b>	<b>\$26,637,498</b>	<b>\$0</b>	<b>0.0%</b>	<b>\$0</b>	
Acquisition Cost	\$0			\$0	\$0									
Contingency		\$0		\$0	\$0									
Contractor's Fee		\$0		\$0	(\$1)									
Financing Cost		(\$451,727)												
Developer Fee	\$0	\$0	8.14%	(\$0)	\$0									
Reserves				\$0	\$0									
<b>ADJUSTED BASIS / COST</b>		<b>\$0</b>	<b>\$26,637,498</b>	<b>\$397,926/unit</b>	<b>\$30,242,409</b>	<b>\$18,782,014</b>	<b>\$17,998,634</b>	<b>\$30,242,409</b>	<b>\$397,926/unit</b>	<b>\$26,637,498</b>	<b>\$0</b>	<b>0.0%</b>	<b>\$0</b>	
<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>					<b>\$30,242,409</b>									



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

*Manson Place, Houston, 9% HTC #21035*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction
<b>ADJUSTED BASIS</b>	\$0	\$26,637,498	\$0	\$26,637,498
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$26,637,498	\$0	\$26,637,498
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$34,628,747	\$0	\$34,628,747
Applicable Fraction	97.19%	97.19%	97%	97%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$33,656,324	\$0	\$33,656,324
Applicable Percentage	4.00%	9.00%	4.00%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	0	\$3,029,069	\$0	\$3,029,069
<b>CREDITS ON QUALIFIED BASIS</b>	\$3,029,069		\$3,029,069	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8699	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$3,029,069	\$26,350,266	----	----	----
<b>Needed to Fill Gap</b>	\$1,775,110	\$15,441,909	----	----	----
<b>Previous Allocation</b>	\$1,725,000	\$15,005,999	<b>\$1,725,000</b>	<b>\$0</b>	<b>\$0</b>

## Long-Term Pro Forma

*Manson Place, Houston, 9% HTC #21035*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$1,347,374	\$1,374,321	\$1,401,807	\$1,429,844	\$1,458,440	\$1,610,236	\$1,777,831	\$1,962,869	\$2,167,166	\$2,392,726	\$2,641,763	\$2,916,720
TOTAL EXPENSES	3.00%	\$585,736	\$602,702	\$620,164	\$638,138	\$656,639	\$757,602	\$874,270	\$1,009,102	\$1,164,951	\$1,345,115	\$1,553,414	\$1,794,271
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$761,638</b>	<b>\$771,619</b>	<b>\$781,643</b>	<b>\$791,705</b>	<b>\$801,801</b>	<b>\$852,634</b>	<b>\$903,561</b>	<b>\$953,766</b>	<b>\$1,002,215</b>	<b>\$1,047,611</b>	<b>\$1,088,349</b>	<b>\$1,122,448</b>
EXPENSE/INCOME RATIO		43.5%	43.9%	44.2%	44.6%	45.0%	47.0%	49.2%	51.4%	53.8%	56.2%	58.8%	61.5%
<b>MUST -PAY DEBT SERVICE</b>													
Amegy Bank - Amortized		\$580,927	\$580,927	\$580,927	\$580,927	\$580,927	\$580,927	\$580,927	\$580,927	\$580,927	\$580,927	\$580,927	\$580,927
Amegy Bank - Interest Only Portion		\$74,000	\$74,000	\$74,000	\$74,000	\$74,000	\$74,000	\$74,000	\$74,000	\$74,000	\$74,000	\$74,000	\$74,000
MFDL Amortized Repayable		\$6,915	\$6,915	\$6,915	\$6,915	\$6,915	\$6,915	\$6,915	\$6,915	\$6,915	\$6,915	\$6,915	\$6,915
<b>TOTAL DEBT SERVICE</b>		<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>	<b>\$661,843</b>
DEBT COVERAGE RATIO		1.15	1.17	1.18	1.20	1.21	1.29	1.37	1.44	1.51	1.58	1.64	1.70
<b>ANNUAL CASH FLOW</b>		<b>\$99,795</b>	<b>\$109,777</b>	<b>\$119,800</b>	<b>\$129,862</b>	<b>\$139,959</b>	<b>\$190,791</b>	<b>\$241,719</b>	<b>\$291,924</b>	<b>\$340,372</b>	<b>\$385,768</b>	<b>\$426,506</b>	<b>\$460,606</b>
Deferred Developer Fee Balance		\$336,115	\$226,338	\$106,538	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$23,325</b>	<b>\$163,283</b>	<b>\$1,015,396</b>	<b>\$2,122,244</b>	<b>\$3,481,931</b>	<b>\$5,087,835</b>	<b>\$6,927,402</b>	<b>\$8,980,687</b>	<b>\$11,218,621</b>



**Addendum to Underwriting Report**

TDHCA Application #: **23907\_21035** Program(s): **9% HTC**

**Manson Place**

Address/Location: \_\_\_\_\_ SWQ of Reeves Steet & Scott Street

City: \_\_\_\_\_ Houston \_\_\_\_\_ County: \_\_\_\_\_ Houston \_\_\_\_\_ Zip: \_\_\_\_\_ 77004

APPLICATION HISTORY	
Report Date	PURPOSE
02/27/23	Supplemental Credit Memo
06/19/21	Original Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
LIHTC (9% Credit)	\$1,500,000				\$1,725,000				

**CONDITIONS STATUS**

- 1 Receipt and acceptance by 10% test:
  - Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.
- 2 Receipt and acceptance by Cost Certification:
  - a: Architect certification that all noise assessment recommendations were implemented and the
  - b: Certification that subsurface environmental investigation was performed as specified in the ESA, and 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.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	8
50% of AMI	50% of AMI	30
60% of AMI	60% of AMI	32
80% of AMI	80% of AMI	4

## ANALYSIS

The Development received a 9% HTC allocation in 2021 and is requesting a 15.00% increase in annual tax credit allocation consistent with the 2023 QAP Subchapter F, Supplement Housing Tax Credits. Tax credits will be calculated at cost certification based on actual eligible costs incurred.

Per Subchapter F, the developer fee cannot increase from the previously published underwriting report, and the deferred developer fee cannot decrease from the previously published underwriting report.

The underwriter recommends a total annual credit allocation of \$1,725,000.

Underwriter: Laura Rogers

Manager of Real Estate Analysis: Gregg Kazak

Director of Real Estate Analysis: Jeanna Adams

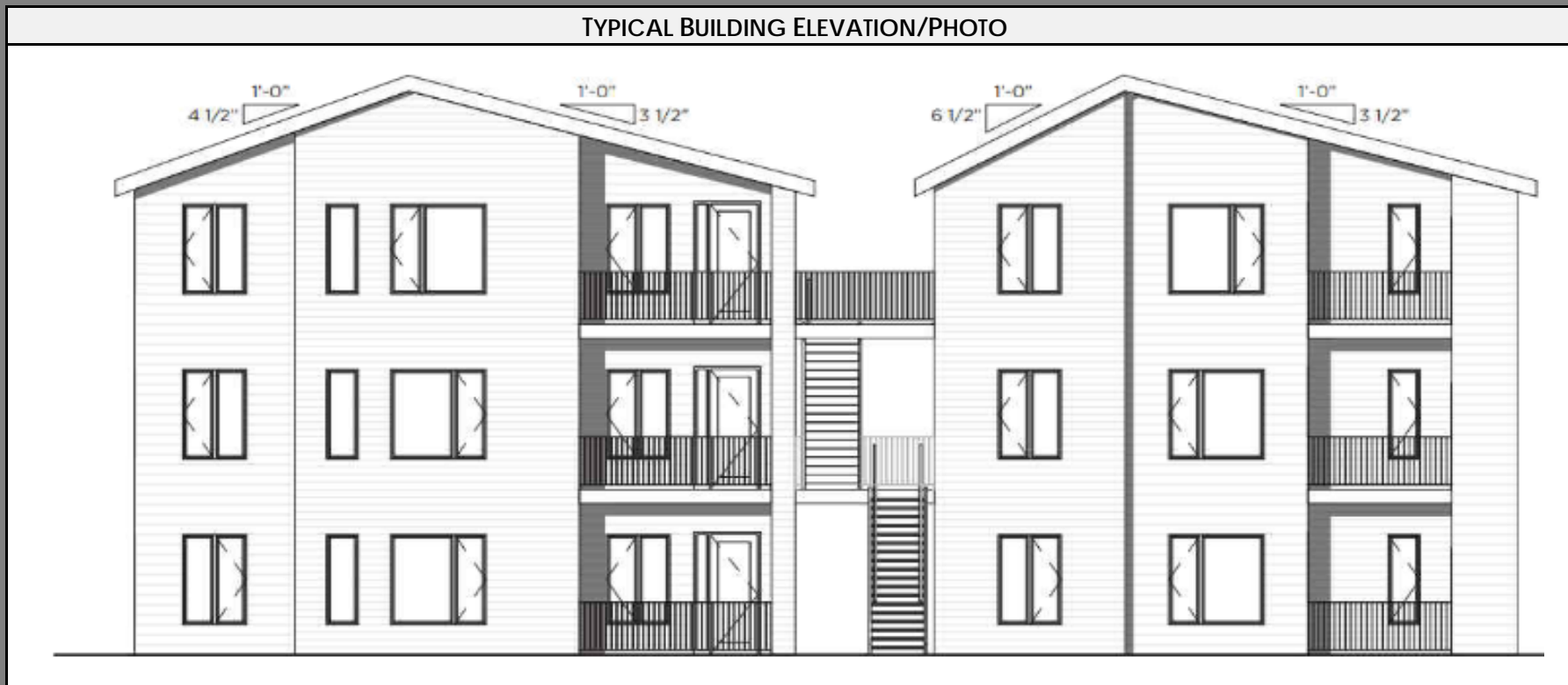
# 21035 Manson Place - Application Summary

REAL ESTATE ANALYSIS DIVISION  
June 17, 2021

PROPERTY IDENTIFICATION	
Application #	21035
Development	Manson Place
City / County	Houston / Harris
Region/Area	6 / Urban
Population	General
Set-Aside	General
Activity	New Construction

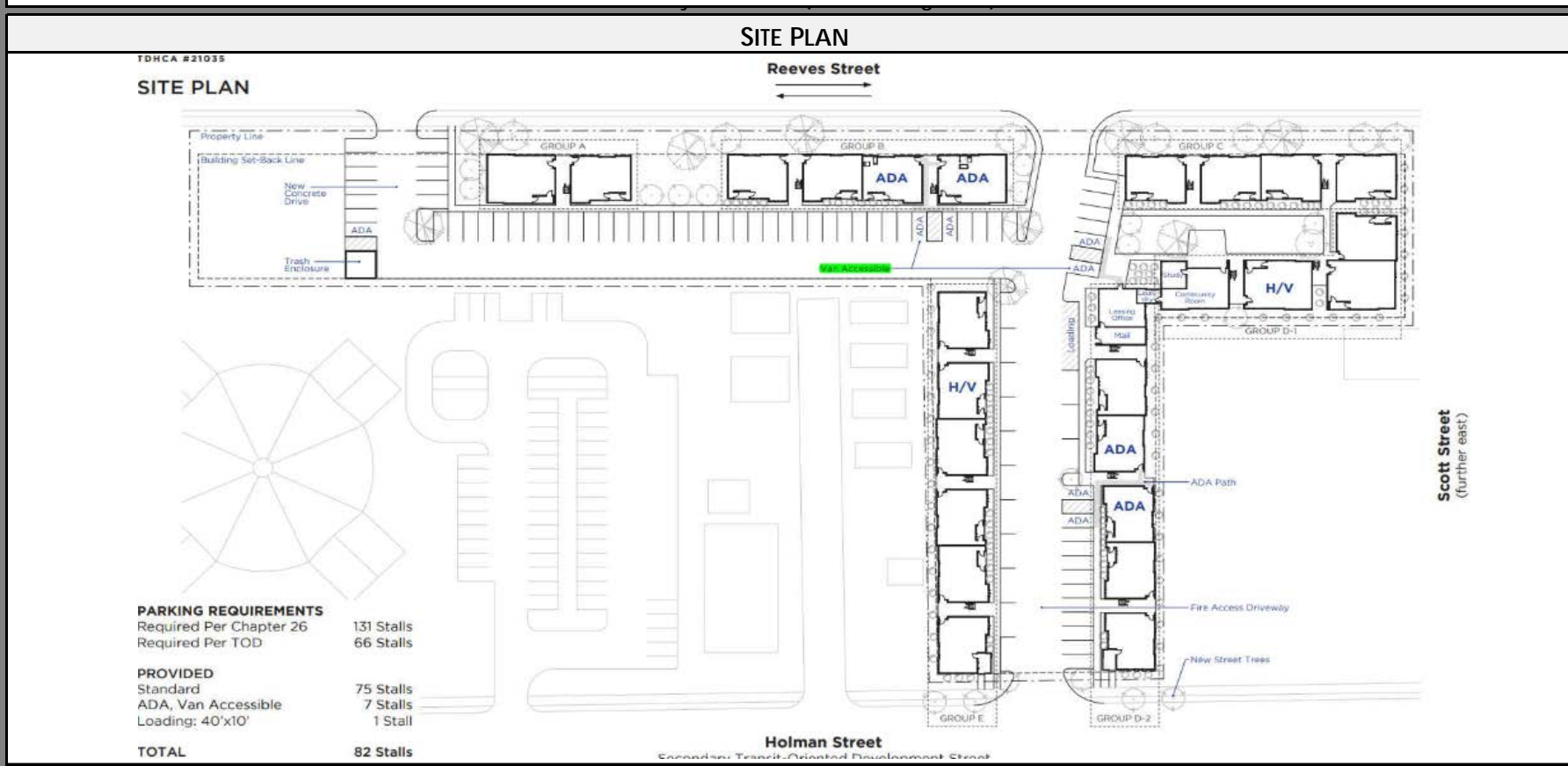
RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (9% Credit)	\$1,500,000	\$1,500,000	\$19,737/Unit	\$0.93	

KEY PRINCIPALS / SPONSOR		
Richard Sciortino - Principal & David Brint - Principal of Brinshore Development, LLC		
Related Parties	Contractor - TBD	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	-	0%	30%	8	11%
2	62	82%	40%	-	0%
3	14	18%	50%	30	39%
4	-	0%	60%	32	42%
			70%	-	0%
			80%	4	5%
			MR	2	3%
<b>TOTAL</b>	<b>76</b>	<b>100%</b>	<b>TOTAL</b>	<b>76</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.20	Expense Ratio	57.2%
Breakeven Occ.	85.9%	Breakeven Rent	\$802
Average Rent	\$866	B/E Rent Margin	\$63
Property Taxes	\$1,308/unit	Exemption/PILOT	0%
Total Expense	\$5,625/unit	Controllable	\$3,057/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			2.3%
Highest Unit Capture Rate	20%	2 BR/50%	29
Dominant Unit Cap. Rate	20%	2 BR/50%	29
Premiums (↑60% Rents)	Yes		\$119/Avg.
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	961 SF	Density	29.3/acre
Acquisition		\$25K/unit	\$1,865K
Building Cost	\$106.80/SF	\$103K/unit	\$7,803K
Hard Cost		\$129K/unit	\$9,807K
Total Cost		\$247K/unit	\$18,782K
Developer Fee	\$2,038K	(21% Deferred)	Paid Year: 8
Contractor Fee	\$1,373K	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
Amegy Bank	18/35	5.00%	\$4,397,000	1.20	City of Houston	0/0	0.00%	\$500	1.20	Richman Group	\$13,948,605
<b>TOTAL DEBT (Must Pay)</b>			<b>\$4,397,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$500</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$14,384,514</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$4,397,500</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$18,782,014</b>

**CONDITIONS**

- 1 Receipt and acceptance by 10% test:
  - Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.
- 2 Receipt and acceptance by Cost Certification:
  - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Certification that subsurface environmental investigation was performed as specified in the ESA, and if necessary, that any recommended mitigation measures were fully 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.

**RISK PROFILE**

**STRENGTHS/MITIGATING FACTORS**

- Low Capture Rates
- Overall Feasibility Indicators
- Proximity to transit
- Proximity to employment opportunities
- Developer Experience

**WEAKNESSES/RISKS**

- Low visibility
- Potential for increased costs due to noise mitigation.
- Subsurface groundwater risks.
- 1.08 parking spaces per unit
- Applicant has not yet delivered LIHTC units in Texas.

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**







**DEVELOPMENT IDENTIFICATION**

TDHCA Application #: 21035 Program(s): 9% HTC

Manson Place

Address/Location: SWQ of Reeves Steet & Scott Street

City: Houston County: Harris Zip: 77004

Population: General Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Garden (Up to 4-story) Region: 6

Analysis Purpose: New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (9% Credit)	\$1,500,000				\$1,500,000				

**CONDITIONS**

- 1 Receipt and acceptance by 10% test:
  - Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.
- 2 Receipt and acceptance by Cost Certification:
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**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	8
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60% of AMI	60% of AMI	32
80% of AMI	80% of AMI	4

**DEVELOPMENT SUMMARY**

Manson Place is a proposed 76 unit development located in Houston's Historic Third Ward. The development is located in one of Houston's Complete Communities where robust community revitalization is a primary objective including significant committed funding. The 2.595 acre site will house 76 families consisting of all 2 and 3 bedroom units. Manson Place will partner with Family Scholar House to provide the parent(s) resources to enable them to earn a college degree and provide a safe, nurturing environment for their children. The development site is conveniently located next to the University of Houston as well as a light rail stop. Due to the proximity to mass transit, the City of Houston permits a 50% parking reduction.

**RISK PROFILE**

STRENGTHS/MITIGATING FACTORS	
▫	Low Capture Rates
▫	Overall Feasibility Indicators
▫	Proximity to employment opportunities
▫	Proximity to transit
▫	Developer Experience

WEAKNESSES/RISKS	
▫	Low visibility
▫	Potential for increased costs due to noise mitigation.
▫	Subsurface groundwater risks.
▫	1.08 parking spaces per unit
▫	Applicant has not yet delivered LIHTC units in Texas.



**DEVELOPMENT TEAM**

PRIMARY CONTACTS

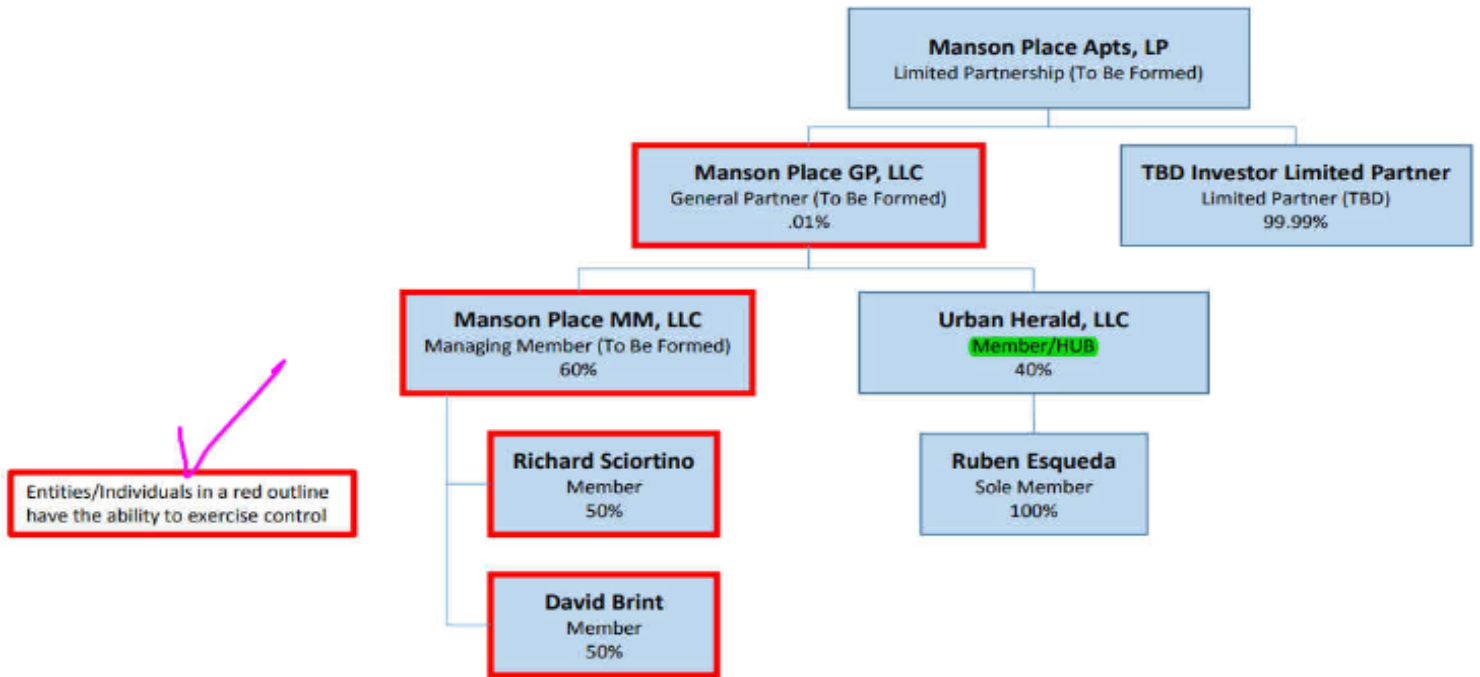
Name: Scott Puffer  
Phone: (513) 603-0074  
Relationship: Applicant Business Development

Name: Ruben Esqueda  
Phone: (817) 329-8051  
Relationship: Applicant Sr. Vice President

OWNERSHIP STRUCTURE

**Manson Place Apartments**

Ownership Organization Chart



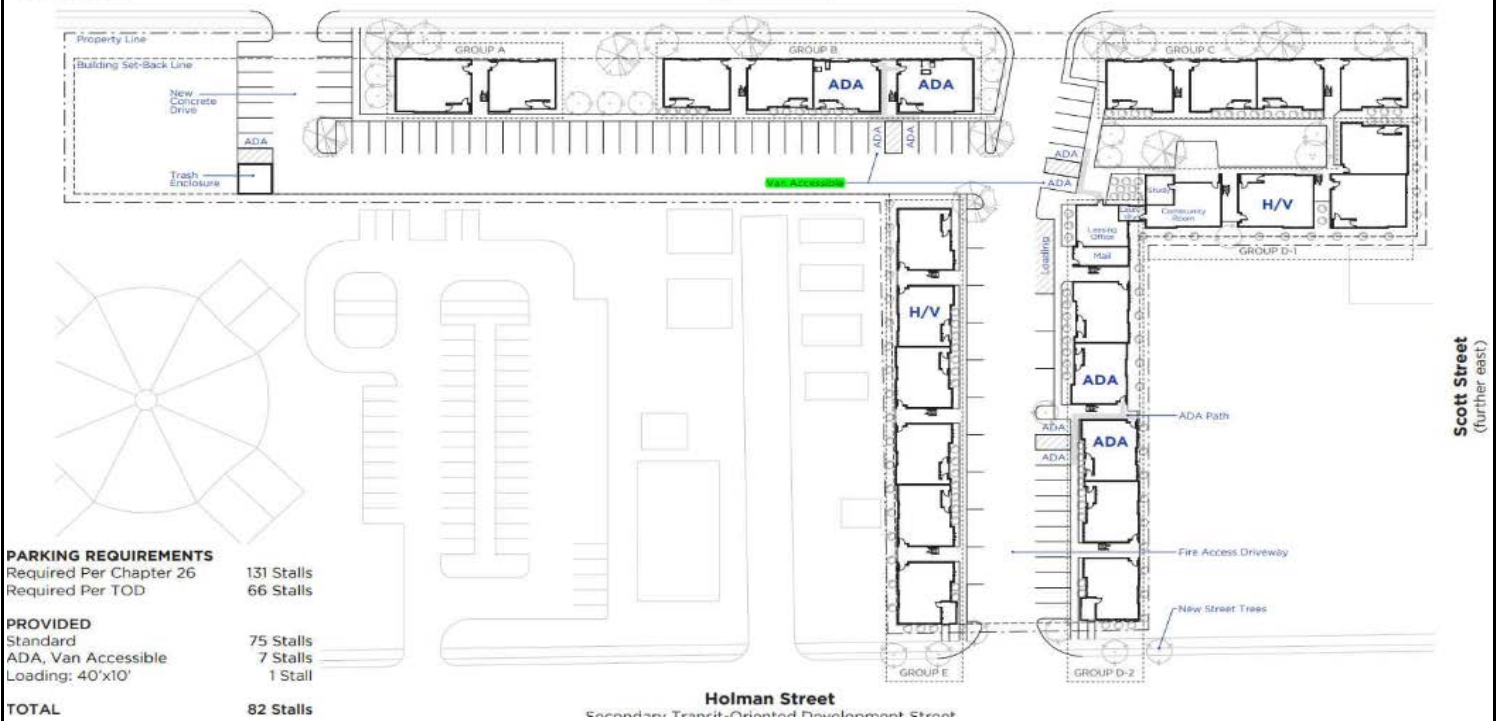
- The managing members of Manson Place MM, LLC are principals of the applicant, Brinshore Development. Brinshore has successfully developed over 7,500 units in 15 cities nationally, and has recently begun development of one Bond development in Waco and two other 9% developments in Houston.

# DEVELOPMENT SUMMARY

## SITE PLAN

TDHCA #21035

### SITE PLAN



**Comments:**

Parking requirement is reduced 50% because the project is a Transit-Oriented Development (TOD). Seventy (70) parking spaces are provided (139 spaces required before 50% TOD bonus, 82 spaces provided). There is no remaining room for Site Amenities, and all amenities have been included in the Common Spaces. Similarly, there is no greenspace, but the developer will provide landscaping along Reeves St.

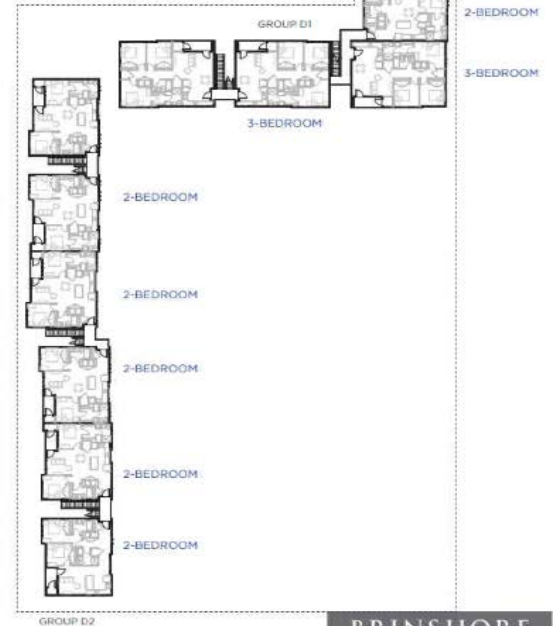
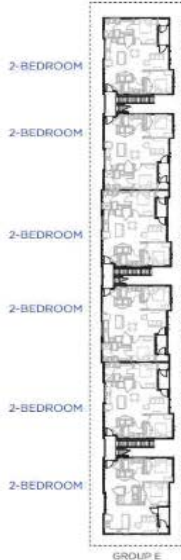
When parking, there's no room to turn around on-site and tenants may need to exit and reenter the site through any one of three places of ingress/egress.

# BUILDING PLAN (Typical)

## SECOND & THIRD FLOOR PLAN



**UNIT MIX SECOND & THIRD FLOORS**  
 2-BEDROOM 21 UNITS  
 3-BEDROOM 5 UNITS



	GROUP A	GROUP B	GROUP C	GROUP D1	GROUP D2	GROUP E
GROSS BUILDING	2,261 SF	4,300 SF	4,085 SF	4,734 SF	6,103 SF	6,148 SF
UTILITY*	27 SF	57 SF	52 SF	56 SF	75 SF	75 SF
BREEZEWAY	77 SF	136 SF	117 SF	232 SF	194 SF	176 SF
CORRIDOR	0 SF	0 SF	0 SF	0 SF	0 SF	0 SF
BALCONY*	105 SF	195 SF	189 SF	225 SF	225 SF	270 SF
PATIO*	0 SF	0 SF	0 SF	0 SF	0 SF	0 SF

\*SEE UNIT PLANS FOR DIMENSIONS AND SQUARE FOOTAGES FOR UTILITY, BALCONY, PATIO

1" = 40'-0"

**BRINSHORE**

**Comments:**

All units are 2-3 Bedroom, with large walk-in closets in the Master Bedroom leading to the Master Bathroom. All units have in-unit laundry, along with sizable balconies on the 2nd and 3rd floors. Minimal breezeways are necessary, as all units are accessed from exterior stairways.



APPRAISED VALUE

Appraiser: David L. Pallante & Associates, L.L.C. Date: 1/22/2021

Land as Vacant:	2.603 acres	<u>\$1,940,000</u>	Per Unit:	<u>\$25,526</u>
<b>Total Development: (as-is)</b>		<b><u>\$1,940,000</u></b>	Per Unit:	<b><u>\$25,526</u></b>

Comments:  
Appraiser utilized a Sales Comparison Approach since the property is vacant land.

SITE INFORMATION

Flood Zone:	<u>Zone X</u>	Scattered Site?	<u>No</u>
Zoning:	<u>None</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>0</u>	Title Issues?	<u>No</u>

Current Uses of Subject Site:  
Vacant, grass-covered land with a dirt road and a concrete driveway.

Surrounding Uses:  
Mixed Residential and Commerical properties. Commercial property usage has included dry-cleaners, automobile repair shops, fueling stations, restaurants, banks, and convenience stores.

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: EnSafe Inc. Date: 2/3/2021

- Recognized Environmental Conditions (RECs) and Other Concerns:
- Benzene and other petroleum-related chemicals of concern from an up-gradient LPST facility are likely to have migrated to and impacted soil, groundwater, and/or soil vapor at the subject property.
  - The subject property is near high-traffic roadways, outdoor sports stadiums, a non-commuter railway, and other potential noise considerations including William P. Hobby Airport.

## MARKET ANALYSIS

Provider: Affordable Housing Analysts

Date: 3/23/2021

Contact: Bob Coe

Phone: 281-387-7552

Primary Market Area (PMA): 13 sq. miles 2 mile equivalent radius

ELIGIBLE HOUSEHOLDS BY INCOME								
Harris County Income Limits								
HH Size		1	2	3	4	5	6	7+
30% AMGI	Min	\$15,960	\$15,960	\$15,960	\$15,960	\$18,450	\$18,450	---
	Max	\$16,560	\$18,930	\$21,300	\$23,640	\$25,560	\$27,450	---
50% AMGI	Min	\$26,610	\$26,610	\$26,610	\$26,610	\$30,750	\$30,750	---
	Max	\$27,600	\$31,550	\$35,500	\$39,400	\$42,600	\$45,750	---
60% AMGI	Min	\$31,950	\$31,950	\$31,950	\$31,950	\$36,900	\$36,900	---
	Max	\$33,120	\$37,860	\$42,600	\$47,280	\$51,120	\$54,900	---
80% AMGI	Min	\$42,600	\$42,600	\$42,600	\$42,600	\$49,200	\$49,200	---
	Max	\$44,160	\$50,480	\$56,800	\$63,040	\$68,160	\$73,200	---

AFFORDABLE HOUSING INVENTORY						
Competitive Supply (Proposed, Under Construction, and Unstabilized)						
File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
21132	OST Lofts	Y	New	General	41	130
20097	Regency Lofts	Y	New	General	63	120
Other Affordable Developments in PMA since 2016						
18243	2222 Cleburne		New	Elderly Limitation	n/a	112
<b>Stabilized Affordable Developments in PMA</b>					Total Units	1,695
					Total Developments	9
					Average Occupancy	98%

Proposed, Under Construction, and Unstabilized Competitive Supply:

21132 OST Lofts is proposed with 41 competitive HTC units a few miles away on the south side of Hwy 90.

20097 Regency Lofts is a few miles south of the subject currently under development with 63 competitive units.

21607 Caroline Lofts is a General New Construction development in an adjacent census tract to the subject, and 21026 Vista at Park Place is a New Construction development in an adjacent census tract to the subject PMA.

Market Analysts have defined the PMA's of all deals so they don't overlap and are non-competitive.

OVERALL DEMAND ANALYSIS				
	Market Analyst		Underwriter	
	HTC	Assisted	HTC	
Total Households in the Primary Market Area	22,562		22,562	
Potential Demand from the Primary Market Area	6,966		6,966	
10% External Demand	697		697	
Potential Demand from Other Sources	0		0	
<b>GROSS DEMAND</b>	<b>7,663</b>		<b>7,663</b>	
Subject Affordable Units	74		74	
Unstabilized Competitive Units	112		104	
<b>RELEVANT SUPPLY</b>	<b>186</b>		<b>178</b>	
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>2.4%</b>		<b>2.3%</b>	

Population:	<b>General</b>	Market Area:	<b>Urban</b>	Maximum Gross Capture Rate:	<b>10%</b>
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND										
AMGI Band	Market Analyst					Underwriter				
	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate
30% AMGI	2,303	230	8	11	1%	2,303	230	8	10	1%
50% AMGI	1,785	179	30	44	4%	1,785	179	30	33	3%
60% AMGI	1,711	171	32	57	5%	1,711	171	32	60	5%
80% AMGI	1,166	117	4	0	0%	1,166	117	4	1	0%

**Demand Analysis:**

The capture rate calculation determines the percentage of the qualified demand that is needed to absorb the proposed units. All capture rates reported are below the maximum thresholds.

Underwriter's capture rates are based on Market Analyst's qualified demand but include a different number of identified comp units at the Market Analyst determined comp properties. Underwriter's capture rates are used for analysis.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE										
Unit Type	Market Analyst					Underwriter				
	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
2 BR/30%	460	46	7	8	3%	460	46	7	8	3%
2 BR/50%	265	27	29	35	22%	265	27	29	28	20%
2 BR/60%	572	57	23	48	11%	572	57	23	54	12%
2 BR/80%	380	38	2	0	0%	380	38	2	0	0%
3 BR/30%	557	56	1	3	1%	557	56	1	2	0%
3 BR/50%	303	30	1	9	3%	303	30	1	5	2%
3 BR/60%	738	74	9	9	2%	738	74	9	6	2%
3 BR/80%	478	48	2	0	0%	478	48	2	1	1%

Market Analyst Comments:

"Occupancies of the affordable housing projects are high, with some maintaining waiting lists. Therefore, the subject property need only achieve moderate penetration to be feasible." (p. 14)

"... a total of 227 units require absorption, of which 186 units will be rent-restricted. There are approximately 7,663 (HISTA) potential households (relevant to the rent restricted units) based on income eligibility, household size, and housing preference in the subject's primary market." (p. 14)

"Houston gained more residents between 2000 and 2010 than any of the nation's other 365 cities according to a new study by Kinder Institute for Urban Research at Rice University. During this period, the Greater Houston metropolitan area grew by 1.2 million people." (p. 22)

**OPERATING PRO FORMA**

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$319,584	Avg. Rent:	\$866	Expense Ratio:	57.2%
Debt Service:	\$266,293	B/E Rent:	\$802	Controllable Expenses:	\$3,057
Net Cash Flow:	\$53,291	UW Occupancy:	92.5%	Property Taxes/Unit:	\$1,308
Aggregate DCR:	1.20	B/E Occupancy:	85.9%	Program Rent Year:	2020

Applicant elects to use Income Averaging.

2 market rate units and 4 80% HTC units are underwritten at gross 60% HTC rents.

Average Rent is \$64 above Break-Even Rent.

Interest rate could only increase 30bps before DCR drops below 1.15 and assumed debt would be decreased, compensated by additional Deferred Developer Fee.

\$6k of supportive services are included and will be underwritten at cost certification, regardless if actually incurred.

Applicant Electric / Gas estimate is limited to Common Area only, with LED lighting and no conditioned corridors.

Applicant's Property Tax projection is based on an 8.5% cap rate, rather than the 10% provided by QAP rules.



## DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$712,909/ac	\$24,539/unit	<b>\$1,865,000</b>	Contractor Fee	<b>\$1,372,914</b>
Off-site + Site Work		\$20,224/unit	<b>\$1,537,000</b>	Soft Cost + Financing	<b>\$3,352,408</b>
Building Cost	\$106.80/sf	\$102,665/unit	<b>\$7,802,550</b>	Developer Fee	<b>\$2,038,279</b>
Contingency	5.00%	\$6,144/unit	<b>\$466,978</b>	Reserves	<b>\$346,886</b>
<b>Total Development Cost</b>		<b>\$247,132/unit</b>	<b>\$18,782,014</b>	<b>Rehabilitation Cost</b>	<b>N/A</b>
<b>Qualified for 30% Basis Boost?</b>		Located in OCT with < 20% HTC units/HH			

**Acquisition:**

Land acquisition cost of \$24K per unit.

A small legal fee regarding the acquisition was added to the Acquisition rather than as a soft cost.

**Site Work:**

Site Amenities \$435K (Landscaping / Fencing) and \$494K (on-site utilities) contribute to the Site Work of \$20.2K/unit when divided over the low number of units.

**Building Cost:**

Underwriter's Building Cost estimate (\$98.27 psf) based on Marshall & Swift "average" cost model adjusted for current market conditions. Applicant's \$106.80 cost is 8.7% higher than Underwriter's estimate.

Budget for Woods & Plastics account for nearly 1/3 of Total Building Costs.

Three roof pitches ranging from 3.5/12 to 6.5/12, and underwriter added a small premium for the variance.

Adjustment added due to the lower than average number of units.

Adder applied to account for current costs of lumber and steel.

**Soft Costs:**

Just over \$11K / unit for Architecture & Engineering

**Credit Allocation Supported by Costs:**

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
<b>\$18,782,014</b>	<b>\$13,519,460</b>	<b>\$1,537,457</b>

## UNDERWRITTEN CAPITALIZATION

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
Amegy Bank	Conventional Loan	\$12,100,000	4.50%	81%
Richman Group	HTC	\$2,789,721	\$0.93	19%
City of Houston	§11.9(d)(2)LPS Contribution	\$500		0%
<b>\$14,890,221</b>			<b>Total Sources</b>	

Comments:

Construction Loan through Amegy Bank will convert to a non-recourse loan when converted to Permanent.

PERMANENT SOURCES										
Debt Source	PROPOSED				UNDERWRITTEN					
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC	
Amegy Bank	\$4,397,000	5.00%	35	18	\$4,397,000	5.00%	35	18	23%	
City of Houston	\$500	0.00%	0	0	\$500	0.00%	0	0	0%	
<b>Total</b>		<b>\$4,397,500</b>				<b>\$4,397,500</b>				

Comments:

Permanent interest rate fixed at 15 Year Swap plus 3%.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Richman Group	\$13,948,605	\$0.93		\$13,948,605	\$0.93	74%	
Manson Place Development, LLC	\$435,910		21%	\$435,909		2%	22%
<b>Total</b>		<b>\$14,384,515</b>		<b>\$14,384,514</b>			
				<b>\$18,782,014</b>	<b>Total Sources</b>		

Credit Price Sensitivity based on current capital structure	
<b>\$0.959</b>	Maximum Credit Price before the Development is oversourced and allocation is limited
<b>\$0.891</b>	Minimum Credit Price below which the Development would be characterized as infeasible

Comments:

Applicant's Deferred Developer Fee should be fully repaid in 8 years.

## CONCLUSIONS

Gap Analysis:	
Total Development Cost	\$18,782,014
Permanent Sources (debt + non-HTC equity)	\$4,397,500
<b>Gap in Permanent Financing</b>	<b>\$14,384,514</b>

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$14,296,922	\$1,537,457
Needed to Balance Sources & Uses	\$14,384,514	\$1,546,877
Requested by Applicant	\$13,948,605	\$1,500,000

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
<b>Tax Credit Allocation</b>	<b>\$13,948,605</b>	<b>\$1,500,000</b>

Deferred Developer Fee	\$435,909	( 22% deferred)
Repayable in	8 years	

Comments:

Underwriter recommends \$1,500,000 in annual tax credits as requested by Applicant.

Underwriter:	<i>Greg Stoll</i>
Manager of Real Estate Analysis:	<i>Jeanna Adams</i>
Director of Real Estate Analysis:	<i>Thomas Cavanagh</i>

**UNIT MIX/RENT SCHEDULE**  
**Manson Place, Houston, 9% HTC #21035**

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
Area Median Income	\$78,800
PROGRAM REGION:	6
PROGRAM RENT YEAR:	2020

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	-	0.0%	0	0
2	62	81.6%	0	0
3	14	18.4%	0	0
4	-	0.0%	0	0
5	-	0.0%	0	0
<b>TOTAL</b>				
	<b>76</b>	<b>100.0%</b>	<b>-</b>	<b>-</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	97.20%
APP % Acquisition	4.00%
APP % Construction	9.00%
Average Unit Size	961 sf

54%	Income	20%	30%	40%	50%	60%	70%	80%	MR	TOTAL
Average	# Units	-	8	-	30	32	-	4	2	76
Income	% Total	0.0%	10.5%	0.0%	39.5%	42.1%	0.0%	5.3%	2.6%	100.0%

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 30%	\$532	7	2	2	925	\$532	\$107	\$425	\$0	\$0.46	\$425	\$2,975	\$2,975	\$425	\$0	\$0	\$1,065	\$1.15	\$1,340
TC 50%	\$887	29	2	2	925	\$887	\$107	\$780	\$0	\$0.84	\$780	\$22,620	\$22,620	\$780	\$1	\$0	\$1,065	\$1.15	\$1,340
TC 60%	\$1,065	23	2	2	925	\$1,065	\$107	\$958	\$0	\$1.04	\$958	\$22,034	\$22,034	\$958	\$1	\$0	\$1,065	\$1.15	\$1,340
TC 80%	\$1,420	2	2	2	925	\$1,420	\$107	\$1,313	(\$248)	\$1.15	\$1,065	\$2,130	\$2,130	\$1,065	\$1	(\$248)	\$1,065	\$1.15	\$1,340
MR		1	2	2	925	\$0	\$107		NA	\$1.15	\$1,065	\$1,065	\$1,065	\$1,065	\$1	NA	\$1,065	\$1.15	\$1,340
TC 30%	\$615	1	3	2	1,122	\$615	\$131	\$484	\$0	\$0.43	\$484	\$484	\$484	\$484	\$0	\$0	\$1,230	\$1.10	\$1,700
TC 50%	\$1,025	1	3	2	1,122	\$1,025	\$131	\$894	\$0	\$0.80	\$894	\$894	\$894	\$894	\$1	\$0	\$1,230	\$1.10	\$1,700
TC 60%	\$1,230	9	3	2	1,122	\$1,230	\$131	\$1,099	\$0	\$0.98	\$1,099	\$9,891	\$9,891	\$1,099	\$1	\$0	\$1,230	\$1.10	\$1,700
TC 80%	\$1,640	2	3	2	1,122	\$1,640	\$131	\$1,509	(\$279)	\$1.10	\$1,230	\$2,460	\$2,460	\$1,230	\$1	(\$279)	\$1,230	\$1.10	\$1,700
MR		1	3	2	1,122	\$0	\$131		NA	\$1.10	\$1,230	\$1,230	\$1,230	\$1,230	\$1	NA	\$1,230	\$1.10	\$1,700
<b>TOTALS/AVERAGES:</b>		<b>76</b>			<b>73,058</b>				<b>(\$14)</b>	<b>\$0.90</b>	<b>\$866</b>	<b>\$65,783</b>	<b>\$65,783</b>	<b>\$866</b>	<b>\$0.90</b>	<b>(\$14)</b>	<b>\$1,095</b>	<b>\$1.14</b>	<b>\$1,406</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$789,396</b>	<b>\$789,396</b>
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## STABILIZED PRO FORMA

*Manson Place, Houston, 9% HTC #21035*

STABILIZED FIRST YEAR PRO FORMA												
COMPARABLES			APPLICANT				TDHCA				VARIANCE	
Database	Local 2020 Comps		% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.90	\$866	\$789,396	\$789,396	\$866	\$0.90		0.0%	\$0
Laundry, late fees, and pet fees					\$20.00	\$18,240						
Total Secondary Income					\$20.00		\$18,240	\$20.00			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$807,636	\$807,636				0.0%	\$0
Vacancy & Collection Loss					7.5% PGI	(60,573)	(60,573)	7.5% PGI			0.0%	-
Rental Concessions						-	-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$747,063	\$747,063				0.0%	\$0

General & Administrative	\$35,185	\$463/Unit	\$31,261	\$411	4.14%	\$0.42	\$407	\$30,940	\$31,261	\$411	\$0.43	4.18%	-1.0%	(321)
Management	\$35,962	4.4% EGI	\$25,638	\$337	5.00%	\$0.51	\$491	\$37,353	\$37,353	\$491	\$0.51	5.00%	0.0%	-
Payroll & Payroll Tax	\$105,369	\$1,386/Unit	\$113,758	\$1,497	13.73%	\$1.40	\$1,350	\$102,600	\$105,369	\$1,386	\$1.44	14.10%	-2.6%	(2,769)
Repairs & Maintenance	\$58,081	\$764/Unit	\$61,810	\$813	6.10%	\$0.62	\$600	\$45,600	\$49,400	\$650	\$0.68	6.61%	-7.7%	(3,800)
Electric/Gas	\$18,776	\$247/Unit	\$29,515	\$388	0.71%	\$0.07	\$70	\$5,320	\$18,776	\$247	\$0.26	2.51%	-71.7%	(13,456)
Water, Sewer, & Trash	\$53,034	\$698/Unit	\$52,982	\$697	6.41%	\$0.66	\$630	\$47,880	\$52,982	\$697	\$0.73	7.09%	-9.6%	(5,102)
Property Insurance	\$34,088	\$0.47 /sf	\$40,901	\$538	4.07%	\$0.42	\$400	\$30,400	\$34,088	\$449	\$0.47	4.56%	-10.8%	(3,688)
Property Tax (@ 100%) 2.5144	\$67,566	\$889/Unit	\$54,659	\$719	13.31%	\$1.36	\$1,308	\$99,426	\$78,334	\$1,031	\$1.07	10.49%	26.9%	21,092
Reserve for Replacements					2.54%	\$0.26	\$250	\$19,000	\$19,000	\$250	\$0.26	2.54%	0.0%	-
Supportive Services					0.80%	\$0.08	\$79	\$6,000	\$6,000	\$79	\$0.08	0.80%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)					0.40%	\$0.04	\$39	\$2,960	\$2,960	\$39	\$0.04	0.40%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>57.22%</b>	<b>\$5.85</b>	<b>\$5,625</b>	<b>\$ 427,479</b>	<b>\$435,523</b>	<b>\$5,731</b>	<b>\$5.96</b>	<b>58.30%</b>	<b>-1.8%</b>	<b>\$ (8,044)</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>42.78%</b>	<b>\$4.37</b>	<b>\$4,205</b>	<b>\$319,584</b>	<b>\$311,540</b>	<b>\$4,099</b>	<b>\$4.26</b>	<b>41.70%</b>	<b>2.6%</b>	<b>\$ 8,044</b>

CONTROLLABLE EXPENSES	\$3,057/Unit	\$3,392/Unit
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Manson Place, Houston, 9% HTC #21035*

DEBT / GRANT SOURCES															
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE					
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
Amegy Bank		1.17	1.20	266,293	5.00%	35	18	\$4,397,000	\$4,397,000	18	35	5.00%	\$266,293	1.20	23.4%
<b>CASH FLOW DEBT / GRANTS</b>															
City of Houston		1.17	1.20		0.00%	0	0	\$500	\$500	0	0	0.00%		1.20	0.0%
				<b>\$266,293</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$4,397,500</b>	<b>\$4,397,500</b>	<b>TOTAL DEBT SERVICE</b>			<b>\$266,293</b>	<b>1.20</b>	<b>23.4%</b>
<b>NET CASH FLOW</b>		\$45,247	\$53,291					<b>APPLICANT</b>	<b>NET OPERATING INCOME</b>	\$319,584	\$53,291	<b>NET CASH FLOW</b>			

EQUITY SOURCES													
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE							
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method		
Richman Group	LIHTC Equity	74.3%	\$1,500,000	0.929907	\$13,948,605	\$13,948,605	\$0.9299	\$1,500,000	74.3%	\$19,737	Applicant Request		
Manson Place Development, LLC	Deferred Developer Fees	2.3%	(21% Deferred)		\$435,910	\$435,909	(21% Deferred)		2.3%		<b>Total Developer Fee:</b>	<b>\$2,038,279</b>	
Additional (Excess) Funds Req'd		0.0%				\$0			0.0%				
<b>TOTAL EQUITY SOURCES</b>		<b>76.6%</b>			<b>\$14,384,515</b>	<b>\$14,384,514</b>			<b>76.6%</b>				
<b>TOTAL CAPITALIZATION</b>						<b>\$18,782,015</b>	<b>\$18,782,014</b>					<b>15-Yr Cash Flow after Deferred Fee:</b>	<b>\$587,083</b>

DEVELOPMENT COST / ITEMIZED BASIS												
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS					COST VARIANCE		
	Eligible Basis		Total Costs		Total Costs	Eligible Basis				%	\$	
	Acquisition	New Const. Rehab				New Const. Rehab	Acquisition					
Land Acquisition			\$24,342 / Unit	\$1,850,000	\$1,850,000		\$24,342 / Unit			0.0%	\$0	
Acquisition Legal Fees				\$15,000	\$15,000					0.0%	\$0	
Site Work		\$1,102,000	\$14,500 / Unit	\$1,102,000	\$1,102,000	\$14,500 / Unit	\$1,102,000			0.0%	\$0	
Site Amenities		\$435,000	\$5,724 / Unit	\$435,000	\$435,000	\$5,724 / Unit	\$435,000			0.0%	\$0	
Building Cost		\$5,849,683	\$106.80 /sf	\$102,665/Unit	\$7,802,550	\$7,179,179	\$94,463/Unit	\$98.27 /sf	\$5,849,683	8.7%	\$623,371	
Contingency		\$466,978	6.32%	5.00%	\$466,978	\$466,978	5.36%	6.32%	\$466,978	0.0%	\$0	
Contractor Fees		\$1,099,513	14.00%	14.00%	\$1,372,915	\$1,285,642	14.00%	14.00%	\$1,099,513	6.8%	\$87,273	
Soft Costs	\$0	\$1,914,641	\$28,811 / Unit	\$2,189,641	\$2,189,641	\$28,811 / Unit	\$1,914,641	\$0	\$0	0.0%	\$0	
Financing	\$0	\$906,297	\$15,300 / Unit	\$1,162,767	\$1,162,767	\$15,300 / Unit	\$906,297	\$0	\$0	0.0%	\$0	
Developer Fee	\$0	\$1,745,349	14.82%	14.85%	\$2,038,279	\$1,965,541	15.00%	14.82%	\$1,745,349	3.7%	\$72,737	
Reserves			6 Months	\$346,886	\$346,886	6 Months				0.0%	\$0	
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		<b>\$0</b>	<b>\$13,519,460</b>	<b>\$247,132 / Unit</b>	<b>\$18,782,015</b>	<b>\$17,998,634</b>	<b>\$236,824 / Unit</b>	<b>\$13,519,460</b>	<b>\$0</b>	<b>4.4%</b>	<b>\$783,381</b>	
Acquisition Cost	\$0			\$0								
Contingency		\$0		\$0								
Contractor's Fee		(\$0)		(\$1)								
Financing Cost		\$0		\$0								
Developer Fee	\$0	\$0		\$0								
Reserves				\$0								
<b>ADJUSTED BASIS / COST</b>		<b>\$0</b>	<b>\$13,519,460</b>	<b>\$247,132/unit</b>	<b>\$18,782,014</b>	<b>\$17,998,634</b>	<b>\$236,824/unit</b>	<b>\$13,519,460</b>	<b>\$0</b>	<b>4.4%</b>	<b>\$783,380</b>	
<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>						<b>\$18,782,014</b>						

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

*Manson Place, Houston, 9% HTC #21035*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction
<b>ADJUSTED BASIS</b>	\$0	\$13,519,460	\$0	\$13,519,460
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$13,519,460	\$0	\$13,519,460
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$17,575,297	\$0	\$17,575,297
Applicable Fraction	97.20%	97.20%	97%	97%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$17,082,858	\$0	\$17,082,858
Applicable Percentage	4.00%	9.00%	4.00%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	0	\$1,537,457	\$0	\$1,537,457
<b>CREDITS ON QUALIFIED BASIS</b>	\$1,537,457		\$1,537,457	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9299	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$1,537,457	\$14,296,922	----	----	----
<b>Needed to Fill Gap</b>	\$1,546,877	\$14,384,514	----	----	----
<b>Applicant Request</b>	\$1,500,000	\$13,948,605	<b>\$1,500,000</b>	<b>\$0</b>	<b>\$0</b>

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Garden (Up to 4-story)	73,058 SF	\$89.25	6,520,404
Adjustments				
Exterior Wall Finish	0.00%		0.00	\$0
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.00%		2.68	195,612
Roof Adjustment(s)			1.04	76,000
Subfloor			(0.16)	(11,689)
Floor Cover			2.56	187,028
Breezeways	\$30.78	6,188	2.61	190,494
Balconies	\$30.30	4,688	1.94	142,061
Plumbing Fixtures	\$1,080	228	3.37	246,240
Rough-ins	\$530	152	1.10	80,560
Built-In Appliances	\$1,830	76	1.90	139,080
Exterior Stairs	\$2,460	26	0.88	63,960
Heating/Cooling			2.34	170,956
Storage Space	\$30.78	0	0.00	0
Carports	\$12.25	0	0.00	0
Garages		0	0.00	0
Common/Support Area	\$100.12	2,145	2.94	214,758
Elevators		0	0.00	0
<b>Other:</b>			0.00	0
Fire Sprinklers	\$2.59	81,391	2.89	210,803
<b>SUBTOTAL</b>			<b>115.34</b>	<b>8,426,267</b>
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	1.00		0.00	0
Reserved				0
<b>TOTAL BUILDING COSTS</b>			<b>115.34</b>	<b>\$8,426,267</b>
Plans, specs, survey, bldg permits	3.30%		(3.81)	(\$278,067)
Contractor's OH & Profit	11.50%		(13.26)	(969,021)
<b>NET BUILDING COSTS</b>		\$94,463/unit	\$98.27/sf	\$7,179,179

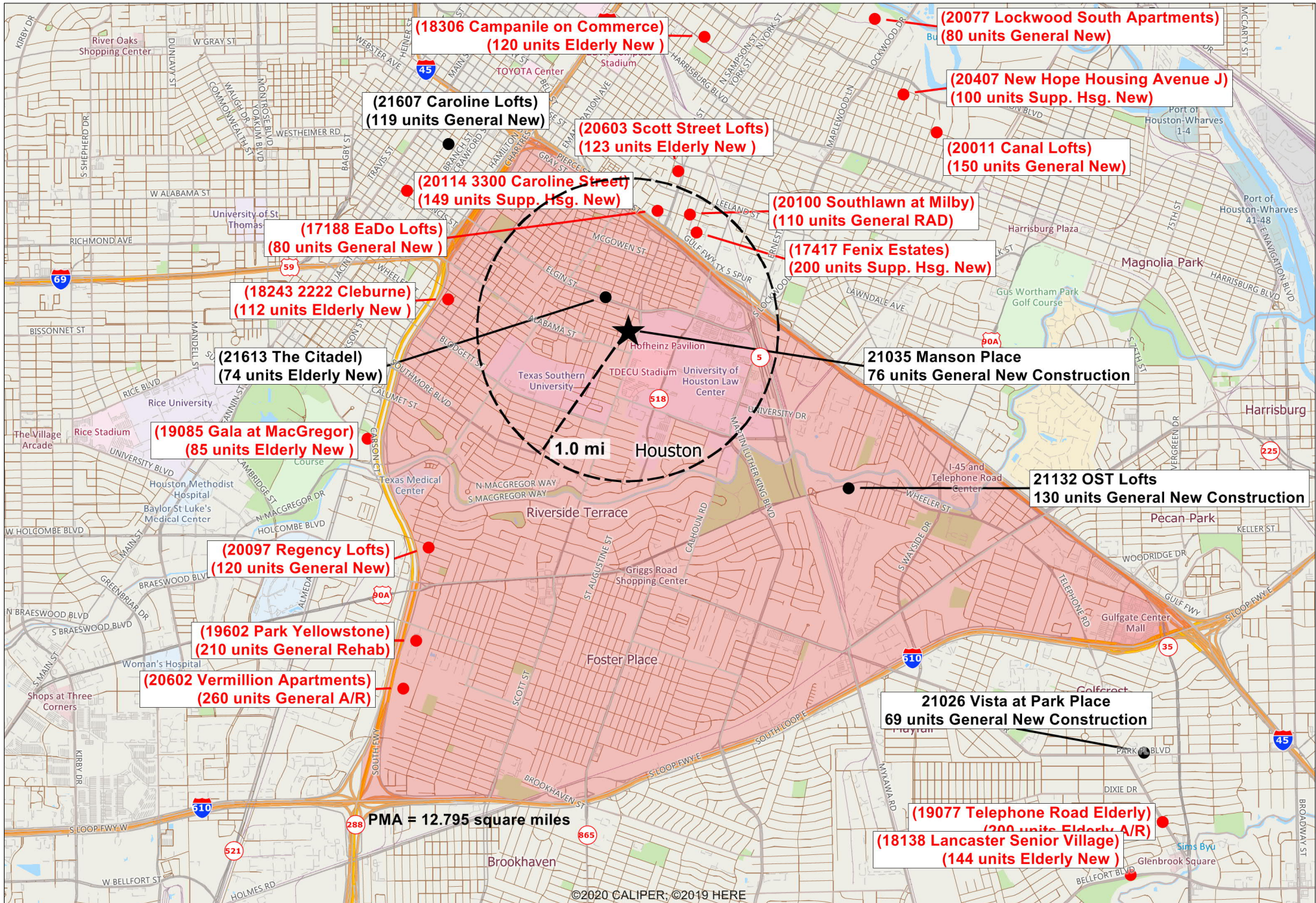
## Long-Term Pro Forma

*Manson Place, Houston, 9% HTC #21035*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$747,063	\$762,005	\$777,245	\$792,790	\$808,645	\$892,810	\$985,734	\$1,088,330	\$1,201,604	\$1,326,668	\$1,464,749
TOTAL EXPENSES	3.00%	\$427,479	\$439,930	\$452,747	\$465,941	\$479,523	\$553,666	\$639,387	\$738,505	\$853,126	\$985,691	\$1,139,025
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$319,584</b>	<b>\$322,075</b>	<b>\$324,498</b>	<b>\$326,849</b>	<b>\$329,123</b>	<b>\$339,143</b>	<b>\$346,347</b>	<b>\$349,825</b>	<b>\$348,478</b>	<b>\$340,978</b>	<b>\$325,724</b>
EXPENSE/INCOME RATIO		57.2%	57.7%	58.3%	58.8%	59.3%	62.0%	64.9%	67.9%	71.0%	74.3%	77.8%
<b>MUST -PAY DEBT SERVICE</b>												
TOTAL DEBT SERVICE		\$266,293	\$266,293	\$266,293	\$266,293	\$266,293	\$266,293	\$266,293	\$266,293	\$266,293	\$266,293	\$266,293
DEBT COVERAGE RATIO		1.20	1.21	1.22	1.23	1.24	1.27	1.30	1.31	1.31	1.28	1.22
<b>ANNUAL CASH FLOW</b>												
		\$53,291	\$55,781	\$58,204	\$60,555	\$62,829	\$72,850	\$80,053	\$83,532	\$82,185	\$74,684	\$59,431
Deferred Developer Fee Balance		\$382,618	\$326,837	\$268,633	\$208,077	\$145,248	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		\$0	\$0	\$0	\$0	\$0	\$199,928	\$587,083	\$999,481	\$1,415,277	\$1,806,459	\$2,137,579



# 21035 Manson Place - PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 653

**Agenda Date:** 6/13/2024

**Agenda #:** 32.

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Presentation, discussion, and possible action on a staff-initiated waiver of 10 TAC §11.204(15) related to HOME Match Requirements for certain Tax-Exempt Bond Developments

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #:** 659

**Agenda Date:** 6/13/2024

**Agenda #:** 33.

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Boulevard 61

#### **RECOMMENDED ACTION**

**WHEREAS**, the above listed development was awarded 9% housing tax credits during the 2021 competitive Application round;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner, which included certifications from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2023;

**WHEREAS**, the Development received an allocation of supplemental housing tax credits in 2023 that further extended that deadline to December 31, 2025;

**WHEREAS**, the Department received a request from the Development Owner to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the Development Owner has presented evidence that relief under force majeure is appropriate.

**NOW, therefore, it is hereby**

**RESOLVED**, the requests for treatment under an application of the force majeure rule are approved, with the 2021 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2024 Program Calendar applicable to the Development.

#### **BACKGROUND**

An award of Competitive (9%) Housing Tax Credits was approved by the Board for Boulevard 61 in 2021. Staff executed a Carryover Allocation Agreement with the Development Owner which included a certification from the Development Owner that documentation for the 10% Test would be submitted by a set date, and, in order to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocations were made would be placed in service by December 31, 2023. The Department received a request from the Development Owner to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. Staff determined that this effective "extension" of the 10% Test deadline due to Force Majeure events was appropriate under these circumstances.

Per 10 TAC §11.6(5) of the Qualified Allocation Plan (QAP), related to Credits Returns Resulting from Force Majeure Events, a Development Owner is allowed to return issued credits within three years of award, and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Per 10 TAC

§11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress.

The Development Owner has communicated to staff the specific challenges that impacted construction timelines and their ability to meet the 10% test and Placed in Service deadlines.

Boulevard 61 is a 100-unit mixed-income Development to be completed on Richmond Avenue in Houston. The Development was originally awarded Housing Tax Credits in 2021 and subsequently received an allocation of Multifamily Direct Loan (MFDL) Funds and supplemental housing tax credits in 2023, the latter of which extended the placed-in-service deadline to December 31, 2025. Since the receipt of these funds, the Development has encountered additional rising construction costs, supply chain issues, inflation, interest rate increases, and rising insurance premiums. Such increases and delays have led to a longer construction timeline, now projected at 18 months. This extended timeline materially impedes the Development's ability to meet the December 2025 placed-in-service deadline.

Staff has determined there is sufficient evidence of "sudden and unforeseen circumstances outside the control of the Development Owner . . . [regarding] supplier failures; or materials or labor shortages," as described in 10 TAC §11.6(5), for the Department to treat the Development under an application of the force majeure rule. If the Board approves the request to consider these force majeure events, the Development Owner will return the awarded credits and execution of a 2024 Carryover Allocation Agreement will result in a new award and a new placed-in-service deadline of December 31, 2026, for the Development, with a new 10% Test deadline of July 1, 2025. The 2021 Qualified Allocation Plan and Uniform Multifamily Rules will be applicable to the Development for the purposes of the force majeure event.

If the Board denies the requests regarding the force majeure events, the date by which the denied Development must be placed in service will remain as previously agreed. Because the Development Owner had anticipated not meeting the placed in service deadline, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregions from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits. If there are pending Applications on the 2024 or 2025 (depending on when the credits are returned) waiting list from the relevant subregions, the next Application would be awarded, assuming there are enough credits to make the award. If

there are not enough credits in the subregion to make an award, the credits will go into the statewide collapse and contribute the next award.

Staff recommends the Board approve the requests for treatment under an application of the force majeure rule for the Development. Approval of this request does not change any federal or state deadlines for MFDL.



May 14, 2024

VIA EMAIL: [cody.campbell@tdhca.state.tx.us](mailto:cody.campbell@tdhca.state.tx.us)

Mr. Cody Campbell  
Direct of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: Request for Force Majeure for Boulevard 61 (#21131/#23933/#23504)

Dear Mr. Campbell:

We are the development team for Houston DMA Housing III, LLC, the recipient a 2023 supplemental 9% LIHTC allocation and NHTF loan for Boulevard 61 in Houston. We are submitting this request to return our tax credits and have TDHCA reallocate the tax credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the 2024 Qualified Allocation Plan (QAP).

Since receipt of the 2023 supplemental credits, Boulevard 61 has had to continue to manage rising construction costs, supply chain issues, inflation and interest rate increases. The volatility in prices coupled with worker shortages and logistics delays have meant that all projects are still experiencing cost increases and very long construction periods. Whereas before the pandemic, a 100-unit development like Boulevard 61 would have a construction time of 12-15 months, now similarly sized developments take more than 24 months to construct. Contractors will no longer agree to aggressive construction timelines because there are so many things still outside of their control—like availability of certain products and services, and mostly notably equipment necessary for permanent electric at the sites. Further, developments like Boulevard 61, which are located near the Gulf of Mexico, have been hit particularly hard by operating expense increases due to rising property insurance premiums.

Due to these global issues, we have had to “pull out all the stops,” so to speak, to make this deal pencil. Using all the tools in the toolkit requires an inordinate amount of time and energy to get everything teed up and lined up accordingly. We have been working diligently on getting this development to the finish line for the past year, by undertaking the following:

- June 2023. DMA finally receives a commitment of gap funding from TDHCA: \$225,000 in 9% LIHTC supplemental credits and an award of \$5,660,000 in additional NHTF. Only at this time do we have a feasible deal to discuss with lenders, investors, and potential partners.
- July-October 2023. During this time, we were actively negotiating a partnership with the Houston Housing Authority for a partnership to achieve a property tax exemption. The negotiations were very long and protracted, and at the end of the negotiation, HHA advises us that they could not partner with us because doing so would violate their \$3M credit cap, according to TDHCA staff.

- October 2023-December 2023. DMA immediately pivots and begins joint venture negotiations anew with the Texas State Affordable Housing Corporation.
- December 2023. DMA submit an ownership transfer request to TDHCA.
- January 2024. DMA and Capital One hold concept meeting with HUD; HUD invites the team to go directly to firm commitment application stage, which is an expedited review.
- March 2024. TDHCA approves ownership change. DMA receives notice from City that permits are ready to be pulled.
- March 2024-present. DMA is working on packaging the firm commitment application to submit to HUD within the next 45 days.

Due to these exhaustive efforts to tee up the financing, and given the fact that we are permit ready, we finally are in a place to close this transaction this summer, however, our investor, RBC Capital, requires us to receive this force majeure approval prior to closing, because the construction timeline is such that placing in service by December 31, 2025 is not possible at this point in time given our 18 month construction timeline. See attached letter from RBC Capital for further support.

In closing, it is very important to note that DMA is truly committed to closing this transaction and placing this development in service. To date, not only have we purchased the \$7M site, but we have also expended \$1.6M to date in getting this development shovel ready. If the board declines to approve this force majeure request, DMA will take an enormous financial loss. Even though we could sell the land, there is no way in this market to recoup what we purchased it for, not to mention the \$1.6M in sunk costs. Moreover, our capital stack assumes that DMA will loan the deal at least \$1M to close the remaining financing gap. This is all to say that 1) we are extremely pregnant with this deal, and there is really not another option than to sprint toward a closing this summer; and 2) we are simply asking for more time, not more money.

We thank TDHCA for their consideration of our request. The delays imposed by the uncertainty in the construction market are "force majeure" events that have materially impeded our ability to finalize financing and begin construction on a Houston property that DMA owns. Unforeseeable issues with HHA as well as additional time required for new gap financing requests have made the current 2023 awardee timelines unachievable. Our circumstance clearly satisfies TDHCA's requirements for a reallocation of LIHTC under Section 11.6(5) of the QAP and we request that this matter be considered at the next available Board meeting with a recommendation for approval. If additional information is required, please contact me at [JanineS@dmacompanies.com](mailto:JanineS@dmacompanies.com) or 512-328-3232 extension 4505.

Sincerely,  
DMA DEVELOPMENT COMPANY, LLC



Janine Sisak  
Senior Vice President/General Counsel



RBC Capital Markets®

RBC Capital Markets Corporation

Tax Credit Equity Group

Cleveland, Ohio, 44102

Telephone: (216) 875-2626

Fax: (216) 875-2612

April 2, 2024

DMA Development Company, LLC  
4101 Parkstone Heights Drive  
Suite 310  
Austin, Texas 78746  
Attn: Janine Sisak

**Re: Boulevard 61  
Houston, TX**

Dear Janine:

We are very excited about the opportunity to work with you on Boulevard 61 and bring this much needed affordable housing to Houston. However, we do have an issue with the placed in-service risk. We are not comfortable moving forward with the current deadline for placing the deal in service, which is December 2025 for this 2023 9% transaction. We will need to pass on this opportunity unless we can get an extension on the PIS deadline through the force majeure provision of the Qualified Allocation Plan which would allow DMA to exchange its 2023 credits for 2024 credits, thereby extending the PIS deadline to December 2026. As you know, we are one of the largest equity syndicators in the country and represent most of the investors in the LIHTC space. Without this PIS extension, we cannot invest in this deal as no upper tier investor will take the current PIS risk. If TDHCA is able to grant an extension through the force majeure provision, we would have the investors back at the table and ready to move forward. We would need that extension approved ahead of closing.

Very truly yours,

A handwritten signature in black ink, appearing to read 'DK' followed by a stylized flourish.

Dan Kierce  
Managing Director  
RBC Community Investment





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 660

**Agenda Date:** 6/13/2024

**Agenda #:** 34.

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Knoll Street Crossing

**RECOMMENDED ACTION**

**WHEREAS**, the above listed development was awarded 9% housing tax credits during the 2023 competitive Application round;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner, which included certifications from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2025;

**WHEREAS**, the Department received a request from the Development Owner to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the Development Owner has presented evidence that relief under force majeure is appropriate.

**NOW, therefore, it is hereby**

**RESOLVED**, the requests for treatment under an application of the force majeure rule are approved, with the 2023 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2024 Program Calendar applicable to the Development.

**BACKGROUND**

An award of Competitive (9%) Housing Tax Credits was approved by the Board for Knoll Street Crossing in 2023. Staff executed a Carryover Allocation Agreement with the Development Owner which included a certification from the Development Owner that documentation for the 10% Test would be submitted by a set date, and, in order to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocations were made would be placed in service by December 31, 2025. The Department received a request from the Development Owner to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. Staff determined that this effective "extension" of the 10% Test deadline due to Force Majeure events was appropriate under these circumstances.

Per 10 TAC §11.6(5) of the Qualified Allocation Plan (QAP), related to Credits Returns Resulting from Force Majeure Events, a Development Owner is allowed to return issued credits within three years of award, and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Per 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program

year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress.

The Development Owner has communicated to staff the specific challenges that impacted construction timelines and their ability to meet the 10% test and Placed in Service deadlines.

Knoll Street Crossing is a 65-unit Development to be completed on Knoll Street in Houston. The Development was awarded Housing Tax Credits in 2023, and has since experienced several unexpected delays. The Development Site was directly impacted by the 2024 Houston Derecho weather event, which has made a previously scheduled closing timeline non-viable and caused damage to the property. The Applicant also states that the derecho's regional impact on the Greater Houston area is likely to cause further delay, as it may compound already extended construction timelines as well as material and labor shortages. Development is anticipating a construction completion date in the first quarter of 2026.

Staff has determined there is sufficient evidence of "sudden and unforeseen circumstances outside the control of the Development Owner . . . [regarding] supplier failures; or materials or labor shortages," as described in 10 TAC §11.6(5), for the Department to treat the Development under an application of the force majeure rule. If the Board approves the request to consider these force majeure events, the Development Owner will return the awarded credits and execution of a 2024 Carryover Allocation Agreement will result in a new award and a new placed-in-service deadline of December 31, 2026, for the Development, with a new 10% Test deadline of July 1, 2025. The 2023 Qualified Allocation Plan and Uniform Multifamily Rules will be applicable to the Development for the purposes of the force majeure event.

If the Board denies the requests regarding the force majeure events, the date by which the denied Development must be placed in service will remain as previously agreed. Because the Development Owner had anticipated not meeting the placed in service deadline, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available to the subregions from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits. If there are pending Applications on the 2024 or 2025 (depending on when the credits are returned) waiting list from the relevant subregions, the next Application would be awarded, assuming there are enough credits to make the award. If there are not enough credits in the subregion to make an award, the credits will go into the statewide collapse and contribute to the next award.

Staff recommends the Board approve the request for treatment under an application of the force majeure rule for the Development.



May 31, 2024

Texas Department of Housing and Community Affairs (“TDHCA”)  
ATTN: Cody Campbell, Director of Multifamily Programs  
221 E. 11th Street  
Austin, TX 78701

RE: Request for Return and Reallocation of Tax Credits – Force Majeure under 10 TAC 11.6(5)  
/ Knoll Street Crossing, TDHCA Application #23068

Dear Mr. Campbell,

On August 28th, 2023, CSH Knoll Street Crossing, Ltd. (the “Owner”) received a Commitment Notice from TDHCA for an award of 2023 9% Low Income Housing Tax Credits (the “HTCs”) for Knoll Street Crossing (the “Development”) located in Houston, Texas. Knoll Street Crossing is not currently under construction; however, it was tracking for a timely construction closing on or before June 30<sup>th</sup>, 2024. As detailed below, the Development has suffered a variety of unexpected delays that have been outside the control of the Owner. The Owner believes the circumstances constitute “force majeure” and, consequently, Owner respectfully requests that the TDHCA Board (the “Board”) considers Owner’s return of the 2023 Credits in exchange for an allocation of 2024 housing tax credits under 10 TAC 11.6(5). This request, if approved, would allow Owner to meet both its 10% Test and Placed-In-Service (“PIS”) deadlines.

**FORCE MAJEURE EVENTS / SUDDEN AND UNFORESEEN CIRCUMSTANCES  
OUTSIDE OF OWNER’S CONTROL**

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**1. 2024 Houston Derecho / Direct Hit at Knoll Street Crossing Development Site**

- On May 16<sup>th</sup> and May 17<sup>th</sup> of this year, the 2024 Houston Derecho (as named by the National Weather Service) caused multiple fatalities, widespread storm damage, ongoing delays even as of today’s date, extensive closures, vast power outages affecting millions of people, and moreover an overwhelming direct impact and damage to the Knoll Street Crossing Development Site address (1938 Knoll Street, Houston, Texas 77080) See, **Exhibit A.**

- Knoll Street Crossing has up to twenty-five mobile homes owned by residents who were previously mobilizing to remove their mobile homes on or before June 24<sup>th</sup>, 2024.
- Following the storm, the residents are currently mobilizing to remove their mobile homes from the property which would now allow for closing on or before July 31<sup>st</sup>, 2024. See, **Exhibit B**.
- Notwithstanding flying debris, broken glass, trees falling on mobile homes and 100mph wind damage, three (3) transformers exploded causing outages and a mitigated fire event. See, **Exhibit C**.
- The Houston Derecho moved through Greater Houston – creating a direct impact area over Knoll Street Crossing, See, **Exhibit D** – and is now considered the worst damaging wind event to affect Houston in nearly half a century.

## 2. **Delays Due to Supplier, Materials and Labor Shortages**

- While the construction industry has been working through upheaval since the commencement of the pandemic, shortages remain a real problem. The time to get certain critical items may be more than triple what it was pre-pandemic.
- Compounded with pandemic delays and now experiencing the subsequent Houston Derecho impact, communication and electricity have been down for multiple days and extending into multiple weeks due to extensive transmission line damage, causing City of Houston municipality closures and/or significant communication problems/delays.
- City of Houston Permitting and other government offices were closed following the storms with staff unavailable to coordinate on matters related to permitting and other approvals. Issuance of site development permits and building permits have been delayed. The site development permits have been issued and the Development has a path to start construction after closing on the financing. However, the building permit is still pending. Although the building permits will not delay the start of construction, the timing for release of the building permits will delay vertical construction and thus achievement of placed-in-service such that the anticipated placed-in-service date would occur on January 26, 2026.
- The General Contractor for the Development is Houston-based and lost power, electricity, and communication for multiple days, leading to delays in pre-closing and construction deliverables which have delayed closing.
- Again, unforeseeable weather events, such as the 2024 Houston Derecho, will continue to create sub-contractor labor shortages throughout the ongoing Knoll Street Crossing construction period because of assessment and repair to damaged infrastructure work now associated with this massive storm.
- It should also be noted that still, after more than four years since the Covid-19 pandemic was declared in Mar-2020, the multifamily housing industry continues to experience logistical difficulties adversely affecting schedules and budgets.

- Ongoing conflicts and proxy wars beginning in Feb-2022 (Ukraine-Russia) and Oct-2023 (Israel-Hamas) continue to escalate fuel, lumber, and housing material costs, along with disrupting job growth and labor markets in the United States.
- And importantly, even now in May and June 2024, national consumer prices currently reflect an inflation rate at an all-time high, with the Federal Reserve still considering hiking interest rates at aggressive increments not experienced in nearly three decades with no signs of slowing down.

### **3. Further Considerations**

- As per the QAP, a Force Majeure event is the sudden and unforeseen circumstances outside the control of the Owner, such as, acts of God which are fires, tornadoes, floods, significant or unusual rainfalls, explosions, or losses of necessary water or utilities as a direct result of a significant weather event. In addition, this also includes supplier failures or material and labor shortages. To the extent that the Force Majeure events make construction activity impossible, or materially impedes progress, a request for relief can be considered.
- The delays experienced to Knoll Street Crossing as a result of the 2024 Houston Derecho; the disrupted progress at city permitting departments, ongoing power outages and temporary delay with utility coordination as well as disruption to the infrastructure and service resulting in shortages of materials and labor are Force Majeure events that have significantly impeded the Owner's ability to mobilize existing mobile home owners, close on financing and engage construction activities on a timeline that complies with the PIS deadline applicable to the Development.
- The Owner attempted to mitigate the impacts to the materials and labor supply chains due to interest rate uncertainty and other market wide economic conditions by beginning to work with financing partners immediately upon receipt of an award, as well as, submitting for permits quickly.
- Each delay caused by the continuing effects of the weather, wars, and economy triggers a cascading effect on pre-development mobilization on 1938 Knoll Street, its construction timing, its worker scheduling, and indeed any material availability. While the Development Owner intends to close for construction this summer so that placed in service can be met as expeditiously as possible, the challenges outlined in this request are still significant.
- All aforementioned bulleted items evidence a direct loss impacting the Development. These Force Majeure events have materially impeded the construction progress of this Development, and continue to result in loss to the Development, and they could not have been reasonably foreseeable and mitigated through appropriate planning and risk management.
- The Development remains financially feasible, despite any ongoing delays. However, the Investor is requesting the Applicant receive an extension to the placed-in-service date as a condition to closing.

## **CONCLUSION**

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Owner is kindly requesting TDHCA approval at the next available board meeting in June. Owner does not anticipate needing a full two-year extension, and Owner is committed to delivering the Development on a timely basis. In addition, Owner is pleased to report that the Development is on its way to closing for construction with permits this summer and all financing partners are prepared to close. Ultimately, there are no other anticipated hurdles to overcome, and the Development is anticipating a construction completion date in the first quarter of 2026.

In conclusion, Owner kindly requests that this matter be considered by the Board with a recommendation for approval. If any additional information is required, please feel free to contact me directly. And as always, I sincerely appreciate your willingness and helpful attention to this matter.






Kind Regards,

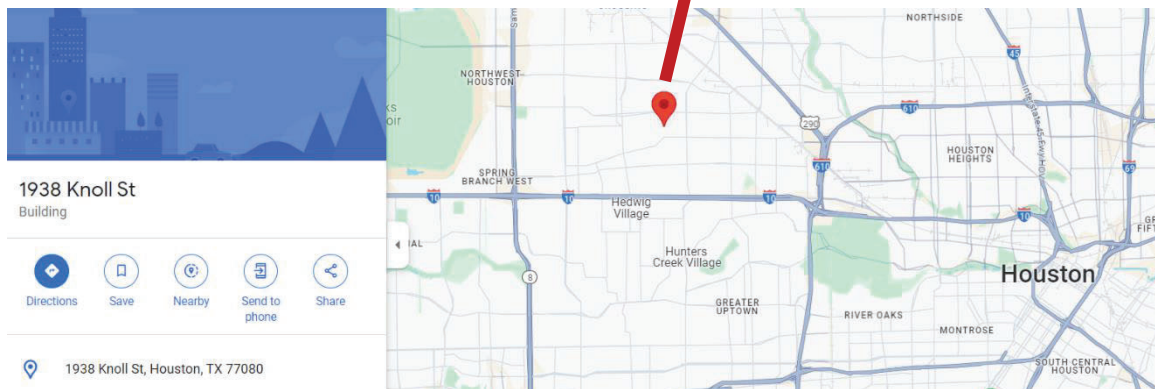


Russ Michaels, Executive Director  
Texas Inter-Faith Housing Corporation  
[rmichaels@interfaithgroup.org](mailto:rmichaels@interfaithgroup.org)  
212-960-3913 / mobile



EXHIBIT A

 **Meteorologist Noah Bergren**     
11h ·   
6:27PM CDT: Goodness! 121.9 MPH winds being detected on radar about to blast into millions in the heart of Houston, Texas. Could be the worst thunderstorm here in a LONG time.





**EXHIBIT B**

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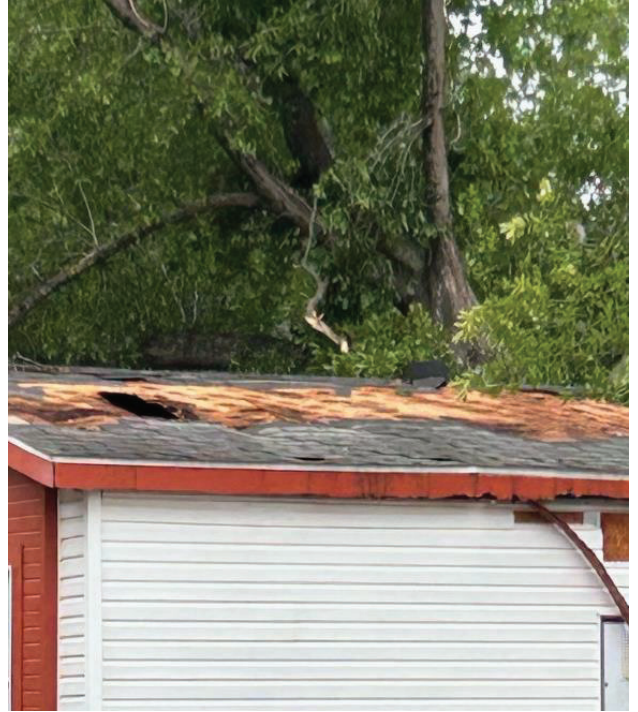
EXHIBIT C

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EXHIBIT D





## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #:** 661

**Agenda Date:** 6/13/2024

**Agenda #:** 35.

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for The Sasha

#### **RECOMMENDED ACTION**

**WHEREAS**, the above listed development was awarded 9% housing tax credits during the 2023 competitive Application round;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner, which included certifications from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2025;

**WHEREAS**, the Department received a request from the Development Owner to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the Development Owner has presented evidence that relief under force majeure is appropriate.

**NOW, therefore, it is hereby**

**RESOLVED**, the requests for treatment under an application of the force majeure rule are approved, with the 2023 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2024 Program Calendar applicable to the Development.

#### **BACKGROUND**

An award of Competitive (9%) Housing Tax Credits was approved by the Board for The Sasha in 2023. Staff executed a Carryover Allocation Agreement with the Development Owner which included a certification from the Development Owner that documentation for the 10% Test would be submitted by a set date, and, in order to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocations were made would be placed in service by December 31, 2025. The Department received a request from the Development Owner to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. Staff determined that this effective "extension" of the 10% Test deadline due to Force Majeure events was appropriate under these circumstances.

Per 10 TAC §11.6(5) of the Qualified Allocation Plan (QAP), related to Credits Returns Resulting from Force Majeure Events, a Development Owner is allowed to return issued credits within three years of award, and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Per 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development



Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress.

The Development Owner has communicated to staff the specific challenges that impacted construction timelines and their ability to meet the 10% test and Placed in Service deadlines.

The Sasha is a 60-unit Supportive Housing Development in Austin to be completed on the Grove Boulevard Campus of The SAFE Alliance, a nonprofit that is Sole Member of the General Partner and Co-Developer. Since its award of Housing Tax Credits in 2023, the Development has experienced several delays that materially impede its ability to meet the current December 2025 placed-in-service deadline in jeopardy. The Applicant was unable to obtain a site development permit from the City of Austin until May 2024 despite the application submittal occurring before the Development received an award of tax credits. In addition, the general contractor has relayed to the applicant that the Development cannot be constructed in less than 24 months. This is largely due to uncertain availability of electrical components in the Austin area and the unique requirements of building a high density podium product within a small site.

Staff has determined there is sufficient evidence of "sudden and unforeseen circumstances outside the control of the Development Owner . . . [regarding] supplier failures; or materials or labor shortages," as described in 10 TAC §11.6(5), for the Department to treat the Development under an application of the force majeure rule. If the Board approves the request to consider these force majeure events, the Development Owner will return the awarded credits and execution of a 2024 Carryover Allocation Agreement will result in a new award and a new placed-in-service deadline of December 31, 2026, for the Development, with a new 10% Test deadline of July 1, 2025. The 2023 Qualified Allocation Plan and Uniform Multifamily Rules will be applicable to the Development for the purposes of the force majeure event.

If the Board denies the requests regarding the force majeure events, the date by which the denied Development must be placed in service will remain as previously agreed. Because the Development Owner had anticipated not meeting the placed in service deadline, the credits are expected to be returned. If the Development Owner returns the credits, the credits would first be made available in the subregions from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits. If there are pending Applications on the 2024 or 2025 (depending on when the credits are returned) waiting list from the relevant subregions, the next Application would be awarded, assuming there are enough credits to make the award. If

there are not enough credits in the subregion to make an award, the credits will go into the statewide collapse and contribute the next award.

Staff recommends the Board approve the requests for treatment under an application of the force majeure rule for the Development.



May 23, 2024

VIA EMAIL: [cody.campbell@tdhca.state.tx.us](mailto:cody.campbell@tdhca.state.tx.us)

Mr. Cody Campbell  
Direct of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: Request for Force Majeure for The Sasha (#23011)

Dear Mr. Campbell:

DMA and The SAFE Alliance represent the development team for The Sasha, LP, the recipient of a 2023 9% LIHTC allocation for The Sasha in Austin. We are submitting this request to return our tax credits and have TDHCA reallocate the tax credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the 2024 Qualified Allocation Plan (QAP).

The basis for this request is two-fold:

1) Permitting delays.

It takes more than a year to obtain a site development permit in the City of Austin, even under the City of Austin's streamlined process for supportive housing deals, for which this development qualified. As part of that process, our architect and engineer had multiple meetings with Development Services staff starting in February 2023, with consultations at various stages of the design process intended to limit questions and redesign requests that typically come up after formal submittal. Despite these exhaustive pre-submittal efforts, and despite that we submitted our site development plan application in May 2023, two months before we received an award of tax credits, we only received site plan approval this month, after more than a 15-month processing time.

2) Extended construction period.

The general contractor cannot construct this development in less than 24 months because this is a high-density podium product located on a very tight site, within the larger SAFE campus that requires unusual security measures due to the safety needs of SAFE's client base (families who have recently experienced domestic violence). Further, in this post-pandemic world, contractors will no longer agree to aggressive construction timelines because there are so many things still outside of their control—like availability of certain products and services, and mostly notably in Austin, equipment necessary for permanent electric. Whereas before the pandemic, a 60-unit development like The Sasha could be constructed in 12-14 months, now similarly sized developments take 18-24 months to construct. See attached letter from Bailey Elliott Construction (the GC) for further support.

Despite these two major timing challenges, we have been working diligently on getting this development to the finish line for the past year, by undertaking the following:

- October 2023. SAFE/DMA receives the Commitment Notice.
- January 2024. SAFE/DMA receives a proposal from the selected General Contractor with a construction contract amount that is \$4M more than budget.
- March 2024. SAFE/DMA sign Letter of Intent with syndicator for \$0.86, approximately \$0.02 less than what we had at the time of application and commitment in 2023.
- March 2024. SAFE/DMA select a second General Contractor to rebid the construction contract. The GC received bids that resulted in a construction contract amount that is approximately \$2M more than what we had budgeted. Additionally, the GC will not commit to anything less than a 24-month construction schedule.
- April 2024. To make up for the gap caused by increased construction costs and reduced equity pricing, we requested and received an additional 5 Project-Based Vouchers and reduced the land cost (related party seller) from \$1M to \$0. The remaining gap is being filled with deferred developer fee.

Due to these exhaustive efforts to arrange the financing, and given the fact that we are permit ready, we finally can close this transaction within the next 3 months. However, our investor, Enterprise, requires us to receive this force majeure approval prior to closing because, while our placed in service deadline is not for another 18 months from now, we will be unable to meet that deadline because our construction period is 24 months. Stated another way, the December 2025 deadline is impossible to meet at this point.

The delays imposed by the uncertainty in the construction market are "force majeure" events that have materially impeded our ability to finalize financing and begin construction on a property that SAFE owns. Unforeseeable issues with the City of Austin as well as additional time required for value engineering have made the current 2023 awardee timelines unachievable. Our circumstance clearly satisfies TDHCA's requirements for a reallocation of LIHTC under Section 11.6(5) of the QAP and we request that this matter be considered at the next available Board meeting with a recommendation for approval.

SAFE and DMA are committed to closing this transaction and placing this development in service. SAFE currently owns the site and DMA has expended over \$1M in getting this development shovel ready. We are simply asking for more time here to place in service.

We thank TDHCA for their consideration of our request. If additional information is required, please contact me at [JanineS@dmacompanies.com](mailto:JanineS@dmacompanies.com) or 512-328-3232 extension 4505.

Sincerely,

DMA DEVELOPMENT COMPANY, LLC



Janine Sisak

Senior Vice President/General Counsel



May 23, 2024

VIA EMAIL: [cody.campbell@tdhca.state.tx.us](mailto:cody.campbell@tdhca.state.tx.us)

Mr. Cody Campbell  
Direct of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: Construction Timeline for The Sasha (#23011)

Dear Mr. Campbell:

We are the General Contractor for The Sasha and understand that DMA and The SAFE Alliance have submitted a letter requesting an extension to the Placed-In-Service date because of several factors, one of which being the construction timeline that we anticipate for this project.

We anticipate – based on the podium structural requirements, the 5-A construction type, constraints inherent to dealing with a tight sight, building in close proximity to occupied buildings, and limited access courtyard requirement – that construction will take 24 months from mobilization to completion.

If additional information is required, please contact me at [jhardesty@becaustin.com](mailto:jhardesty@becaustin.com) or 512-739-2925.

Respectfully,

Joshua Hardesty  
Vice President of Operations  
BEC Austin



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 662**

**Agenda Date: 6/13/2024**

**Agenda #: 36.**

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for The Upland

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #:** 663

**Agenda Date:** 6/13/2024

**Agenda #:** 37.

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Presentation, discussion, and possible action regarding waivers of certain provisions of 10 TAC Chapter 13 in response to the Department's National Housing Trust Fund expenditure deadline

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**