



May 8, 2024

Asset Management Division
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, TX 78701

RE: TDCHA Application 23007, 305 E Round Grove Living Placed-in-Service Deadline Extension

To Whom it May Concern,

The purpose of this letter is to request an extension for the Placed-in-Service deadline of 305 E Round Grove Living (the "Project") from December 31, 2025 to June 30, 2026 as well as an extension on the 10% Test to December 31, 2024.

Under §11.6.Competitive HTC Allocation Process of the 2024 Qualified Allocation Plan ("QAP"), subsection (5) provides provisions for Credits Returned Resulting from Force Majeure Events and allows the original allocation to be returned and reallocated to the Project under the current QAP while not being subject to the requirements of §11.6 paragraph (2), so long as certain criteria are met. Below are the criteria along with explanations as to how each is met.

(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.

- **Explanation of criteria being met:** At the time of submission of the tax credit application on March 1, 2023, the estimated interest rate on the HUD 221(d)(4) loan was 4.80% and total development costs were estimated at \$26.6 million. The interest rate trend generally follows the trend of the U.S. 10-Year Treasury Rate. At the time of application, the 10-Year Treasury was at approximately 3.90%. Now, the rate is at almost 4.50%. In addition to this, total development costs for this project have increased to \$29.9 million due to construction pricing increases which were unforeseen at the time of application. The combination of these two items has caused a financing gap of over \$4.4 million. These items were not in control of the Development Owner and could not have been foreseen.



(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board.

- **Explanation of criteria being met:** Interest rate increases and construction pricing increases could not have been reasonably foreseen by the Development Owner. In addition to this, at the end of 2023 the Federal Reserve had signaled that rate cuts would be coming in 2024. It was our expectation that this would occur and allow this development to close and meet the original placed-in-service deadline. However, there have been no rate cuts in 2024 and rates have actually increased since year-end 2023. This could not have been reasonably mitigated by the Development Owner.

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

- **Explanation of criteria being met:** As detailed in (A) above, interest rates have increased since application by approximately 0.60% since application and total development costs have increased by over \$3.3 million due to unforeseen construction pricing increases.

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner were properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph.

- **Explanation of criteria being met:** This request is being submitted before closing on the financing and commencing construction in order to ensure the request is submitted and considered in a timely manner. The Development Owner has also applied for a MFDL under the 2024-2 NOFA, which requires approximately 120 days from application to award and we will be required to have the award letter to close on other financing. Exhibit A which is attached hereto shows the detailed timeline from Allocation to Construction Completion.

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation.

- **Explanation of criteria being met:** As detailed in the timeline provided in Exhibit A, it is not feasible to complete the project by the required placement in service date.

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



- **Explanation of criteria being met:** There will be no changes to the originally-requested credits.

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially feasible in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

- **Explanation of criteria being met:** No insurance proceeds are being received as a result of the requested extension and all criteria used during underwriting has been approved by REA.

If you have any questions regarding this matter, please contact Cody Hunt via email at chunt@rivaswitzerland.com.

Best Regards,

A blue ink handwritten signature, appearing to be "Cody Hunt", with a stylized flourish at the end.

Cody Hunt
Authorized Representative