

ENFORCEMENT ACTION AGAINST
LOOP 12 TRAILS, LTD. WITH
RESPECT TO RIDGE AT TRINITY
(F/K/A GROVE VILLAGE)
(HTC # 04608 / BOND #04608B /
CMTS # 4198)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 6th day of September, 2018, 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 **LOOP 12 TRAILS, LTD.**, a Texas limited partnership (“Respondent”).

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

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

WAIVER

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

FINDINGS OF FACT (“FOF”)

Jurisdiction:

1. During 2004, Grove Village Limited Partnership (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$402,329 to acquire, rehabilitate, and operate Ridge at Trinity (f/k/a Grove Village) (“Property”) (HTC file No. 4608 / CMTS No. 4198 / LDLD No. 370).

2. Prior Owner signed a land use restriction agreement (“BOND LURA”) regarding the Property. The LURA was effective August 1, 2006, and filed of record at Document Number 200600324711 of the Records. In accordance with Section 12 of the BOND LURA, the BOND LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the BOND LURA.
3. Prior Owner signed a land use restriction agreement (“HTC LURA”) regarding the Property. The HTC LURA was effective May 18, 2009, and filed of record at Document Number 2010000017174 of the Official Public Records of Real Property of Dallas County, Texas (“Records”). In accordance with Section 2 of the HTC LURA, the HTC LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the HTC LURA.
4. Respondent took ownership of the Property on January 29, 2015. Although an Agreement to Comply was not signed for the BOND LURA, Respondent is bound to the terms of the BOND LURA in accordance with Section 12 thereof. Respondent signed an agreement with TDHCA to assume the duties imposed by the HTC LURA and to comply fully with the terms thereof (Agreement to Assume and Comply), effective January 30, 2015, and filed the same in the Records at Document Number 201500027657, thereby further binding Respondent to the terms of the HTC LURA.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

6. Property has a history of violations and previously signed an Agreed Final Order during 2017, agreeing to a \$5,000 Administrative Penalty, with \$500 due at signing and the remainder to be forgivable provided that Respondent complied with all requirements. Findings in that Agreed Final Order included: failure to provide Annual Eligibility Certifications for 2 units, failure to include required lease language for 29 units, failure to provide Fair Housing Disclosure Notices for 4 units, failure to provide a Notice of Amenities and Services for 1 unit, failure to provide documentation that households were within prescribed limits upon initial occupancy for 12 units, failure to provide evidence of appropriate social service expenditures, and failing to provide evidence that 7 units identified as casualty losses had been restored. Respondent fully complied with the terms of the Agreed Final Order and the remainder of the administrative penalty was deferred and forgiven.

¹ 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.

7. An on-site monitoring review was conducted on October 25, 2017, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a March 30, 2018, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received in response to the Enforcement Committee's informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to the groups identified within the plan. The finding remains unresolved;
 - b. Respondent failed to timely update and recalculate the utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. A utility allowance was received in response to the Enforcement Committee's informal conference notice, but it was an outdated utility allowance approved by HUD in 2016. The finding remains unresolved;
 - c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1011, 1057, 1086, and 2012, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. The finding for unit 1057 was corrected on June 29, 2017, 101 days past the deadline, after intervention by the Enforcement Committee. The findings for units 1011, 1086, and 2012 remain unresolved;
 - d. Respondent collected gross rents that exceeded income limits as a result of an unsupported \$24 application fee, a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations). TDHCA publishes maximum rent limits for the tax credit program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. 10 TAC §10.622(c)(1) further stipulates that application fees can only be charged for the actual cost of checking a prospective tenant's income, credit history and landlord references, plus up to \$5.50 per unit for out of pocket costs to process the application. Owners are required to support the application fee with invoices. Documentation was received in response to the Enforcement Committee's informal conference notice, but it stated that the development is currently charging an application fee of \$24.00 per applicant. Submitted invoices justify an out of pocket cost of \$19.43. The rate of \$24.00 would be permissible for the first applicant but all subsequent applicants in the same household must be charged no more than \$19.43 per application. The finding remains unresolved;

- e. Respondent failed to maintain compliant written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements; and
 - f. Respondent established that supportive services are being provided, but failed to provide evidence to verify the required monthly expenditure, a violation of Section (4)(g) of the BOND LURA and 10 TAC §10.619 (Monitoring for Social Services). The BOND LURA requires an expenditure of \$10 per month per unit, for a total expenditure of \$2,320 per month. Cost documentation was received in response to the Enforcement Committee’s informal conference notice, with documentation to support expenditure on an annual basis. There were multiple months where more than \$2,320 was spent, so Respondent was under the impression that they could spend less than the monthly requirement for other months to compensate. The expenditure is required monthly. The finding remains unresolved.
8. The following violations remain outstanding at the time of this order:
- a. Affirmative marketing plan violation described in FOF #7.a;
 - b. Utility allowance violation described in FOF #7b;
 - c. Household income violations described in FOF #7c;
 - d. Gross rent violation described in FOF #7d;
 - e. Written tenant selection criteria violation described in FOF 7e; and
 - f. Supportive services violation described in FOF #7f.

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. Respondent violated 10 TAC §10.617 in 2017, by failing to provide a complete affirmative marketing plan;
5. Respondent violated 10 TAC §10.614 in 2017 by failing to properly calculate a utility allowance;
6. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2017, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 4 units;

7. Respondent violated 10 TAC §10.622 in 2017 by charging excessive application fees resulting in gross rents exceeding the allowable limits;
8. Respondent violated 10 TAC §10.610 in 2017, by not maintaining written tenant selection criteria meeting TDHCA requirements; and
9. Respondent violated Section 4(g) of the BOND LURA and 10 TAC §10.619 in 2017 by failing to make the required monthly expenditures for supportive services.
10. 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.
11. 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.
12. 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.
13. An administrative penalty of \$10,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

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

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$2,500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before October 8, 2018.

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 October 8, 2018.

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 that remaining \$7,500 portion of the 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 \$7,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th 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.

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Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

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

6. **Written tenant selection criteria (“TSC”) and Gross Rent violations** – Respondent submitted written tenant selection criteria, however, the criteria did not meet all TDHCA requirements. Update the policy as indicated below, then upload to CMTS. A copy of 10 TAC §10.610 is available at:
[http://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=10&rl=610](http://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=10&rl=610)

Required updates include:

- i. Update the application fee section of the TSC to show a \$24 fee for the first applicant in a unit, then \$19.43 for each subsequent applicant. The development is currently charging an application fee of \$24.00 per applicant, as stated in the TSC and submitted tenant ledgers. This amount exceeds the amount allowed under §10.622(c)(1), which states “Development Owner’s may add up to \$5.50 per Unit for their out of pocket costs for processing and application”. The submitted TSC and resident ledgers, along with screening invoices, justify an out of pocket cost of \$19.43. The rate of \$24.00 would be permissible for the first applicant on a single unit but all subsequent applicants must be charged no more than \$19.43 per application. Adjust application fee immediately and adjust the TSC accordingly.
- ii. Include the current income and rent limits applicable to the property per 10 TAC §10.610(b)(1)(A)(iii). Remove the 30% income limits from the TSC as they are not applicable for

the Development. Please bear in mind that the 2018 rent/income limits have taken effect and are available online.

- iii. Remove the application deposit from the TSC. This application deposit is separate from, and in addition to, the application fee that covers the owner's actual out-of-pocket cost for processing the application. The 8823 Audit Guide and Treasury Regulation 1.42-11 addresses fees for services and refundable fees that must be paid as a condition of occupancy. This "application deposit" does not seem to be a fee for a service. Nor does it seem to be a refundable fee that must be paid as a condition of occupancy (e.g. a security deposit being collected when the lease is being signed for a unit). It appears that there is no offsetting out of pocket expense; it is a fee related to applying for a unit and is therefore disallowed. You must cease charging application deposits and update your leasing criteria accordingly;
 - iv. Verify whether persons employed with commission, bonus, or tip based income should be classified as "self employed" and update the TSC as necessary. The TSC submitted on 6/29/2018, categorized persons employed with commission, bonus, or tip based income as "self employed". This may not be accurate and the Department recommends that the Development verify this with a council of their choosing;
 - v. Remove the "non-refundable high risk fee" from the TSC. This is a non permissible fee and the practice must be discontinued;
 - vi. Add the required language verbatim: "Specific animal, breed, number, weight restriction, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s)";
 - vii. Review whether you would like to include a rental insurance requirement in your TSC and update the TSC if necessary. The Department advises that requiring renter's insurance may be permissible, but is considered a mandatory fee and the cost of said insurance must be included in the gross rent calculation;
 - viii. Update the waitlist policy to meet the requirements at 10 TAC §10.610(1) and (2). Also update it to include specifically when and why the wait list is opened or closed, include a prioritization in accordance with 24 CFR 8.27, and have separate wait lists for the 50% and 60% set asides;
 - ix. Update the TSC to include a non-renewal and termination policy in line with 10 TAC §10.610(f);
 - x. Update the TSC to include a reasonable accommodation policy in line with 10 TAC §10.610(c)(1) and (2); and
 - xi. Update the TSC to include a policy in accordance with §10.610(g). Since form 8609 was never issued for the property each building will be considered it own project in this regard.
7. **Utility Allowance** – Obtain and implement a HUD approved utility allowance with 2018 approval. Upload a copy of the HUD approval for the 2018 utility allowance. Also submit the development's updated Unit Status Report via CMTS to demonstrate that the utility allowance has been implemented. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days, outside of this Agreed Final Order. For more information, see: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>
8. **Supportive services** – The Development submitted copies of supporting documentation to evidence the BOND expenditure requirement on an annual basis. However, the Development is still not meeting the required \$2,300 cost per month on social services. The submission included an owner's explanation of the expenditure shortfall by exceeding the required amount on an annual basis for 2017. However, per §10.619(c) the requirement is based on a monthly requirement as defined in the Land Use Restrictive Agreement (LURA) as "at least \$10 per unit per month." The last month provided to the Department was September 2017, with an expenditure of \$1501.93. To correct, upload documentation of expenses from when the Development's social services expenditures have returned to, and maintained the required amount. Include at least 4 months after September 2017.

9. **Affirmative marketing plan** – A HUD-approved Affirmative Marketing Plan was submitted, but did not include evidence of outreach marketing to all “least likely to apply” groups identified in box 3b of the plan. Additional marketing materials were then submitted, but were still incomplete.

Identify community contacts for, and conduct outreach marketing efforts to, all groups identified in box 3b of the HUD approved plan. Upload copies of these marketing outreach efforts to CMTS. Do not include any additional marketing efforts to groups that *are not* identified in the plan, as this would be considered general marketing rather than affirmative marketing.

Technical support:

- a. Identify in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials to all of the groups checked in box 3b of your HUD-approved plan. The organizations must specifically reach those groups designated as least likely to apply. Some specific examples:
 - i. Least likely to apply population - People with disabilities:
 1. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html
 2. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 3. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 4. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
 5. Local non-profits in your area serving people with disabilities
 6. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
 - ii. Least likely to apply population - White:
 1. Examples of acceptable community contacts might include community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA’s Web Tool, these areas are listed under “tracts for outreach consideration”
 - iii. Least likely to apply population - Asian:
 1. Local Asian real estate association
 2. Local Asian Chamber of Commerce
 3. Local Asian American Resource Center
 4. Local organizations serving the Asian community
 5. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA’s Web Tool, these areas are listed under “tracts for outreach consideration”

iv. Least likely to apply population - Black/African American:

1. Local Black/African American Chamber of Commerce
2. Local Black/African American Professionals Social Network
3. Weekly Black/African American newspaper / website for a city
4. Local community center or YMCA in a historically black/African American neighborhood;
5. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

v. Least likely to apply population - Hispanic:

1. Local Hispanic Chamber of Commerce
2. Local Young Hispanic Professional Association
3. The Hispanic Alliance
4. Mexican American Cultural Center
5. Local Spanish language publications
6. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

vi. Least likely to apply population – Not Hispanic:

1. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

- b. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms "reasonable accommodation" and must be in English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: "*Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.*"

9. Household income above limit upon initial occupancy – units 1011, 1086, and 2012

Specific problems with past submissions for these units include, but are not limited to:

- a. Unit 1011: Incomplete corrections were submitted on 6/29/2018 for tenant: William Mark Hill. The application disclosed employment that was not reported on the certification and was not verified.
- b. Unit 2012: Incomplete corrections were submitted on 6/29/2018 for tenant: DeAsha Brown. The Tenant Selection Criteria were not included in the submission, the student income only needs to be reported if the household is receiving Section 8 assistance. Please recalculate income on the Tenant Income Certification.
- c. Unit 1086: Incomplete corrections were submitted on 6/29/2018 for tenant: Brianna Johnson. The income certification was incomplete and needs to be submitted in full. Reported child support needs to be included in the annual income, or the file must include documentation of failed attempts to collect it.

To correct the violations for units 1011, 2012, and 1086: Follow the instructions in the table below and submit complete documentation via CMTS. If you are uncertain how to compile a complete tenant file, technical support regarding each file component is at Exhibit 2.

Circumstance with respect to units listed above	Instruction
I. If unit is occupied by the same household listed above AND that household qualifies for occupancy	<p>Submit copies of the household's application, verifications of all sources of income and assets, executed Income Certification form, first and signatory page of the lease contract, applicable lease addenda, and the executed Tenant Rights and Resources Guide Acknowledgment form, <i>in addition to</i> making the specific corrections noted above for each unit.</p> <p>If the original file does not include all required information, or the household's circumstances have changed, you should certify the household under their current circumstances. This means that the application, verifications of all sources of income and assets, and the Income Certification would be new, and all dated within 120 days of one another.</p>
II. If unit is occupied by a new qualified household that occupied the unit after 6/29/2018.	<p>Submit the full tenant file, including copies of the household's application, verifications of all sources of income and assets, executed Income Certification form, first and signatory page of the lease contract, applicable lease addenda, and the executed Tenant Rights and Resources Guide Acknowledgment form. Remember that the application, verifications, and Income Certification must be dated within 120 days of one another.</p>

<p>III. If unit is occupied by a nonqualified household on a month-to-month lease</p>	<p>A. Follow your normal procedures for terminating residency and provide a copy of notice documents to TDHCA* by 10/8/2018.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after the October deadline is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>IV. If unit is occupied by a nonqualified household with a non-expired lease</p>	<p>A. Send a notice of nonrenewal to the household and provide a copy to TDHCA* by 10/8/2018.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after the October deadline is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>V. If unit has been vacant <i>more than</i> 30 days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA by 10/8/2018.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after October is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>VI. If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA by 10/8/2018.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA by 10/8/2018 including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after October is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>

* If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)

Exhibit 2

Tenant File Guidelines

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

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** 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:** This form is signed by the Public Housing Authority, certifying that the household is eligible at initial occupancy. This form can only be completed at initial occupancy and cannot be used to correct a finding of noncompliance relating to income eligibility.
 - b. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
 - 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;
 - 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) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount. If child support is ordered but is not

- being received, documentation regarding collection attempts must be included, otherwise child support will need to be included in the annual income calculation;
- 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;
 - 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 owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
- a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 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. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
 - c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **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 <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.

6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 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(f) 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. TAA has an affordable 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.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(m), a laminated copy of this guide must be posted 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 Tenant Rights and Resources Guide includes:

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

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

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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