SUPPLEMENT TO BOARD BOOK OF FEBRUARY 25, 2016

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

February 17, 2016

Writer's direct phone # 512-475-2109
Email: raquel.morales@tdhca.state.tx.us

Barry Palmer
Coats Rose
9 Greenway Plaza, Ste. 1100
Houston, TX 77046

RE: THOMAS WESTFALL MEMORIAL (THE "DEVELOPMENT"), EL PASO – TDHCA # 15267 – APPLICATION AMENDMENT REQUEST

Dear Mr. Palmer:

The Texas Department of Housing and Community Affairs received your request to amend the 9% Housing Tax Credit application of Thomas Westfall Memorial Apartments on January 8, 2016. The application was filed under the At Risk Set Aside in 2015 as a development planning to receive subsidy on seventy five percent of its units from HUD's Rental Assistance Demonstration (RAD) program while retaining twenty five percent of its public housing units through public housing operating subsidy. In 2015, this requirement for developments participating in the RAD program was consistent with §11.5(3)(D) of the Qualified Application Plan (QAP) and Texas Government Code 2306.6714(a-1), the QAP language is as follows:

> "(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. ***For Developments qualifying under 2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (2306.6714(a-1)).*** " (emphasis added)

In the spring of 2015, the Texas Legislature and Governor enacted HB2926 which amended the definition of At Risk to include RAD developments in applications submitted after the effective date of the legislation, September 1, 2015. The Statute explicitly states that it does not affect applications submitted prior to the effective date:

> "SECTION 2. The change in law made by this Act applies only to applications submitted on or after the effective date of this Act. An application for low income housing tax credits that is submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the ***former law is continued in effect for that purpose***." (emphasis added)

On December 17, 2015, the TDHCA Board approved an agenda item confirming that public housing that undergoes a conversion from a subsidy under Section 9 of the National Housing Act to a subsidy under Section 8 of the

Act is public housing that meets the requirements of Texas Government Code §2306.6714 and §11.5(3)(D) of the QAP. The Board action addressed policy questions concerning 2016 applications and is only effective from the date of approval (December 17, 2015) forward. The Thomas Westfall Memorial application was submitted in March of 2015 and therefore predates HB 2926 and the TDHCA Board's policy clarification.

The request submitted seeks to amend the application so that the development will receive project based rental subsidy on one hundred percent of its units from HUD's RAD program but retain the applicant's qualification under the 2015 At Risk Set Aside without the twenty five percent of units maintained by public housing operating subsidy. You have indicated that the change is based on the fact that HUD will not approve any RAD application where less than one hundred percent of the units will be converted from public housing operating subsidy.

The Department is denying this amendment request because without a retained Section 9 subsidy it would not have qualified as an At Risk development under the 2015 rules and governing statute as then in effect. You may have rights of appeal of a staff determination under 10 TAC §10.902 in which case you have seven days to submit your appeal.

Please contact me at (512) 475- 2109 with any further questions regarding this denial.

Sincerely,

Raquel Morales

Raquel Morales
Director of Asset Management

RM/ld

cc: Gerald Cichon
Sarah Anderson

COATS | ROSE

A Professional Corporation

BARRY J. PALMER

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Direct Dial
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February 4, 2016

By Email to tom.gouris@tdhca.state.tx.us
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attention: Tom Gouris, Deputy Executive Director for Housing Programs

RE: #15267 – Thomas Westfall Memorial Apartments, El Paso, El Paso County, Texas; Supplement to Application Amendment.

Dear Tom:

Pursuant to your discussions with Tamea Dula of our office on February 3rd, we are providing this supplement to the Application Amendment filed January 8, 2016, in connection with the Thomas Westfall Memorial Apartments in El Paso (the "Project"). As you are aware, the Housing Authority of the City of El Paso ("HACEP") is the sponsor of the Project, which is being proposed as a Rental Assistance Demonstration ("RAD") conversion from housing subsidized under Section 9 of the United States Housing Act of 1937 (the "Act") to housing subsidized under Section 8 of the Act.

You have requested that we address why recent legislative changes to the definition of an "At-Risk Development" contained in Section 2306.6702(a)(5) of the Government Code and which took effect on September 1, 2015, should be considered applicable to this Project, which received an award of 2015 Competitive Housing Tax Credits under the At-Risk Set-Aside on July 31, 2015.

In 2012, HUD initiated the RAD Program though PIH Notice 2012-18 Rental Assistance Demonstration – Partial Implementation and Request for Comments issued March 8, 2012. Subsequently PIH Notice 2012-32 was issued on July 26, 2012, providing potential financing for up to 60,000 units on a competitive basis. Public housing authorities ("PHAs") were encouraged to convert units subsidized under Section 9 of the Act to other forms of subsidy.

Prior to 2013 developments with public housing subsidies did not appear to qualify for the At-Risk Set-Aside because a subsidy pursuant to Section 9 of the Act was not listed in Section 2306.67002(a)(5). As a result of efforts by Texas PHAs, the draft 2013 QAP was revised to specifically permit developments retaining public housing operating subsidies to qualify under the At-Risk Set-Aside pursuant to Section 11.5(3)(D) of the 2013 QAP. (See Exhibit A)

Subsequently, PHAs lobbied the Texas Legislature for changes in the Government Code to specifically permit RAD conversions to participate in the At-Risk Set-Aside. In the 2013 legislative session H.B. 1888 was adopted, amending Section 2306.6702(a)(11)(5) of the Government Code to add a new subsection (B) which specifically empowered public housing authorities to participate in the At-Risk Set-Aside by rehabilitating or reconstructing properties subsidized under Section 9 of the Act. That provision became effective September 1, 2013. (See Exhibit B)

We note that the 2013 QAP permitted developments with public housing subsidies to qualify as being At-Risk under Section 2306.6702(a)(5) even before the Legislature acted to add the new subsection (B) dealing only with PHAs and Section 9 subsidies. The 2013 QAP provisions would appear to be contrary to Section 2306.6702(a)(5) as it stood at the time of the 2013 QAP's adoption unless "public housing operating subsidies" were among those subsidies cited in 2306.6702(a)(5).

The transcript for the November 7, 2013 TDHCA Board Meeting reflects that as part of the discussion of the 2014 QAP, Staff had raised the question of whether RAD conversions qualified for the At-Risk Set-Aside under the 2013 legislation. RAD conversions are situations where initially the subsidy comes from Section 9 of the Act and then converts to a subsidy under Section 8 of the Act. As a result of H.B. 1888, developments with Section 9 subsidies were now specifically included in the definition of "At-Risk Developments" pursuant to Subsection (B), but after conversion the developments were left with Section 8 – a different variety of public subsidy.

The 2014 QAP was slightly modified to provide that "For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy." This revision brought the QAP in agreement with Section 2306.6714 which had been modified by H.B. 1888 by adding subsection (a-1):

> (a-1) An at-risk development described by Section 2306.6702(a)(5)(B) is eligible for housing tax credits set aside under Subsection (a) if:
>
> (1) a portion of the public housing operating subsidy received from the department is retained for the development; and
>
> (2) a portion of the units of the development are reserved for public housing as specified in the qualified housing plan.

On Staff's recommendation, the TDHCA Board requested the Texas Attorney General to opine on whether RAD conversions qualified as being At-Risk under Section 2306.6702(a)(5), as amended by H.B. 1888. By letter dated November 13, 2013, the TDHCA Board inquired whether the governing board of the TDHCA is authorized to treat a RAD conversion development as an "At-Risk Development" within the meaning of Section 2306.6702(a)(5), eligible to compete in the "At-Risk Set-Aside created under Section 2306.6714. By Opinion No. GA-1060 dated May 20, 2014 (the "AG Opinion"), the Attorney General opined:

> A court would likely conclude that it is within the authority of the Texas Department of Housing and Community Affairs ("TDHCA") to consider a development undergoing a conversion pursuant to the United States Department of Housing's Rental Assistance Demonstration program as eligible to compete for the at-risk set-aside under Government Code section 2306.6714 if TDHCA determines that all applicable eligibility requirements have been satisfied.

(See Exhibit C)

Two applications for RAD conversion projects were filed by HACEP in the At-Risk Set-Aside while awaiting the AG Opinion: 14127 – Hayman Krupp and 14130 – Tays. Both of these applications received allocations of 2014 9% Housing Tax Credits. Unfortunately, each of these projects had its RAD conversion application denied by HUD because HUD policy prohibited 25% of the units remaining as public housing with Section 9 operating subsidy, in accordance with the requirements of the 2014 QAP. Accordingly, both projects requested that their applications be amended to change from RAD conversion to Section 8 Project-Based Vouchers, with 25% of the units retained as public housing units. The TDHCA Board approval of these amendments established the policy that an At-Risk Development under Section 2306.6702(a)(5)(B) could be redeveloped as an At-Risk Development with a subsidy described in Section 2306.6702(a)(5)(A), if 25% of the units were retained as public housing units with Section 9 operating subsidy.

HUD's policy requiring 100% conversion means that RAD conversions cannot qualify for the At-Risk Set-Aside if 25% of the units have to remain "public housing" receiving subsidy under Section 9. The 2013 legislative changes to Section 2306.6702(a)(5) are not a problem, because they define any development rehabilitating or reconstructing (i) units that are owned by a PHA and receive Section 9 assistance; or (ii) units that received assistance under Section 9 and are either proposed to be disposed of or demolished by a PHA or have been disposed of or demolished by a PHA in the two-year period preceding the application for housing tax credits. The problem lies in the 2013 legislative changes to Section 2306.6714 which stated that an At-Risk Development qualifying under Section 2306.6702(a)(5)(B) is only eligible to participate in the At-Risk Set-Aside if: (i) a portion of the public housing operating subsidy is retained for the development; and (ii) a portion of the units are reserved for public housing as specified in the QAP.

We note that the details of what portion of the units are reserved for "public housing" is specifically left to the TDHCA to establish. The 2014 – 2016 QAPs include the requirement that no less than 25% of the proposed units must be "public housing units supported by public housing operating subsidy." The term "public housing" is not defined, however, either in the QAP, the Rules or in Section 2306 of the Government Code. For that reason, the manner in which the TDHCA chooses to define "public housing" permits the TDHCA to facilitate this process by defining "public housing" in such a way that the intent of the legislation is enabled.

When the issue of RAD conversions qualifying for the At-Risk Set-Aside remained cloudy in 2014 while awaiting the AG Opinion, the PHAs started pushing for a legislative clarification from the 2015 Legislature. Ultimately, H.B. 2926 was passed, revising Section 2306.6702(a)(5)(B) to specifically include as "At-Risk Developments" those projects rehabilitating or reconstructing units that receive assistance or will receive assistance through the RAD Program, if the RAD application is included in the annual plan most recently approved by HUD. (See Exhibit D) This amendment was essentially redundant because RAD conversion developments were already covered by the 2013 addition of Section 2306.6702(a)(5)(B) to the statute. The primary open question was whether these At-Risk Developments qualified for the Set-Aside under Section 2306.6714 – and the Legislature failed to amend that statute to specifically permit RAD conversions to qualify for the Set-Aside, even though their subsidy is converting to a different type of subsidy. When the unintended consequences of the Legislature's failure to simultaneously revise Section 2306.6714 was presented to the TDHCA Board on December 17, 2015, the Board resolved the matter by adopting the following resolution:

> RESOLVED, that this Board confirms its interpretation that public housing that undergoes a conversion from a subsidy under §9 of the Act to a subsidy under §8 of the Act under the RAD program meets the requirements of Tex. Gov't Code §2306.6714 and 10 TAC, §11.5(3)(D).

(See Exhibit E) We point out that the resolution did not establish a new interpretation or policy, but instead confirmed an existing interpretation that RAD conversions satisfy the requirements of Section 2306.6714 and therefore qualify for the At-Risk Set-Aside. The only way in which such an interpretation could be considered consistent with Section 2306.6714 is if RAD conversion units are regarded by the TDHCA as constituting "public housing" and the Section 8 operating subsidy that funds converted units is considered to be "public housing operating subsidy." The Board's confirmation of this interpretation means that a RAD conversion development qualified for the Set-Aside because it retains 100% of the converted units as public housing receiving public housing operating subsidy.

Basically, RAD conversions qualified as "At-Risk Developments" under Section 2306.6702(a)(5) effective as of September 1, 2013, when H.B. 1888 changes were implemented, because they are all developments owned by a PHA and either (i) receiving Section 9 assistance, or (ii) having received Section 9 assistance and having been disposed of or demolished within the two years prior to applying for tax credits or proposed for disposition or demolition by a PHA. There is no necessity to rely upon the 2015 legislative changes, because the TDHCA Board has resolved the issue by exercising its authority to define what constitutes public housing.

HACEP proposes to amend the Westfall Application to provide that 100% of the public housing units will be converted to RAD units supported with project-based rental subsidy under Section 8. As demonstrated by this analysis, the proposed amendment does not depend upon H.B. 2926 which only applied to applications filed on or after September 1, 2015. Pursuant to the TDHCA Board's interpretation, a RAD conversion satisfies Section 2306.6714 because the converted units all constitute public housing and are all supported by public housing operating subsidies.

Thank you for providing us with the opportunity to supplement the amendment request and more clearly set forth our analysis. If you have any questions or comments, please do not hesitate to call.

Sincerely,

Barry J. Palmer

Enclosures

cc: Tim Irvine
Beau Eccles
Raquel Morales
Gerald W. Cichon
Sarah Anderson

EXHIBIT A

Section 11.5(3)(D) 2013 QAP

aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments funded with USDA.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this paragraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) calendar years of July 31 of the year the Application is submitted.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702 will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site.

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments retaining public housing operating subsidies to qualify under the At-Risk Set-Aside, only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to an Application seeking to enable the Development to qualify as an At-Risk Development, that is submitted to the Department while the Application is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3

EXHIBIT B

H.B. 1888
(Effective September 1, 2013)

AN ACT

relating to low income housing tax credits awarded to at-risk developments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2306.6702(a)(5), Government Code, is amended to read as follows:

(5) "At-risk development" means:

(A) a development that:

(i) [~~(A)~~] has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(a) [~~(i)~~] Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(b) [~~(ii)~~] Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(c) [~~(iii)~~] Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(d) [~~(iv)~~] Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(e) [~~(v)~~] the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of

Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(f) [~~(vi)~~] the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

(g) [~~(vii)~~] Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(h) [~~(viii)~~] Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42); and

(ii) [~~(B)~~] is subject to the following conditions:

(a) [~~(i)~~] the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

(b) [~~(ii)~~] the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its term; or

(B) a development that proposes to rehabilitate or reconstruct housing units that:

(i) are owned by a public housing authority and receive assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g); or

(ii) received assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g) and:

(a) are proposed to be disposed of or

demolished by a public housing authority; or

(b) have been disposed of or demolished by a public housing authority in the two-year period preceding the application for housing tax credits.

SECTION 2. Section 2306.6714, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The department shall set aside for eligible at-risk developments not less than 15 percent of the housing tax credits available for allocation in the calendar year.

(a-1) An at-risk development described by Section 2306.6702(a)(5)(B) is eligible for housing tax credits set aside under Subsection (a) if:

(1) a portion of the public housing operating subsidy received from the department is retained for the development; and

(2) a portion of the units of the development are reserved for public housing as specified in the qualified housing plan.

SECTION 3. The changes in law made by this Act apply only to an application for low income housing tax credits that is submitted on or after the effective date of this Act. An application for low income housing tax credits that is submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2013.

President of the Senate | Speaker of the House

I certify that H.B. No. 1888 was passed by the House on May 2, 2013, by the following vote: Yeas 139, Nays 8, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1888 on May 22, 2013, by the following vote: Yeas 77, Nays 51, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1888 was passed by the Senate, with amendments, on May 20, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: ____________________

Date

____

Governor

EXHIBIT C

Attorney General Opinion No. GA-1060
(May 20, 2014)

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2014

Mr. J. Paul Oxer, Chair
Governing Board
Texas Department of Housing and
Community Affairs
Post Office Box 13941
Austin, Texas 78711-3941

Opinion No. GA-1060

Re: Authority of the Texas Department of Housing and Community Affairs over implementation of the at-risk development set-asides under the low income housing tax credit program in Government Code sections 2306.6702(a)(5) and 2306.6714 (RQ-1167-GA)

Dear Mr. Oxer:

You ask whether the governing board of the Texas Department of Housing and Community Affairs ("TDHCA") is authorized to treat certain housing developments as eligible to receive a tax credit that has been set aside for "at-risk developments" under Government Code section 2306.6714.[1] You explain that TDHCA administers the state's low income housing tax credit program[2]—governed by chapter 2306, subchapter DD, of the Government Code—under which tax credits are competitively awarded to developers of low income housing. Request Letter at 1; *see generally* TEX. GOV'T CODE ANN. §§ 2306.6701-.6735 (West 2008 & Supp. 2013). You state that subchapter DD "provides for the establishment of certain set-asides." Request Letter at 1. A "set-aside" is defined under chapter 2306 as "a reservation of a portion of the available housing tax credits to provide financial support for specific types of housing . . . or serve specific types of applicants." TEX. GOV'T CODE ANN. § 2306.6702(a)(14) (West Supp. 2013). Your question concerns the set-aside for "at-risk developments" under section 2306.6714. *See id.* § 2306.6714(a).

As background, you explain that the United States Department of Housing and Urban Development created the Rental Assistance Demonstration ("RAD") program, by which a "public housing annual operating subsidy . . . under Section 9 of the United States Housing Act

[1]*See* Letter from Mr. J. Paul Oxer, Chair, Tex. Dept. of Housing & Cmty. Affairs, to Honorable Greg Abbott, Tex. Att'y Gen. at 1 (Nov. 13, 2013), http://www.texasattorneygeneral.gov/opin ("Request Letter").

[2]Federal law provides for the allocation and awarding of federal tax credits at the state level to developers of low income housing. *See generally* 26 U.S.C.A. § 42 (West Supp. 2013).

of 1937 . . . converts to a rental subsidy under Section 8 of the Act." Request Letter at 1. You describe TDHCA's belief that "many of the [public housing authorities] in Texas will be seeking to convert operating subsidies [to rental subsidies] under the RAD program." *Id.* at 2. Your question is whether TDHCA may, as the administrator of the low income housing tax credit program, treat public housing developments undergoing a RAD conversion as eligible to compete for the at-risk set-aside under section 2306.6714. *Id.*

Like the courts, when construing a statute we seek to draw the Legislature's intent from the statute's plain language. *See Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). Section 2306.6714 provides in relevant part:

> (a) [TDHCA] shall set aside for eligible at-risk developments not less than 15 percent of the housing tax credits available for allocation in the calendar year.
>
> (a–1) An at-risk development described by Section 2306.6702(a)(5)(B) is eligible for housing tax credits set aside under Subsection (a) if:
>
> (1) a portion of the public housing operating subsidy received from [TDHCA] is retained for the development; and
>
> (2) a portion of the units of the development are reserved for public housing as specified in the qualified housing plan.

TEX. GOV'T CODE ANN. § 2306.6714 (West Supp. 2013). Subsection (a) provides that tax credits shall be set aside for "eligible at-risk developments." *Id.* § 2306.6714(a). Subsection (a–1) then imposes conditions for eligibility on "[a]n at-risk development described by Subsection 2306.6702(a)(5)(B)." *Id.* § 2306.6714(a–1). Subsection 2306.6702(a)(5) contains two possible definitions of "at-risk development" that are differentiated by the form of federal subsidy assistance a development receives. *See id.* § 2306.6702(a)(5)(A) (describing, in part, a development that receives federal subsidy under Section 8); (a)(5)(B) (describing, in part, a development that receives or has received federal subsidy under Section 9).

Subsection 2306.6714(a–1) limits the eligibility of subsection 2306.6702(a)(5)(B) developments, but it does not affect, much less eliminate, the eligibility of subsection 2306.6702(a)(5)(A) developments. Thus, a development that undergoes a RAD conversion and no longer satisfies subsection 2306.6702(a)(5)(B) would still be eligible for the at-risk set-aside if it satisfied subsection 2306.6702(a)(5)(A).

As the administering agency of the low income housing tax credit program, TDHCA has discretion to determine whether a development has satisfied the eligibility requirements for competing for a set-aside. *Id.* §§ 2306.6701 (West 2008), .67022 (West Supp. 2013). A development is an at-risk development under subsection 2306.6702(a)(5)(A) if it "has received the benefit of a subsidy in the form of a . . . rental subsidy, [or] Section 8 housing assistance payment." *Id.* § 2306.6702(a)(5)(A)(i). If TDHCA determines that a development undergoing a RAD conversion has received assistance under section 8 of the Act and consequently is eligible for the at-risk set-aside, a court is not likely to disturb that determination. *See R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 624 (Tex. 2011) (stating that courts will generally uphold a state agency's interpretation of a statute it is charged with administering, so long as the construction is reasonable and not contrary to the statute's language).

<u>SUMMARY</u>

A court would likely conclude that it is within the authority of the Texas Department of Housing and Community Affairs ("TDHCA") to consider a development undergoing a conversion pursuant to the United States Department of Housing's Rental Assistance Demonstration program as eligible to compete for the at-risk set-aside under Government Code section 2306.6714 if TDHCA determines that all applicable eligibility requirements have been satisfied.

Very truly yours,

Greg Abbott

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JAMES D. BLACKLOCK
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

Stephen L. Tatum, Jr.
Assistant Attorney General, Opinion Committee

EXHIBIT D

H.B. 2926
(Effective September 1, 2015)

AN ACT

relating to low income housing tax credits awarded for at-risk developments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2306.6702(a)(5), Government Code, is amended to read as follows:

(5) "At-risk development" means:

(A) a development that:

(i) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(a) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(b) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(c) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(d) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(e) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of

Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(f) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

(g) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(h) Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42); and

(ii) is subject to the following conditions:

(a) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

(b) the HUD-insured or HUD-held [~~federally insured~~] mortgage on the development is eligible for prepayment or is nearing the end of its term; or

(B) a development that proposes to rehabilitate or reconstruct housing units that:

(i) are owned by a public housing authority and receive assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g); [~~or~~]

(ii) received assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g) and:

(a) are proposed to be disposed of or demolished by a public housing authority; or

(b) have been disposed of or demolished by a public housing authority in the two-year period preceding the application for housing tax credits; or

(iii) receive assistance or will receive assistance through the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development as specified by the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. No. 112-55) and its subsequent amendments, if the application for assistance through the Rental Assistance Demonstration program is included in the applicable public housing authority's annual plan that was most recently approved by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Section 903.23.

SECTION 2. The change in law made by this Act applies only to an application for low income housing tax credits that is submitted on or after the effective date of this Act. An application for low income housing tax credits that is submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

H.B. No. 2926

______________________________ ______________________________

President of the Senate Speaker of the House

I certify that H.B. No. 2926 was passed by the House on May 5, 2015, by the following vote: Yeas 137, Nays 8, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2926 on May 27, 2015, by the following vote: Yeas 133, Nays 6, 3 present, not voting.

____

Chief Clerk of the House

I certify that H.B. No. 2926 was passed by the Senate, with amendments, on May 24, 2015, by the following vote: Yeas 23, Nays 7.

____

Secretary of the Senate

APPROVED: _____________________

Date

____

Governor

EXHIBIT E

TDHCA Board Resolution (December 17, 2015)

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

DECEMBER 17, 2015

Presentation, Discussion, and Possible Action on the application of the At Risk Set-aside to an application undergoing a conversion under the Rental Assistance Demonstration ("RAD") program of the U.S. Department of Housing and Urban Development ("HUD").

RECOMMENDED ACTION

WHEREAS, §9 of the National Housing Act of 1937 (the "Act," codified at 42 USCS §§ 1437 et seq.) provides an operating subsidy to public housing; and

WHEREAS, under the RAD program a public housing development's subsidy under §9 of the Act is replaced by a project based §8 subsidy providing rental support at levels that provide for reasonable expected costs of operations;

Now, therefore, it is hereby

RESOLVED, that this Board confirms its interpretation that public housing that undergoes a conversion from a subsidy under §9 of the Act to a subsidy under §8 of the Act under the RAD program meets the requirements of TEX. GOV'T CODE §2306.6714 and 10 TAC, §11.5(3)(D).

BACKGROUND

Staff has received a question as to whether a public housing authority applying for tax credits in connection with a RAD conversion meets the criteria to compete in the at risk set-aside, which is defined at TEX. GOV'T CODE §2306.6714. Staff believes that HB 2926 (84th Legislature, regular session) amended the definition of at risk developments in a manner that expressly includes developments undergoing RAD conversions. Such a development, pre-conversion, has an operating subsidy under §9 of the Act and this subsidy is replaced by a new subsidy under §8 of the Act. The new subsidy provides financial assistance necessary to operation (making it *de facto* an operating subsidy) and because it is project based the entirety of the subsidy is retained at the development.

COATS | ROSE

A Professional Corporation

BARRY J. PALMER

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(713) 653-7395
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(713) 890-3944

January 8, 2016

By Email to laura.debellas@tdhca.state.tx.us
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attention: Laura DeBellas, Asset Manager

RE: #15267 – Thomas Westfall Memorial Apartments, El Paso, El Paso County, Texas; Application Amendment.

Dear Laura:

This is a request to amend the application (the "Application") for Thomas Westfall Memorial Apartments (the "Project") to modify the financial subsidy. The Housing Authority of the City of El Paso ("HACEP") is the sponsor of the Project. A check in the amount of the $2,500.00 Amendment Fee will be delivered to you today to support this amendment request.

The Application for the Project was filed in the At-Risk Set-Aside under §11.5(3)(D) of the 2015 Qualified Allocation Plan ("QAP"), based upon the Project having no less than 25% of its units being public housing units supported by public housing operating subsidy. The Application's Rent Schedule showed a mixture of 25% public housing units and 75% RAD units, designed to meet the requirements of §11.5(3)(D) of the 2015 QAP.

Subsequent to the filing of the Application, HACEP was notified by HUD in connection with another development (#14127 – Hayman Krupp Apartments) that HUD is unable to approve a RAD application where less than 100% of the units are being converted. This position by HUD, which to the best of our knowledge was only asserted after the Application was filed, means that we cannot keep the unit mix subsidy as originally shown in the Application.

Because the RAD Program was very new when this Application was filed, and rules for the RAD Program were still evolving, we believe that it was not foreseeable or avoidable that HUD would prohibit mixing RAD units with retained public housing subsidies. The Rental Assistance Demonstration Conversion Guide for Public Housing Agencies that was made available to housing authorities actually contemplated partial conversions in a footnote on page 3 of the document. Notwithstanding this, HACEP received a letter from HUD on June 30, 2015, advising that "HUD was unable to approve a RAD application where less than 100 percent of the units are converted." Accordingly, the Application must be revised to eliminate the public housing units while maintaining qualification with the At-Risk Set-Aside requirements. To do this, the 23 units that were previously designated as Public Housing have been eliminated, and all 90 units are RAD Units that will be provided with property-based rental assistance through Section 8 of the National Housing Act of 1937 (the "Act"). This is consistent with the TDHCA Board's approval on December 17, 2015, of an interpretation that public housing undergoing a RAD conversion from a subsidy under Section 9 of the Act to an operating subsidy under Section 8 of the Act qualifies for the At-Risk Set-Aside.

HACEP proposes to amend the Application to provide that 100% of the public housing units will be changed to RAD units supported with project-based rental subsidy under Section 8 of the Act. The requested amendment will not result in a change to the Application's score.

The change in type of subsidy will result in changes to the Rent Schedule, so this application amendment request updates that information and other financial projections that were affected. Because the finances were changing and an application amendment was clearly required, we took the opportunity to update the sources and uses of funds. The amendment to the Application requires changes to the following portions of the Application, which are hereby submitted:

1. Tab 17 –Development Narrative;
2. Tab 20- Acquisition and Rehabilitation Information – Section 2 – Existing Development Assistance – Part A;
3. Tab 24 - Rent Schedule;
4. Tab 26 - Operating Expenses;
5. Tab 27 - Proforma;
6. Tab 31 - Financing Narrative and Summary of Sources and Uses; and
7. Tab 35– Updated HACEP letter committing project-based rental subsidy for 90 units.

We respectfully request that the TDHCA Staff support the requested application amendment and recommend approval to the TDHCA Board at the February Board Meeting.

Sincerely,

Barry J. Palmer

Enclosures

cc: Tim Irvine
Tom Gouris
Raquel Morales
Gerald W. Cichon
Sarah Anderson

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

DECEMBER 17, 2015

Presentation, Discussion, and Possible Action on the application of the At Risk Set-aside to an application undergoing a conversion under the Rental Assistance Demonstration ("RAD") program of the U.S. Department of Housing and Urban Development ("HUD").

RECOMMENDED ACTION

WHEREAS, §9 of the National Housing Act of 1937 (the "Act," codified at 42 USCS §§ 1437 et seq.) provides an operating subsidy to public housing; and

WHEREAS, under the RAD program a public housing development's subsidy under §9 of the Act is replaced by a project based §8 subsidy providing rental support at levels that provide for reasonable expected costs of operations;

Now, therefore, it is hereby

RESOLVED, that this Board confirms its interpretation that public housing that undergoes a conversion from a subsidy under §9 of the Act to a subsidy under §8 of the Act under the RAD program meets the requirements of TEX. GOV'T CODE §2306.6714 and 10 TAC, §11.5(3)(D).

BACKGROUND

Staff has received a question as to whether a public housing authority applying for tax credits in connection with a RAD conversion meets the criteria to compete in the at risk set-aside, which is defined at TEX. GOV'T CODE §2306.6714. Staff believes that HB 2926 (84th Legislature, regular session) amended the definition of at risk developments in a manner that expressly includes developments undergoing RAD conversions. Such a development, pre-conversion, has an operating subsidy under §9 of the Act and this subsidy is replaced by a new subsidy under §8 of the Act. The new subsidy provides financial assistance necessary to operation (making it *de facto* an operating subsidy) and because it is project based the entirety of the subsidy is retained at the development.

Development Narrative

1. The proposed Development is: (*Check all that apply*)

Reconstruction and/or:

Previous TDHCA # *NA* If Acquisition/Rehab or Rehab, original construction year:

If Reconstruction, 90 Units Demolished 90 Units Reconstructed

If Adaptive Reuse, Additional Phase, or Scattered Site, include detailed information in the Narrative (4.) below.

2. The Target Population will be:

General

3. Staff Determinations regarding definitions of development activity obtained?

☐ If a determination under §10.3(b) of the Uniform Multifamily Rules was made prior to Application submission, provide a copy of such determination behind this form.

4. Narrative

Briefly describe the proposed Development, including any relevant information not already identified above.

Thomas Westfall Memorial Apartments is an existing 90 unit public housing development, which will be demolished and reconstructed. The units will be replaced on a one to one basis meaning that the same number of one, two, and three bedroom units will be replaced. There will be a total of 11 residential buildings and one clubhouse which will also house the leasing office.

5. Funding Request:

Complete the table below to describe this Application's funding request.

Department Funds applying for with this Application	Requested Amount	If funds will be in the form of a Direct Loan by the Department or for Private Activity Bonds, the terms will be:		
		Interest Rate (%)	Amortization (Years)	Term (Years)
TDHCA HOME				
CHDO Operating Expense				
Housing Tax Credits	$ 980,000			
Private Activity Mortgage Revenue				
TCAP Loan Repayments				

6. Set-Aside *(For Competitive HTC & HOME Applications Only)*

Identify any and all set-asides the application will be applying under.
Set-Asides can not be added or dropped from pre-application to full Application for Competitive HTC Applications.

Competitive HTC Only			HOME Only	
At-Risk	Nonprofit	USDA	CHDO	Persons w/Disabilities
x	x			

By selecting the set-aside above, I, individually or as the general partner(s) or officers of the Applicant entity, confirm that I (we) are applying for the above-stated Set-Aside(s) and Allocations. To the best of my (our) knowledge and belief, the Applicant entity has met the requirements that make this Application eligible for this (these) Set-Aside(s) and Allocations and will adhere to all requirements and eligibility standards for the selected Set-Aside(s) and Allocations.

7. Previously Awarded State and Federal Funding

Has this site/activity previously received or applied for TDHCA funds? Yes

If "Yes" Enter Project Number: 14129 and TDHCA funding source: HTC

Has this site/activity previously received non-TDHCA federal funding? Yes

Will this site/activity receive non-TDHCA federal funding for costs described in this Application? Yes

8. Qualified Low Income Housing Development Election (*HTC Applications only*)

Pursuant to §42(g)(1)(A) & (B), the term "qualified low income housing development" means any project or residential rental property, if the Development meets one of the requirements below, whichever is elected by the taxpayer." Once an election is made, it is irrevocable. Select only one:

☐ At least 20% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income, adjusted for family size.

☒ At least 40% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 60% or less of the median gross income, adjusted for family size.

ACQUISITION AND REHABILITATION INFORMATION

1. **At-Risk Set-Aside *(Competitive HTC Applications Only)***

[x] Qualification: Must meet the requirements of an At-Risk Development in §11.5(3) of the Qualified Allocation Plan.

Documentation: Must be submitted behind this tab showing that the Development meets the requirements of §2306.6702(a)(5) of the Texas Government Code.

Part A: Documentation must show that the subsidy or benefit is from one of the following approved programs (mark all that apply)

- [ ] Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l)
- [ ] Section 236, National Housing Act (12 U.S.C. Section 1715z-1)
- [ ] Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q)
- [ ] Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s)
- [ ] The Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the U.S. Department of Housing and Urban Development as specified in 24 CFR Part 886, Subpart A.
- [ ] The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the U.S. Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart C.
- [ ] Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485 and 1486)
- [ ] Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. Section 42)
- [x] Applicant proposes rehabilitation or reconstruction of housing units that:
  - [ ] are owned by a Public Housing Authority and received assistance under Section 9;

    OR
  - [x] received assistance under Section 9 **and:**
    - [x] are proposed to be demolished by the Public Housing Authority **OR**
    - [ ] have been demolished by the Public Housing Authority in the last 2 years.

Part B: Place an "X" by one of the following:

- [ ] The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31, 2015). See §11.5(3)(E) and (F) of the 2014 QAP concerning At-Risk developments qualifying under Section 42 of the Internal Revenue Code.
- [ ] The subsidy marked above is a federally insured mortgage and is eligible for prepayment without penalty or is nearing the end of its mortgage term (the term will end within two (2) calendar years of July 31, 2015)

Part C: I certify that:

- [ ] the Development is at risk of losing affordability from the financial benefits available to the Development, and those financial benefits and affordability will be retained or renewed unless regulatory barriers necessitate elimination of a portion of that benefit, pursuant to §11.5(3)(D) of the Qualified Allocation Plan.

Part D: If proposing demolition of the existing Units which have received the financial benefits described in Part A:

- [x] the redevelopment will include at least a portion of the same site.

  OR
- [ ] relocation of the existing units is proposed, and the requirements of §11.5(3)(C)(i) through (iii) of the 2015 Qualified Allocation Plan will be met.

2. Existing Development Assistance On Housing Rehabilitation Activities[1]

Part A.

The existing Property is expected to have or continue the following benefit:

Provide a brief description of the restrictions or subsidies the existing Property will have or continue in the space below:

100% of the project will be HTC and Project Based Section 8 Financing.

[X] A copy of the contract or agreement securing the funds identified above is provided behind this form.

The source of funds is:	HACEP
The annual amount of funds is:	
The number of units receiving assistance:	90
The term of the contract or agreement is (date):	NA
The expiration of the contract or agreement is (date):	TBD

Part B. Acquisition Of Existing Buildings (applicable only to HTC applications with Acquisition credits requested)

Date of the most recent sale or transfer of the building(s):

In the last ten years, did the previous owner perform rehabilitation work greater than 25% of the building's adjusted basis?

Was the building occupied at any time during the last ten years?

Was the building occupied or suitable for occupancy at the time of purchase?

Will the acquisition meet the requirements of §42(d)(2)(B)(ii) relating to the 10-year placed in service rule?

If "**Yes**", provide a copy of a title commitment that the Development meets the requirements of §42(d)(2)(B)(ii) as to the 10 year period.

If "**No**", does the property qualify for a waiver under §42(d)(6)?

If "Yes", provide the waiver and/or other documentation.

How many buildings will be acquired for the Development?

Are all the buildings currently under control by the Development Owner?

If "No", how many buildings are under control by the Development Owner?

When will the remaining buildings be under control?

[1] Per §2306.008, TDHCA shall support the preservation of affordable housing for individuals with special needs and individuals and families of low income at any location considered necessary by TDHCA.

ACQUISITION AND/OR REHABILITATION (Continued)

Part B. Acquisition Of Existing Buildings (continued)

Identification or address(es) of Building(s) under Owner's Control	Type of Control (Ownership, Option, Purchase Contract)	Expiration Date	# of Units	Acquisition Cost of Building

Provide the information listed below concerning the acquisition of building(s) for the Development:

1. Building(s) acquired or to be acquired from: ☐ Related Party ☐ Unrelated Party
2. Building(s) acquired or to be acquired with Buyer's Basis:
   ☐ Determined with reference to Seller's Basis ☐ Not Determined with reference to Seller's Basis

List below by building address, the date the building was placed in service (PIS), the date the building was or is planned for acquisition, and the number of years between the date the building was placed in service and acquisition. Attach separate sheet(s) with additional information if necessary.

Building Address(es)	PIS date of building by most recent owner	Proposed Acquisition date by the Applicant	Years between PIS & Acquisition

3. Lead Based Paint (HOME Applications Only)

Development constructed before January 1, 1978 ☐ (If "Yes", continue to next selections)

Check each of the following that applies [24 CFR 35.115]:

☐ Emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. The exemption applies only to repairs necessary to respond to the emergency.

☐ The property will not be used for human residential habitation. This does not apply to common areas such as hallways and stairways of residential and mixed-use properties.

☐ Housing "exclusively" for the elderly or persons with disabilities, with the provision that children less than six years of age will not reside in the dwelling unit.

☐ An inspection performed according to HUD standards found the property contained no lead-based paint.

☐ According to documented methodologies, lead-based paint has been identified and removed; and the property has achieved clearance.

☐ The rehabilitation will not disturb any painted surface.

☐ The property has no bedrooms.

☐ The property is currently vacant and will remain vacant until demolition.

Rent Schedule

Self Score Total: **132**

'ate Activity Bond Priority (For Tax-Exempt Bond Developments ONLY):

Unit types must be entered from smallest to largest based on "# of Bedrooms" and "Unit Size", then within the same "# of Bedrooms" and "Unit Size" from lowest to highest "Rent Collected/Unit".

Rent Designations (select from Drop down menu)													
HTC Units	HOME Units (Rent/Inc)	HTF Units	MRB Units	Other/ Subsidy	# 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%				Section 8	22	1	1.0	659	14,498	295	73	440	9,680
TC 50%				Section 8	16	1	1.0	659	10,544	492	73	440	7,040
TC 30%				Section 8	12	2	1.0	873	10,476	354	97	523	6,276
TC 50%				Section 8	14	2	1.0	873	12,222	591	97	523	7,322
TC 60%				Section 8	2	2	1.0	873	1,746	709	97	523	1,046
TC 30%				Section 8	2	3	2.0	1087	2,174	409	120	751	1,502
TC 50%				Section 8	6	3	2.0	1087	6,522	682	120	751	4,506
TC 60%				Section 8	16	3	2.0	1087	17,392	819	120	751	12,016
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			TOTAL		90				75,574				49,388

Non Rental Income	$0.00	per unit/month for:		
Non Rental Income	0.00	per unit/month for:		
Non Rental Income	0.00	per unit/month for:		
+ TOTAL NONRENTAL INCOME	**$0.00**	per unit/month		-
= POTENTIAL GROSS MONTHLY INCOME				49,388
- Provision for Vacancy & Collection Loss		% of Potential Gross Income:	7.50%	(3,704)
- Rental Concessions ***(enter as a negative number)***		**Enter as a negative value**		
= EFFECTIVE GROSS MONTHLY INCOME				45,684
x 12 = EFFECTIVE GROSS ANNUAL INCOME				548,207

Rent Schedule (Continued)

		% of LI	% of Total	
HOUSING TAX CREDITS	TC30%	40%	40%	36
	TC40%			0
	TC50%	40%	40%	36
	TC60%	20%	20%	18
	HTC LI Total			90
	EO			0
	MR			0
	MR Total			0
	Total Units			90
MORTGAGE REVENUE BOND	MRB30%			0
	MRB40%			0
	MRB50%			0
	MRB60%			0
	MRB LI Total			0
	MRBMR			0
	MRBMR Total			0
	MRB Total			0

		% of LI	% of Total	
HOUSING TRUST FUND	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	HTF LI Total			0
	MR			0
	MR Total			0
	HTF Total			0
HOME	30%			0
	LH/50%			0
	HH/60%			0
	HH/80%			0
	HOME LI Total			0
	EO			0
	MR			0
	MR Total			0
	HOME Total			0
OTHER	Total OT Units			90

BEDROOMS	0			0
	1			38
	2			28
	3			24
	4			0
	5			0

ACQUISITION + HARD		
Cost Per Sq Ft	$ 111.26	
HARD		
Cost Per Sq Ft	$ 111.26	
BUILDING		Total Points claimed:
Cost Per Sq Ft	$ 69.83	12

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

ANNUAL OPERATING EXPENSES

General & Administrative Expenses				
Accounting		$	16,176	
Advertising		$	150	
Legal fees		$	480	
Leased equipment		$	700	
Postage & office supplies		$	950	
Telephone		$	2,480	
Other	***Printing***	$	2,217	
Other	***Training***	$	8,419	
Total General & Administrative Expenses:				$ 31,572
Management Fee:	Percent of Effective Gross Income:		6.00%	$ 32,892
Payroll, Payroll Tax & Employee Benefits				
Management		$	35,000	
Maintenance		$	20,000	
Other	***Benefits***	$	11,891	
Other	***Tenant Services***		14,560	
Total Payroll, Payroll Tax & Employee Benefits:				$ 81,451
Repairs & Maintenance				
Elevator		$		
Exterminating		$	2,427	
Grounds		$	840	
Make-ready		$	9,932	
Repairs		$	18,735	
Pool		$		
Other	***Maintenance Contracts***	$	22,151	
Other		$		
Total Repairs & Maintenance:				$ 54,085
Utilities (Enter Only Property Paid Expense)				
Electric	***portfolio***	$	14,163	
Natural gas	***portfolio***	$	22,005	
Trash	***portfolio***	$	12,360	
Water/Sewer	***portfolio***	$	24,720	
Other		$		
Other		$		
Total Utilities:				$ 73,248
Annual Property Insurance:	Rate per net rentable square foot:	$	0.27	$ 20,700
Property Taxes:				
Published Capitalization Rate:	Source:			
Annual Property Taxes		$		
Payments in Lieu of Taxes		$	14,603	
Total Property Taxes:				$ 14,603
Reserve for Replacements:	Annual reserves per unit:	$	$ 300	$ 27,000
Other Expenses				
Cable TV		$		
Supportive Services (Staffing/Contracted Services)		$		
TDHCA Compliance fees		$	3,600	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)		$		
Security		$	10,560	
Other		$		
Other		$		
Total Other Expenses:				$ 14,160
TOTAL ANNUAL EXPENSES	Expense per unit:	$	3886	$ 349,711
	Expense to Income Ratio:		**63.79%**	
NET OPERATING INCOME (before debt service)				$ 198,495
Annual Debt Service				
El Paso HFC Loan		$	68,300	
HACEP Loan		$	78,418	
		$		
		$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:		1.35	$ 146,718
NET CASH FLOW				$ 51,777

15 Year Rental Housing Operating Pro Forma

All Programs Must Complete the following:

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME	$592,656	$604,509	$616,599	$628,931	$641,510	$708,279	$781,997
Secondary Income	$ -	$ -	$ -	$ -	$ -	$ -	$ -
POTENTIAL GROSS ANNUAL INCOME	$592,656	$604,509	$616,599	$628,931	$641,510	$708,279	$781,997
Provision for Vacancy & Collection Loss	($44,449)	($45,338)	($46,245)	($47,170)	($48,113)	($53,121)	($58,650)
Rental Concessions	$0						
EFFECTIVE GROSS ANNUAL INCOME	$548,207	$559,171	$570,354	$581,761	$593,397	$655,158	$723,347
EXPENSES							
General & Administrative Expenses	$31,572	$32,519	$33,495	$34,500	$35,535	$41,194	$47,755
Management Fee	$ 32,892	$ 33,879	$ 34,896	$ 35,942	$ 37,021	$ 42,917	$ 49,753
Payroll, Payroll Tax & Employee Benefits	$ 81,451	$ 83,895	$ 86,411	$ 89,004	$ 91,674	$ 106,275	$ 123,202
Repairs & Maintenance	$ 54,085	$ 55,708	$ 57,379	$ 59,100	$ 60,873	$ 70,569	$ 81,808
Electric & Gas Utilities	$ 36,168	$ 37,253	$ 38,371	$ 39,522	$ 40,707	$ 47,191	$ 54,707
Water, Sewer & Trash Utilities	$ 37,080	$ 38,192	$ 39,338	$ 40,518	$ 41,734	$ 48,381	$ 56,087
Annual Property Insurance Premiums	$ 20,700	$ 21,321	$ 21,961	$ 22,619	$ 23,298	$ 27,009	$ 31,311
Property Tax	$ 14,603	$ 15,041	$ 15,492	$ 15,957	$ 16,436	$ 19,054	$ 22,088
Reserve for Replacements	$ 27,000	$ 27,810	$ 28,644	$ 29,504	$ 30,389	$ 35,229	$ 40,840
Other Expenses	$ 14,160	$ 14,585	$ 15,022	$ 15,473	$ 15,937	$ 18,476	$ 21,418
TOTAL ANNUAL EXPENSES	$349,711	$360,203	$371,009	$382,139	$393,603	$456,294	$528,970
NET OPERATING INCOME	$198,495	$198,968	$199,346	$199,622	$199,793	$198,864	$194,377
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	$68,300	$68,300	$68,300	$68,300	$68,300	$68,300	$68,300
Second Deed of Trust Annual Loan Payment	78,418	78,418	78,418	78,418	78,418	78,418	78,418
Third Deed of Trust Annual Loan Payment							
Other Annual Required Payment							
Other Annual Required Payment							
NET CASH FLOW	$51,777	$52,250	$52,628	$52,904	$53,075	$52,146	$47,659
Debt Coverage Ratio	1.35	1.36	1.36	1.36	1.36	1.36	1.32
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, rent schedule and operating expense schedule have been reviewed and generally meet current lender underwriting parameters for the loan terms indicated in the term sheet. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

Phone:

Email:

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Date

Financing Narrative and Summary of Sources and Uses

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
Debt										
TDHCA	HOME	$0	0%		$ -	0%	0	0		
TDHCA	TCAP Loan Repayments	$0	0%		$ -	0%	0	0		
TDHCA	Mortgage Revenue Bond	$0	0%		$ -	0%	0	0		
PNC	Conventional Loan	$7,329,744	4.00%							
El Paso HFC	Local Government Loan	$1,350,000	3.00%	First	$ 1,350,000	3.00%	30	15		First
HACEP	Local Government Loan	$1,550,000	3.00%	Second	$ 1,550,000	3.00%	30	30		Second
Third Party Equity										
PNC	HTC $ 980,000	$ 1,861,814			$ 9,309,069				0.95	
Grant										
Deferred Developer Fee										
	Deferred Fee				$ 117,511					
Other										
	Total Sources of Funds	$ 12,091,558			$ 12,326,580					
	Total Uses of Funds				$ 12,326,580					

Briefly describe the complete financing plan for the Development, including a discussion of the sources of funds. The information must be consistent with all other documentation in this section. Provide sufficient detail so that the reader can understand all terms related to each source that are not readily apparent above or in the term sheets.

Please see financing narrative on separate page.

Housing Authority
of the City of El Paso

January 8, 2016

Paisano Housing Redevelopment Corporation
5300 E. Paisano Drive
El Paso, TX 79905

Re: Thomas Westfall Memorial Apartments Housing Tax Credit Application

To Whom It May Concern:

The Housing Authority of the City of El Paso will convert Thomas Westfall Memorial Apartments from Public Housing to Project Based rental subsidy under the RAD conversion program. The property will have a long term contract for rental subsidy.

Sincerely,

Satish Bhaskar
Chief Financial Officer

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