

SUPPLEMENTAL BOARD BOOK OF MARCH 23, 2017



J. Paul Ozer, Chair
Leslie Bingham Escareño, Vice-Chair
Juan Muñoz, Member
T. Tolbert Chisum, Member
Tom H. Gann, Member
J. B. Goodwin, Member

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

**A G E N D A
9:00 AM
March 23, 2017**

**Dewitt C. Greer State Highway Building
Ric Williamson Hearing Room
125 E 11th Street
Austin, Texas**

CALL TO ORDER

ROLL CALL

Leslie Bingham-Escareño, Vice Chair

CERTIFICATION OF QUORUM

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

Resolution recognizing April as *Fair Housing Month*

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

LEGAL

- a) Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Order concerning Royal Palm (HTC 91017 / CMTS 947)

Jeff Pender
Deputy General Counsel

ASSET MANAGEMENT

- b) Presentation, Discussion and Possible Action regarding Material Amendments to the Housing Tax Credit Land Use Restriction Agreement ("LURA")
99201 Sea Mist Townhomes Rockport
01130 Port Arthur Townhomes Port Arthur
- c) Presentation, Discussion and Possible Action regarding Placed in Service Deadline Extensions
14087 Cypress Creek at Joshua Station Joshua
14292 Cypress Creek at Parker Boulevard Royse
- d) Presentation, Discussion and Possible Action regarding Ownership Transfer Prior to IRS 8609 Issuance or Construction Completion
12413 Sienna Pointe San Marcos

Raquel Morales
Director

BOND FINANCE

- e) Presentation, Discussion, and Possible Action regarding Resolution No. 17-013 approving an underwriting team and containing other provisions relating to the subject

Monica Galuski
Director

HOME AND HOMELESS PROGRAM

- f) Presentation, Discussion, and Possible Action Regarding Additional Authority to Reallocate Recaptured Program Year 2015 Emergency Solutions Grants Program Funding

Jennifer Molinari
Director

HOUSING RESOURCE CENTER

- g) Presentation, Discussion, and Possible Action on the re-release of a draft 2017 State of Texas Consolidated Plan: One-Year Action Plan

Elizabeth Yevich
Director

MULTIFAMILY FINANCE

- h) Presentation, Discussion, and Possible Action on the Issuance of a Determination Notice for Housing Tax Credits with another Issuer
17400 Casa Del Rio/Villa Hermosa Del Rio

Marni Holloway
Director

- i) Presentation, Discussion, and Possible Action on Inducement Resolution No. 17-014 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List for Emli at Liberty Crossing Apartments

TEXAS HOMEOWNERSHIP

- j) Presentation, Discussion and Possible Action regarding publication of a Request for Proposal (“RFP”) for a Program Administrator for the Texas First Time Homebuyer Program, the My First Texas Home Program, the Texas Mortgage Credit Certificate (MCC) Program, and other first-time homebuyer programs that may be implemented by the Department

Cathy Gutierrez
Director

RULES

- k) Presentation, Discussion, and Possible Action on an order proposing actions to 10 TAC Chapter 6 Community Affairs Programs, including the 1) proposed amendments in Subchapter A, General Provisions, of §6.2 Definitions, §6.4 Income Determination, and §6.5 Documentation and Frequency of Determining Customer Eligibility; and 2) proposed amendments in Subchapter C, Comprehensive Energy Assistance Program (“CEAP”), of §6.308 Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16, and §6.310 Household Crisis Component; and directing that they be published for public comment in the *Texas Register*

Michael DeYoung
Director, Community Affairs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, February-March 2017
- b) Quarterly Report on Texas Homeownership Division Activity
- c) Report on Department’s Fair Housing Activities

Michael Lyttle
Chief, External Affairs
Cathy Gutierrez
Director, Texas Homeownership
Suzanne Hemphill
Fair Housing Project Mgr

ACTION ITEMS

ITEM 3: EXECUTIVE

- a) Presentation, Discussion, and Possible Action to adopt additional clarifying guidance on Resolution 02-056 separating the policy-making functions of the Board and the management responsibilities of staff
- b) Presentation, Discussion, and Possible Actions to address syndication issues on 2016 9% awards

Timothy K. Irvine
Executive Director

ITEM 4: REPORTS

Report on 2018 Qualified Allocation Plan (“QAP”) Project

Marni Holloway
Director, MF Finance

ITEM 5: MULTIFAMILY FINANCE

- Presentation, Discussion, and Possible Action on Timely Filed Appeals of Application Termination under the Department’s Multifamily Program Rules
17029 Cibolo Senior Gardens Boerne
17043 Maplewood Gardens Caldwell
17045 Rock Prairie Village College Station
17049 Oak Creek Senior Village New Braunfels

Marni Holloway
Director

17060 Artisan at Old Tezel Road

17087 Artisan at Potranco

17038 Columbia Renaissance Sq II

17084 Country Place Apartments

17144 Derbyshire Court Villas

17351 The Heritage Apartments

17069 Arlinda Gardens

17742 Las Villas del Rio Hondo

San Antonio

San Antonio

Fort Worth

Atlanta

Lindale

Houston

Bryan

Rio Hondo

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

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

Leslie Bingham-Escareño
Vice Chair

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una

pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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**THIS ITEM HAS BEEN PULLED
FROM THE AGENDA**

1h

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
MARCH 23, 2017

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#17400 Casa Del Rio/Villa Hermosa, Del Rio)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Casa Del Rio/Villa Hermosa, sponsored by the Hermosa Housing Corporation, an instrumentality of the Housing Authority of the City of Del Rio, was submitted to the Department on December 12, 2016;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate from the Texas Bond Review Board (“BRB”) was issued on January 11, 2017, and will expire on December 31, 2019;

WHEREAS, the proposed issuer of the bonds is the Del Rio Housing Finance Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain undesirable characteristics of a proposed development site;

WHEREAS, while the applicant did not disclose the presence of such undesirable neighborhood characteristics, staff has determined that the high school in the attendance zone for the development did not achieve a Met Standard rating based on the 2016 Accountability Ratings by the Texas Education Agency (“TEA”);

WHEREAS, staff recommends the site be considered eligible considering the school has been Improvement Required for one year, has achieved Met Standard for the past three years, and based on the fact that it was three points shy of achieving the target score on one of the performance index indicators and otherwise would have achieved Met Standard; and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 4 and after review and discussion the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of a Determination Notice, with conditions, as identified below;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$735,267 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Casa Del Rio/Villa Hermosa is hereby approved as presented to this meeting conditioned upon the following:

1. Submittal of proof of 2016 property taxes paid or proof of exemption for Sunflower Estates and past due compliance Fees for Forest Park, Silver Springs, and River Pointe prior to or on March 16, 2017.

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing on or before July 23, 2017, the Board authorizes EARAC to approve or deny an extension of the Determination Notice date subject to an updated previous participation review, if necessary.

BACKGROUND

General Information: The Casa Del Rio/Villa Hermosa application consists of two existing scattered sites both of which are located in the City of Del Rio, Val Verde County. Combined there are a total of 170 units, all of which are currently operating as public housing and are owned and managed by the Housing Authority of the City of Del Rio and will be converted through HUD's Rental Assistance Demonstration program.

The Casa Del Rio is located at 100 East Rodriguez Street and consists of 120 units, all of which will be rent and income restricted at 60% of Area Median Family Income ("AMFI"). The development was originally constructed in 1961 and underwent a partial renovation in 2012 and 2013 that included upgraded windows, installation of bathroom exhaust fans and updated blown-in insulation, to name a few. The development will serve the general population and conforms to current zoning. The census tract (9506.01) has a median household income of \$37,935, is in the second quartile and has a poverty rate of 23.20%.

The Villa Hermosa site is located at 2201 North Main Street and consists of 50 units, all of which will be rent and income restricted at 60% AMFI. The development was originally constructed in 1981. The development will serve the general population and conforms to current zoning. The census tract (9503.01) has a median household income of \$41,875, is in the first quartile and has a poverty rate of 19.10%.

Site Analysis: The proposed development is to be located within the San Felipe-Del Rio Consolidated Independent School District and the Del Rio High School ("DRHS") failed to achieve the 2016 Met Standard rating, by three points, on Index 3 (relating to Closing Performance Gaps). From a historical perspective, DRHS achieved Met Standard in 2013, 2014 and 2015. DRHS serves grades 10 – 12, is the only high school that serves students in the district, with a population of 2,180 students that includes an increase over the prior year of approximately 50 students. Staff notes that there is a separate 9th Grade campus, Del Rio Freshman School, of approximately 800 students that has achieved Met Standard for the past four years.

In each of the prior years (2013 – 2015) DRHS achieved the target score on all of the performance index indicators and achieved one distinction in 2013 and another in 2015. Over the past four years DRHS has seen an increase in student population of approximately 200 students, while maintaining the Met Standard rating, with the exception of last year. Staff notes that part of the Campus Improvement Plan for DRHS included a Community and Student Engagement section, dated Spring 2016, and indicated an overall campus rating of "Recognized" with several of the individual categories obtaining exemplary and recognized status in areas of Dropout Prevention, Gifted and Talented, Second Language Transition and Fine Arts.

Staff believes that considering the historical and consistent performance of DRHS, combined with the 2016 performance and other aforementioned factors, this undesirable neighborhood characteristic should be

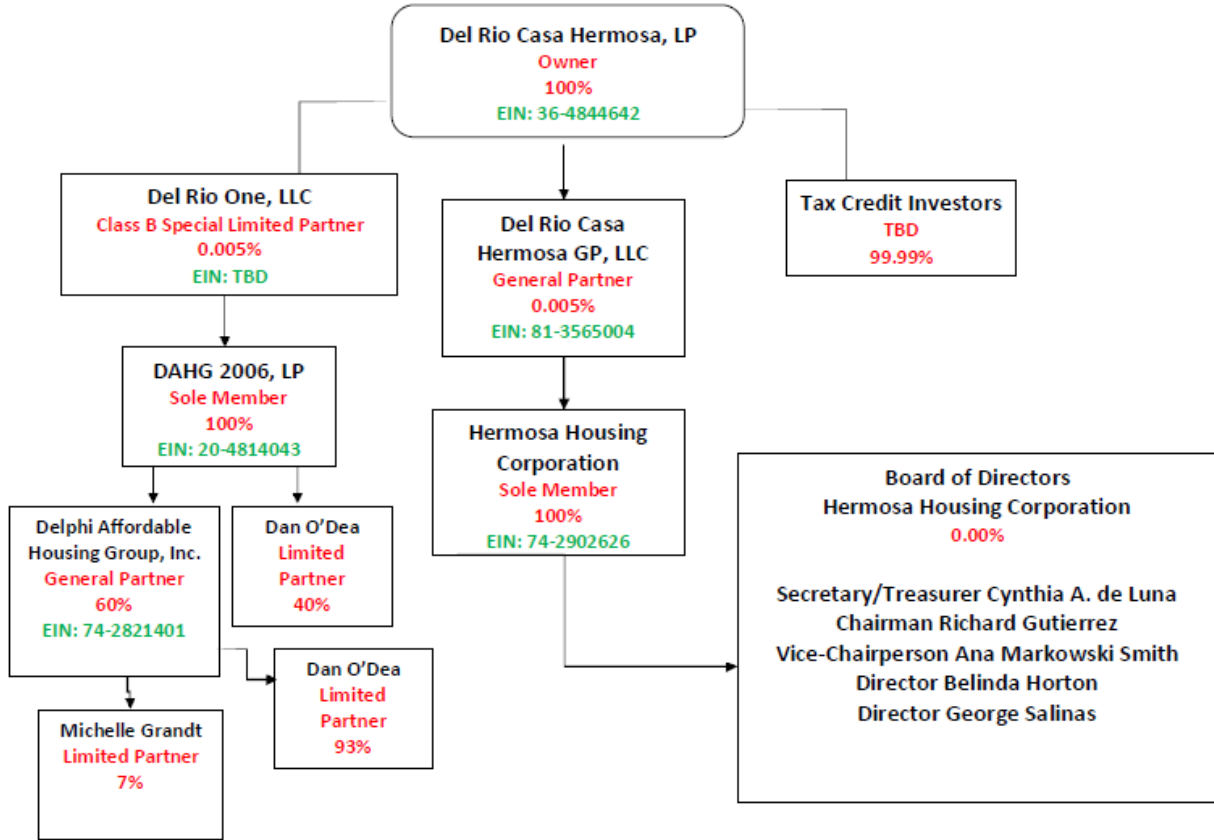
considered mitigated under the assumption that it is plausible for the DRHS to achieve Met Standard over the next year, or by the time Casas Del Rio/Villa Hermosa places into service. Staff does not believe the performance of the high school is of a nature and severity that should render the sites ineligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules.

Organizational Structure: The Borrower is Del Rio Casa Hermosa, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The EARAC met on March 13, 2017, and considered the previous participation review documentation associated with the application. In accordance with 10 TAC §1.301(d)(1), the applicant's portfolio is considered a Category 4 due to non-payment of Department fees and 2016 property tax documentation that had not been submitted. The deadline imposed by EARAC to meet this condition was March 16, 2017, and staff notes that it has been cleared which resulted in a portfolio designated as a Category 2.

Public Comment: There have been no letters of support or opposition received by the Department.

EXHIBIT A

CASAS DEL RIO & VILLA HERMOSA
OWNERSHIP CHART



APPLICATION SUMMARY

REAL ESTATE ANALYSIS DIVISION

March 15, 2017

PROPERTY IDENTIFICATION			RECOMMENDATION					KEY PRINCIPAL / SPONSOR			
Application #	17400		TDHCA Program		Request	Approved		General Partner(s)			
Development	Casas Del Rio and Villa Hermosa		LIHTC (4% Credit)		\$766,636	\$735,267	\$4,325/Unit	\$0.93	Delphi Affordable Housing Group		
City / County	Del Rio / Val Verde				Amount	Rate	Amort	Term	Housing Authority of City of Del Rio		
Region/Area	11 / Rural		Private Activity Bonds								
Population	General		MDLP (Repayable)								
Set-Aside	General		MDLP (Non-Repayable)								
Activity	Acquisition/Rehab	1981/1961	CHDO Expenses		Developer(s)						
									Daniel O'Dea		
									Michelle Brandt		
						Related-Parties		Contractor - No		Seller - Yes	

TYPICAL BUILDING ELEVATION/PHOTO

Villa Hermosa



Casas Del Rio



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	10	6%	40%	-	0%
2	78	46%	50%	-	0%
3	74	44%	60%	170	100%
4	8	5%	MR	-	0%
TOTAL	170	100%	TOTAL	170	100%

PRO FORMA FEASIBILITY INDICATORS

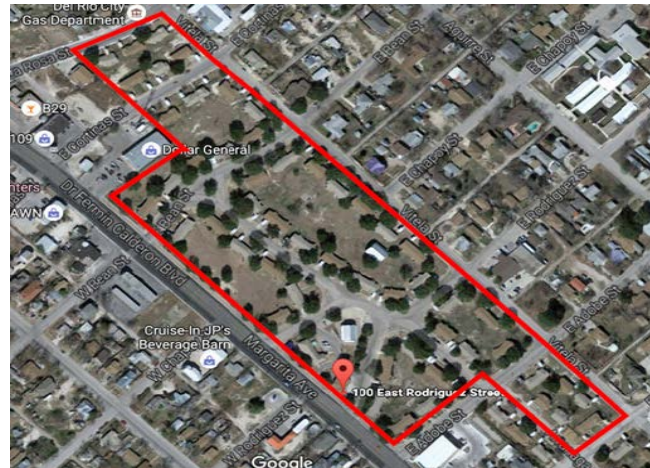
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	62.1%
Breakeven Occ.	90.3%	Breakeven Rent	\$534
Average Rent	\$562	B/E Rent Margin	\$28
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,051/unit	Controllable	\$2,765/unit

SITE PLAN

Villa Hermosa



Casas Del Rio



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (30% Maximum)	7.5%		
Highest Unit Capture Rate	17%	3 BR/60%	74
Dominant Unit Cap. Rate	12%	2 BR/60%	78
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	170	100% Total Units	

DEVELOPMENT COST SUMMARY

Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	895 SF	Density	5.6/acre
Acquisition	\$31K/unit	\$5,190K	
Building Cost	\$42.89/SF	\$38K/unit	\$6,527K
Hard Cost	\$46K/unit		\$7,880K
Total Cost	\$117K/unit		\$19,857K
Developer Fee	\$2,132K	(8% Deferred)	Paid Year: 4
Contractor Fee	\$1,103K	30% Boost	Yes

REHABILITATION COSTS / UNIT

Site Work	\$2K	4%	Finishes/Fixtures	\$21K	46%
Building Shell	\$10K	21%	Amenities	\$3K	7%
HVAC	\$2K	4%	Total Exterior	\$15K	32%
Appliances	\$3K	6%	Total Interior	\$26K	56%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
221(d)4 - HUD - Davis Penn	40/40	4.35%	\$6,596,700	1.15	Housing Authority of the City of Del Rio	50/50	2.25%	\$5,190,000	1.15	PNC	\$6,824,304
										Delphi Affordable Housing	\$181,430
					Public Housing Operating Reserve	0/0	0.00%	\$900,000	1.15	TOTAL EQUITY SOURCES	\$7,005,734
					GIC Income	0/0	0.00%	\$165,000	1.15	TOTAL DEBT SOURCES	\$12,851,700
TOTAL DEBT (Must Pay)			\$6,596,700		CASH FLOW DEBT / GRANTS			\$6,255,000		TOTAL CAPITALIZATION	\$19,857,434

CONDITIONS

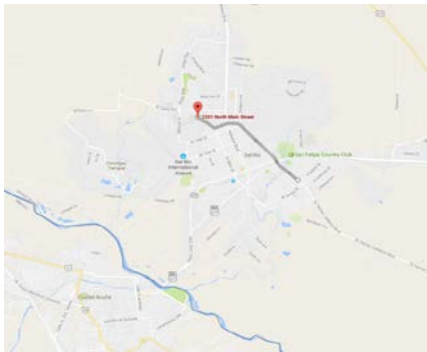
- 1 Receipt and acceptance by Cost Certification:
 - a: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - b: Receipt of final CHAP contract showing the correct unit mix.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

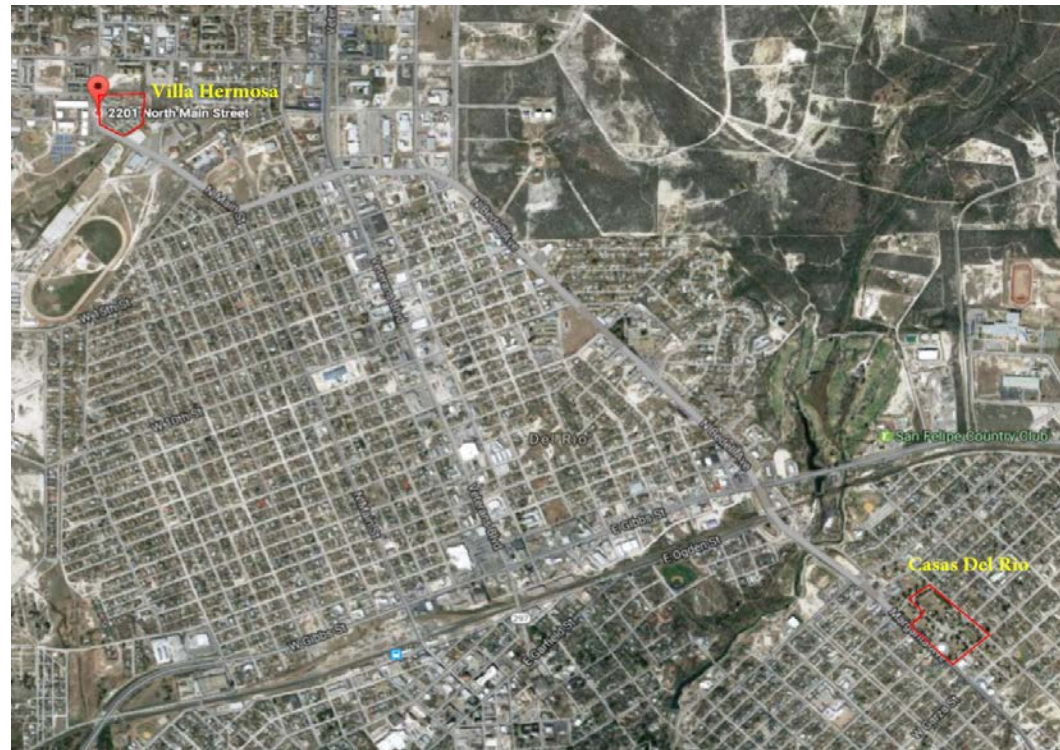
BOND RESERVATION / ISSUER	
Issuer	Del Rio HFC
Expiration Date	12/31/2019
Bond Amount	\$13,000,000
BRB Priority	N/A
Expected Close	N/A
Bond Structure	Cash Collateralized Short Term

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Developer Experience
▫	Partnership with Housing Authority of City of Del Rio
▫	All units covered with RAD Contract
WEAKNESSES/RISKS	
▫	First year DCR at 1.15

AREA MAP



AERIAL PHOTOGRAPH(S)



3b

BOARD ACTION REQUEST

MULTIFAMILY FINANCE

MARCH 23, 2017

Presentation, Discussion, and Possible Action on Possible Actions to Assist 2016 9% tax credit awardees that have suffered adverse changes in syndication rates

RECOMMENDED ACTION

WHEREAS, a number of proposed developments that received awards of 9% competitive low income housing tax credits in 2016 have, since the time of award, experienced various adverse changes that make it no longer financially feasible to close on development financing and proceed, such changes most notably including adverse changes in the price at which investor capital will be contributed to ownership structures;

WHEREAS, the Board finds that it is in the best interest of the State of Texas to identify lawful measures that may be taken to assist these developments such that they can move forward, thereby minimizing disruption to the development of suitable affordable housing;

WHEREAS, the Board has weighed the benefits of certain accommodations against the impact of delays or loss of production; and

NOW, therefore, it is hereby

RESOLVED, that this Board hereby expresses its support for staff's proceeding with each and all of the following measures to address these matters, subject to further more specific board action where required by law or rule:

- 1) Allowing awardees of 2016 9% competitive low income housing tax credits to return their credits without point or other penalty if they have experienced a loss in prospective equity attributable to a decline in syndication rates of such a magnitude that the transactions are no longer financially feasible without other accommodations and funding or equity sources. The Board finds that the waiver of this penalty is necessary in order to effectuate the express statutory policy objective of development of suitable affordable housing, and no further board action is required in this regard but this statement does not preclude bringing any appeals to the Board if staff concludes that support for meeting the claimed criteria for this waiver is insufficient in any given case. The documentation required will be a letter from an authorized representative of the awardee stating that either their equity investor is no longer willing to move forward at all or that they have changed the terms by reducing their syndication price and at the reduced price the transaction is no longer financially feasible. The letter must also state that the awardee pursued but was unable to secure feasible equity financing from other equity investors.
- 2) Developing for consideration at the appropriate time language for inclusion in the proposed 2018 Qualified Allocation Plan ("QAP") to address these situations through *force majeure* or other appropriate means.

- 3) Identifying any potential sources of gap funding and proposing terms for the offering of such funding in a manner that will maximize the number of current 2016 awardees that can be assisted with such funds, realizing that soft debt and or reduced or zero rate structures will adversely impact prospective cash flows to assist future transactions, make proposals as to how such streams might be replaced or reprioritized including specifically identification of a funding stream for loans to support permanent supportive housing.
- 4) Consideration of compliant requests for material amendments to value engineer these transactions or otherwise restructure them to enable them to proceed with their reduced syndication equity. Requests for waivers may be considered incident to this approach. Proposed changes or waivers that have affected eligibility or would have yielded a score (and tie breaker factors, if applicable) that would not have supported an award may be considered but generally will not be approved. The request, in order to be represented to this board for its required approval with an affirmative staff recommendation, would need to demonstrate how the revised financial sources, including any reduced syndication proceeds, would support the revised costs of the transaction, as sought to be amended. This would be reviewed by the Real Estate Analysis Division in accordance with the Department's underwriting rules, 10 TAC §§10.301-306.

FURTHER RESOLVED, that staff should continue to work with stakeholders to identify any other lawful and appropriate measures that might be recommended this Board.

BACKGROUND

An applicant for 9% competitive low income housing tax credits awarded in the 2016 round requires a combination of all sources sufficient to enable them to close on their financing and syndication, develop their property as set forth in their application, and proceed with development and operation of the property in a legally compliant and financially feasible manner. Conditions have developed in recent months that may have left some of these awardees unable to close and proceed. The most significant factor has been deterioration in syndication rates for investment in tax credit limited partnerships, but increases in interest rates on loans and increased costs, especially in very strong markets, may also have been factors. In some instances syndicators have decided to stay out of the syndication market for the time being regardless of rates.

Staff has had multiple meetings with representatives of the developer community to discuss and better understand these issues and to try to identify ways that the Department can assist these deals in moving forward.

The situation with regard to syndication

We understand that a number of awardees have been able to close their deals because the syndication investment had already been sold through to a fund or because their development satisfied some particular CRA requirement that the investor needed to address. Some investors may have simply backed out of other market for the moment. We understand that others have experienced pricing deterioration as their investors have made assumptions on the marginal tax rate, yielding a syndication price as much as 15 basis points lower. It has been related that larger syndicators seem to be settling on assumptions of a marginal rate in the 20-25% range. We also understand that the customary adjusters are being modified to allow for some give back if the marginal tax rate is not brought down as far.

Possible tools to help these deals

In theory, but within the constraints of current applicable law and funding sources, the Department could:

- 1) Allow for return of credits, waiving the point penalty.
- 2) Allow for a return and re-award under *force majeure* or some other new provision in the 2018 qualified allocation plan, yet to be developed, buying more time.
- 3) Provide funding to fill gaps.
- 4) Entertain value re-engineering of these deals, perhaps including material amendments.

Allow for return of credits, waiving the point penalty.

If an awardee can establish that their credit pricing (or loss of a commitment for syndication), alone or coupled with increases in interest rates and/or increases in costs of construction, makes their deal no longer feasible, allow them to return their credits without risk of a penalty point assessment.

Allow for a return and re-award under *force majeure*, buying more time.

The *force majeure* provision in the 2017 QAP does not provide for this, but we anticipate that as we develop the proposed 2018 we will consider possibly addressing this as a *force majeure* or similar matter (as well as being open to other lawful measures that might be addressed in the 2018 QAP to address these situations).

Provide funds to fill gaps.

We do not know the full extent of gaps that awardees will otherwise be unable to address, but we do have a limited amount of available funds to lend:

Funding source	Amount currently available under a NOFA	Amount requested by pending applications	Estimated amount available to program over the next twelve months (assuming all funds currently available in 2017-1 are awarded)	Comments
HOME	\$20,049,906	\$5,286,330	\$15,713,359	Generally available only in areas outside of participating jurisdictions
TCAP-RF	\$8,500,000 General \$4,000,000 SH/SR*	\$17,181,558 \$2,360,000	\$0 (insufficient funding to meet current requests)	May be used in participating jurisdictions
NHTF	\$4,310,529	N/A	\$4,310,529	Not currently available; will be limited to assisting units restricted to maximum of 30% rents/incomes

Of these funding sources TCAP-RF is by far the most flexible, not having the restrictions on use in participating jurisdictions that HOME funds carry. However, as described above, the amount of TCAP-RF is extremely limited at this time. If these funds need to be used as HOME match, recipients could be required to comply with additional requirements, as if they were HOME loans. We have determined that if TCAP-RF is used in soft financing (paid out of cash flow) structure with a 0% interest rate, this will maximize the awardee's ability to obtain and service additional senior debt (using less TCAP-RF). Mathematically, each one percent reduction in the interest rate on a \$500,000 loan may enable the awardee to finance an additional \$76,000 in senior debt (assuming the senior debt is at 5% for 30 years). However, since by rule the interest repayment stream on the TCAP-RF loans is the principal source of funding for loans to support permanent supportive housing ("PSH"), we will need to amend the rule to provide for a different stream of funding to support PSH. One possibility is to dedicate a specified portion of all of the TCAP-RF payment stream, regardless of whether it is principal or interest, to PSH. Staff believes that it ought to be considered whether we could have effectively a stated rate and use the zero as a conditional maximum rate. The loan would pay at 0% until and unless the adjuster yielded financial benefit and in that case the Department would share in that benefit up to the point where it produced an interest rate on the loan equal to the rate that would have been charged but for the exceptional circumstances, currently 3.25%. This would operate very much like an interest recapture clause for a variable rate loan when the indexed rate goes above the usury ceiling.

Entertain value re-engineering of these deals, perhaps including material amendments.

As long a transaction yields a development that would have supported receipt of its award and it complies with the material amendments rule, we could present material amendment requests to the Board for consideration. For example, a 100 unit deal with five buildings might seek to become an 80 unit deal with four buildings (with the same proportional unit mix and rent and income limits), or costly amenities like large clubhouses and pools could be replaced by less costly amenities or scaled down. It would be necessary for a party seeking such an amendment to demonstrate a revised cost structure and a revised financing structure which align to produce a financially feasible development that meets the Department's underwriting criteria as set forth in 10 TAC §§10.301-306. This would necessitate, among other things, a new cost schedule and updated financing and investment commitments.

5

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
MARCH 23, 2017

Presentation, Discussion, and Possible Action on Timely Filed Appeals of Application Termination under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, the appeals relate to Competitive Housing Tax Credit ("HTC") applications 17029, 17043, 17045, and 17049, which were submitted to the Department by the Full Application Delivery Date;

WHEREAS, notices of termination were provided to the Applicant for failure to meet the requirements of 10 TAC §10.201(1)(C) of the 2017 Uniform Multifamily Rules;

WHEREAS, the Applicant timely filed appeals; and

WHEREAS, the Executive Director denied the appeals;

NOW, therefore, it is hereby

RESOLVED, that the appeals of termination for Cibolo Senior Gardens (17029), Maplewood Gardens (17043), Rock Prairie Village (17045) and Oak Creek Senior Village (17049), are hereby denied.

BACKGROUND

Pursuant to 10 TAC §10.201 Procedural Requirements for Application Submission, subparagraph (1)(C):

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual.

The Applicant for the above mentioned Applications failed to upload the Excel copy of the Applications to the Department's secure web transfer server by the Application Deadline. In its combined appeal, the Applicant states that the Excel files were not included because the 2017 Multifamily Programs Procedures Manual did not state that it was required, as the previous year's manual had. The Applicant is correct that the language restating the rule requirement was not included in the 2017 manual, attached as "Exhibit A". However, the explicit and unambiguous rule requirement that the Excel copy of the Application be provided did not change and has been in place since program year 2011 when the electronic application was introduced. The Applicant is an experienced Developer, having received awards in 2011, 2014, and 2016, so they are experienced in submission of Applications to the Department. The Department received a total of 138 applications that did include the required spreadsheets as required, and subregions 8 Rural, 8 Urban, 9 Rural and 9 Urban remain oversubscribed without the inclusion of these applications.

The Applicant states that the Excel spreadsheet contains duplicative information and is therefore not material and its exclusion should be treated as an Administrative Deficiency. This required item is not an alternative depiction of the same information but, in fact, includes functionality that is critically important. That is why the rule expressly requires the .pdf and the Excel copy. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule and is essential to the full and efficient review of the application, it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application: a material deficiency.

Staff recommends denial of the appeals.

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

Termination Letter

17029 Cibolo Senior Gardens
17043 Maplewood Gardens
17045 Rock Prairie Village
17049 Oak Creek Senior Village



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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March 9, 2017

Writer's direct phone # (512) 475-1676
Email: marni.holloway@tdhca.state.tx.us

Mr. Will Märkel
Manager
JES Holdings, LLC
206 Peach Way
Columbia, MO 65203

RE: TERMINATION OF 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 17029 CIBOLO SENIOR GARDENS, 17043 MAPLEWOOD GARDENS, 17045 ROCK PRAIRIE VILLAGE, 17049 OAK CREEK SENIOR VILLAGE

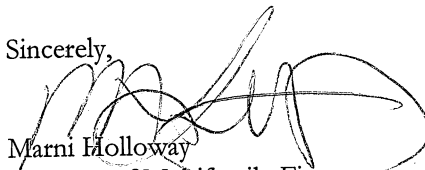
Dear Mr. Märkel:

The Texas Department of Housing and Community Affairs ("the Department" or "TDHCA") is in receipt of the application submissions indicated above. None of these application submissions included the Excel copy of the Application required by rule (10 TAC §10.201(1)(C)). In email correspondence on (date), you stated that "[w]e can do whatever is easiest for TDHCA in regards to the excel file, as looks like there just was some confusion as to what was outlined in the procedurals manual this year vs years past." Pursuant to 10 TAC §10.201(1)(C), the "Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. . . . It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline." (Emphasis added). Without the Excel copy of the applications, the Applications were incomplete and, accordingly, are hereby terminated because an entire material element was missing from each.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §10.902, in the 2017 Uniform Multifamily Rules. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Department. Please review 10 TAC §10.902 for the specifics of appeals process.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at marni.holloway@tdhca.state.tx.us.

Sincerely,


Marni Holloway
Director of Multifamily Finance

Cc: John Guttman



Appeal Documents

- 17029 Cibolo Senior Gardens
- 17043 Maplewood Gardens
- 17045 Rock Prairie Village
- 17049 Oak Creek Senior Village



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Cynthia L. Bast
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Direct Fax: 512-391-4707
cbast@lockelord.com

March 16, 2017

Via Electronic Mail

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 West 11th Street
Austin, Texas 78701

Re: #17029 – Cibolo Senior Gardens
#17043 – Maplewood Gardens
#17045 – Rock Prairie Village
#17049 – Oak Creek Senior Village
Appeal to Termination for Failure to Submit Excel Spreadsheet with
Applications

Dear Mr. Irvine:

We represent JES Dev Co, Inc. (the “**Applicant**”), which filed the above-referenced applications (the “**Applications**”) for low-income housing tax credits. This letter constitutes an appeal of the termination of the Applications by staff of the Texas Department of Housing and Community Affairs (the “**Department**”).

A termination notification was issued by the department based on the grounds that the Applications did not include the Excel files used to create the full applications. We respectfully request reconsideration of this decision on the ground that the instructions for electronic submission of the full applications did not state that the Excel spreadsheets were required to be included. Additionally, we contest that the Excel spreadsheets are material to the Applications because they contained information identical to the information provided in the PDF documents. Therefore, the Applicant should be allowed to provide the Excel files through the administrative deficiency process.

MULTIFAMILY PROCEDURES MANUAL OMMITTED KEY INSTRUCTIONS

This appeal is centered on the fact that the Multifamily Procedures Manual has historically included the full application assembly instructions. In 2016, the first year to upload an application, the Procedures Manual included the full assembly and upload

procedure, which the Applicant followed and later received an award of credits for a successful application. In prior years when applicants submitted a CD, the Application Assembly Instructions contained the full assembly and submission procedures. In every application round prior to 2017 where both an Excel and PDF files were required, the Multifamily Procedures Manual clearly instructed applicants to include both the Excel and PDF file whether on CD or uploading to the ftp. Every year that Applicant has submitted applications in the Competitive Round it followed the instructions as outlined in the Multifamily Procedures Manual and it has never been cautioned that it may not include the full submission instructions.

Included as Exhibit A are the Application Assembly Instructions as stated in the Procedures Manual between 2012 and 2016. As you can see the previous assembly instructions have been clear on the need to submit an Excel and PDF file for the five years prior to the 2017 Procedures Manual. The Procedures Manual is the first place developers go for information on how to submit an application--therefore a precedent has been established by the inclusion of full application submission instructions in prior year's Procedures Manuals.

It is true that the 2017 Uniform Multifamily Rules specify submission of an Excel file, but the Rules do not contain the comprehensive procedure for assembling and submitting an application, as does the Procedures Manual. The specificity of the Procedures Manual in outlining how to convert the Excel form to a PDF, the application delivery instructions, and the application assembly instructions suggests that any important element of the submission process should be included there, and has been in the past.

Exhibit B is the Application Assembly Instructions for 2017. The language speaking to the submission of an Excel and PDF file that was included in prior years is absent from the 2017 instructions. In its place the 2017 instructions state:

“For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file.”

It is not until the Multifamily Direct Loans portion of the 2017 Procedures Manual that instructions to submit an Excel and PDF file are included; however, this section does not apply to Applicant's 9% LIHTC Applications.

Clearly, TDHCA intends for applicants to use the Multifamily Procedures Manual to submit documents to the department, and applicants have been instructed to follow the guidance in the manual. As stated, “The purpose of this manual is to provide a brief description of each tab in the application, **guidance as to the Department's submission requirements** and what is acceptable supporting documentation.” (emphasis added) As demonstrated in Exhibit A, the full application procedure has historically been provided in the manual. It was therefore reasonable for Applicant to expect that this year's manual would also include the full application assembly

instructions. However, a modification was made this year, removing the language that explicitly instructs applicants to upload the Excel file. By removing this language, TDHCA effectively removed the requirement. At the very least, instructions to include an Excel file are not clear.

EXCEL SPREADSHEETS DUPLICATIVE NOT MATERIAL INFORMATION

Additionally, it is our position that the PDFs submitted contain all the material information to the Applications and that the Excel files are supplemental to the PDF—therefore they could properly be added through the Administrative Deficiency process.

An “Administrative Deficiency” is defined in 10 TAC § 10.3 as “**information** requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or **to assist staff in evaluating the Application** that . . . may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application.” (emphasis added)

A “Material Deficiency” is defined in 10 TAC § 10.3 as “[a]ny deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency.” The Multi-family Rules clearly and explicitly conclude that if a deficiency is within the scope of the definition of an Administrative Deficiency, then it cannot be defined as a Material Deficiency.

In this case, the information provided in the Excel files is identical to the information provided in the PDF files. The only distinction is that the Excel files assist staff in more easily manipulating and working with the same data included in the PDF files. Therefore, the information omitted by Applicant was precisely the kind of data described in the definition of Administrative Deficiency that “assists staff in evaluating the Application.”

Additionally, because the Excel file information duplicated that in the PDF file, it cannot be argued that any “material” information was omitted. What was omitted was “non-material” but helpful information that assists staff in evaluating the Applications.

Finally, because the Excel file data was duplicative of that in the PDF files, supplementation of the Applications with such information would not “necessitate a substantial reassessment or re-evaluation of the Application.” If the Excel files were requested by the department today, it would see that the modification date on each excel file is prior to the application deadline date, demonstrating that the files have not been altered since the time of submission of the Applications to the Department. Additionally, the Department may simply compare the data in the Excel files to the PDF files presently in its possession to verify that such supplementation is identical.

Therefore, because the Excel files constitute information that is clearly within the scope of the definition of Administrative Deficiency, based upon the express language of the Multifamily Rules, their omission cannot be characterized as a Material Deficiency.

Texas Department of Housing
and Community Affairs
March 16, 2017
Page 4

We respectfully appeal the Department decision to terminate Applicant's four Applications. We request that the Department acknowledge that the Procedures Manual has historically been a reliable source of complete information when submitting an application and that the 2017 Application Assembly Instructions were not as clear or explicit as prior years. We further request that based on the confusion in the Procedures Manual, the Department allow us to submit an Excel file for each of our applications to reinstate our applications.

Alternatively, since the omission of the Excel files may be handled as an easily correctible Administrative Deficiency, we respectfully request the Department to provide this path to resolve this matter.

We further commit to provide Excel files for each Application electronically dated prior to the submission deadline.

Sincerely,



Cynthia L. Bast

cc: Jim Markel
Brian Kimes


Exhibit A

2016 Multifamily Application Procedures Manual

The Department shall not be responsible for internet connectivity problems on the part of the Applicant and shall not be responsible for any delivery failure on the part of the Applicant; it is their responsibility to ensure timely delivery. If the Applicant chooses to use a postal or courier service to deliver the payment to TDHCA and such service fails to make the delivery by the deadline, then the Application will be considered untimely and will not be accepted. Pursuant to §10.201(1)(A) of the Uniform Multifamily Rules, if an Application, including the corresponding Application fee is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

 **NEW!** All Application materials must be uploaded to the Serv-UHTTPs account in electronic format only, unless specifically noted otherwise. The Applicant must upload:

1. An active Microsoft Excel based 2016 Multifamily Uniform Application; and
2. The completed, executed PDF copy of the 2016 Multifamily Uniform Application with all attachments;
3. a complete, searchable PDF copy of the following Third Party reports:
 - o Phase I Environmental Site Assessment,
 - o Property Condition Assessment (where applicable),
 - o Appraisal (where applicable)
 - o Feasibility Study
 - o If the Market Study is available, it may be uploaded with all other Third Party reports.

Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per PDF file. Tabs within the Application should not be separated into separate files.

Label the PDF and Excel files with the development name and application number (if assigned at Pre-Application). If an application number has not previously been assigned or a Pre-Application was not submitted, then as stated above, a hard copy of the *Electronic Filing Agreement* must be submitted by February 1, 2016 in order to ensure enough time for the Department to create the Serv-UHTTPs account and for you to set-up the password. The *Electronic Filing Agreement* is posted on the Department's website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Please email the form to Liz.Cline@tdhca.state.tx.us.

4. Completed hard copy of the 2016 Payment Receipt must be delivered to the Department. Attach check for the correct Application Fee made payable to "Texas Department of Housing and Community Affairs"; and
5. Payment – the Housing Tax Credit Application fee is \$30 per unit as represented in the Application. For competitive Housing Tax Credit applications, if a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the

2015 Multifamily Application Procedures Manual

have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - the completed, active Microsoft Excel based 2015 Multifamily Uniform Application;
 - the completed, executed PDF copy of the 2015 Multifamily Uniform Application with all attachments; and
 - **NEW!** the completed Community Input Scoring Items form with attached letters
2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - Feasibility Study
 - If the Market Study is available, it may be included on the CD with all other 3rd party reports.

Note: The Department will also accept one CD-R with the Application, Community Input Scoring items form (with letters) and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated into separate files or on to separate discs.

3. Completed hard copy of the 2015 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and
4. Completed and fully executed 2015 Electronic Application Filing Agreement.
5. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE**

2015 Multifamily Application Procedures Manual

have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - the completed, active Microsoft Excel based 2015 Multifamily Uniform Application;
 - the completed, executed PDF copy of the 2015 Multifamily Uniform Application with all attachments; and
 - **NEW!** the completed Community Input Scoring Items form with attached letters
2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - Feasibility Study
 - If the Market Study is available, it may be included on the CD with all other 3rd party reports.

Note: The Department will also accept one CD-R with the Application, Community Input Scoring items form (with letters) and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated into separate files or on to separate discs.

3. Completed hard copy of the 2015 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and
4. Completed and fully executed 2015 Electronic Application Filing Agreement.
5. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE**

2014 Multifamily Application Procedures Manual

have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - the completed, active Microsoft Excel based 2014 Multifamily Uniform Application; and
 - the completed, executed PDF copy of the 2014 Multifamily Uniform Application with all attachments;
2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - Feasibility Study
 - If the Market Study is available, it may be included on the CD with all other 3rd party reports.

Note: The Department will also accept one CD-R with both the Application and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated into separate files or on to separate discs.

3. Completed hard copy of the 2014 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and
4. Completed and fully executed 2014 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).
5. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE**

2013 Multifamily Programs Procedures Manual

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - the completed, active Microsoft Excel based 2013 Multifamily Uniform Application; and
 - the completed, executed PDF copy of the 2013 Multifamily Uniform Application with all attachments;

2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following Third Party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - If the Market Study and/or Site Design and Development Feasibility Report are available on March 1st, they may be included on the CD with all other Third Party reports.

Note: The Department will also accept one CD-R with both the Application and the Third Party Reports on the same disc. Staff appreciates that Third Party reports may come directly from the report provider and will also accept one Third Party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the Third Party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated onto separate discs. In addition, each of the two Application files (the Excel and PDF) should be one file; the Application should not be separated into more than one file. PLEASE ENSURE THE EXCEL AND PDF VERSIONS OF YOUR APPLICATION ARE IDENTICAL.

3. Completed hard copy of the 2013 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and

4. Completed and fully executed 2013 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).

NOTE!


The Market Study and Site Design and Development Feasibility Report are not due to the Department until Monday, April 1, 2013 (for Competitive HTC Applications); however, the supplemental report should be submitted in the same format as described above for all other supplemental reports.

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABEL TO**

2012 Multifamily Application Procedures Manual

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - o the completed, active Microsoft Excel based 2012 Multifamily Uniform Application; and
 - o the completed, executed PDF copy of the 2012 Multifamily Uniform Application with all attachments;
-  2. **One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:**
 - o Phase I Environmental Site Assessment,
 - o Property Condition Assessment (where applicable), and
 - o Appraisal (where applicable)
 - o If the Market Study is available on March 1st, it may be included on CD with all other 3rd party reports.
3. Completed hard copy of the 2012 Payment Receipt. Attach check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
4. Completed and fully executed 2012 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).

 **NOTE!**

The Market Study is not due to the Department until Monday, April 2, 2012; however, the supplemental report should be submitted in the same format as described above for all other supplemental reports.

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant's name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2" above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABEL TO THE CD ITSELF.** Rather, write the requested information legibly on the printed side of the CD itself with a felt-tip pen. Refer to labeling illustrations below. **Double-check the CD to verify that it contains the properly named virus-free application files.**

Exhibit B

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. **The submitted Application should be the electronic copy created from the Excel file, *not* a scanned copy of the Excel or PDF file.** Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
MARCH 23, 2017

Presentation, Discussion, and Possible Action on Timely Filed Appeals of Application Termination under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, the appeals relate to Competitive Housing Tax Credit ("HTC") applications 17060 and 17087, which were submitted to the Department by the Full Application Delivery Date;

WHEREAS, notices of termination were provided to the Applicant for failure to meet the requirements of 10 TAC §10.201(1)(C) of the 2017 Uniform Multifamily Rules;

WHEREAS, the Applicant timely filed appeals; and

WHEREAS, the Executive Director denied the appeals;

NOW, therefore, it is hereby

RESOLVED, that the appeals of termination for Artisan at Old Tezel Road (17060) and Artisan at Potranco (17087), are hereby denied.

BACKGROUND

Pursuant to 10 TAC §10.201 Procedural Requirements for Application Submission, subparagraph (1)(C):

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual.

The Applicant for the above mentioned Applications failed to upload the Excel copy of the Applications to the Department's secure web transfer server by the Application Deadline. In its combined appeal, the Applicant states that the Excel files were not included because the 2017 Multifamily Programs Procedures Manual did not state that it was required, as the previous year's manual had. The Applicant is correct that the language restating the rule requirement was not included in the 2017 manual, attached as "Exhibit A". However, the explicit and unambiguous rule requirement that the Excel copy of the Application be provided did not change and has been in place since program year 2011 when the electronic application was introduced. The Department received a total of 138 applications that did include the required spreadsheets as required, and subregion 9 Urban remains oversubscribed without the inclusion of these applications.

Staff recommends denial of the appeals.

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

Termination Letter

17060 *Artisan at Old Tezel Road*
17087 *Artisan at Potranco*



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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March 15, 2017

Writer's direct phone # (512) 475-3296
Email: tim.irvine@tdhca.state.tx.us

Mr. Edgar Sandoval
Franklin Development
21260 Gathering Oak, Ste 101
San Antonio, TX 78247

RE: TERMINATION OF 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 17060 ARTISAN
AT OLD TEZEL ROAD AND 17087 ARTISAN AT POTRANCO

Dear Mr. Sandoval:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submissions indicated above. The application submissions did not include the Excel copy of the Application. Twelve applications did not include the specifically required Excel version of their submittal. This required item is not an alternative depiction of the same information but in fact includes functionality that is critically important. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule (see below) and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application, a material deficiency.

Pursuant to 10 TAC §10.201(1)(C):

The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

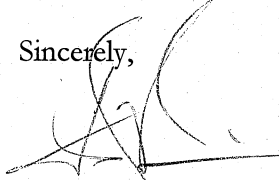
I do not have the discretionary latitude to grant your appeal to me, and it is, accordingly, denied.



An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §10.902 of the 2017 Uniform Multifamily Rules. It is our understanding that you request this item to be addressed at the March Board meeting. **Please provide your appeal materials to Marni Holloway no later than noon Austin local time, on March 20, 2017,** so that they can be included in the Board materials.

If you have any questions or concerns, please contact me at 512-475-3296 or by email at tim.irvine@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy K. Irvine', written over a horizontal line.

Timothy K. Irvine
Executive Director

Appeal Documents

17060 *Artisan at Old Tezel Road*
17087 *Artisan at Potranco*

COATS | ROSE

A Professional Corporation

TAMIEA A. DULA
OF COUNSEL

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(713) 653-7322
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March 16, 2017

TDHCA Board Members
Texas Department of Housing and Community Affairs
211 East 11th Street
Austin, Texas 78701-2410

RE: #17060 – Artisan at Old Tezel Road, San Antonio, Texas;
#17087 – Artisan at Potranco, San Antonio, Texas;
Appeal of Termination for Failure to Submit Excel Spreadsheet with Application.

Dear Board Chair and Members:

Our law firm represents Franklin Development Company (“Franklin”) in connection with termination of the two above-referenced applications because the Excel format copies of the applications were not included in the electronic submissions. We request that the Board reinstate each of these applications on the grounds that (i) the instructions for electronic submission of full applications did not clearly state that the Excel version was required to be submitted, and (ii) the omission of the Excel file meets the definition of an Administrative Deficiency and does not amount to a Material Deficiency which would warrant termination of the application.

We note that apparently twelve applications have been terminated because Excel files were not uploaded. These applications were all from experienced developers, some of whom successfully submitted electronic applications in 2016 when the instructions clearly specified that Excel files were required to be included.

2017 Multifamily Programs Procedures Manual Does Not Specify Inclusion of Excel File –

The 2017 Multifamily Programs Procedures Manual (“Procedures Manual”) is the first place to go for information on how to submit a multifamily application. It contains the step-by-step instructions for how to convert the Excel file to a PDF file and subsequently to insert supporting documentation into the PDF file. The instructions for 2017 do not state that the Excel file must be included in the 9% Application submission. Please see Exhibit A attached which shows that on page 14 in the “Applications” section, under the subsection titled “Application Assembly Instructions” it states:

... The submitted Application should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

9 Greenway Plaza, Suite 1100 Houston, Texas 77046
Phone: 713-651-0111 Fax: 713-651-0220
Web: www.coatsrosco.com

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Please compare this instruction with the one from 2016, which is shown on Exhibit B attached and which specifically states that an active Excel Application form must be submitted. This language was affirmatively changed for the 2017 edition of the Procedures Manual.

Additionally, while the 9% Program instructions only specifically required submission of an electronic copy of the application created from the Excel file, the instructions for the Direct Loan Program were extremely clear, as shown on Exhibit C attached, where on page 43 it specifies:

All Applicants must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server.

It is true that the 2017 Uniform Multifamily Rules ("Rules") do still state in §10.201(1)(C) that: "The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. ...". It should be noted, however, that the Rules do not include explicit directions for how to assemble and submit a 9% Application, as does the Procedures Manual. The applicants follow the Procedures Manual steps, and if the need to upload the Excel file in order to have a complete application was not mentioned here, it should have been.

Omission of Excel File Does Not Omit Any Information Relative To The Application-

We request that you also take note of the fact that the Excel file does not include any information relative to the Application that was not already submitted in the PDF file. If the conversion from the Excel file to the PDF file is correctly done, the information provided in the Excel file is exactly shown in the PDF file – so no pertinent information regarding an application is missing due to the failure to upload the Excel file. We suggest that the deficiency is an Administrative Deficiency and not a Material Deficiency.

Per Tim Irvine's letter of March 15, 2017 denying the request to accept submission of these applications, the mathematical functionality of the Excel file is critically important to staff's review of the applications because it "enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the recreation of this functionality, a process which inherently entails the risk of data entry error."

The Rules' definition of a Material Deficiency is:

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

Looking at the definition of an Administrative Deficiency, the Rules state:

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original

Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance. [Emphasis added]

The Excel file contains formulas that permit automatic calculation of the numerical portions of the Application and also permit the auto-population of fields with information that appears in multiple places throughout the Application. These formulas certainly help in Staff's review of the Application because mathematical conclusions shown in the PDF file can be confirmed as correct. However, in the absence of an Excel file, such calculations could be independently conducted with only the information in the PDF file, albeit laboriously and with the risk of inputting error. Accordingly, a missing Excel file cannot be considered to provide information concerning the Application that would require a substantial re-assessment or re-evaluation of the Application. Instead, a missing Excel file falls within the definition of an Administrative Deficiency because Staff may request the missing Excel file to assist Staff in evaluating the Application without necessitating a substantial reassessment or re-evaluation of the Application.

We acknowledge that in the past the absence of an Excel file has been considered a fatal flaw in Application submission. This situation differs, however, because the 2017 Procedures Manual had been revised to delete the explicit reference to submitting the Excel file in addition to the PDF file. An applicant should be entitled to rely upon the Procedures Manual in submitting an Application, and not have to conduct a review of all TDHCA publications and commentary in order to confirm the instructions provided.

Under the circumstances, we respectfully request that the Department acknowledge that the Procedures Manual could have been a lot more explicit this year, especially in view of the specificity of instructions used in the past. We request that you grant leniency to Franklin and those other developers who failed to submit Excel files, but clearly had them available because PDFs of the Excel files were submitted.

Very truly yours,



Tamea A. Dula

cc: Aubra Franklin
Ryan Wilson

EXHIBIT A

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. **The submitted Application should be the electronic copy created from the Excel file, *not* a scanned copy of the Excel or PDF file.** Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

EXHIBIT B

2016 Multifamily Application Procedures Manual

The Department shall not be responsible for internet connectivity problems on the part of the Applicant and shall not be responsible for any delivery failure on the part of the Applicant; it is their responsibility to ensure timely delivery. If the Applicant chooses to use a postal or courier service to deliver the payment to TDHCA and such service fails to make the delivery by the deadline, then the Application will be considered untimely and will not be accepted. Pursuant to §10.201(1)(A) of the Uniform Multifamily Rules, if an Application, including the corresponding Application fee is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, *not* a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

NEW

NEW! All Application materials must be uploaded to the Serv-UHTTPs account in electronic format only, unless specifically noted otherwise. **The Applicant must upload:**

1. An active Microsoft Excel based 2016 Multifamily Uniform Application; and
2. The completed, executed PDF copy of the 2016 Multifamily Uniform Application with all attachments;
3. a complete, searchable PDF copy of the following Third Party reports:
 - o Phase I Environmental Site Assessment,
 - o Property Condition Assessment (where applicable),
 - o Appraisal (where applicable)
 - o Feasibility Study
 - o If the Market Study is available, it may be uploaded with all other Third Party reports.

Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per PDF file. Tabs within the Application should not be separated into separate files.

Label the PDF and Excel files with the development name and application number (if assigned at Pre-Application). If an application number has not previously been assigned or a Pre-Application was not submitted, then as stated above, a hard copy of the *Electronic Filing Agreement* must be submitted by February 1, 2016 in order to ensure enough time for the Department to create the Serv-UHTTPs account and for you to set-up the password. The *Electronic Filing Agreement* is posted on the Department's website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Please email the form to Liz.Cline@tdhca.state.tx.us.

4. Completed hard copy of the 2016 Payment Receipt must be delivered to the Department. Attach check for the correct Application Fee made payable to "Texas Department of Housing and Community Affairs"; and
5. Payment – the Housing Tax Credit Application fee is \$30 per unit as represented in the Application. For competitive Housing Tax Credit applications, if a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the

EXHIBIT C

2017 Multifamily Application Procedures Manual

Multifamily Direct Loan Program Information

Application Delivery Instructions

All Applicants must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually book-marked as further described in this manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful.

If you are applying for Multifamily Direct Loan ("MFDL") funds in conjunction with 4% or 9% Housing Tax Credits, you must complete the following sections of 2017 Multifamily Uniform Application *in addition* to what you would normally complete when applying for 4% or 9% Housing Tax Credits:

- Multifamily Direct Loan Certification
- Tab 9 – Applicable sections (if seeking points under the 2017 MFDL NOFA)
- Tab 10 – Applicable sections (if seeking points under the 2017 MFDL NOFA)
- Tab 12 – Site and Neighborhood documentation (New Construction only)
- Tab 17 – Section 5 (Direct Loan request)
- Tab 19 – Section 2
- Tab 20 – Section 3
- Tab 21 – Uniform Relocation Act (Rehabilitation only)
- Tab 32 (if applicable)
- Tab 33
- Tab 44
- Tab 46 – Section 2

If you are applying for Multifamily Direct Loan funds as the only source of Department funds, you must complete all sections of the 2017 Multifamily Uniform Application except for those sections that reference Housing Tax Credit applications only. All applicable Third Party Reports are required in accordance with 10 TAC §10.205 regardless of whether or not your application is layered with Housing Tax Credits.

The application deadline for applicants applying in conjunction with 2017 9% Housing Tax Credits is 5:00 p.m. (Austin local time) on March 1, 2017, with a Market Analysis Delivery Date of April 1, 2017. The application deadline for all other applicants is 5:00 p.m. (Austin local time) on August 31, 2017. If you are applying for HOME funds under the CDHO Set Aside, please also check the CHDO box in Tab 17 of the 2017 Multifamily Uniform Application and submit the 2017 CHDO Certification Packet (located on the Apply for Funds page of the Multifamily Programs page). For applicants applying in conjunction with 2017 9% Housing Tax Credits, the 2017 CHDO Certification Packet must be received no later than 5:00 p.m. (Austin local time) on March 1, 2017. For all other applicants, the 2017 CHDO Certification Packet must be submitted with the 2017 Multifamily Uniform Application. Applicants for

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
MARCH 23, 2017

Presentation, Discussion, and Possible Action on Timely Filed Appeal of Application Termination under the 2017 Uniform Multifamily Rules

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (“HTC”) application #17038 Columbia Renaissance Square II Seniors, submitted to the Department by the Full Application Delivery Date;

WHEREAS, notice of termination was provided to the Applicant for failure to meet the requirements of 10 TAC §10.201(1)(C) of the 2017 Uniform Multifamily Rules;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Executive Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal of termination for Columbia Renaissance Square II Seniors (17038), is hereby denied.

BACKGROUND

Pursuant to 10 TAC §10.201 Procedural Requirements for Application Submission, subparagraph (1)(C):

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department’s secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual.

The Applicant for the above mentioned Application failed to upload the Excel copy of the Application to the Department’s secure web transfer server by the Application Deadline. In its appeal, the Applicant states that the Excel file was not included because the 2017 Multifamily Programs Procedures Manual did not state that it was required, as the previous year’s manual had. The Applicant is correct that the language restating the rule requirement was not included in the 2017 manual, attached as “Exhibit A”. However, the explicit and unambiguous rule requirement that the Excel copy of the Application be provided did not change and has been in place since program year 2011 when the electronic application was introduced. A representative of the Applicant attended the 2017 Houston Application Workshop, as evidenced by the sign-in sheet attached as “Exhibit B”. The requirement for submission of the Excel Workbook was clearly described at the Workshop, as shown in the attached “Exhibit C”. The Department received a total of 138 applications that did include the required spreadsheets as required, and subregion 3 Urban remains oversubscribed without the inclusion of this application.

Staff recommends denial of the appeal.

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

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2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

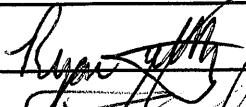
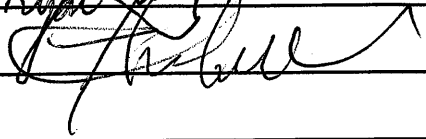
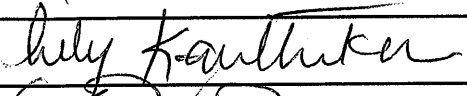

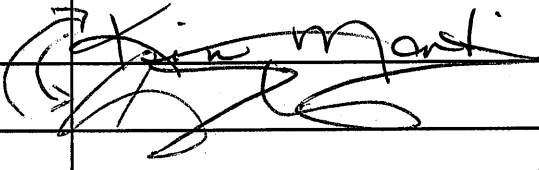
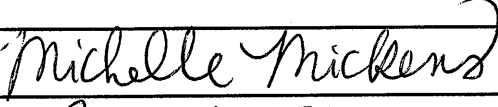
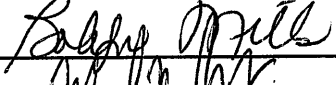

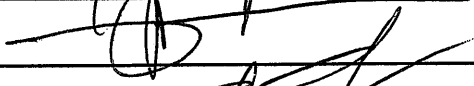


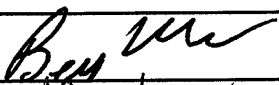
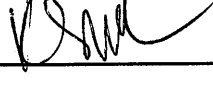
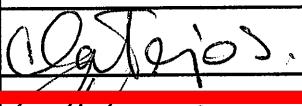

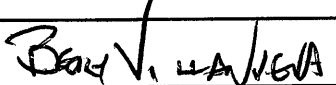
Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

2017 TDHCA Application Workshop
12/7/2016 - Houston

Ryan	Hettig	
Charles	Holcomb	
Marvalette	Hunter	
Amay	Inamdar	
Lily	Kavthekar	
Les	Kilday	
Teresa	Luquette	
Alison	Malkhassian	
Mannaser	Marshall	
Audrey	Martin	
Kimberly	Martin	
Alice	Melendez	
Michelle	Mickens	
Bobbye	Mills	
Mark	Moseley	
Mark	Musemeche	
Barry	Palmer	
Sean	Ratterree	
Paula	Robinson	
Benny	Rodriguez	
Kathryn	Saar	
Bobken	Simonians	
Tim	Tomo	
Clara	Trejos	
JOANNA	VARGAS	
Lisa	Vecchietti	
Becky	Villanueva	

What Comes In with the Full App



An Excel and a PDF Version



Excel and PDF Versions are Still Required

- There are still extra pages hidden within the Excel document in case you need them.
- Once you PDF your document, if there are extra, superfluous pages, DELETE THEM.

There are several extra pages at the end of the application this year, DON'T DELETE THEM



Termination Letter

17038 Columbia Renaissance Square II Seniors



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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J.B. Goodwin

March 9, 2017

Writer's direct phone # (512) 475-1676
Email: marni.holloway@tdhca.state.tx.us

Ms. Clara Trejos
Columbia Renaissance Square II, L.P.
1718 Peachtree Street NW, Ste 684
Atlanta, GA 30309

RE: TERMINATION OF 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATION 17038 COLUMBIA
RENAISSANCE SQUARE II-SENIOR

Dear Ms. Trejos:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. Pursuant to 10 TAC §10.201(1)(C), the "Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. . . It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline." (Emphasis added) The application submission did not include the required Excel copy of the Application (10 TAC §10.201(1)(C)). The Application is incomplete because an entire required material element was missing and is, therefore, hereby terminated.

An appeals process exists for the Housing Tax Credit Program. The appeals process is set forth in 10 TAC §10.902. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Department. If you have any questions or concerns, please contact me at 512-475-1676 or by email at marni.holloway@tdhca.state.tx.us.

Sincerely,


Marni Holloway
Director of Multifamily Finance



Appeal Documents

17038 Columbia Renaissance Square II Seniors



Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas

March 13, 2017

RE: 17038 Columbia Renaissance Square II-Senior

Dear Mr. Irvine,

I am writing to appeal the termination of 2017 Competitive Housing Tax Credit Application 17038 Columbia Renaissance Square II-Senior pursuant to a letter received from the Texas Department of Housing and Community Affairs on March 9, 2017. I am specifically requesting that the Department reconsider their decision to terminate this application and to reinstate 17038 Columbia Renaissance Square II-Senior to the applicant pool for the reasons outlined below.

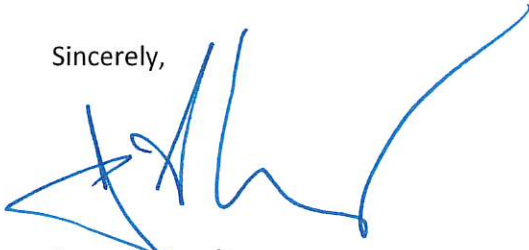
The application was terminated for failing to upload the required Excel copy of the application prior to the March 1st deadline established by the Department, although the required PDF along with the attachments and third party reports were uploaded in a timely manner. In submitting our application, we utilized instructions that TDHCA published on its website (2017 Multifamily Program Procedures Manual) for primary guidance on uploading to the TDHCA system. These TDHCA-provided instructions were incomplete and did not include instructions to upload the Excel format. Although the section on Direct Loans did state that both the PDF and Excel versions of the application should be uploaded by applicants, this information was missing in the non-Direct Loan section of the instructions. Further, the upload system did not provide a warning or notification of any sort that the upload was incomplete. We followed the step by step instructions which TDHCA issued and did not realize we had followed incorrect instructions or that the TDHCA instructions were missing a vital piece of information.

While it is true that other materials published by TDHCA referenced uploading the Excel copy of the application, I believe that the erroneous and inconsistent guidance provided by TDHCA provide a strong basis for reconsidering the Department's decision to terminate. We were not alone in making this mistake, ten (10) additional projects made the exact same mistake, including multiple Public Housing Agency projects throughout the state. The frequency of this error suggests that the Department bears some responsibility for our mistake and that granting leniency in this matter would only be fair.

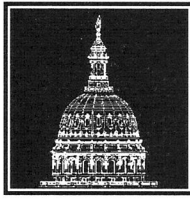
We are not seeking an unfair advantage over any other applicant. All 3rd party letters and commitments were submitted in PDF form by the deadline, and the Excel copy of the application was submitted as soon as the deficiency was realized. No changes were made to the Excel copy: it is the version that was used to create the uploaded PDF file as evidenced by the time stamp embedded within the file's metadata. The project was otherwise complete and meets all requirements for submission.

Columbia Renaissance Square II-Senior was designated by the City of Fort Worth as the project contributing more than any other development to the concerted revitalization efforts of the City of Fort Worth. This project is vital to the city's efforts to improve the Berry Hill-Mason Heights area, and deserves consideration from TDHCA on its merits. I respectfully request that our application be allowed to compete in the 2017 funding round.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James S. Grauley', with a long, sweeping flourish extending to the right.

James S. Grauley



★
March 15, 2017

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas

RE: 17038 Columbia Renaissance Square II-Senior

Dear Mr. Irvine,

I am writing to express my support as a member of the Texas House of Representatives for the 2017 Competitive Housing Tax Credit Application 17038 Columbia Renaissance Square II-Senior ("Applicant"), which was terminated pursuant to a letter received from the Texas Department of Housing and Community Affairs on March 9, 2017. Columbia Renaissance Square II-Senior is located within my district and is an important project for the City of Fort Worth. I am specifically requesting that the Department reconsider their decision to terminate this application and to reinstate 17038 Columbia Renaissance Square II-Senior to the applicant pool for the reasons outlined below.

As I understand this case, the Applicant was terminated for failing to upload the required Excel copy of the application prior to the deadline established by the Department. I have been informed that the Applicant utilized the instructions that TDHCA published on its website (2017 Multifamily Program Procedures Manual) for primary guidance on uploading to the TDHCA system. These TDHCA-provided instructions were incomplete and did not include instructions to upload the Excel format. The upload system did not provide a warning or notification of any sort that the upload was incomplete. Many of the applicants who followed the instructions which TDHCA issued did not realize they had followed incorrect instructions.

While it is true that other materials published by TDHCA referenced uploading the Excel copy of the application, the erroneous guidance which TDHCA did issue and email directly to the applicants provides a strong basis for reconsidering the Department's decision to terminate. The Applicant was not alone in making this mistake, as ten (10) other projects made the exact same mistake, included multiple Public Housing Agency projects throughout the state. The frequency of this error should support leniency from the Department for an honest mistake. The Department has the power to rectify a mistake for which it bears some responsibility, and may otherwise harm many deserving communities.

Reinstating the Applicant does not create an unfair advantage over any other applicant. The document that was uploaded by the Applicant to the TDHCA portal before the deadline is a PDF file created from the Excel file (as instructed), therefore the agency has the same exact information that is contained in the Excel spreadsheet. No additional information is contained in the Excel file. All 3rd party reports,

attachments and commitments required by TDHCA were also submitted in PDF form by the deadline, and the Excel copy of the application was submitted as soon as the deficiency was realized. The project was otherwise complete and meets all requirements for submission.

Columbia Renaissance Square II-Senior was designated by the City of Fort Worth as the project contributing more than any other development to the concerted revitalization efforts of the City of Fort Worth. This project is vital to the city's efforts to improve the Berry Hill-Mason Heights area, and deserves consideration from TDHCA on its merits. Please consider my support for the Applicant's appeal as you make your decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ramon Romero, Jr.', with a stylized flourish at the end.

Ramon Romero, Jr.
State Representative, District 90



March 14, 2017

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: 17038 Columbia Renaissance Square II-Senior

Dear Mr. Irvine,

I am writing to express The City of Fort Worth's support for the 2017 Competitive Housing Tax Credit Application 17038 Columbia Renaissance Square II-Senior ("Applicant"), which was terminated pursuant to a letter received from the Texas Department of Housing and Community Affairs on March 9, 2017. Columbia Renaissance Square II-Senior is located within my council district in the City of Fort Worth and is a significant project for the City. I strongly urge and respectfully request that the Department reconsider its decision to terminate this application and to reinstate 17038 Columbia Renaissance Square II-Senior to the applicant pool.

It is my understanding that the Applicant was terminated for failing to upload the required Excel copy of the application prior to the deadline established by the Department. I was informed that the Applicant utilized the instructions that TDHCA published on its website (2017 Multifamily Program Procedures Manual) for primary guidance on uploading to the TDHCA system. It appears that these TDHCA-provided instructions were incomplete and did not include instructions to upload the Excel format. The upload system did not provide a warning or notification of any sort that the upload was incomplete. Many of the applicants who followed the instructions which TDHCA issued did not realize they had followed insufficient/incorrect instructions. The Applicant was not alone in making this mistake, as ten (10) other projects made the exact same technical error, including multiple Public Housing Agency projects throughout the state.

This was an honest mistake and I hope that the Department would exercise leniency for a non-substantive error.

Columbia Renaissance Square II-Senior was designated by the City of Fort Worth City Council as the project contributing more than any other development to the concerted revitalization efforts of the City of Fort Worth. This project is vital to the City's efforts to improve the Berry Hill-Mason Heights area, and deserves consideration from TDHCA on its merits.

OFFICE OF COUNCIL MEMBER KELLY ALLEN-GRAY

The City of Fort Worth ★ 200 Texas Street ★ Fort Worth, Texas 76102

817-392-8808 ★ Fax 817-392-2409

There are no unfair competitive advantages over any applicant created by reinstating the Applicant. The document that was uploaded to the TDHCA portal by the Applicant before the deadline is a PDF file created from the Excel file (as instructed). Therefore, the agency has the same exact information that is contained in the Excel spreadsheet. No additional information is contained in the Excel file, nor is any information missing from the PDF file. All 3rd party reports, attachments and commitments required by TDHCA were also submitted in PDF form by the deadline, and the Excel copy of the application was submitted as soon as the deficiency was realized. The project was otherwise complete and meets all substantive requirements for submission.

In closing, I reiterate that the decision to disqualify this application is for a non-substantive technicality that if reversed on appeal does not give the Applicant any unfair competitive advantage. I strongly believe that the application will successfully stand on its own merits once reinstated by the Department. Please consider the City's support for the Applicant's appeal as you make your decision. Thank you in advance for your consideration.

Sincerely,



Kelly Allen-Gray
City Council Member, District 8

cc: Jim Grauley, President, Chief Operating Officer, Columbia Residential
Honorable Betsy Price, Mayor, City of Fort Worth
David Cooke, City Manager, City of Fort Worth
Fernando Costa, Assistant City Manager, City of Fort Worth
Aubrey Thagard, Director of Neighborhood Services, City of Fort Worth

OFFICE OF COUNCIL MEMBER KELLY ALLEN-GRAY

The City of Fort Worth ★ 200 Texas Street ★ Fort Worth, Texas 76102

817-392-8808 ★ Fax 817-392-2409



March 13, 2017

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: 17038 Columbia Renaissance Square II-Senior

Dear Mr. Irvine,

I am writing to express The City of Fort Worth's support for the 2017 Competitive Housing Tax Credit Application 17038 Columbia Renaissance Square II-Senior ("Applicant"), which was terminated pursuant to a letter received from the Texas Department of Housing and Community Affairs on March 9, 2017. Columbia Renaissance Square II-Senior is located within the City of Fort Worth and is an important project for the City. The City of Fort Worth specifically and respectfully requests that the Department reconsider its decision to terminate this application and to reinstate 17038 Columbia Renaissance Square II-Senior to the applicant pool for the reasons outlined below.

As I understand this case, the Applicant was terminated for failing to upload the required Excel copy of the application prior to the deadline established by the Department. I have been informed that the Applicant utilized the instructions that TDHCA published on its website (2017 Multifamily Program Procedures Manual) for primary guidance on uploading to the TDHCA system. These TDHCA-provided instructions were incomplete and did not include instructions to upload the Excel format. The upload system did not provide a warning or notification of any sort that the upload was incomplete. Many of the applicants who followed the instructions which TDHCA issued did not realize they had followed incorrect instructions.

While it is true that other materials published by TDHCA referenced uploading the Excel copy of the application, the erroneous guidance which TDHCA issued and emailed directly to the applicants provides a strong basis for reconsidering the Department's decision to terminate. The Applicant was not alone in making this mistake, as 10 other projects made the exact same technical error, including multiple Public Housing Agency projects throughout the state. The frequency of this non-substantive error should support leniency from the Department for an honest mistake. The Department has the power to rectify a mistake that may otherwise harm many deserving communities.

CITY MANAGER'S OFFICE

The City of Fort Worth ★ 200 Texas Street ★ Fort Worth, Texas 76102
817-392-6111 ★ Fax 817-392-6134

Reinstating the Applicant does not create an unfair advantage over any other applicant. The document that was uploaded by the Applicant to the TDHCA portal before the deadline is a PDF file created from the Excel file (as instructed); therefore, the agency has the same exact information that is contained in the Excel spreadsheet. No additional information is contained in the Excel file, nor is any information missing from the PDF file. All third party reports, attachments and commitments required by TDHCA were also submitted in PDF form by the deadline, and the Excel copy of the application was submitted as soon as the deficiency was realized. The project was otherwise complete and meets all substantive requirements for submission.

Columbia Renaissance Square II-Senior was designated by the City of Fort Worth City Council as the project contributing more than any other development to the concerted revitalization efforts of the City of Fort Worth. This project is vital to the City's efforts to improve the Berry Hill-Mason Heights area, and deserves consideration from TDHCA on its merits. Please consider the City's support for the Applicant's appeal as you make your decision.

Sincerely,



for David Cooke
City Manager

cc: Jim Grauley, President, Chief Operating Officer, Columbia Residential
Fernando Costa, Assistant City Manager, City of Fort Worth
Aubrey Thagard, Director of Neighborhood Services, City of Fort Worth
Vicki Ganske, Senior Assistant City Attorney, City of Fort Worth
Paige Mebane, Assistant City Attorney, City of Fort Worth

CITY MANAGER'S OFFICE

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817-392-6111 ★ Fax 817-392-6134

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
MARCH 23, 2017

Presentation, Discussion, and Possible Action on a Timely Filed Appeal of Application Termination under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit ("HTC") application 17084, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, a notice of termination was provided to the Applicant for failure to meet the requirements of 10 TAC §10.201(1)(C) of the 2017 Uniform Multifamily Rules;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Executive Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal of termination for Country Place Apartments (17084) is hereby denied.

BACKGROUND

Pursuant to 10 TAC §10.201 Procedural Requirements for Application Submission, subparagraph (1)(C):

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual.

The Applicant for the above mentioned Application failed to upload the Excel copy of the Application to the Department's secure web transfer server by the Application Deadline. In its combined appeal, the Applicant states that the Excel file was not included because the 2017 Multifamily Programs Procedures Manual did not state that it was required, as the previous year's manual had. The Applicant is correct that the language restating the rule requirement was not included in the 2017 manual, attached as "Exhibit A". However, the explicit and unambiguous rule requirement that the Excel copy of the Application be provided did not change and has been in place since program year 2011 when the electronic application was introduced. A representative of the Applicant attended the 2017 Application in workshop in Austin, as evidenced by the sign-in sheet attached as "Exhibit B". The continuing requirement to submit the Excel workbook was clearly covered during that training, as shown in "Exhibit C". The Department received a total of 138 applications that did include the required spreadsheets as required, and subregion 3 Urban remains oversubscribed without the inclusion of this application.

The Applicant states that the Excel spreadsheet contains duplicative information and is therefore not material and its exclusion should be treated as an Administrative Deficiency. This required item is not an alternative depiction of the same information but, in fact, includes functionality that is critically important. That is why the rule expressly requires the .pdf and the Excel copy. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application: a material deficiency.

Staff recommends denial of the appeal.

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:



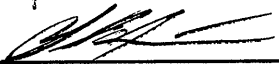

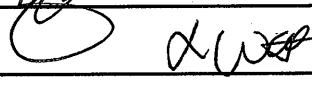
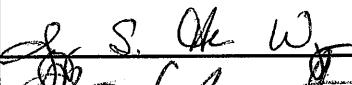
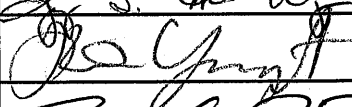

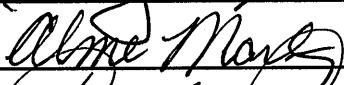
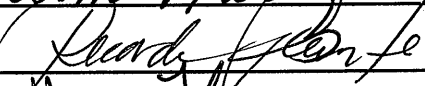
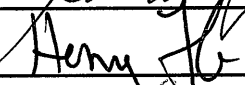
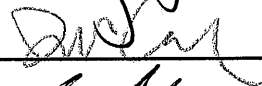
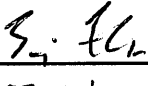
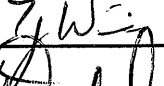
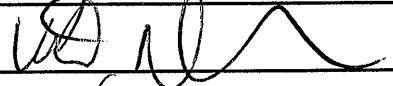
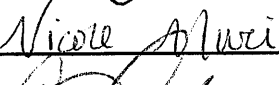



1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

Alice	Salinas	
Pilar	Sanchez	
Colton	Sanders	
Allen	Sanders	
Edgar	Sandoval	
Kit	Sarai	
Teresa	Shell	
Nancy	Sheppard	
JoEllen	Smith	
Whitney Seth	Sullivan	
Lisa	Vecchiotti	
Sara	Walker	
Lindsey	Wolfson	
Jacque	Woodring	
Kim	Youngquist	
SUNNY	PHILIP	
Alma	Martinez	
Ricardo	Puente	
Henry Flores	Flores	
DASH	GRODDY	
HENRY	Funes	
Toby	Williams	
Val	Debean	
Nicole	Mwei	
Tilla	Coxdale	
Todd	Wind	
Roger	Canales	

What Comes In with the Full App



An Excel and a PDF Version



Excel and PDF Versions are Still Required

- There are still extra pages hidden within the Excel document in case you need them.
- Once you PDF your document, if there are extra, superfluous pages, DELETE THEM.

There are several extra pages at the end of the application this year, DON'T DELETE THEM



Termination Letter

17084 Country Place Apartments



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

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Juan S. Muñoz, PhD, *Vice Chair*
Leslie Bingham-Escareño
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

March 15, 2017

Writer's direct phone # (512) 475-3296
Email: tim.irvine@tdhca.state.tx.us

Mr. Winston Sullivan
Member
Cass County Communities II, Ltd.
P.O. Box 847
Linden, Texas 75563

RE: TERMINATION OF 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATION 17084 COUNTRY PLACE APARTMENTS

Dear Mr. Sullivan:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. The application submission did not include the Excel copy of the Application. Twelve applications did not include the specifically required Excel version of their submittal. This required item is not an alternative depiction of the same information but in fact includes functionality that is critically important. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule (see below) and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application, a material deficiency.

Pursuant to 10 TAC §10.201(1)(C):

The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

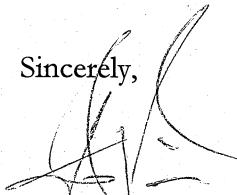
I do not have the discretionary latitude to grant your appeal to me, and it is, accordingly, denied.



An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §10.902 of the 2017 Uniform Multifamily Rules. It is our understanding that you request this item to be addressed at the March Board meeting. **Please provide your appeal materials to Marni Holloway no later than noon Austin local time, on March 20, 2017,** so that they can be included in the Board materials.

If you have any questions or concerns, please contact me at 512-475-3296 or by email at tim.irvine@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy K. Irvine', written over a faint circular stamp or watermark.

Timothy K. Irvine
Executive Director

Appeal Documents

17084 Country Place Apartments



Denial of Application #17084 Response

March 17, 2017

Timothy Irvine, Executive Director
Texas Department of Housing & Community Affairs
221 E. 11th Street, P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Irvine:

I submit the following response to your decision to deny the “appeal,” of Cass County Communities II, Ltd., (hereinafter “the Applicant”) on behalf of the Applicant, in its application for the 2017 9% low-income housing tax credit program for Country Place Apartments, in Atlanta, Texas. Your decision on behalf of the Texas Department of Housing and Community Affairs (hereinafter “TDHCA”), was submitted to the Applicant on March 15, 2017, via electronic-message (hereinafter “the denial letter”). The grounds for the denial is based on the Applicant’s submission failing to include the Excel copy of the Application. The Applicant respectfully requests you revise your decision for the following reasons: I) the information at issue was in fact provided, II) the omission of the electronic version of the information was reasonable, III) the omission should be considered an “Administrative Deficiency” based on the governing rules, and IV) the decision and interpretation of the rules in this instance was altogether unfair in consideration of the purpose of the program.

I. In the denial letter it is stated, “This required item is not an alternative depiction of the same information but in fact includes functionality that is critically important,” (p.1). The Applicant agrees that the format of the information is different, but stating it is not an alternative depiction of the same information is at the very least a misrepresentation. This is especially true considering you state as support, “... staff would be greatly disadvantaged, having to undergo the recreation of this functionality, a process which inherently entails the risk of data entry error,” (p.1). If this is the concern for not accepting only one version of the information, then that concern alone is based on the premise that the version of the form submitted would be the same information and the conversion could possibly cause a “data entry error”—meaning the converted information could be different (or, not the same). It is in fact the same information, merely the format is different. Further, it is easily understood and can be easily proven that there is an Excel version as there must be an original file if there is a PDF copy of the information. It is in fact the same information. The functionality or format may be different, but this does not change the substance of the information. We find this ground for denial as insufficient and respectfully request you revise your decision.

II. The omission of the electronic Excel version of the information was reasonable for the following reasons: a) the language provided in the instructions manual is inconsistent and ambiguous, b) experienced developers across the state had the same interpretation and omission based on the given language, and c) there is additional proof of inconsistent direction given by the agency.

The language provided in the 2016 Multifamily Application Procedures Manual (hereinafter “2016 Manual,” attached as “Exhibit A”) is very specific as to each file submission required by the applicants. In contrast, the 2017 Manual (attached as “Exhibit B”) has different language which does not specifically state each file required to be uploaded. The Applicant acknowledges the electronic Excel submission requirement is stated in the rules, but this inconsistency makes it difficult to understand what the agency is actually requesting. The Applicant and its agents attended many of the training sessions over the past year to better understand the process in order to successfully complete the 2017 application. The agency consistently advocated that applicants strictly follow the 2017 Manual in order to properly apply for the credits at these sessions. It is difficult to follow inconsistent and ambiguous direction given in one place, but then not clearly given in the 2017 Manual in which the Applicant was instructed to follow.

In addition to the language, not one, two, nor three, but six experienced developers across the state had the exact same interpretation of the manual based on the language. At some point the line has to be drawn between clear and unclear language. If six unaffiliated developers across the state, many of whom are competing against each other, had the same interpretation it serves as a very reasonable conclusion that the instructions were unclear. In the case of the Applicant, they have been awarded the tax credits multiple times and have been in the low-income housing field in Texas since the 1980s. Consequently, the Applicant has interpreted the instructions properly many times, but in this instance the language was changed from the year before. It was not the Applicant’s decision to change the very specific language previously used to the current language that was misunderstood by numerous developers. It was very reasonable to presume the language had a different meaning as it was changed by the agency and many developers had the same interpretation.

After corresponding with developers and consultants with the same application omission and denial, it has come to our attention there is also an inconsistency in the direction given by two different agents of the agency in regards to filing an appeal. It is clear that some developers have been advised by yourself to submit information before noon on March 20, in order for the Board to consider the appeal, while others have been instructed by another agent to submit the appeal to you for your consideration. The inconsistent instruction was given to applicants dealing with the exact same issue. This further supports the Applicant’s contention that inconsistent language, instruction, direction, and information is regularly given out by the agency. If specific actions are required and expected by the agency, then consistent direction should be given, and can reasonably be expected by Applicants. Applicants should not be held responsible for these inconsistencies, while inequitably being held to a strict standard.

III. The omission by the Applicant should be held as an “Administrative Deficiency,” defined in 10 TAC § 10.3 as, “Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff’s reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application.” Also under 10.3, a “Material Deficiency” is defined as, “Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency...” In consideration of the definitions the analysis turns on whether a deficiency is determined to be “administrative.”

The standard for the Department staff is it must be a reasonable judgment that the application may be cured with supplemental information, but that it will not necessitate substantial re-assessment. Under the facts here, the Applicant's omission could be cured by supplemental information by submitting the Excel version of the information. Clearly, the information is the same and as you have stated, the functionality of the Excel form is crucial in assisting staff to perform the assessment. Accordingly, in consideration of the information's "functionality" it clearly will "assist staff in evaluating the application." As the board is "greatly disadvantaged," without the omitted version it should not "necessitate a substantial reassessment."

It is not stated specifically in the denial letter why the omission is considered a "Material Deficiency," in terms of the standard provided in the rules. This is what the denial letter states to the Applicant, "Because this item was expressly required by rule and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application, a material deficiency." This does address the standard clearly given under 10 TAC § 10.3, clarifying the difference between an "Administrative Deficiency," and "Material Deficiency." Contrarily, the denial is based on the "lack of a material element." Under the rules the Applicant has found no standard or rule qualifying this ground as a basis for termination as stated in the denial. The standard is clearly defined above in the definitions but no reference to this standard for distinction is made in the denial letter.

IV. Regardless of the points above, your decision to deny the Applicant is unfair and we believe goes against the public policy of the state of Texas. The denial letter given to the Applicant fails to provide any explanation as to the standard for staff viewing the omission as a "material element." The only explanation given is that the item is "expressly required by rule," but this is true of omissions determined as an "Administrative Deficiency," as well. No distinction is made between the two in the denial letter. Most important, no rule is cited justifying the conclusive statement of terminating application for lack of the material element. This is the main grounds given for terminating the application, but the rule cited only applies to what is to be submitted, and does not state grounds for termination.

Further, staff continuously interprets language in a light most favorable to the agency. There is case precedent supporting that contracts and other documents are to be interpreted against the drafter of the document, as the drafter has the control to be specific or ambiguous in the language they choose. Here, the Applicant most certainly did not draft the rules or instructions and clearly numerous developers interpreted the ambiguous language in a manner the drafter (the agency) did not. Accordingly, the conclusion to terminate opposed to considering helpful provisions to the Applicant available under the rules, such as the "Administrative Deficiency," process is unreasonable and altogether unfair.

On a final note, the Applicant does not believe these decisions in this circumstance further the purpose of providing housing on the basis of need across the state. When developers can make mistakes that are considered a "Material Deficiency," while otherwise the application would be competitively scored, this seems inequitable and most certainly is not fair to the citizens served at that location. If the scoring system promulgated by the legislature is for the purpose of providing housing based on need, then the interpretation of the grounds to terminate under the rules has effectively defeated the purpose of the rules. We firmly believe it is unfair to interpret the rules in a manner to terminate the application based

on a procedural omission, when the substance of the application is not even considered, and the application could have been easily supplemented just as all "Administrative Deficiencies," are treated. There are other explanations for the reasons to terminate the application, but here it is clearly not focused on the property with the most need. As if that were the purpose then the agency would assist developers in mistakes and omissions in order to be sure the property where the assistance is needed most receives the credits.

We respectfully request you reinstate the Applicant's application on all grounds, allowing the Applicant to submit the duplicative electronic Excel version of the information already provided in PDF form.

Respectfully,



Seth B. Sullivan

Attorney-at-Law

In House Counsel, Sullivan Companies

200 Sunny Lane, Linden, Texas 75563

P: (903) 576-4034

E: sully078@aol.com

EXHIBIT A

2016 Multifamily Application Procedures Manual

The Department shall not be responsible for internet connectivity problems on the part of the Applicant and shall not be responsible for any delivery failure on the part of the Applicant; it is their responsibility to ensure timely delivery. If the Applicant chooses to use a postal or courier service to deliver the payment to TDHCA and such service fails to make the delivery by the deadline, then the Application will be considered untimely and will not be accepted. Pursuant to §10.201(1)(A) of the Uniform Multifamily Rules, if an Application, including the corresponding Application fee is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.



NEW

NEW! All Application materials must be uploaded to the Serv-UHTTPs account in electronic format only, unless specifically noted otherwise. **The Applicant must upload:**

1. An active Microsoft Excel based 2016 Multifamily Uniform Application; and
2. The completed, executed PDF copy of the 2016 Multifamily Uniform Application with all attachments;
3. a complete, searchable PDF copy of the following Third Party reports:
 - o Phase I Environmental Site Assessment,
 - o Property Condition Assessment (where applicable),
 - o Appraisal (where applicable)
 - o Feasibility Study
 - o If the Market Study is available, it may be uploaded with all other Third Party reports.

Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per PDF file. Tabs within the Application should not be separated into separate files.

Label the PDF and Excel files with the development name and application number (if assigned at Pre-Application). If an application number has not previously been assigned or a Pre-Application was not submitted, then as stated above, a hard copy of the *Electronic Filing Agreement* must be submitted by February 1, 2016 in order to ensure enough time for the Department to create the Serv-UHTTPs account and for you to set-up the password. The *Electronic Filing Agreement* is posted on the Department's website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Please email the form to Liz.Cline@tdhca.state.tx.us.

4. Completed hard copy of the 2016 Payment Receipt must be delivered to the Department. Attach check for the correct Application Fee made payable to "Texas Department of Housing and Community Affairs"; and
5. Payment – the Housing Tax Credit Application fee is \$30 per unit as represented in the Application. For competitive Housing Tax Credit applications, if a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the

EXHIBIT B

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. **The submitted Application should be the electronic copy created from the Excel file, *not* a scanned copy of the Excel or PDF file.** Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
MARCH 23, 2017

Presentation, Discussion, and Possible Action on a Timely Filed Appeal of Application Termination under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit ("HTC") application 17144, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, a notice of termination was provided to the Applicant for failure to meet the requirements of 10 TAC §10.201(1)(C) of the 2017 Uniform Multifamily Rules;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Executive Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal of termination for Derbyshire Court Villas (17144), is hereby denied.

BACKGROUND

Pursuant to 10 TAC §10.201 Procedural Requirements for Application Submission, subparagraph (1)(C):

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual.

The Applicant for the above mentioned Application failed to upload the Excel copy of the Application to the Department's secure web transfer server by the Application Deadline. In its appeal, the Applicant states that the Excel file was not included because the 2017 Multifamily Programs Procedures Manual did not state that it was required, as the previous year's manual had. The Applicant is correct that the language restating the rule requirement was not included in the 2017 manual, attached as "Exhibit A". However, the explicit and unambiguous rule requirement that the Excel copy of the Application be provided did not change and has been in place since program year 2011 when the electronic application was introduced. The Department received a total of 138 applications that did include the required spreadsheets as required, and subregion 3 Urban remains oversubscribed without the inclusion of this application.

The Applicant states that the Excel spreadsheet contains duplicative information and is therefore not material and its exclusion should be treated as an Administrative Deficiency. This required item is not an alternative depiction of the same information but, in fact, includes functionality that is critically important.

That is why the rule expressly requires the .pdf and the Excel copy. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application: a material deficiency.

Staff recommends denial of the appeal.

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

Termination Letter

17144 Derbyshire Court Villas



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

J. Paul Oser, *Chair*
Juan S. Muñoz, PhD, *Vice Chair*
Leslie Bingham-Escareño
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

March 15, 2017

Writer's direct phone # (512) 475-3296
Email: tim.irvine@tdhca.state.tx.us

Mr. Mark Feaster
Columbia Renaissance Square II, L.P.
10334 Conser Street, 1Q
Overland Park, KS 66212

RE: TERMINATION OF 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATION 17144
DERBYSHIRE COURT VILLAS

Dear Mr. Feaster:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. The application submission did not include the Excel copy of the Application. Twelve applications did not include the specifically required Excel version of their submittal. This required item is not an alternative depiction of the same information but in fact includes functionality that is critically important. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule (see below) and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application, a material deficiency.

Pursuant to 10 TAC §10.201(1)(C):

The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

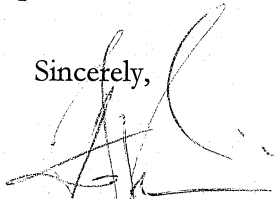
I do not have the discretionary latitude to grant your appeal to me, and it is, accordingly, denied.



An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §10.902 of the 2017 Uniform Multifamily Rules. It is our understanding that you request this item to be addressed at the March Board meeting. **Please provide your appeal materials to Marni Holloway no later than noon Austin local time, on March 20, 2017,** so that they can be included in the Board materials.

If you have any questions or concerns, please contact me at 512-475-3296 or by email at tim.irvine@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy K. Irvine', with a large, sweeping flourish extending upwards and to the right.

Timothy K. Irvine
Executive Director

Appeal Documents

17144 Derbyshire Court Villas

COATS | ROSE

A Professional Corporation

TAMIEA A. DULA
OF COUNSEL

tdula@coatsrose.com
Direct Dial
(713) 653-7322
Direct Fax
(713) 890-3918

March 16, 2017

TDHCA Board Members
Texas Department of Housing and Community Affairs
211 East 11th Street
Austin, Texas 78701-2410

RE: #17144 – Derbyshire Court Villas, Lindale, Smith County, Texas;
Appeal of Termination for Failure to Submit Excel Spreadsheet with Application.

Dear Board Chair and Members:

Our law firm represents Provident Realty Company (“Provident”) in connection with termination of the above-referenced application because the Excel format copy of the application was not included in the electronic submission. We request that the Board reinstate this application on the grounds that (i) the instructions for electronic submission of full applications did not clearly state that the Excel version was required to be submitted, and (ii) the omission of the Excel file meets the definition of an Administrative Deficiency and does not amount to a Material Deficiency which would warrant termination of the application.

Apparently twelve applications have been terminated because Excel files were not uploaded. These applications were all from experienced developers, some of whom successfully submitted electronic applications in 2016 when the instructions clearly specified that Excel files were required to be included.

2017 Multifamily Programs Procedures Manual Does Not Specify Inclusion of Excel File –

The 2017 Multifamily Programs Procedures Manual (“Procedures Manual”) is the first place to go for information on how to submit a multifamily application. It contains the step-by-step instructions for how to convert the Excel file to a PDF file and subsequently to insert supporting documentation into the PDF file. The instructions for 2017 do not state that the Excel file must be included in the 9% Application submission. Please see Exhibit A attached which shows that on page 14 in the “Applications” section, under the subsection titled “Application Assembly Instructions” it states:

... The submitted Application should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

9 Greenway Plaza, Suite 1100 Houston, Texas 77046
Phone: 713-651-0111 Fax: 713-651-0220
Web: www.coatsrose.com

HOUSTON | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS

Please compare this instruction with the one from 2016, which is shown on Exhibit B attached and which specifically states that an active Excel Application form must be submitted. This language was affirmatively changed for the 2017 edition of the Procedures Manual.

Additionally, while the 9% Program instructions only specifically required submission of an electronic copy of the application created from the Excel file, the instructions for the 2017 Direct Loan Program were extremely clear, as shown on Exhibit C attached, where on page 43 it specifies:

All Applicants must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server.

It is true that the 2017 Uniform Multifamily Rules ("Rules") do still state in §10.201(1)(C) that: "The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. ...". It should be noted, however, that the Rules do not include explicit directions for how to assemble and submit a 9% Application, as does the Procedures Manual. The applicants follow the Procedures Manual steps, and if the need to upload the Excel file in order to have a complete application was not mentioned here, it should have been.

Omission of Excel File Does Not Omit Any Information Relative To The Application-

We request that you also take note of the fact that the Excel file does not include any information relative to the application that was not already submitted in the PDF file. If the conversion from the Excel file to the PDF file is correctly done, the information provided in the Excel file is exactly shown in the PDF file – so no pertinent information regarding an application is missing due to the failure to upload the Excel file. We suggest that the deficiency is an Administrative Deficiency and not a Material Deficiency.

Per Tim Irvine's letter of March 15, 2017 denying the request to accept submission of this application, the mathematical functionality of the Excel file is critically important to staff's review of the applications because it "enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the recreation of this functionality, a process which inherently entails the risk of data entry error."

The Rules' definition of a Material Deficiency is:

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

Looking at the definition of an Administrative Deficiency, the Rules state:

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance. [Emphasis added]

The Excel file contains formulas that permit automatic calculation of the numerical portions of the application and also permit the auto-population of fields with information that appears in multiple places throughout the application. These formulas certainly help in staff's review of the application because mathematical conclusions shown in the PDF file can be confirmed as correct. However, in the absence of an Excel file, such calculations could be independently conducted with only the information in the PDF file, albeit laboriously and with the risk of inputting error. Accordingly, a missing Excel file cannot be considered to provide information concerning the application that would require a substantial re-assessment or re-evaluation of the application. Instead, a missing Excel file falls within the definition of an Administrative Deficiency because staff may request the missing Excel file to assist staff in evaluating the application without necessitating a substantial reassessment or re-evaluation of the application.

We acknowledge that in the past the absence of an Excel file has been considered a fatal flaw in application submission. This situation differs, however, because the 2017 Procedures Manual had been revised to delete the explicit reference to submitting the Excel file in addition to the PDF file. An applicant should be entitled to rely upon the Procedures Manual in submitting an application, and not have to conduct a review of all TDHCA publications and commentary in order to confirm the instructions provided.

Under the circumstances, we respectfully request that the Department acknowledge that the Procedures Manual could have been a lot more explicit this year, especially in view of the specificity of instructions used in the past. We request that you grant leniency to Provident and those other developers who failed to submit Excel files, but clearly had them available because PDFs of the Excel files were submitted.

Very truly yours,



Tamea A. Dula

cc: Mark Feaster
Matt Harris

EXHIBIT A

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. **The submitted Application should be the electronic copy created from the Excel file, *not* a scanned copy of the Excel or PDF file.** Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

EXHIBIT B

2016 Multifamily Application Procedures Manual

The Department shall not be responsible for internet connectivity problems on the part of the Applicant and shall not be responsible for any delivery failure on the part of the Applicant; it is their responsibility to ensure timely delivery. If the Applicant chooses to use a postal or courier service to deliver the payment to TDHCA and such service fails to make the delivery by the deadline, then the Application will be considered untimely and will not be accepted. Pursuant to §10.201(1)(A) of the Uniform Multifamily Rules, if an Application, including the corresponding Application fee is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

NEW

NEW! All Application materials must be uploaded to the Serv-UHTTPs account in electronic format only, unless specifically noted otherwise. **The Applicant must upload:**

1. An active Microsoft Excel based 2016 Multifamily Uniform Application; and
2. The completed, executed PDF copy of the 2016 Multifamily Uniform Application with all attachments;
3. a complete, searchable PDF copy of the following Third Party reports:
 - o Phase I Environmental Site Assessment,
 - o Property Condition Assessment (where applicable),
 - o Appraisal (where applicable)
 - o Feasibility Study
 - o If the Market Study is available, it may be uploaded with all other Third Party reports.

Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per PDF file. Tabs within the Application should not be separated into separate files.

Label the PDF and Excel files with the development name and application number (if assigned at Pre-Application). If an application number has not previously been assigned or a Pre-Application was not submitted, then as stated above, a hard copy of the *Electronic Filing Agreement* must be submitted by February 1, 2016 in order to ensure enough time for the Department to create the Serv-UHTTPs account and for you to set-up the password. The *Electronic Filing Agreement* is posted on the Department's website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Please email the form to Liz.Cline@tdhca.state.tx.us.

4. Completed hard copy of the 2016 Payment Receipt must be delivered to the Department. Attach check for the correct Application Fee made payable to "Texas Department of Housing and Community Affairs"; and
5. Payment – the Housing Tax Credit Application fee is \$30 per unit as represented in the Application. For competitive Housing Tax Credit applications, if a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the

EXHIBIT C

2017 Multifamily Application Procedures Manual

Multifamily Direct Loan Program Information

Application Delivery Instructions

All Applicants must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in this manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful.

If you are applying for Multifamily Direct Loan ("MFDL") funds in conjunction with 4% or 9% Housing Tax Credits, you must complete the following sections of 2017 Multifamily Uniform Application *in addition* to what you would normally complete when applying for 4% or 9% Housing Tax Credits:

- Multifamily Direct Loan Certification
- Tab 9 – Applicable sections (if seeking points under the 2017 MFDL NOFA)
- Tab 10 – Applicable sections (if seeking points under the 2017 MFDL NOFA)
- Tab 12 – Site and Neighborhood documentation (New Construction only)
- Tab 17 – Section 5 (Direct Loan request)
- Tab 19 – Section 2
- Tab 20 – Section 3
- Tab 21 – Uniform Relocation Act (Rehabilitation only)
- Tab 32 (if applicable)
- Tab 33
- Tab 44
- Tab 46 – Section 2

If you are applying for Multifamily Direct Loan funds as the only source of Department funds, you must complete all sections of the 2017 Multifamily Uniform Application except for those sections that reference Housing Tax Credit applications only. All applicable Third Party Reports are required in accordance with 10 TAC §10.205 regardless of whether or not your application is layered with Housing Tax Credits.

The application deadline for applicants applying in conjunction with 2017 9% Housing Tax Credits is 5:00 p.m. (Austin local time) on March 1, 2017, with a Market Analysis Delivery Date of April 1, 2017. The application deadline for all other applicants is 5:00 p.m. (Austin local time) on August 31, 2017. If you are applying for HOME funds under the CDHO Set Aside, please also check the CHDO box in Tab 17 of the 2017 Multifamily Uniform Application and submit the 2017 CHDO Certification Packet (located on the Apply for Funds page of the Multifamily Programs page). For applicants applying in conjunction with 2017 9% Housing Tax Credits, the 2017 CHDO Certification Packet must be received no later than 5:00 p.m. (Austin local time) on March 1, 2017. For all other applicants, the 2017 CHDO Certification Packet must be submitted with the 2017 Multifamily Uniform Application. Applicants for

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
MARCH 23, 2017

Presentation, Discussion, and Possible Action on Timely Filed Appeal of Application Termination under the 2017 Uniform Multifamily Rules

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (“HTC”) application #17351 The Heritage Apartments, submitted to the Department by the Full Application Delivery Date;

WHEREAS, notice of termination was provided to the Applicant for failure to meet the requirements of 10 TAC §10.201(1)(C) of the 2017 Uniform Multifamily Rules;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Executive Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal of termination for The Heritage Apartments (17351), is hereby denied.

BACKGROUND

Pursuant to 10 TAC §10.201 Procedural Requirements for Application Submission, subparagraph (1)(C):

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department’s secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual.

The Applicant for the above mentioned Applications failed to upload the Excel copy of the Applications to the Department’s secure web transfer server by the Application Deadline. In its appeal, the Applicant states that the Excel file was not included because the 2017 Multifamily Programs Procedures Manual did not state that it was required, as the previous year’s manual had. The Applicant is correct that the language restating the rule requirement was not included in the 2017 manual, attached as “Exhibit A”. However, while the Applicant failed to upload the Excel copy of the Application for the mentioned Application, it is noteworthy that the Applicant *did* include the spreadsheet in two other applications submitted by the same nonprofit: 17251 Pine Terrace Apartments and 17255 Trinity Oaks Apartments. The explicit and unambiguous rule requirement that the Excel copy of the Application be provided did not change and has been in place since program year 2011 when the electronic application was introduced. The Department received a total of 138 applications that included the required spreadsheets as required, and subregion 6 Urban remains oversubscribed without the inclusion of this application.

The Applicant states that the Excel spreadsheet contains duplicative information and is therefore not material and its exclusion should be treated as an Administrative Deficiency. This required item is not an alternative depiction of the same information but, in fact, includes functionality that is critically important. That is why the rule expressly requires the .pdf and the Excel copy. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application: a material deficiency.

Staff recommends denial of the appeal.

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

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1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

Termination Letter

17351 The heritage Apartments



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

J. Paul Oser, *Chair*
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March 15, 2017

Writer's direct phone # (512) 475-3296
Email: tim.irvine@tdca.state.tx.us

Mr. Jonathon Campbell
Chief Executive Officer
NIFF Oaklake Heritage, LP
3701 Kirby Drive, Ste 860
Houston, Texas 77098

RE: TERMINATION OF 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATION 17351 THE HERITAGE APARTMENTS

Dear Mr. Campbell:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. The application submission did not include the Excel copy of the Application. Twelve applications did not include the specifically required Excel version of their submittal. This required item is not an alternative depiction of the same information but in fact includes functionality that is critically important. It enables the staff engaged in reviewing the application to perform certain essential functions, and without its inclusion staff would be greatly disadvantaged, having to undergo the re-creation of this functionality, a process which inherently entails the risk of data entry error. Because this item was expressly required by rule (see below) and is essential to the full and efficient review of the application it is viewed by staff as a material element, and the lack of this material element constitutes, in staff's assessment, cause for termination on the basis of an incomplete application, a material deficiency.

Pursuant to 10 TAC §10.201(1)(C):

The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

I do not have the discretionary latitude to grant your appeal to me, and it is, accordingly, denied.

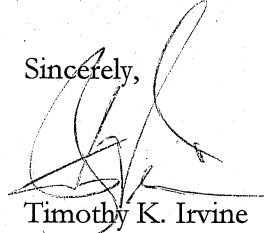


Termination of HTC Application
March 15, 2017
Page 2

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §10.902 of the 2017 Uniform Multifamily Rules. It is our understanding that you request this item to be addressed at the March Board meeting. **Please provide your appeal materials to Marni Holloway no later than noon Austin local time, on March 20, 2017,** so that they can be included in the Board materials.

If you have any questions or concerns, please contact me at 512-475-3296 or by email at tim.irvine@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy K. Irvine', is written over a horizontal line.

Timothy K. Irvine
Executive Director

Appeal Documents

17351 The heritage Apartments



600 Congress, Suite 2200
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Neal Rackleff
Direct Telephone: 512-305-4715
neal.rackleff@lockelord.com

March 17, 2017

Via Electronic Mail

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 West 11th Street
Austin, Texas 78701

Re: #17351– The Heritage Apartments
Appeal to Termination for Failure to Submit Excel Spreadsheet with
Application

Dear Mr. Irvine:

We represent NIFF Oaklake Heritage, LP (the “**Applicant**”), which filed the above-referenced application (the “**Applications**”) for low-income housing tax credits. This letter constitutes an appeal of the termination of the Applications by staff of the Texas Department of Housing and Community Affairs (the “**Department**”). Because you indicated in your termination letter dated March 15, 2017 that you “do not have the discretionary latitude to grant your appeal to me, and it is, accordingly, denied” this appeal is made to the Board of the Department.

A termination notification was issued by the department based on the grounds that the Application did not include the Excel file used to create the full application. We respectfully request reconsideration of this decision on the ground that the instructions for electronic submission of the full application did not state that the Excel spreadsheet was required to be included. Additionally, we contest that the Excel spreadsheet is material to the Application because it contained information identical to the information provided in the PDF document. Therefore, the Applicant should be allowed to provide the Excel file through the administrative deficiency process.

MULTIFAMILY PROCEDURES MANUAL OMMITTED KEY INSTRUCTIONS

This appeal is centered on the fact that the Multifamily Procedures Manual has historically included the full application assembly instructions. In 2016, the first year to upload an application, the Procedures Manual included the full assembly and upload procedure. In prior years when applicants submitted a CD, the Application Assembly Instructions contained the full assembly and submission procedures. In every application round prior to 2017 where both an Excel and PDF file was required, the

Multifamily Procedures Manual clearly instructed applicants to include both the Excel and PDF file whether on CD or uploading to the FTP. That clear instruction was omitted and is the crux of the confusion caused by TDHCA that lead to nearly 5% of the applications submitted this year to omit the Excel file in their submissions.

Included as Exhibit A are the Application Assembly Instructions as stated in the Procedures Manual between 2012 and 2016. As you can see the previous assembly instructions were clear on the requirement to submit an Excel and PDF file. The Procedures Manual is the first place developers go for information on how to submit an application; therefore, a precedent has been established by the inclusion of complete application submission instructions in prior year's Procedures Manuals.

It is true that the 2017 Uniform Multifamily Rules specify submission of an Excel file, but the Rules do not contain the comprehensive procedure for assembling and submitting an application, as the Procedures Manual have year after year demonstrated to encompass. The specificity of the Procedures Manual in outlining how to convert the Excel form to a PDF, the application delivery instructions, and the application assembly instructions all suggest that any important element of the submission process should be included there, as has been the case in the past.

Exhibit B is the Application Assembly Instructions for 2017. The language speaking to the submission of an Excel and PDF file that was included in prior years is absent from the 2017 instructions. In its place the 2017 instructions state:

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file.

It is not until the Multifamily Direct Loans portion of the 2017 Procedures Manual that instructions to submit an Excel and PDF file are included; however, this section does not apply to Applicant's 9% LIHTC Application and developers would accordingly not review those instructions.

Clearly, TDHCA intends for applicants to use the Multifamily Procedures Manual to submit documents to the department, and applicants have been instructed to follow the guidance in the manual. As stated, "The purpose of this manual is to provide a brief description of each tab in the application, **guidance as to the Department's submission requirements** and what is acceptable supporting documentation." (emphasis added) As demonstrated in Exhibit A, the full application procedure has historically been provided in the manual. It was therefore reasonable for Applicant to expect that this year's manual would also include the full application assembly instructions. However, a modification was made this year, removing the language that explicitly instructs applicants to upload the Excel file. By removing this language, TDHCA effectively removed the requirement. At the very least, instructions to include an Excel file are not clear.

EXCEL SPREADSHEETS DUPLICATIVE NOT MATERIAL INFORMATION

Additionally, it is our position that the PDFs submitted contain all the material information to the Applications and that the Excel files are supplemental to the PDF—therefore they could properly be added through the Administrative Deficiency process.

An “Administrative Deficiency” is defined in 10 TAC § 10.3 as:

[i]nformation requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or **to assist staff in evaluating the Application** that . . . may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. (emphasis added)

A “Material Deficiency” is defined in 10 TAC § 10.3 as:

[a]ny deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency.” The Multi-family Rules clearly and explicitly conclude that if a deficiency is within the scope of the definition of an Administrative Deficiency, then it cannot be defined as a Material Deficiency.

In this case, the **information** provided in the Excel file is identical to the **information** provided in the PDF file. The only distinction is that the **Excel file assists staff in more easily manipulating and working with the same data** included in the PDF file. Therefore, the information omitted by Applicant was precisely the kind of data described in the definition of Administrative Deficiency that “assists staff in evaluating the Application.”

Additionally, because the Excel file information duplicated that in the PDF file, it cannot be argued that any “material” information was omitted. What was omitted was “non-material” but helpful information that assists staff in evaluating the Applications.

Finally, because the Excel file data was duplicative of that in the PDF file, supplementation of the Application with such information would not “necessitate a substantial reassessment or re-evaluation of the Application.” If the Excel file was requested by the department today, it would see that the modification date on the excel file is prior to the application deadline date, demonstrating that the file has not been altered since the time of submission of the Application to the Department. Additionally, the Department may simply compare the data in the Excel file to the PDF file presently in its possession to verify that such supplementation is identical.

Therefore, because the Excel file constitutes information that is clearly within the scope of the definition of Administrative Deficiency, based upon the express language of the Multifamily Rules, such omission cannot be characterized as a Material Deficiency.

We respectfully appeal the Department decision to terminate Applicant's Application.

We request clemency on this point from the Department because the 2017 Application Assembly Instructions were not as clear or explicit as prior years. We further request that based on the confusion in the Procedures Manual, the Department allow us to submit an Excel file for our application to reinstate the application.

Alternatively, since the omission of the Excel file may be handled as an easily correctible Administrative Deficiency, we respectfully request the Department to provide this path to resolve this matter.

We further commit to sign a certification affirming under penalty of perjury that the Excel file we provide contained no changes from the Excel file from March 1 2017.

Sincerely,



Neal Rackleff

cc: Jonathan Campbell
Dan Allgeier


Exhibit A

2016 Multifamily Application Procedures Manual

The Department shall not be responsible for internet connectivity problems on the part of the Applicant and shall not be responsible for any delivery failure on the part of the Applicant; it is their responsibility to ensure timely delivery. If the Applicant chooses to use a postal or courier service to deliver the payment to TDHCA and such service fails to make the delivery by the deadline, then the Application will be considered untimely and will not be accepted. Pursuant to §10.201(1)(A) of the Uniform Multifamily Rules, if an Application, including the corresponding Application fee is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

 **NEW!** All Application materials must be uploaded to the Serv-UHTTPs account in electronic format only, unless specifically noted otherwise. The Applicant must upload:

1. An active Microsoft Excel based 2016 Multifamily Uniform Application; and
2. The completed, executed PDF copy of the 2016 Multifamily Uniform Application with all attachments;
3. a complete, searchable PDF copy of the following Third Party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - Feasibility Study
 - If the Market Study is available, it may be uploaded with all other Third Party reports.

Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per PDF file. Tabs within the Application should not be separated into separate files.

Label the PDF and Excel files with the development name and application number (if assigned at Pre-Application). If an application number has not previously been assigned or a Pre-Application was not submitted, then as stated above, a hard copy of the *Electronic Filing Agreement* must be submitted by February 1, 2016 in order to ensure enough time for the Department to create the Serv-UHTTPs account and for you to set-up the password. The *Electronic Filing Agreement* is posted on the Department's website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Please email the form to Liz.Cline@tdhca.state.tx.us.

4. Completed hard copy of the 2016 Payment Receipt must be delivered to the Department. Attach check for the correct Application Fee made payable to "Texas Department of Housing and Community Affairs"; and
5. Payment – the Housing Tax Credit Application fee is \$30 per unit as represented in the Application. For competitive Housing Tax Credit applications, if a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the

2015 Multifamily Application Procedures Manual

have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - the completed, active Microsoft Excel based 2015 Multifamily Uniform Application;
 - the completed, executed PDF copy of the 2015 Multifamily Uniform Application with all attachments; and
 - **NEW!** the completed Community Input Scoring Items form with attached letters
2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - Feasibility Study
 - If the Market Study is available, it may be included on the CD with all other 3rd party reports.

Note: The Department will also accept one CD-R with the Application, Community Input Scoring items form (with letters) and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated into separate files or on to separate discs.

3. Completed hard copy of the 2015 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and
4. Completed and fully executed 2015 Electronic Application Filing Agreement.
5. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE**

2014 Multifamily Application Procedures Manual

have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - the completed, active Microsoft Excel based 2014 Multifamily Uniform Application; and
 - the completed, executed PDF copy of the 2014 Multifamily Uniform Application with all attachments;
2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - Feasibility Study
 - If the Market Study is available, it may be included on the CD with all other 3rd party reports.

Note: The Department will also accept one CD-R with both the Application and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated into separate files or on to separate discs.

3. Completed hard copy of the 2014 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and
4. Completed and fully executed 2014 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).
5. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE**

2013 Multifamily Programs Procedures Manual

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
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 - the completed, executed PDF copy of the 2013 Multifamily Uniform Application with all attachments;

2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following Third Party reports:
 - Phase I Environmental Site Assessment,
 - Property Condition Assessment (where applicable),
 - Appraisal (where applicable)
 - If the Market Study and/or Site Design and Development Feasibility Report are available on March 1st, they may be included on the CD with all other Third Party reports.

Note: The Department will also accept one CD-R with both the Application and the Third Party Reports on the same disc. Staff appreciates that Third Party reports may come directly from the report provider and will also accept one Third Party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the Third Party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated onto separate discs. In addition, each of the two Application files (the Excel and PDF) should be one file; the Application should not be separated into more than one file. PLEASE ENSURE THE EXCEL AND PDF VERSIONS OF YOUR APPLICATION ARE IDENTICAL.

3. Completed hard copy of the 2013 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and

4. Completed and fully executed 2013 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).

NOTE!

The Market Study and Site Design and Development Feasibility Report are not due to the Department until Monday, April 1, 2013 (for Competitive HTC Applications); however, the supplemental report should be submitted in the same format as described above for all other supplemental reports.

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABEL TO**

2012 Multifamily Application Procedures Manual

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
 - o the completed, active Microsoft Excel based 2012 Multifamily Uniform Application; and
 - o the completed, executed PDF copy of the 2012 Multifamily Uniform Application with all attachments;
2. **One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:**
 - o Phase I Environmental Site Assessment,
 - o Property Condition Assessment (where applicable), and
 - o Appraisal (where applicable)
 - o If the Market Study is available on March 1st, it may be included on CD with all other 3rd party reports.
3. Completed hard copy of the 2012 Payment Receipt. Attach check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
4. Completed and fully executed 2012 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).

NEW!

NOTE!

The Market Study is not due to the Department until Monday, April 2, 2012; however, the supplemental report should be submitted in the same format as described above for all other supplemental reports.

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant's name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2" above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABEL TO THE CD ITSELF.** Rather, write the requested information legibly on the printed side of the CD itself with a felt-tip pen. Refer to labeling illustrations below. **Double-check the CD to verify that it contains the properly named virus-free application files.**

Exhibit B

2017 Multifamily Application Procedures Manual

TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted. **Likewise, the Department shall not be responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant.**

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. **The submitted Application should be the electronic copy created from the Excel file, *not* a scanned copy of the Excel or PDF file.** Scanned copies of the Application are difficult to read, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

1. Completed hard copy of the 2017 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and
2. Completed and fully executed 2017 Electronic Application Filing Agreement (**Only required if no pre-app submitted**).
3. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a Pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from Pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

Required Forms and Exhibits for the Application

The 2017 Multifamily Housing Application form consists of seven (7) parts. Complete all applicable parts. Those cells which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Applicants are cautioned that some parts of the Application are specific to fund sources and programs. Applicants to the Multifamily Direct Loan Program must complete all applicable parts, regardless of the fund source they wish to access.

REMEMBER – Pursuant to §11.9(a) of the QAP, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency.

**THIS ITEM HAS BEEN PULLED
FROM THE AGENDA**

**THIS ITEM HAS BEEN PULLED
FROM THE AGENDA**