



**TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS**
Building Homes. Strengthening Communities.

Asset Management Division

Post Carryover Activities

221 East 11th Street
Austin, Texas 78701

Updated February 2014

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Introduction

The Asset Management Division is responsible for monitoring and processing all post-Carryover activities for developments involving Housing Tax Credits, HOME funds, Housing Trust Funds and Neighborhood Stabilization Program (NSP) funds. This manual outlines the procedures and instructions for completing activities including, but not limited to, 10% Test, Construction Status Reports, Cost Certification, LURA Origination, LURA Amendments, Application Amendments, Ownership Transfers, Right of First Refusal and Qualified Contract. Development owners will be updated through a LISTSERV announcement as additions to the manual are made. If you haven't already, be sure to join the TDHCA email list to receive these email updates.

An Asset Manager has been assigned to each region in order to provide development owners with one contact person for any questions related to their developments and the post award activities detailed in this manual. To find the Asset Manager assigned to your region, go to the following link and enter the county in which the development is located: <http://www.tdhca.state.tx.us/asset-management/contacts.htm>.

Delivery Instructions

The post-Carryover activities discussed in this manual will require the submission of the required documentation in a specific format(s). All documentation must be submitted to the Department electronically. Depending on the activity, the Department may require a PDF and/or Excel file to be submitted. ***Please be sure to read the chapter for the appropriate activity being performed to ensure proper delivery in the required format.***

If documentation (in either format) is submitted via the Department's File Transfer Protocol (FTP) system, please be sure to contact your Asset Manager after the file(s) has been uploaded for confirmation of receipt by the Department prior to the required deadline. If documentation is submitted electronically via a CD-R, submit the CD-R in person or by mail to one of the following:

CD Delivery (Overnights): Texas Department of Housing & Community Affairs
Asset Management
Attn: (assigned Asset Manager's name)
221 East 11th Street
Austin, Texas 78701

CD Delivery by Regular Mail: Texas Department of Housing & Community Affairs
Asset Management
Attn: (assigned Asset Manager's name)
P.O. Box 13941
Austin, Texas 78711

Instructions for Completing Electronic Files

Downloading the Electronic Materials

Some of the post Carryover activities detailed in this manual will require the owner to use an Excel file created by the Department specific to that activity. Owners should read the chapter for the appropriate post Carryover activity to determine if submission of an Excel file is required.

1. To download any of the electronic post Carryover files, right click on the link at the website provided in each chapter, select “Save Target As” and choose the storage location on your computer. The Excel file should be named in the following format -- <TDHCA Application #_Development Name_Activity>.xls (e.g. 12001_Austin Trails_10% Test.xls or 12001_Austin Trails_Cost Cert.xls).
2. Any cell that is highlighted yellow is available to be manipulated by the owner. All other cells, unless specifically stated, are for Department use only; these cells have been pre-formatted to automatically calculate information provided and are locked. Owners may view any formulas within the cells. Owners may not insert additional columns or rows to the spreadsheets, unless otherwise stated.
3. All questions are intended to elicit a response; please do not leave out any requested information. If formula references are made by the owner to external spreadsheets, those references must be removed prior to submission to TDHCA, as this may hamper the proper functioning of internal evaluation tools and make pertinent information unavailable to TDHCA.
4. Be sure to save the file as you fill it out.

If you have difficulty downloading any of the files from the website, contact Raquel Morales at (512) 475-2109 or raquel.morales@tdhca.state.tx.us.

Instructions for Converting the Excel file to PDF

Once the file you are working on is completed and you are ready to convert the file to PDF, follow these instructions:

Be sure to check all of the page breaks in the Excel files before you convert to PDF.

Excel 2007 Users:

1. Click the **Microsoft Office Button**  , point to the arrow next to **Save As**, and then click **PDF or XPS**.

2. In the **File Name** list, type or select a name for the workbook.
3. In the **Save as type** list, click **PDF**.
4. If you want to open the file immediately after saving it, select the **Open file after publishing** check box. This check box is available only if you have a PDF reader installed on your computer.
5. Next to **Optimize for**, do one of the following, depending on whether file size or print quality is more important to you:
 - If the workbook requires high print quality, click **Standard (publishing online and printing)**.
 - If the print quality is less important than file size, click **Minimum size (publishing online)**.
6. Click **Options**. Under **Publish What** select **Entire Workbook** and click **OK**.
7. Click **Publish**.

Excel 1997-2003 Users:

1. With the Excel file open, go to the Adobe PDF drop-down box from the task bar (if using Excel 2007 click on “Acrobat” tab in the task bar).
2. Select “Convert to Adobe PDF” from the drop-down list (Excel 2007- select “Create PDF”).
3. The Adobe PDFMaker box will appear. All of the sheets within the Excel file will be listed on the left hand side of the box, and you will be prompted to select the sheets you would like to convert to PDF. Once the sheets you want to convert are selected, click on the “Add Sheets” button to move those sheets over to the right-hand side of the Adobe PDFMaker box, which will list the sheets selected to be converted to PDF.
4. Once all sheets you have selected appear on the right-hand side under “Sheets in PDF” click on the “Convert to PDF” button.
5. You will be prompted to create a name and save the PDF file. The PDF file should be named in the following format -- <Development Name_10% Test>.pdf (e.g. Austin_Crossing_10% Test.pdf).
6. A pop-up box will appear that asks “Do you want to proceed without creating tags?” Click Yes.

Remember that there are forms that require a signature. Once you have executed all required documents, those pages should be scanned and re-inserted into the PDF in the original order. ***A hard copy will not be required. Do NOT submit hard copy documents to the Department.*** Only electronic format is acceptable. The Development Owner must retain ALL originals that are not submitted to the Department for submittal in the future, should the Department require such information.

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Once the file has been converted to PDF and all executed forms have been re-inserted into its appropriate location within the file, you will need to create Bookmarks. Bookmarks may or may not have already been created as part of the conversion process. You will need to designate or re-set the locations. To correctly set the Bookmark locations, you must have the PDF file open in Adobe Acrobat. Click on the Bookmark icon located on the left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View** → **Navigation Panels** → **Bookmarks**.

If a Bookmark has already been created for each tab within the Excel file, simply re-set the bookmarks to the correct locations. To re-set the location for the Bookmarks, go to the first page of each separately labeled form/exhibit. You will then right-click on the corresponding Bookmark for the form/exhibit you are currently viewing. Select **Set Destination** and a pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If Bookmarks were not already created within the Excel file, then you will need to create these Bookmarks. Go to **Document** → **Add Bookmark**. Right-click on the first Bookmark and re-name it for the appropriate form or exhibit. You will then need to set the location of the Bookmark by going to the first page of each form or exhibit, right click on the corresponding Bookmark and select **Set Destination**. A pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If after conversion of the Excel file to PDF you have extra blank pages of any exhibit, you can delete those pages in order to limit the size of the file. To delete any unnecessary pages, identify the page number(s) you want deleted. On the Adobe Acrobat Task Bar, click on Document and select Delete Pages from the drop down list. A box will appear prompting you to select which page(s) you would like to delete. Enter the page numbers to be deleted and hit OK.

The PDF formatted file must be checked for the following prior to submission:

- ✓ All tabs and/or volumes must be correctly bookmarked
- ✓ Files should average less than 100 kilobytes per page
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above
- ✓ Files should be saved so that "Fast Web View" (or page at a time downloading) is enabled
- ✓ Text within the PDF file should be searchable using the "Find" command in the PDF viewer

If you have any questions on using or experience difficulties with the Microsoft Excel based application, contact Raquel Morales via email at raquel.morales@tdhca.state.tx.us.

10% Test (Competitive HTC Only)

Developments that received a Competitive Housing Tax Credit Commitment Notice and Carryover Agreement must submit required documentation for the 10% Test to show that, no later than the deadline provided in the applicable Qualified Allocation Plan and Rules, expenditures comprising a part of the taxpayer's basis in the Development were incurred in excess of 10% of the total reasonably expected basis.

The deadline for submitting the 10% Test documentation will be identified in both the Qualified Allocation Plan ("QAP") in effect the year the Application was made, or in the Uniform Multifamily Rules, Chapter 10 Subchapter E. Generally, this deadline will be July 1 of the year following the submission of the Carryover Allocation Agreement to the Department, but may be extended upon approval by the Department. Should the deadline date fall on a weekend or a holiday observed by the Department where the office is closed, the deadline is the business day immediately following the deadline date. This chapter describes the conditions and documentation necessary to satisfy the 10% Test requirement pursuant to the Qualified Allocation Plan and Rules (the "QAP" or the "Rules"). The Department may amend any part of this section from time to time, as necessary.

The Development name, Development Owner name and General Partner names used throughout the documents must match the names on file with the Secretary of State and should be the same as indicated in the Application. Do not truncate or abbreviate any part of the name, and punctuate exactly as recorded with the Secretary of State. For example, if the ownership entity name uses the words "Limited Partnership", do not substitute "Ltd." or "L.P."

As Department staff reviews the documentation submitted, the names, calculations and other specific information in the each document must all be reconciled with the corresponding or related information in other documents. Therefore, the instructions in this section should be followed closely. The information presented will be used to verify compliance with the 10% Test.

Please note that the Development Owner is solely responsible for proper and timely delivery of the documentation. Delay in submission by the deadline will result in additional requirements such as extensions and possible fees imposed as a result.

If the deadline cannot be met, an extension accompanied by the appropriate fee must be requested through the Department's Asset Management Division and should be referred to the appropriate Asset Manager for your property. To find the Asset Manager assigned to your region go to the following link and enter the county in which the development is located: <http://www.tdhca.state.tx.us/asset-management/contacts.htm>. Please note that approval for an extension under this activity may result in penalty points during the next Housing Tax Credit application cycle.

Required Forms and Exhibits for the 10% Test

Submission of a 10% Test is required of all awardees of a competitive housing tax credit allocation. You must use the 10% Test file provided by TDHCA and located on the Asset Management webpage at (<http://www.tdhca.state.tx.us/asset-management/index.htm>). *A final PDF of the 10% Test file must be submitted to the Department either via FTP or by CD addressed to the appropriate asset manager.*

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All documentation stated in this section must be submitted to the Department behind the tabs listed and in the order stated below. If deficiencies are found, the Department will notify the Development Owner via email. The Development Owner will be given a specific length of time to correct the deficiencies. If the Development Owner does not correct the deficiencies within the time allowed, the Department may terminate the Carryover and the Commitment of the allocation.

There are nine (9) electronic tabs in the 10% Test Excel workbook that represent separate spreadsheets for Development Owner use. Note that some tabs in the workbook act as a placeholder for purposes of reminding Development Owners of the unbound documents that must be provided within the 10% Test.

Please note that all of the information outlined below is required as part of the 10% Test documentation. **Also, please remember that hard copies are no longer required. If any document requires signature, submission of a scanned copy of the fully executed document within the final PDF is acceptable.**

❖ **Tab 1: Owner and Development Summary**

- This form must be completed in its entirety. If the development has previously received approval from the Department regarding any extensions, ownership changes and/or changes to the development (amendments), please provide a copy of that approval letter behind this tab. If any extensions, ownership changes and/or changes to the development are being requested at the time the 10% Test is being submitted, please be sure to include the request letter(s) behind this tab.

❖ **Tab 2: HTC Commitment Notice, Resolution of Conditions & Carryover Agreement**

- A copy of the fully executed Housing Tax Credit Commitment Notice and Carryover Allocation Agreement must be provided behind this tab.
- If any conditions were required to be met at 10% Test include a list of those conditions on the Resolution of Conditions form and provide a resolution for each condition. **NOTE:** Please **DO NOT** include a copy of the documentation that was submitted previously at the time Commitment Notice documentation was due. The **ONLY** conditions reflected here should be those that were due at 10% Test, if any.

❖ **Tab 3: Independent Accountant's Report & Taxpayer's Basis Schedule**

- A template for the Independent Accountant's Report is provided at the end of this chapter. The report must be prepared by a third party accountant on the accounting firm's letterhead and must be signed.
- The report should be addressed to the Development Owner or an Affiliate of the owner and must include the name, telephone and facsimile information of the individual CPA who actually produced the report.
- The "Taxpayer's Basis Incurred" referred to in the report, and all figures referenced in the report, must be consistent with the "10% Test: Taxpayer's Basis Schedule."
- The Taxpayer's Basis Schedule must be completed showing the taxpayer's basis incurred and percentage of total reasonably expected basis incurred. The form must be signed by the Development Owner.

❖ **Tab 4: Evidence of Available Utilities**

- For New Construction, Reconstruction and Adaptive Reuse Developments, a certification from a third party civil engineer stating that all necessary utilities will be available at the site and that there are no easements, licenses, royalties or other

conditions on or affecting the Development which would materially and adversely impact the ability to acquire, develop and operate as set forth in the Application. Copies of supporting documents must be provided upon request.

❖ **Tab 5: Management and Affirmative Marketing Plan**

- Provide a management and affirmative marketing plan that clearly states the following:
 - Prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other prospective tenant;
 - Any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided; however, if Section 8 pays 100% of the rent for the unit, the housing sponsor may establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8 voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and
 - All other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to the prospective tenants uniformly and in a manner consistent with the Texas and Federal Fair Housing Acts and with Department requirements.

- Requirements and Guidelines for Affirmative Marketing Plan
 - "Affirmative Fair Housing Marketing AFHM Plan – Multifamily Housing" from HUD (form HUD-935.2A (8/2006) must be completed and submitted with the 10% Test documentation. The form is available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf>
 - A "Management and Marketing Plan Addendum" must be provided and should identify the following:

Texas Department of Housing and Community Affairs Policy and Procedures Regarding Recipients of Certain Federal Housing Assistance

 - a) The Department by rule shall adopt a policy regarding the admittance to low income housing tax credit properties of income-eligible individuals and families receiving assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).
 - b) The policy must provide a reasonable minimum income standard that is not otherwise prohibited by this chapter and that is to be used by owners of low income housing tax credit properties and must place reasonable limits on the use of any other factors that impede the admittance of individuals and families described by Subsection (a) to those properties, including credit histories, security deposits, and employment histories.
 - c) The department, by rule, shall establish procedures to monitor low income housing tax credit properties that refuse to admit individuals and families described by Subsection (a). The Department by rule shall establish enforcement mechanisms with respect to those properties, including a range of sanctions to be imposed against the owners of those properties.

Tenant and Manager Selection

- a) The Department shall set standards for tenant and management selection by a housing sponsor.
- b) The Department shall prohibit a multifamily rental housing development funded or administered by the department, including a development supported with a housing tax credit allocation under Subchapter DD, from:

1. excluding an individual or family from admission to the development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f); and
2. using a financial or minimum income standard for an individual or family participating in the voucher program described by Subdivision (1) that requires the individual or family to have a monthly income of more than 2 ½ times the individual's or family's share of the total monthly rent payable to the owner of the development.

NOTE: In addition to the rules above, the affirmative marketing plan must identify the methods used to market the property to persons with disabilities.

❖ **Tab 6: Fair Housing Certificate**

- Complete the form with the information requested and include with the certificates for the individuals detailed below. Please see <http://www.tdhca.state.tx.us/multifamily/fair-housing.htm> for a list of Department approved training providers:
 - The Development Owner or member of the management company at Department approved Fair Housing training relating to leasing and management issues for at least five (5) hours;
 - The development architect of record OR engineer of record assigned to the Development at Department approved Fair Housing training relating to design issues for five (5) hours.

Note: certifications must not be older than two (2) years from the date of submission of the 10% Test documentation.

❖ **Tab 7: Certifications**

- Development Owner Certification – the Development Owner must complete, execute and notarize this form certifying to compliance with requirements of the Application and the Qualified Allocation Plan in effect at the time the Application was submitted.
- Development Architect Certification – the architect of record for the development must complete, execute and notarize this form certifying to representations of the Application, accessibility standards and energy saving devices, in accordance with Qualified Allocation Plan in effect at the time the Application was submitted.

❖ **Tab 8: Evidence of Site Control, Survey and Title Policy**

- Provide evidence that the purchase or lease of the land has been completed by way of an executed deed showing the Development Owner as grantee, or a copy of the executed lease with a minimum 45 year term. The executed deed, lease or Memorandum of Lease, if applicable, must show receipt by county clerk.
- Include a current plat or survey of the land prepared by a duly licensed Texas Registered Professional Land Surveyor. The survey must clearly delineate the flood plain boundary lines and show all easements and encroachments.
- Provide a current title policy for the development site. The title policy should reflect the name of the Development Owner.

❖ **Tab 9: Certification from Lender or Syndicator**

- Provide certification from the lender or syndicator identifying all Guarantors known at the time of submission of 10% Test. No specific format is required, as long as the lender or syndicator provide the information requested.

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Independent Accountant's Report Template

To: Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
and
_____ (the "Owner")
(Owner Address)
(Owner City, State, Zip)

RE: Housing Tax Credit 10% Test
_____ (the "Development")
_____ (TDHCA #)
_____ (the "Owner")

We have audited the accompanying certification of costs incurred in the "10% Test: Taxpayer's Basis Schedule" (the "Basis Schedule") of the Owner of _____ (the "Development") as of _____ (month, day and year), which is the "Effective Date" of this letter. The Basis Schedule is the responsibility of the Owner and the Owner's management. Our responsibility is to express an opinion about the entries the Basis Schedule based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Basis Schedule is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Basis Schedule. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the information in the Basis Schedule. We believe that our audit provides a reasonable basis for our opinion.

The presentation in the Basis Schedule was prepared in conformity with the accounting practices prescribed by the Internal Revenue Service under the accrual method of accounting and by the Texas Department of Housing and Community Affairs (the "Department"), which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the Basis Schedule, referred to above presents fairly, in all material respects, costs incurred for the Development as of the Effective Date, on the basis of accounting described above.

In addition to auditing the entries in the Basis Schedule, we have, at your request, performed certain agreed-upon procedures, as enumerated below, with respect to the Development. These procedures, which were agreed to by the Owner and the Department, were performed to assist you in determining whether the Development has met the 10% test in accordance with Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6. These agreed-upon procedures were performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representations regarding the sufficiency of the procedures below either for the purpose for which this report has been requested or for any other purpose.

We performed the following procedures as of the Effective Date unless another date is stated:

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- We calculated, based on estimates of total development costs provided by the Owner, the Development's total reasonably expected basis, as defined in Treasury Regulation Section 1.42-6, to be \$_____.
- We calculated the reasonably expected basis incurred by the Owner to be \$_____.
- We calculated the percentage of the development fee incurred by the Owner to be ___% of the total development fee.
- We compared the reasonably expected basis incurred to the total reasonably expected basis of the Development, and calculated that ___% had been incurred.
- We determined that the Owner uses the accrual method of accounting, and has not included any construction costs in carryover allocation basis that were not properly accrued.
- Based on the amount of total reasonably expected basis listed above, for the Owner to meet the 10% test in accordance with the Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6, we calculated that the Development needed to incur at least \$_____ of costs on or before the Effective Date. As of the Effective Date, costs of at least \$_____ had been incurred, which is approximately _____% of the total reasonably expected basis of the Development.

We were not engaged to, and did not perform an audit of the Owner's financial statements or of the Development's total reasonably expected basis. Accordingly, we do not express an opinion on the two items just named. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Owner and the Owner's management and for filing with the Department and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

Signature of Principal of Accounting Firm

Date

Contact Person for questions about this report: Name: _____

Phone: _____

Fax: _____

Email: _____

Construction Status Report (HTC Only)

Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, all multifamily developments must submit a construction status report. Thereafter, Construction Status Reports shall be due by the tenth day following the start of each new quarter (January, April, July and October) and continue on a quarterly basis until the entire development is complete and all units are placed in service, whereupon a final report will be due.

Please note that the Development Owner is solely responsible for proper and timely delivery of the documentation. If a delay in the submission of these reports is anticipated, the Development Owner should contact the appropriate Asset Manager and keep them informed of these delays.

Required Forms and Exhibits for Construction Status Report

Submission of a Construction Status Report is required of all awardees of a housing tax credit allocation. *A final PDF of the Construction Status Report must be submitted to the Department either via FTP or by CD addressed to the appropriate asset manager.* All documentation stated in this section must be submitted to the Department behind the tabs listed and in the order stated below. Any deficiencies identified through the review process will be sent to the Development Owner via email. The Development Owner will be given a specific length of time to correct the deficiencies.

There are four items required to be submitted in the Construction Status Report. Items (1) – (4), described below, are required to be submitted in the initial report. All subsequent reports shall contain items identified in (3) and (4), unless changes to the original submissions of items (1) and (2) have occurred, in which case such amendments shall also be submitted with the subsequent report.

- ❖ **Tab 1: Item (1)- Partnership Agreement**
Provide a copy of an executed partnership agreement with the investor (identifying all Guarantors) or other documents setting forth the legal structure and ownership.
- ❖ **Tab 2: Item (2)- Construction Contract and Loan Agreement**
Provide a copy of an executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided, and upon closing, the agreement must be provided to the Department.
- ❖ **Tab 3: Item (3)- AIA G702 and G703**
Provide a copy of the most recent AIA G702 and G703 certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor).
- ❖ **Tab 4: Item (4)- Construction Inspection Reports**
Provide all Third Party construction inspection reports not previously submitted.

Land Use Restrictive Covenant (LURA) Origination (HTC Only)

The Department will generate a Land Use Restrictive Covenant (LURA) for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to, specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. Development Owners may contact their assigned Asset Manager at any time during the first year of the Credit Period to initiate the drafting of a LURA for their subject Development. Do not wait until December to initiate this process. The internal drafting of this document may take up to 30 days and includes ongoing communication with the Development Owner. Upon receipt of the LURA, the Development Owner will also need to coordinate with the all existing lien holders to execute the document and record it in the county where the Development is located.

Once completed, the original recorded LURA must be returned to the Department **no later than the end of the first year of the Credit Period**, in order to avoid issues of noncompliance. IRS Forms 8609 for the allocation of Housing Tax Credits are not allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period.

Required Information for LURA Origination

The following information should be included in the Development Owner's request to draft the LURA:

- ❖ **Name of Lienholder(s)**
Provide the name of lienholder(s) for the Consent and Subordination of Lienholder form.
- ❖ **Legal Description**
A legal description to be included in the LURA must be provided.
- ❖ **Permitted Encumbrances and Exceptions**
Provide a list of the permitted encumbrances and exceptions to be included in the LURA.
- ❖ **Accessibility Requirements**
Identify the unit numbers to be designated for mobility accessibility and/or hearing or visual impairment accessibility. Refer to the Qualified Allocation Plan (QAP) in effect the year the Application for your subject development was made to determine the appropriate accessibility requirements.

❖ **Building Identification Number(s)**

Identify each residential building number and its corresponding Building Identification Number (BIN) and the minimum applicable fraction for each building. Remember that the minimum applicable fraction to be recorded in the LURA should reflect the lesser of the unit fraction or square footage fraction.

A draft of the completed LURA will be sent to the Development Owner for review prior to obtaining the Department's authorized signature. Upon the Development Owner's review and approval, staff will have the LURA signed and will mail the original document to the Development Owner. The Development Owner must execute the LURA and have the fully executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. The original recorded document must be returned to the Department.

Amendments to the LURA

Non-Material LURA Amendments

All non-material amendments to the LURA may be administratively approved by the Executive Director or designee. Development Owners that request to amend an existing and recorded LURA for a non-material change should submit their request in writing to the assigned Asset Manager accompanied by a LURA amendment fee of \$2,500 (pursuant to §10.405(b)(1) of the Uniform Multifamily Rules). The request should specify the following:

- The change(s) requested;
- The reason the change is necessary; and
- The good cause for the change.

Once the LURA amendment is drafted, the Asset Manager will send a copy to the Development Owner for review prior to obtaining the Department's authorized signature. Upon the Development Owner's review and approval, the original LURA amendment will be signed and mailed to the Development Owner. The Development Owner must execute the LURA amendment and have the fully executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. The original recorded document must be returned to the Department.

Material LURA Amendments

Amendments to the LURA that would result in a reduction in the number of low income units, a change in the income or rent restrictions, a change in the target population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements is considered a material amendment to the LURA and requires TDHCA Board approval. Note that if any of the changes described above are the result of a Department work out arrangement or loan modification or other condition recommended by the Department's Asset Review Committee, it will not be considered a material amendment to the LURA and will not require Board approval.

Prior to taking a material LURA amendment to the Board for consideration, the following procedures must occur:

❖ **Submit a Written Request w/Supporting Documentation**

A written request from the Development Owner must be submitted and accompanied by the LURA amendment fee of \$2,500. The amendment request should specify the following;

- The change(s) requested;
- The reason the change is necessary;
- The good cause for the change; and
- If the necessity for the amendment was reasonably foreseeable at the time of Application.

The Development Owner must also provide financial information for the Department to evaluate the financial impact of the change.

Please note that the Department may order a market study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report. The Department will notify the Development Owner if this report is necessary prior to commissioning the report.

❖ **Notice and Public Hearing**

The Development Owner must draft a notice of the requested change and hold a public hearing to discuss the requested change. The public hearing should be scheduled at least seven (7) business days prior to the Board meeting at which the Development Owner would like the request considered. Ten (10) days prior to the scheduled public hearing, the Development Owner must provide a copy of the notice to the Department for approval. The Department will provide feedback or approval within three (3) business days of receipt of such notice.

Sample templates of public notices are provided at the end of this chapter to assist the Development Owner.

Once approved by the Department, the notice must be provided to each of the following parties:

- Each tenant of the Development;
- Current lender and/or investors;
- State Senator for the district containing the Development;
- State Representative for the district containing the Development; and
- The chief elected official for the municipality (Mayor) if located in a municipality, or the county commissioners, if located outside of a municipality.

Please remember that the Department is required to post any amendments to be presented to the Board at least 15 days prior to the scheduled Board meeting. For assistance in determining a Board meeting date that is feasible to allow both the owner and Department to comply with notification requirements, please contact your assigned Asset Manager.

❖ **Amending the LURA after Approval**

After the material amendment is approved by the Board, the Asset Manager will begin the process to draft the LURA amendment as approved. The Asset Manager will send a copy of the draft amendment to the Development Owner for review prior to obtaining the Department's authorized signature. Upon the Development Owner's review and approval, the original LURA amendment will be signed and mailed to the Development Owner. The Development Owner must execute the LURA amendment and have the fully executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located.

SAMPLE NOTICE TO RESIDENTS

[Development Name]

*Development Address
Development Phone Number*

[Date]

TO ALL RESIDENTS OF *[Development Name]*

RE: *LURA Amendment Request to TDHCA
[Development Name] Management Office*

Dear Resident(s):

[Insert Owner Name] is asking the Texas Department of Housing and Community Affairs Governing Board (the "TDHCA Board") to approve an amendment to its Land Use Restrictive Agreement ("LURA") that will ***[insert requested amendment here, for example: remove the requirement of utilizing Unit #8 as a residential unit for a low income household in order to continue its current use as a management office.]*** TDHCA Uniform Multifamily Rules require that notice of this request be provided to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding ***[insert requested amendment]***. If the amendment request is not approved by the TDHCA Board, ***[change according to you requested change, for example: the office will need to be converted into a residential unit and the office will no longer be available for use by management]***. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their ***[insert TDHCA Board meeting date]*** meeting.

If you are unable to attend the public hearing and would like to submit your concerns in writing, please contact the office at *[XXX-XXX-XXX]* or via email at ***[enter appropriate email]***. If you have any questions or comments, please let us know.

A public hearing on this issue is scheduled at ***[enter location of public hearing]***:

| | |
|------------------|--|
| Location: | <i>Name of location Address</i> |
| Date: | <i>xx/xx/xxxx</i> |
| Time: | <i>xx:xx am/pm</i> |

Sincerely,

*Joe Smith
Regional Vice President
Property Management Group*

[INSERT COMPANY LOGO]

**SAMPLE LETTER TO STATE REP/STATE
SENATOR AND CHIEF ELECTED OFFICIAL OR
COUNTY COMMISSIONERS**

Date

The Honorable Senator XXXXXX
Texas State Senator
P.O. Box XXXXXX, Capitol Station
Austin, TX 78711

Re: *XXXXX Apartments*
ADDRESS
LURA Amendment Request to TDHCA

Dear Senator Smith:

NAME OF OWNER is asking the Texas Department of Housing and Community Affairs Governing Board (the “TDHCA Board”) to approve an amendment to its Land Use Restrictive Agreement (“LURA”) that will [provide a brief description of the change requested].

TDHCA Board rules require that notice of this request be given to the Senator for the district in which XXXXX Apartments is located.

A public hearing on this issue is scheduled at XXXXX Apartments:

Location: XXXXX Apartments
ADDRESS
Date: xx/xx/xxxx
Time: xx:xx a.m./p.m.

You are invited to attend and offer your comments.

Yours truly,

Name

Cost Certification (HTC Only)

Developments that have a valid Carryover Allocation Agreement or Determination Notice and have placed their developments in service must submit a cost certification in order to obtain the final allocation of tax credits via IRS Forms 8609. This chapter sets forth the criteria and required documentation for requesting a final allocation of housing tax credits pursuant to the Department's Qualified Allocation Plan ("QAP"). The Department may amend any part of this section from time to time, as necessary.

The deadline for submitting the Cost Certification will be identified in the Qualified Allocation Plan ("QAP") in effect the year the Application was made or in the Uniform Multifamily Rules in Chapter 10. Subchapter E. Generally, this deadline will be January 15th following the year the credit period starts for a development but may be extended upon approval by the Department. Please be sure to check the applicable QAP to ensure timely filing of the cost certification. Should the deadline date fall on a weekend or holiday, the cost certification is due the following business day.

Please note that the Development Owner is solely responsible for proper and timely delivery of the documentation. Late submission will result in additional requirements including the need for an extension and possible fees imposed as a result.

If the deadline cannot be met an extension must be requested through the Department's Asset Management Division and should be referred to the appropriate Asset Manager for your property. To find the Asset Manager assigned to your region go to the following link and enter the county the development is located in: <http://www.tdhca.state.tx.us/asset-management/contacts.htm>.

Required Forms and Exhibits for Cost Certification

Submission of a Cost Certification is required of all awardees of a housing tax credit allocation. You must use the Cost Certification file provided by TDHCA and located on the Asset Management webpage (<http://www.tdhca.state.tx.us/asset-management/index.htm>). ***Submission of the final cost certification should consist of a final PDF AND the Excel file. The files must be submitted to the Department either via FTP or by CD addressed to the appropriate asset manager.***

All documentation stated in this section must be submitted to the Department behind the tabs listed and in the order stated below. Any deficiencies identified through the review process will be sent to the Development Owner via email, with a copy sent to the syndicator contact identified within the cost certification. The Development Owner will be given a specific length of time to correct the deficiencies. Failure to comply with requests for additional information or corrective action within the specified time frame may delay the issuance of IRS Forms 8609.

There are twenty (20) electronic tabs in the Cost Certification Excel workbook that represent separate spreadsheets for Development Owner use. Note that some tabs in the workbook act as a placeholder for purposes of reminding Development Owners of the unbound documents that must be provided within the Cost Certification. Please note that all of the information outlined below is required as part of the Cost Certification documentation.

❖ **Tab 1: Cost Certification Requirements List**

- The checklist is provided for the benefit of the Development Owner in compiling the documentation necessary to submit a complete Cost Certification to the Department.
- Check the appropriate box for each of the required exhibits to indicate it is included in the Cost Certification. If an exhibit is not included, provide a status of the required documentation or an explanation of the omission behind its respective tab.

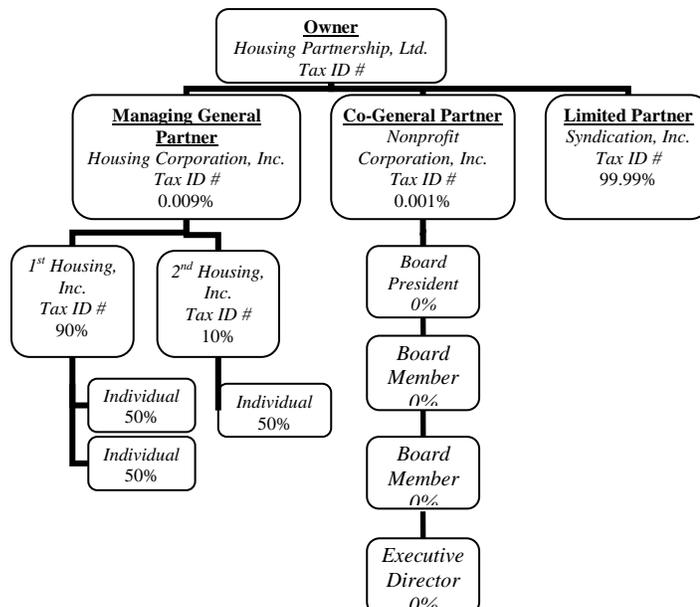
❖ **Tab 2: Exhibit 2A- Owner’s Statement of Certification**

- This form must be executed by the Development Owner. The Development Owner is responsible for certifying to the accuracy of the information provided within the Cost Certification.
- The form must be signed, dated and notarized. *No hard copy is required, only a scanned copy within the final PDF file.*

❖ **Tab 2: Exhibit 2B- Owner Summary & Organization Chart**

- This form must be completed in its entirety. A tax identification number unique to the Development Owner must be provided; without this information, IRS Forms 8609 will not be issued.
- An Owner organization chart must be provided. An illustration of the basic format for organizational charts is provided below. Be sure the chart follows the example given and that it contains the following information:
 - Correct name, ownership percentage and tax identification number of each entity and person;
 - Clear indication of role, i.e. Member, Member/Manager, Class B, LP, etc.
 - Trusts must include the trustee and list all beneficiaries that have the legal ability to access, control, or direct activities of the trust and are not just financial beneficiaries;
 - Nonprofit entities, public housing authorities and publicly traded corporations must show name of organization, individual board members and executive director;
 - Ownership must be illustrated to the level of natural persons, whether owners or board members.

Below is an illustration to assist owners on providing the required information:



- Changes to Ownership Structure
 - Any change to the ownership structure from what was last approved by the Department at application or any other time may require approval. Please note that an ownership transfer must be approved prior to release of IRS Forms 8609.
 - If the Development Owner has previously received approval from the Department regarding an ownership change, please provide a copy of the TDHCA approval letter immediately behind the organization chart.
 - If approval for an ownership change is required at the time the Cost Certification is submitted, the Development Owner **must** provide a request for approval under separate cover. The request must include the documentation requirements as further described in the Ownership Transfer chapter of this manual and on the Asset Management website: <http://www.tdhca.state.tx.us/asset-management/pca-manual.htm>.

- ❖ **Tab 3: Exhibit 3A- Copy of Carryover Agreement or Determination Notice**
 - For 9% awardees- provide a complete copy of the executed Carryover Allocation Agreement issued by the Department.
 - For 4% awardees- provide a complete copy of the executed Determination Notice issued by the Department.
 - 4% ONLY- developments funded with tax-exempt bonds that locked the applicable tax credit percentage must submit a copy of the executed and notarized Agreement and Election Statement. **NOTE: a valid Election Statement must have been executed and notarized no later than the 5th day after the close of the month in which the bonds were issued.**

- ❖ **Tab 3: Exhibit 3B- Evidence of Nonprofit and CHDO Participation**
 - Only nonprofit organizations will complete this form.
 - All nonprofit owners or principals, regardless of their level of ownership or the set-aside under which the application was made must complete this form.

- ❖ **Tab 3: Exhibit 3C- Evidence of HUB Participation**
 - **NEW!!** Only those developments that were awarded points at application for having material participation (51% ownership of General Partner) by a HUB are required to complete this form.
 - Provide a description of the HUB's participation in the yellow highlighted space.
Note: hit Alt+Enter if you want to start a new paragraph within the text box.

- ❖ **Tab 4: Development Team**
 - Provide the information requested of all development team members.
 - A tax identification number is required for each entity and must be consistent with the TIN number reflected in *Exhibit 10C, Total Development Cost Schedule*.
 - A current HUB certificate in the entity's name must be submitted for all development team members that are identified as a Historically Underutilized Business (HUB).

- ❖ **Tab 5: Exhibit 5A- Development Summary w/Architect's Certification**
 - **NEW!! Note that this form has changed.**
 - Development Owners should use the form that is applicable to the development based on the year the tax credit award was made. For example, 2010 allocations should use the exhibit titled "Ex. 5A- Dev Summary – 2010 Awd". All other Ex. 5A forms may be left blank.

NOTE: once you are ready to convert the file to PDF, you will exclude all other extraneous forms that do not apply to your development from being converted.

- All yellow highlighted cells require a response.
- This form must be signed and dated by the development architect. The architect is responsible for certifying to the accuracy of the information provided on this form. *No hard copy is required, only a scanned copy within the final PDF file.*

❖ **Tab 5: Exhibit 5B- Development Change Documentation**

- Complete the form to confirm whether any changes have occurred to the Development.
- If “Yes” is selected to indicate that changes have occurred to the Development and previously approved by TDHCA, place a copy of that approval letter immediately behind this form.
- If “No” is selected to indicate that no change has occurred to the Development, no additional documentation is required.
- If approval for a change to the Development is requested at the time the Cost Certification is submitted, the Development Owner **must** provide the amendment request under separate cover. The request must include the documentation requirements as further described in the Amendments to Application chapter of this manual and on the Asset Management website: <http://www.tdhca.state.tx.us/asset-management/pca-manual.htm>

❖ **Tab 6: As Built Survey**

- No hard copy is required, only a scanned legible copy within the final PDF file.
- The survey must indicate the total acreage of the Development site and the location of all structures, drives, and easements.
- The survey must be labeled with residential building numbers, unit numbers and assigned Building Identification Numbers (BINs). A separate chart identifying each building by its building number, unit numbers and BINs may be provided as long as it can be compared and matched to the survey.
- The survey must identify all final flood elevations and flood zone boundaries.
- The survey must be prepared and signed by an accredited surveyor.

❖ **Tab 7: Closing Statement**

- Provide a full copy of the executed closing statement for each parcel of land and/or building purchased separately and included in the Development. The Development Owner must be identified as the purchaser and the legal name of the seller must be clearly stated.

❖ **Tab 8: Exhibit 8A- Title Policy**

- Provide a full copy of the executed title policy for the Development. It must encompass the entire site associated with the Development. The policy must indicate the Development Owner as the insured. All attachments referenced in the title policy must be provided as part of this exhibit.
- If any mechanic’s or materialman’s liens or judgments are reflected in the report, a copy of an executed release or documentation of adequate payment is required for each lien or judgment identified.

❖ **Tab 8: Exhibit 8B- Nothing Further Certificate or Downdate Endorsement**

- If the title policy provided under Exhibit 8A does not list the TDHCA Housing Tax Credit Land Use Restrictive Covenant (LURA), a current update in the form of a nothing further certificate or downdate endorsement must be provided reflecting the

recorded TDHCA Housing Tax Credit LURA as well as any and all liens from the date of the policy through and including the date the LURA was recorded.

- If any mechanic's or materialman's liens or judgments are reflected in the report, a copy of an executed release or documentation of adequate payment is required for each lien or judgment identified.

❖ **Tab 9: Exhibit 9A- Placement in Service**

- This form provides summary information needed to complete IRS Forms 8609 for the Development on a building by building basis. The exhibit must be consistent with information provided throughout the Cost Certification packet and the Development's LURA.
- Each row should represent a residential building in the development that will receive an IRS Form 8609.
- Credit Period
 - Indicate the first year tax credits will be claimed for each building. This election can be the year the building was placed in service or the year after the building was placed in service.
- Building Number
 - Enter the building number used by the Development Owner, all other building numbers will auto-fill after the first entry is made.
- Building Identification Number (BIN)
 - Enter the Building Identification Number (BIN) for the first building only (without dashes). It is asked that the last digits of the BIN assigned to a building correspond to its building number. The rest of the BINs for other buildings will auto-fill after the first entry.
- Placed in Service Date
 - Acquisition- this column should be completed for developments qualifying for acquisition tax credits. The placed in service date must match the date indicated on *Exhibit 9C- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election*.
 - Rehabilitation - this column should be completed for developments qualifying for rehabilitation tax credits. The placed in service date for rehabilitation must be certified by a third party CPA in *Exhibit 9C- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election*, as having met the parameters of Internal Revenue Code §42(e).
 - New Construction- this column should be completed for developments qualifying for new construction credits. The placed in service date for each building must be documented by the requirements discussed in detail later in this manual under *Tab 9: Exhibit 9B- Evidence of Placement in Service*.
- Units and Square Footage per Building
 - This column should be completed with the following information for *each* residential building: total low income units, total units, total low income square footage and total square footage.
 - The number of units and total net rentable area should be consistent with other information provided in the cost certification packet.
 - A note will appear at the bottom of the form if the sum of net rentable area for each building is inconsistent with information provided in *Exhibit 11A, Rent Schedule*.
- Applicable Fraction
 - The application fractions for each building will be auto-calculated based on information entered in the previous cells of that same row.

- Unit Fraction- the applicable fraction based on units represents the percentage of total low income units.
- Square Footage Fraction- the applicable fraction based on net rentable square footage- represents the percentage of total low income net rentable square footage.
- The applicable fractions should be consistent with information presented throughout the cost certification packet.
- Applicable Percentage
 - Acquisition- this column should be completed for developments qualifying for acquisition tax credits. The applicable percentage rate entered should represent the actual applicable percentage determined by the Secretary of Treasury for the date indicated on this form and in *Exhibit 9C- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election*.
 - Rehab/New Construction- this column should be completed for developments qualifying for rehabilitation or new construction tax credits. The applicable percentage rate entered should represent the actual applicable percentage determined by the Secretary of the Treasury for the date each building placed in service or the date indicated on the corresponding election to lock the applicable percentage rate.
- Eligible Basis
 - Acquisition- enter the actual acquisition eligible basis attributable to the building. The total acquisition eligible basis for all buildings must be supported by the acquisition basis reflected in Exhibit 10C: Total Development Cost Schedule. Any difference in acquisition basis from the originally approved acquisition basis as reflected in the Department's latest underwriting must be explained and well documented.
 - Rehab/New Construction- enter the actual eligible basis attributable to the rehab/new construction of each building.
- Requested Tax Credits
 - The form automatically calculates the request per building for acquisition and/or rehab/new construction housing tax credits based on information in the previous columns. However, the user may overwrite the cell with a request that differs from the calculated tax credits. If the user overwrites the cell, the formatting will change to a dark grey with white lettering but will not prohibit the owner from overwriting the cell.
- **NEW!!! 9% ONLY- Notification of Returned Housing Tax Credits** – This section of the form must only be completed for 9% competitive housing tax credit developments and only if the Development Owner is returning any of the tax credits originally allocated to the development. Credits must be returned prior to the issuance of IRS Forms 8609. Additionally, credits must be returned within 180 days of the end of the first year of the credit period in order to avoid a penalty fee pursuant to the Qualified Allocation Plan.

❖ **Tab 9: Exhibit 9B- Evidence of Placement in Service**

- New Construction
 - New construction developments must submit a Certificate of Occupancy (CO) signed by the local authority responsible for final inspection of developments. A CO must be provided for each residential building housing a tax credit unit.
 - Each CO must indicate the date the final inspection occurred and the building number.
 - If temporary CO's are used to evidence placement in service, the temporary CO must be accompanied by documentation from the governmental authority

confirming that the buildings may be occupied upon the dated indicated on the temporary CO.

- If the Development is located in an area where COs are not issued by a local government, a written statement from the owner confirming that no COs were issued must be submitted along with a completed *Exhibit 9C, Architect's Certification of Completion Date and Date Ready for Occupancy* as described below.
 - TX-USDA-RHS financed New Construction Developments
 - New construction developments financed with USDA may submit Certificate(s) of Occupancy or a full copy of the executed USDA Final Inspection Report.
 - Rehabilitation
 - Rehabilitation developments that cannot provide COs must provide *Exhibit 9C, Architect's Certification of Completion Date and Date Ready for Occupancy* as described below.
- ❖ **Tab 9: Exhibit 9C- Architect's Certification of Completion Date and Date Ready for Occupancy**
- Complete the form with the information requested for rehabilitation development or newly construction developments where a certificate of occupancy is not available.
 - The form must be certified and signed by a third party architect, preferably the development architect.
- ❖ **Tab 9: Exhibit 9D- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election**
- Only acquisition and/or rehabilitation developments must complete this form.
 - A third party CPA must certify that the Development Owner has elected a placed in service date in accordance with the Internal Revenue Code §42(e).
 - **NEW!! A third party CPA must certify that the development met the rehabilitation expenditure threshold defined by the Department in the QAP applicable to the year of the tax credit award.**
 - The dates reflected on this form must be consistent with the same information reflected throughout the cost certification packet.
 - Submission of this document in an alternative format other than that provided may be acceptable as long as all of the information requested in the TDHCA form is included.
- ❖ **Tab 10: Exhibit 10A- Independent Auditor's Report**
- The total development cost and eligible basis certified to by the auditor must support the amounts presented by the Development Owner in *Exhibit 10C, Total Development Cost Schedule*. Submission of this document in an alternative format other than that provided may be acceptable as long as all of the information requested in the TDHCA form is included.
- ❖ **Tab 10: Exhibit 10B- Independent Auditor's Report of Bond Financing**
- This exhibit should be completed only if the development tax credits were allocated as a direct result of associated mortgage revenue bonds. The percentage of aggregate basis financed by tax-exempt bonds certified to by the auditor should be equal to or greater than 50%. Submission of this document in an alternative format other than that provided may be acceptable as long as all of the information requested in the TDHCA form is included.
- ❖ **Tab 10: Exhibit 10C- Total Development Cost Schedule**

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- The total development cost and eligible basis calculated must be consistent with the conclusions in *Exhibit 10A, Independent Auditor's Report*.
 - Each row represents a line item cost associated with the Development. The line-item costs are grouped by type, and a line for "Other" costs not listed is provided at the end of each grouping. The "Other" costs must be identified.
 - If there are not enough spaces available to identify the "Other" costs, include all "Other" costs in the line items, provided and provide a detailed breakdown of those costs on a separate sheet as an attachment to this exhibit.
 - Cells shaded gray are locked and not allowed for data entry, except for the "Offsite Work" line item. Read the section relating to offsite costs included in eligible basis for the required documentation to support those eligible costs.
 - For every individual line item cost, the sum of the figures in the eligible basis columns should never exceed the figure indicated in the total cost column.
 - Taxpayer Identification Number (TIN)
 - The TIN for all payees of a line item cost must be indicated. If multiple payees are identified, the percentage of the cost associated with each payee must also be indicated.
 - Commercial Space Costs
 - Costs for the construction of certain amenities for which the tenants of the Development pay additional fees (i.e. covered parking, storage, etc.) should not be included in eligible basis. If any commercial space costs are being excluded from eligible basis, enter that amount in the line item provided.
 - High Cost Area Adjustment
 - The rehab/new construction eligible basis may be increased by 30% if the Development was eligible for this boost at the time of application. Developments that received a tax credit allocation based on this upward adjustment should enter 130%; otherwise, 100% should be entered.
 - Applicable Fraction
 - This cell contains a formula that calculates the Development's applicable fraction based on information provided in *Exhibit 9A, Placement in Service*. The figure shown must be the lesser of the applicable fraction based on units or net rentable area (NRA).
 - Applicable Percentage
 - This cell contains a formula that calculates the applicable percentage based on information provided in *Exhibit 9A, Placement in Service*.
- ❖ **Tab 10: Exhibit 10D- Contractor's Application for Final Payment (G702/G703)**
- Provide a copy of the final application and certificate for payment (AIA Form G702 and G703) and description of the work performed with all continuation sheets and/or supplements attached. If the permanent lender required a form other than the G702 and G703, other such documents detailing the costs of the Development that have been signed by the architect and provided to the lender for draw purposes may be substituted.
 - If change orders were made, provide copies of those change orders.
- ❖ **Tab 10: Exhibit 10E- Additional Documentation of Offsite Costs**
- **NEW!!** If the Development Owner includes any offsite costs in eligible basis, it is the Development Owner's responsibility to present their case for allowing those costs in eligible basis. The owner must provide an explanation and supporting documentation to show that the fact pattern surrounding the subject development is the same as in Private Letter Ruling 200916007.

- The owner must, via the development Civil Engineer's attestation (with professional seal affixed), answer the following questions:
 - Timing: What was the timing of the determination of the offsite requirements, construction of the offsites, and acceptance of the offsites as compared to the overall construction of the subject development?
 - Improvements: Were the offsites an improvement to existing utility service and/or an incremental improvement to increase capacity? Were the offsites an improvement to an existing roadway?
 - City or local jurisdiction requirement: Were the offsite improvements required by the City of appropriate local jurisdiction? If so, detail what the specific requirements were, and describe what approvals were withheld by the local jurisdiction until improvements were made;
 - Acceptance of Improvements: Did the local jurisdiction's accept the required improvements? If so, in what manner was the improvement(s) accepted (i.e. release of certificates of occupancy, etc.)?
 - Reimbursements: Were there were any reimbursements by the local jurisdiction for the offsite costs? Explain the timing of these reimbursements and any contingencies; and
 - Dedication: Were the improvements dedicated to the local jurisdiction? Document the dedication.

❖ **Tab 11: Exhibit 11A- Rent Schedule**

- The unit mix and net rentable square footages must be consistent with the rent roll, and any rental restrictions placed on the property by the recorded LURA.
- "Gross Rent" cannot exceed the HUD maximum rent limits unless documentation of project based rental assistance is provided.
- "Net Rent" is the tenant paid rent calculated by subtracting the utility allowance from the "Gross Rent."
- If the current market rent is less than the maximum "Net Rent" allowed under program guidelines, then the "Tenant Paid Rent" will be the market rent. If this is the case, the rents reflected in the current rent roll should support the "Tenant Paid Rent" indicated on this exhibit.
- If any non-rental income is included, describe the source(s) of the income. "Misc" income is not an acceptable description.
- If the Development includes loft/efficiency Units, label these Units as "0" bedrooms as provided in the drop-down list.
- If the Development also includes TDHCA HOME funds, identify the correct unit designation for each unit type in the column title "HOME Unit Designation (Rent/Inc)."
- **Tax-Exempt Bond Developments ONLY**
 - space has been added under the "Development Name" to identify the Private Activity Bond Priority. Choose the applicable priority from the drop-down list.
 - Priority must be designated, as submitted to the Bond Review Board, regardless of Bond Issuer. The priority designations include the following:
 - **Priority 1(a)**: Set-aside 50% of the Units at 50% AMGI and 50% of the Units at 60% AMGI.
 - **Priority 1(b)**: Set-aside 15% of the Units at 30% AMGI and 85% of the Units at 60% AMGI.
 - **Priority 1(c)**: Set-aside 100% of the Units at 60% AMGI for Developments located in a census tract with a median income that is higher

than the median income of the county, MSA or PMSA in which the census tract is located.

- **Priority 2:** Set-aside 80% of the Units at 60% AMGI; up to 20% of the Units can be at market rate.
- **Priority 3:** includes any qualified residential rental Development. Market rate Units can be included under this priority.

❖ **Tab 11: Exhibit 11B- Utility Allowances**

- Drop down lists are provided to identify “Who Pays” for the utility service and what type of “Energy Source” will be used.
- If Development is all bills paid, utilities and energy source is still required.
- **Remember to include your support documentation** (i.e., current PHA utility allowance sheet or local utility provider estimate specific to development) that clearly identifies the utility costs included in the estimate and the effective date of the documentation.

❖ **Tab 11: Exhibit 11C- Annual Operating Expenses**

- Fill in all yellow highlighted cells.
- Expenses entered should reflect actual stabilized performance of the property, if available, or a current projection of the performance based on comparable properties.
- You must describe any “other” costs included in any of the expense categories. “Misc” is not an acceptable description.
- Annual Debt Service should be consistent with information provided in *Exhibit 11D- 15 Year Proforma* as well as *Exhibit 13A, Summary of Sources and Uses of Fund*.
- Expense per Unit, Expense to Income Ratio and Debt Service Ratio will be calculated automatically. The Development Owner should familiarize themselves with the underwriting rules (Subchapter D of the Uniform Multifamily Rules) regarding thresholds for these items.

❖ **Tab 11: Exhibit 11D- 15 Year Pro forma**

- Any deferred developer’s fee must be shown to be fully repaid by Year 15.
- You must describe any “Other” debt service included in the pro forma.

❖ **Tab 12: Exhibit 12A- Current Operating Statement**

- If available, provide a full year operating statement. However, a partial year statement will be accepted as long as the period is clearly identified.
- The operating statement must be provided in a format that details individual expense items.

❖ **Tab 12: Exhibit 12B- Current Rent Roll**

- A current rent roll (preferably not older than **one (1)** month prior to the first day of the Cost Certification submission deadline) that includes the following:
 - Terms and rates of lease;
 - Rent Targeting;
 - Unit mix; and
 - Tenant names or vacancy.

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The sample rent roll below illustrates the information to be included:

| Unit | Unit Type | Sq. Ft. | Tenant Name | Lease Start | Lease End | Rental Rate | Tenant Pays |
|------|-----------|---------|-------------|-------------|-----------|-------------|-------------|
| 101 | 1/1 | 630 | Jones | 10/12 | 10/13 | \$450 | \$450 |
| 102 | 1/1 | 630 | Smith | 11/11 | 11/12 | \$450 | \$400 |

❖ **Tab 13: Exhibit 13A- Summary of Sources and Uses of Funds**

- Choose the Funding Descriptions from the drop-down list for Debt and Third Party Equity:
 - Conventional loan
 - Conventional/FHA
 - Conventional/letter of credit
 - TDHCA HOME
 - Housing Trust Fund
 - CDBG
 - Mortgage Revenue Bonds
 - USDA/TXRD Loan
 - Federal Loan
 - State Loan
 - Local government loan
 - Private loan
- Note that the Funding Description under “Deferred Developer Fee” and “Other” do not have drop-down lists. Development Owners should write in a funding description.
- For each source identified, you are required to include the interest rate, amortization, term and syndication rate, where applicable. **The information included here must be consistent with the financing narrative, limited partnership agreement and loan agreements or commitments.**
- Total sources of funds must equal the total uses of funds reflected in *Exhibit 10C- Development Cost Schedule*.

❖ **Tab 13: Exhibit 13B- Financing Narrative**

- Sources and amounts referenced in this narrative must match *Exhibit 13A- Summary of Sources and Uses of Funds* form, loan agreements or commitments for permanent financing and the final limited partnership agreement.
- The narrative should identify any non-traditional financing arrangements; use of funds with respect to the Development; funding sources including permanent debt and commitment status of funding sources for the Development if not already closed at Cost Certification submission.
- If the Development Owner has not converted into the permanent debt, provide the anticipated date this is expected to occur.
- In order to start a new paragraph within the yellow highlighted text box, hit Alt + Enter.

❖ **Tab 14: Final Limited Partnership Agreement**

- The executed agreement must identify all partners and the ownership percentage of each partner.
- At least two of the following items must also be clearly identified:
 - Net syndication proceeds
 - Projected annual tax credits
 - Purchase price per tax credit dollar

- **TAX-EXEMPT BOND DEVELOPMENTS ONLY** – if the Development received a mortgage revenue bond allocation of 4% tax credits and the Development Owner requests more tax credits than originally reflected in the executed Determination Notice, the agreement should clearly state the price that will be paid per tax credit dollar for tax credits in excess of the anticipated annual tax credit allocation. If not, a firm commitment with terms to purchase the additional tax credits must be attached.

- ❖ **Tab 15: Loan Agreement(s) and Promissory Note(s) or Final Commitment(s)**
 - For each source of permanent financing, provide a full copy of the executed loan agreement(s) and promissory note(s) for closed loans. If loans are not closed, provide firm commitment(s) for each source of permanent financing.
 - The note or commitment must agree with information reflected in *Exhibit 13A- Summary of Sources and Uses of Funds* as well as *Exhibit 13B- Financing Narrative*.

- ❖ **Tab 16: Exhibit 16- Architect’s Certification of Fair Housing Requirements**
 - This form must be completed and signed by the development Architect.
 - By checking the appropriate box, the development Architect certifies that the Development meets the standards described.
 - Upon the final construction inspection, if it is found that the Development does not meet the minimum Fair Housing Standards, issuance of IRS Forms 8609 will be delayed until it is determined by the Department that a remedy has been implemented.
 - Questions related to Fair Housing standards may be directed to staff in the Department’s Physical Inspections section of the Compliance Division.

- ❖ **Tab 17: Exhibit 17A- Development Owner Assignment of Individual to Compliance Training**
 - Property Compliance training sessions, which are co-sponsored by the Department's Compliance Monitoring staff, and the Rural Rental Housing Association of Texas (RRHA) or the Texas Apartment Association (TAA), focus on requirements included in Land Use Restriction Agreements (LURAs) to ensure long term compliance with the rules and regulations governing the HTC, BOND, and HOME programs. Visit <http://www.taa.org> for online registration. Trainings are facilitated by Department staff and sponsored by TAA.
 - Either the Development Owner or an assigned individual may attend and receive the required TDHCA Compliance Training.
 - If an individual other than the Development Owner has taken the training and received a certificate of completion, the Development Owner must complete this form and identify the following:
 - The individual designated to attend the compliance training;
 - The individual’s title and/or capacity; and
 - The TDHCA file # and Development Name for each tax credit development that the identified individual represents.
 - The designation of a representative does not relinquish the Development Owner of responsibility for compliance with the regulations and rules governing the Housing Tax Credit Program.

- ❖ **Tab 17: Exhibit 17B- TDHCA Compliance Training Certificate**
 - Provide a copy of the certificate of completion for the Development Owner or the individual assigned to receive this training and identified in *Exhibit 17A- Development Owner’s Assignment of Individual to Compliance Training*.

❖ **Tab 18: Land Use Restriction Agreement (LURA)**

- Provide a copy of the fully executed and recorded LURA behind this tab.
- IRS Forms 8609 will not be issued until the original document (after signature and recording) is returned to the Department.
- If discrepancies are identified between information contained in the cost certification documentation and the recorded LURA, the Development Owner may be required to amend the LURA and additional fees may apply.

❖ **Tab 19: TDHCA Final Inspection Clearance Letter**

- A copy of the TDHCA final inspection clearance letter or a brief summary of the status of the final inspection must be provided.
- IRS Forms 8609 will not be issued until a final inspection clearance letter is issued.

❖ **Tab 20: Other Documentation**

- Other documents deemed relevant to the Cost Certification of the Development should be included behind this tab (i.e., satisfaction of conditions due at Cost Certification, etc.).

Please note that any and all fees, as applicable, will be required to be paid and current prior to the issuance and release of IRS Forms 8609.

Amendments to Application

Amendments to Housing Tax Credit Applications or Awards prior to the recording of a LURA, or amendments that do not result in a change to the LURA should be submitted to the appropriate Asset Manager. A formal written request from the Development Owner should be accompanied by the amendment fee of \$2,500 and specify the following:

- The change(s) requested;
- The reason the change is necessary;
- The good cause for the change;
- Financial information regarding the change (if applicable); and
- If the necessity for the amendment was reasonably foreseeable at the time of Application.

The Asset Manager will evaluate the amendment request and determine if the change requires Executive Director or TDHCA Board approval. Additional information may be requested by Department staff in order to properly evaluate the request.

Non-Material Application Amendments

All non-material application amendments may be administratively approved by the Executive Director. In general, a non-material application amendment includes the following:

- Changes to the Developer, Guarantor, or Person used to meet the experience requirement in the application;
- Any alteration or change in an item that received points in the application; and
- A change that would significantly affect the most recent underwriting analysis completed by the Department.

An amendment request to be considered non-material that has not been implemented will not be required to pay an amendment fee. Upon approval of the amendment, a letter will be sent to the Owner and saved in the application file for future reference. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

Material Application Amendments

Regardless of the development stage, the Board shall reevaluate a Development that undergoes a substantial change or material alteration as described below.

Material alteration of a Development includes, but is not limited to:

- a) a significant modification of the site plan;
- b) a modification of the number of units or bedroom mix of units;
- c) a substantive modification of the scope of tenant services;
- d) a reduction of 3 percent or more in the square footage of the units or common areas;
- e) a significant modification of the architectural design of the Development;
- f) a modification of the residential density of the Development of at least 5 percent;

- g) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;
- h) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or
- i) any other modification considered significant by the Board.

Material application amendment requests must be received by the Department as least forty-five (45) calendar days prior to the Board meeting in which the amendment will be considered. Before the fifteenth (15th) day preceding the date of the meeting, notice of the amendment and staff recommendation will be posted to the Department's website. A final Board Summary Report will be sent to the Owner with notification of Board decision. Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the award cycle.

Amending the LURA after Application Amendment

There may be situations when the approval of an application amendment requires a LURA amendment as well. After the application amendment is approved by the Board or Executive Director, the Asset Manager will begin the process of drafting the LURA amendment as approved. Refer to the **Amendments to the LURA** chapter of this manual for more information.

Ownership Transfers

This chapter provides guidance on the ownership transfer process for all multifamily developments that have received funding from the Department. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Department approval is required for any new member to join in the ownership structure of a Development.

Notifications of Ownership Changes that DO NOT require TDHCA Approval

The following types of ownership changes require notification to the Department but do not require the Department's approval:

- ❖ Departure of the Investment Limited Partner (Syndicator, Tax Equity Investor)
- ❖ Changes to the Limited Partner or other Partners affiliated with the Investment Limited Partner (Syndicator, Tax Equity Investor)
- ❖ Changes resulting from foreclosure where the resulting owner is the lender or financial institution involved in the transaction
- ❖ Transfers to Affiliates that do not include the addition of new individual(s)
- ❖ Transfers to non-Controlling Related Parties for estate planning purposes

For changes described above, the Development Owner must notify the Department in writing and include the following:

- ❖ **Letter of Explanation**
The letter should include a description of persons and organizations departing and entering the ownership structure as well as include the change(s) in percentage of interest. An explanation as to the reason for the change must be identified
- ❖ **Organization Charts**
Provide a copy of the old and new organization chart.
- ❖ **Agreement among Parties**
Provide a copy of any and all agreements acknowledged by all parties associated with the transfer.

Ownership Changes that require TDHCA Approval

All other changes to a Development's ownership structure that are not listed above will require the Department's prior, written approval. In accordance with §10.901(17) of Subchapter G of the 2014 Uniform Multifamily Rules, an Ownership Transfer Fee in the amount of \$500 is required. **Transfer requests will not be processed until the fee is received by the Department.** Submission of the fee does not guarantee approval of the transfer request.

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The Department may deny an Ownership Transfer request if it cannot be demonstrated that the proposed new individuals or entities have the financial capacity or experience to participate as an owner of the Development.

In accordance with 10 TAC §1.5, Previous Participation Rules, the Asset Management Division will conduct a previous participation review for any new application for financial assistance and for ownership transfer requests. A report will be provided to the Department's Executive Award and Review Advisory Committee (EARAC) for approval. The Asset Management portion of the previous participation review will report any known current or ongoing concerns, including but not limited to:

- 1) The establishment and maintenance of appropriate reserves;
- 2) Identification of the development's capacity to meet financial obligations consistent with the minimum ratios to meet underwriting feasibility for the long term;
- 3) Requests for material modifications or amendments;
- 4) Any financing known to be in a workout status; and
- 5) Delays in issuance of IRS Form(s) 8609 which are within the control of the owner.

If any of the above issues are identified during the previous participation review, prior to EARAC notification, the requestor will be provided a five (5) business day period to comment upon the issue(s) identified. The report and owner response will be provided to the committee.

Required Forms and Exhibits for the Ownership Transfer Package

The ownership transfer documentation must be submitted electronically in PDF format. See the chapter titled "Delivery Instructions" for more information on how to properly submit the documentation. Please do not submit the Ownership Transfer request until all documentation is available for submission. Partial submissions will not be accepted or reviewed. If an Ownership Transfer for multiple Developments is being requested, please submit a request for each separate Development. Combined Ownership Transfer requests will not be accepted.

You must use the Ownership Transfer forms provided by TDHCA and located on the Asset Management webpage at (<http://www.tdhca.state.tx.us/asset-management/index.htm>). **A complete Ownership Transfer will consist of one PDF file that is bookmarked.** All forms and supporting documentation must be submitted to the Department behind the tabs listed and in the order stated below. Any deficiencies identified through the review process will be sent to the requesting party via email. The requester will be given a specific length of time to correct the deficiencies. Failure to comply with requests for additional information within the specified time frame may delay approval of the Ownership Transfer.

There are twenty-two (22) electronic tabs in the Ownership Transfer file that represent separate forms or placeholders for purposes of reminding the requesting party of the unbound documents that must be provided within the package. The bookmarks should be labeled as titled below and in the order presented, with the corresponding documentation behind each tab.

❖ **Tab 1- Letter of Explanation**

A letter describing the proposed change(s) in the ownership structure, including change(s) in percentage of interest must be provided. The letter must disclose the reason for the change and briefly describe the new member(s) previous experience as it relates to the acquisition of the subject Development.

Please note that transfer requests submitted for an HTC Development prior to issuance of the 8609's will not be approved by the Department unless the Development Owner can demonstrate a hardship (e.g. potential bankruptcy, removal by Partner, etc.).

❖ **Tab 2 – IRS Forms 8609 or Carryover Allocation Agreement (Housing Tax Credit Only)**

If IRS Forms 8609 have been issued for the development, a copy of the forms with Part Two of the form completed and signed by the owner must be provided. If the development has not placed in service or Forms 8609 have not been issued, a copy of the Carryover Allocation Agreement must be provided.

❖ **Tab 3 – Recorded Land Use Restrictive Covenants and Regulatory Agreements**

Copies of all recorded Land Use Restrictive Covenants (LURA), amendments to LURAs and Regulatory Agreements must be provided.

Regulatory Agreements required ONLY if the development was financed with 4% Housing Tax Credits in association with tax-exempt bonds issued by TDHCA.

❖ **Tab 4 - Agreements Among Parties to the Transfer**

A copy of any agreement among the parties to the transfer, including any third-party agreement with the Department, must be submitted. Such agreements include the contract for sale (if applicable), documents conveying or establishing the interest(s) of the new member(s) of the owner, partnership agreements, and supplementary agreements.

❖ **Tab 5 - Owner Certification Form**

This form must be submitted on behalf of all natural persons who are proposed new owners of the Development Owner, or who are owners of a proposed new member of the Development Owner. If a proposed new owner is a nonprofit organization, the Executive or Director authorized to bind the corporation must execute and submit this form.

❖ **Tab 6 - Ownership Transfer Information Form**

This form must be completed in its entirety. Provide contact information and Tax Identification Numbers (TIN) for the departing owner(s) and the proposed new owner(s).

❖ **Tab 7 - Property Manager Replacement Information Form**

This form must be completed **ONLY** if a new management company will be operating the property. If not applicable, please indicate this by marking “*Not Applicable*” on the form.

❖ **Tab 8 – Certification of Tenant Notification**

The current or proposed Development Owner must certify that the tenants in the Development have been notified in writing 30 days before the transfer. A copy of the notification to the tenants must also be included.

- **The transfer cannot be approved until at least thirty (30) days have transpired from the date of the written notification to the tenants. If the Development is not occupied, a notice is not required. However, a brief explanation for the Development’s vacancy should be included under this tab.**

❖ **Tab 9 - Organization Charts**

A chart of the current ownership structure before the transfer and a chart after the proposed transfer must be submitted.

An illustration of the basic format for organizational charts is provided within the Ownership Transfer file. Be sure the chart follows the example given and that it contains the following information:

- Correct name of each entity and person;
- Ownership percentage for each entity and person;
- Tax Identification Number of each entity;
- Clear indication of role, i.e. Member, Member/Manager, HUB, Non-Profit, Class B, LP, etc.;
- Nonprofit entities, public housing authorities and publicly traded corporations must show name of organization, individual board members and executive director;
- Ownership must be illustrated to the level of natural persons, whether owners or board members.

❖ **Tab 10 – Organizational Documents**

Each new entity shown on the organizational chart of the proposed Development Owner must provide the following documentation, as applicable to document the chain of control and signature authority from the highest to the lowest organization and signatory in the ownership hierarchy:

- ***Certificate of Reservation*** of name or Certificate of limited partnership, organization, or incorporation from the Texas Secretary of State or other appropriate certificate from the Secretary of State documenting that the proposed name of the organization may be used or that the existence of the organization has been recorded;
- ***Certificate of Account Status*** from the Texas Comptroller of Public Accounts or, if such a certificate is not available because the entity is newly formed or is not an organization that is subject to the state franchise tax, a statement to such effect;
 - For entities formed in a state other than Texas, a Certificate of Authority from the Texas Secretary of State to do business in Texas;
- Copies of the entity’s governing documents, including but not limited to, its articles of incorporation, articles of organization, bylaws, regulations and/or partnership agreement.

❖ **Tab 11 - Financial Information**

Financial statements, preferably audited, must be submitted for **all** proposed new individuals, entities, and the individual representing the proposed new entities. Financial information must be provided for any transferees holding an ownership interest of 10 percent or greater in any Principal or Controlling entity. If the new entity is a nonprofit organization, the executive, director, or authorized representing officer is not required to submit their individual financial information. However, the financial statement for the organization must be submitted.

- Financial Statements - For newly formed entities, please indicate if financials are not available.
- Authorization to Release Credit Information Form - This form must be executed by **all** proposed new individuals and/or the individual representing the proposed new entities.

Please note that additional financial information will be requested for ownership transfers that result in a loss of a property tax exemption for the Development.

❖ **Tab 12 - List of Organizations and Principals**

- Complete the yellow highlighted cells as needed, beginning with the proposed Development Owner name.
- Organizations AND persons will be listed on this form.
- Each **entity** will have its own section, in which its individual structure will be given.
- Select the appropriate TDHCA experience for each person from the Yes/No drop-down menu. Make a selection for each entry.

- Be sure names match the organizational charts. Avoid nicknames.
- Additional spaces for Sub-Entities or Principals are available by un-hiding rows.
- Submit as many pages of the form as necessary to report all organizations and natural persons.
- **When converting to PDF format, be sure to adjust page breaks as necessary.**

❖ **Tab 13 – Nonprofit Participation**

If a change in ownership will result in the addition and/or replacement of a nonprofit organization, this form must be completed and submitted. All nonprofit organizations must complete this form without regard to their level of ownership or the set-aside under which the Development was awarded.

❖ **Tab 14 - Uniform Previous Participation Form**

- The form must be completed for each entity and natural Person shown on the organizational chart. For nonprofit entities, public housing authorities and publicly traded corporations, complete a separate exhibit for the entity, the individual board members and executive director.
- Note that the form has been divided into three sections depending on the program under which a person or entity participated.
- This form is still required of all Persons or entities, regardless of whether the Person or entity has previous experience with TDHCA funding. If a person or entity has no prior experience with TDHCA funding, indicate “N/A” on the form and submit.
- For “Contract Begin/End” enter the time period a person’s or entity’s role in each property identified began and ended. This applies to any developments that a Person or entity might have been involved with originally, but have since been transferred over to another Person or entity.
- If the Person’s or entity’s role in a property or service related activity has not ended then leave the “Contract End” column blank.
- If more space is needed, simply print out another form.

❖ **Tab 15 – Credit Limit Certification Form – (9% HTC developments only)**

- This form is NOT required for allocations made prior to 1995.
- Form must be executed by each proposed new individual and/or the individual representing the proposed new entities.
- The credit limit that applies to a development is stated in the QAP of the year of the development’s allocation.

The credit limit may be waived if the award of credits was made at least five years prior to the transfer or if the syndicator, investor or limited partner is taking ownership of the development and not merely replacing the general partner.

The Tabs below pertain to requirements noted in the Department’s Land Use Restriction Agreement (LURA) for the Development. Development Owners must ensure that they have complied with each of these sections or notate that the requirement is not applicable to their LURA.

❖ **Tab 16 - Right of First Refusal (ROFR)**

A review of the LURA must be conducted to determine if a ROFR (as referenced in §42(i)(7) of the Internal Revenue Code) applies to the Development. The ROFR information is available on LURA’s executed after 1995. However, for years prior to 1995, the agreement may have been a part of the application but not specified in the LURA. If the LURA is dated prior to 1995, please contact the Asset Manager to confirm if the original application included a ROFR requirement.

If it is determined that the Development has a ROFR requirement, the process must be followed when an Owner seeks to sell the property anytime after the 15th year of the compliance period. If the compliance period will end before the Department approves a transfer or before the transfer is consummated, then the ROFR process requirement will apply.

An Ownership Transfer cannot be approved until the ROFR requirements have been satisfied.

After confirming the ROFR status, the following must be provided:

- Statement from owner confirming that ROFR is not required per the LURA; or
- A letter from Department evidencing ROFR conditions were satisfied, and
- A copy of the final Sales Contract.

If providing a letter from the Department it cannot be dated more than 24 months prior to the Ownership Transfer request or the ROFR process must be repeated.

❖ **Tab 17 - Historically Underutilized Business (HUB)**

If the original application for the development scored points for proposing that a HUB would participate in the ownership of the Development and the current participating HUB will change in conjunction with the proposed Ownership Transfer request, then documentation must be submitted for the new proposed HUB that will show evidence that the proposed HUB will satisfy the commitment in the application and/or LURA. The proposed new HUB must submit the following:

- A current certificate from the Texas Building and Procurement Commission (formerly General Services Commission), verifying that the entity is a HUB.
- If not already provided under any other Tab, submit a copy of the agreement that clearly outlines the role and responsibility of the HUB in managing the property. This information will be reviewed to determine the adequacy of material participation by the HUB per the LURA, if applicable.

The organization chart for the proposed Development must demonstrate that the HUB will materially participate in the development and operation of the development.

NOTE: the rules for HUB participation may have changed from year to year. Therefore, it is IMPORTANT that you refer to the applicable Qualified Allocation Plan (QAP) for the year the allocation was made in order to know and understand what HUB requirements, if any, will be required to be maintained when requesting an Ownership Transfer.

❖ **Tab 18 - Nonprofit Joint Ventures**

If the original application for the development scored points for proposing a joint venture between a for-profit and a nonprofit organization, this requirement must be preserved. If required by the LURA and/or application and if the Ownership Transfer request would alter the participation of a joint venture with the current nonprofit, the organization chart must indicate that a qualified nonprofit organization would continue to materially participating in the Development as one of the General Partners or managing members. The proposed nonprofit entity to be added to the Development, must provide the following:

- 501(c)(3) or (4) determination letter from the Internal Revenue Service;
- Articles of incorporation and bylaws indicating that fostering affordable housing is an exempt purpose of the organization;

- Completed form entitled “**Nonprofit Participation**” (Tab 13).
- If not already provided under any other Tab, submit a copy of the agreement that clearly outlines the role and responsibility of the non-profit in managing the property. This information will be reviewed to determine the adequacy of material participation by the non-profit organization per the LURA, if applicable.

❖ **Tab 19 - Nonprofit Set-Aside**

If the Applicant was awarded an allocation in the Nonprofit Set-Aside, a qualified nonprofit organization must continue to have control of the proposed development owner. To comply with §42(h)(5) of the Code and §2306.6706 of the Texas Government Code, a request to replace the original nonprofit in control must include:

- 501(c)(3) or (4) determination letter from the Internal Revenue Service;
- articles of incorporation and bylaws indicating that fostering affordable housing is an exempt purpose of the organization;
- evidence that the nonprofit organization prohibits members of the board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;
- third party legal opinion (a template for the opinion can be found in the current year’s application forms) stating:
 - that the nonprofit organization is not affiliated with or controlled by a for-profit organization and the basis for that opinion, and
 - that the nonprofit organization is eligible, as further described, for a housing tax credit allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the nonprofit organization controlling the development and otherwise meeting the requirements of the Internal Revenue Code, §42(h)(5);
- a copy of the nonprofit organization's most recent audited financial statement;
- evidence, in the form of a certification (signed by the chief executive or other authorized officer), that a majority of the members of the nonprofit organization's board of directors principally reside:
 - in this state, if the development is located in a rural area; or
 - not more than 90 miles from the development if the development is not located in a rural area;
- Completed form entitled “**Nonprofit Participation**” (Tab 13).
- If not already provided under any other Tab, submit a copy of the agreement that clearly outlines the role and responsibility of the non-profit in managing the property. This information will be reviewed to determine the adequacy of material participation by the non-profit organization per the LURA, if applicable.

NOTE: the rules for participation by a nonprofit may have changed from year to year. Therefore, it is IMPORTANT that you refer to the applicable Qualified Allocation Plan (QAP) for the year the allocation was made in order to know and understand what nonprofit participation requirements, if any, will be required to be maintained when requesting an Ownership Transfer.

❖ **Tab 20 – Status of Compliance**

If the property being transferred has any uncorrected issues of noncompliance or is in the corrective action period, the proposed new owner must provide a corrective action plan identifying a timeline for correcting any outstanding issues.

❖ **Tab 21 - Experience**

Documentation must be submitted for each proposed new individual and entity to support that they have experience with the operation or management of affordable housing developments or evidence that any lack of experience is being mitigated through other methods (such as 3rd party management/compliance consultant, experienced partner, attendance at relevant training, etc.) The Department may require incoming owners to attend program training.

The following items are needed only for Ownership Transfers that involve the sale of the property to a new individual or entity

❖ **Tab 22 – Closing Documentation**

Prior to the sale of the Development, the following documentation must be submitted for review.

- A copy of the unrecorded deed in the name of the new ownership entity must be submitted for review.
- A copy of the title commitment.

After conditional approval of an ownership transfer that is the result of a sale of the Development is granted by the Department, an **Agreement to Comply with Declaration of Land Use Restrictive Covenants** will be prepared by the Department. The Agreement must be executed by the purchaser(s) and recorded in the county in which the property is located. A copy of the recorded sale deed and the recorded original Agreement to Comply must be returned to the Department. Final approval of an ownership transfer will be conditioned upon the execution, recordation and return of the Agreement to Comply document.

NOTE: If the change in ownership involves the sale of a 4% Housing Tax Credit development that was funded in association with tax-exempt bonds that were issued by the Texas Department of Housing and Community Affairs, an Agreement to Comply with the existing Regulatory Agreement will also be drafted for the purchaser(s) to sign and record.

Additional Forms Required of New Owners and/or General Partners

Upon a change in the ownership structure of a development, either through sale of the property or a change in the General Partner(s), additional forms must be updated and submitted to the Department in order to facilitate compliance with reporting requirements. The following forms should be completed and submitted to the Compliance Department:

- Electronic Compliance Reporting Filing Agreement; and
- Owner's Designation of Administrator of Accounts

You can find these forms at the Department's Compliance Monitoring & Tracking System webpage, the link follows: http://www.tdhca.state.tx.us/comp_reporting.htm. Any questions related to these forms should be directed to James Roper at (512) 936-7751.

Please note that even if the owner entity and/or management company did NOT change, the forms bulleted above are still required to be updated and submitted. The Department relies on the owner's certification to give authority to someone to manage the property in the

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Department's Compliance Monitoring and Tracking System (CMTS). If the individual who originally completed the forms above is no longer involved in the development, then a new form must be provided to the Department.