

**SUPPLEMENTAL BOARD BOOK
OF
FEBRUARY 20, 2020**



Leslie Bingham Escareño, Vice-Chair

Paul Braden, Member

Sharon Thomason, Member

Leo Vasquez, III, Member

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

**A G E N D A
9:00 AM
February 20, 2020**

**City of Weslaco Legislative Chamber
255 South Kansas Avenue
Weslaco, Texas 78596**

CALL TO ORDER

ROLL CALL

Leslie Bingham Escareño, Vice Chair

CERTIFICATION OF QUORUM

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

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

Resolution celebrating the 20th Anniversary of the Texas Bootstrap Loan Program

CONSENT AGENDA

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

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

ASSET MANAGEMENT

- a) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

03134	Cien Palmas	El Paso
16422	Pathways at Shadowbend Ridge	Austin
17736/19707	Providence at Ted Trout Drive	Hudson
19133	Alazan Lofts	San Antonio

- b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application and Land Use Restriction Agreement

00010	El Patrimonio Apartments	McAllen
01031	La Estancia Apartments	Weslaco
10035	HomeWood at Zion	Houston

- c) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

00056	The Woodlands of Beaumont	Beaumont
03134	Cien Palmas	El Paso

Homero Cabello
Director of Program
Controls and Oversight

COMMUNITY AFFAIRS

- d) Presentation, discussion, and possible action on approval of the draft 2020 Department of Energy Weatherization Assistance Program state plan for public comment

Brooke Boston
Director of Programs

FINANCIAL ADMINISTRATION

- e) Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions

Ernie Palacios
Director of Financial Administration

LEGAL

- f) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Plainview II Triplex (HOME 532315 / CMTS 2658)
- g) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Southeast Texas CDC (HOME 537606 / CMTS 2680)
- h) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Maryland I (HTC 91122 / CMTS 990)

Jeff Pender
Deputy General Counsel

RULES

- i) Presentation, discussion, and possible action on the adoption of the 2020 State of Texas Low Income Housing Plan and Annual Report, and an order adopting the repeal and new 10 TAC §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their submission to the *Texas Register*

Brooke Boston
Director of Programs

SINGLE FAMILY AND HOMELESS PROGRAMS

- j) Presentation, discussion, and possible action on awards for the 2019 HOME Investment Partnerships Program Single Family Development Open Cycle Notice of Funding Availability

Abigail Versyp
Director of Single Family and Homeless Programs

BOND FINANCE

- k) Presentation, discussion, and possible action on Resolution No. 20-011 authorizing the filing of one or more applications for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds, authorizing state debt application, and containing other provisions relating to the subject
- l) Presentation, discussion, and possible action on Inducement Resolution No. 20-010 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

Monica Galuski
Director of Bond Finance

Teresa Morales
Director of Multifamily Bonds

20602	Vermillion Apartments	Houston
20604	The Walzem	San Antonio ETJ

MULTIFAMILY FINANCE

- m) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications
- n) Presentation, discussion, and possible action regarding the re-issuance of the Determination Notice for Scharbauer Flats (#20448)

Teresa Morales
Director of Multifamily Bonds

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Outreach and Activities Report (Jan-Feb)
- b) Report on the Department’s 1st Quarter Investment Report in accordance with the Public Funds Investment Act
- c) Report on the Department’s 1st Quarter Investment Report relating to funds held under Bond Trust Indentures

Michael Lyttle
Director of External Affairs

Ernie Palacios
Director of Financial Administration

Monica Galuski
Director of Bond Finance

ACTION ITEMS

ITEM 3: TEXAS HOMEOWNERSHIP

Housing Finance Activity Report

Cathy Gutierrez
Director of Texas
Homeownership

ITEM 4: ASSET MANAGEMENT

Presentation, discussion, and possible action regarding approval of a Multifamily Direct Loan assumption

1001800 The Lakeshore Apartments Homes Lake Dallas

Homero Cabello
Director of Program
Controls and Oversight

ITEM 5: MULTIFAMILY FINANCE

a) Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.204(15) regarding the requirements for a Feasibility Report for proposed Rehabilitation Development Applications

Marni Holloway
Director of
Multifamily Finance

b) Presentation, discussion, and possible action on penalties for failure to meet deadlines under 10 TAC 11.9(c)(8) Readiness to Proceed

19070	South Rice Apartments	Houston
19074	900 Winston	Houston
19077	Telephone Road Elderly	Houston
19085	Gala at McGregor	Houston
19242	The Tramonti	Houston
19245	Huntington Chimney Rock	Houston
19296	McKee City Living	Houston

c) Presentation, discussion, and possible action on the First Amendment to the 2020-1 Multifamily Direct Loan Notice of Funding Availability

Andrew Sinnott
Multifamily Loan
Programs Administrator

d) Presentation, discussion, and possible action regarding the cancellation of the 2020-2 Multifamily Direct Loan Special Purpose Notice of Funding Availability and approval of the 2020-2B Multifamily Direct Loan Special Purpose Notice of Funding Availability

e) Presentation, discussion, and possible action regarding the approval for publication in the *Texas Register* of the 2020-4 Multifamily Direct Loan Special Purpose Notice of Funding Availability (NOFA)

ITEM 6: RULES

Presentation, discussion, and possible action on the proposed repeal and proposed new 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, and Subchapter B, Homeless Housing and Services Program; 10 TAC §7.31, §7.34, §7.36, §§7.41-44, Emergency Solutions Grants; and 10 TAC §7.62 and §7.65, Ending Homelessness Fund, and directing publication for public comment in the *Texas Register*

Abigail Versyp
Director of Single Family
and Homeless Programs

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

EXECUTIVE SESSION

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

Leslie Bingham Escareño
Vice Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

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

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact MeLissa Nemecek, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

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

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

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

THIS RESTRICTION IS APPLICABLE TO THE IDENTIFIED MEETING ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 20, 2020

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Plainview II (Triplex) (HOME 532315 / CMTS 2658)

RECOMMENDED ACTION

WHEREAS, Plainview II (Triplex), owned by Hale Center Housing Authority (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, an Owner representative has attended multiple informal conferences and signed a prior Agreed Final Order in 2017, relating to file monitoring findings identified during a 2016 onsite file monitoring review;

WHEREAS, the terms of the prior Agreed Final Order were violated and the \$1,000 administrative penalty was paid in full, then final corrections were received after the penalty was paid;

WHEREAS, TDHCA identified the following findings of noncompliance during its 2019 onsite monitoring review and referred them for an administrative penalty when they were not fully and timely corrected: failure to provide pre-onsite documentation; program unit not leased to Low-Income household / household income above limit upon initial occupancy for units 302, 304 and 306; lease language violations for units 302, 304 and 306; and lease notice violations for units 302, 304 and 306;

WHEREAS, on December 17, 2019, an Owner's representative participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$6,500, with \$4,000 to be paid within 30 days of approval by the Board and the remaining \$2,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before May 20, 2020;

WHEREAS, the above household income findings remain unresolved for units 302 and 304; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$6,500, subject to partial forgiveness as outlined above, for noncompliance at Plainview II (Triplex), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Hale Center Housing Authority (Owner) is the owner of Plainview II (Triplex) (Property), a low-income apartment complex composed of three units, located in Plainview, Hale County. Cindy Carthel is the executive director for the housing authority and is the only full-time employee. CMTS lists Ms. Carthel as the primary contact for Owner. The property is self-managed.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by a prior owner in 1994 in consideration for an interest-free HOME loan in the amount of \$204,460 to build and operate the Property. Owner acquired the Property in 2014, and signed an Assumption Agreement, assuming the TDHCA loan and all duties imposed, including operating the Property under the requirements of the LURA.

Owner was previously referred for an administrative penalty for reporting violations and file monitoring, violations, with an Agreed Final Order signed in 2017, calling for an administrative penalty of \$1,000, which was to be fully deferred and forgiven provided that Owner met the terms of the Order. Owner signed the Order, but did not fully comply and the \$1,000 penalty was declared due and payable. The penalty was paid, and the remaining findings were ultimately resolved.

Ms. Carthel has asked on numerous occasions to be released from the LURA, and asked whether they can pay off the HOME loan in order to receive a LURA release. The current principal balance is \$56,219.10. TDHCA's Asset Management, Compliance, HOME, and Program Controls and Oversight Divisions considered the request in December 2019, but rejected it because the financing structure for this loan at 0% interest provided a significant benefit for the owner. They instead recommended that Ms. Carthel consider submitting a non-material LURA amendment request to decrease the minimum household size because of occupancy problems. Property consists of four-bedroom units, and the LURA requires occupancy by households of at least five individuals. Ms. Carthel states this has led to occupancy problems because there is a high vacancy rate in the area and not enough demand by households of at least five individuals.

The following new compliance violations were identified during 2019. They were then referred for an administrative penalty and have been resolved:

1. Failure to submit pre-onsite documentation;
2. Lease language violations for units 302, 304 and 306;
3. Lease notice violations for units 302, 304 and 306; and
4. Program unit not leased to Low-Income household / household income above limit upon initial occupancy for unit 306.

The following new compliance violations were identified during 2019. They were then referred for an administrative penalty and have not been resolved:

1. Program unit not leased to Low-Income household / household income above limit upon initial occupancy for units 302 and 304. The income for unit 302 was confirmed to be more than double the maximum income limit for a household of six at 50% of Area Median Income. The income for unit 304 may qualify, but acceptable verifications have not been submitted.

Owner participated in an informal conference with the Enforcement Committee on December 17, 2019, and agreed to sign an Agreed Final Order with the following terms:

1. A \$6,500 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$4,000 portion of the administrative penalty on or before March 23, 2020;
3. Owner must address the file monitoring violations as indicated in the Agreed Final Order and submit full documentation of the corrections to TDHCA along with a non-material LURA amendment request on or before May 20, 2020;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$2,500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full remaining administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$6,500 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
HALE CENTER HOUSING AUTHORITY	§	TEXAS DEPARTMENT OF
WITH RESPECT TO	§	HOUSING AND COMMUNITY
PLAINVIEW II (TRIPLEX)	§	AFFAIRS
(HOME FILE # 532315 / CMTS # 2658)	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 20th day of February, 2020, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **HALE CENTER HOUSING AUTHORITY**, a public housing authority (Respondent).

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

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

WAIVER

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

FINDINGS OF FACT (FOF)

Jurisdiction:

1. **During 1994**, Caprock Community Action Association, Inc. ("Prior Owner") received a HOME loan in the amount of \$204,460 to build and operate Plainview II (Triplex) ("Property") (HOME file No. 532315 / CMTS No. 2658 / LDLD No. 117).

2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective August 19, 1994, and filed of record at Volume 851, Page 397 of the Official Public Records of Real Property of Hale County, Texas (“Records”). In accordance with Section 7.8 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property and signed an Assumption Agreement with TDHCA to assume the loan and all duties imposed, effective March 17, 2014, and filed the same in the Records at Document Number 2014-001000.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. Property has a history of violations and previously signed an Agreed Final Order on January 11, 2018, agreeing to a \$1,000 Administrative Penalty which was to be fully forgivable provided that Respondent submitted complete corrections. The Order was violated and the full penalty was paid.
6. An on-site monitoring review was conducted on May 23, 2019, to determine whether Respondent has complied with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a September 23, 2019, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline and were referred for an administrative penalty:
 - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review, including utility allowance information, and written policies and procedures. This finding has been resolved.
 - b. Respondent failed to provide documentation that program units were leased to Low-Income households / household incomes were within prescribed limits upon initial occupancy for units 302, 304, and 306, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2.4 of the LURA, which require screening of tenants to ensure qualification for the program. The violation for unit 306 has been resolved, but the finding remains unresolved for units 302 and 304.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

- c. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 302, 304, and 306, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. This finding has been resolved.
 - d. Respondent failed to execute required lease provisions or exclude prohibited lease language, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language preventing evictions or refusal to renew except for good cause. Leases were also missing language to require households to report changes in student status. This finding has been resolved.
7. The following violations remain outstanding at the time of this order:
 - a. Program units not leased to Low-Income households / household incomes not within prescribed limits upon initial occupancy for units 302, and 304, as described in FOF #6.b.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.607 and §10.618 in 2019, by not submitting pre-onsite documentation including utility allowance information and written policies and procedures, in preparation for the monitoring review.
4. Respondent violated 10 TAC §10.611 and Section 2.4 of the LURA in 2019, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units 302, 304, and 306.
5. Respondent violated leasing requirements in 10 TAC §10.613 in 2019, by failing to provide a Tenant Rights and Resources Guide to units 302, 304, and 306, and have the households sign an acknowledgment form.
6. Respondent violated leasing requirements in 10 TAC §10.613 in 2019, by failing to execute required lease language for units 302, 304, and 306.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.

8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
10. An administrative penalty of \$6,500 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$6,500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$4,000 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

IT IS FURTHER ORDERED that Respondent shall fully address the file monitoring violations as indicated in Exhibit 1 and submit full documentation of the corrections to TDHCA on or before 5/20/2020.

IT IS FURTHER ORDERED that Respondent shall submit a non-material LURA amendment request to Rene Ruiz on or before 5/20/2020, requesting permission to decrease the number of required occupants per unit in Section 2.3 of the LURA due to vacancy problems. See Exhibit 3 for details.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty in the amount of \$2,500, which shall then be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the Property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$2,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community

Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the Property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 4, and obtain approval from the Department prior to consummating a sale of the Property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on February 20, 2020.

By: _____
Name: Leslie Bingham-Escareño
Title: Chair of the Board of TDHCA

By: _____
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 20th day of February, 2020, personally appeared Leslie Bingham-Escareño, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 20th day of February, 2020, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

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

Instructions:

6. **Household income above limit upon initial occupancy for units 302 and 304:** Follow the instructions below with respect to each unit, and submit documentation.
 - i. **Unit 302:** Our understanding based upon your representations during the informal conference is that the over-income household in this unit has moved out. Follow the instructions in the applicable row of the table on the following page.
 - ii. **Unit 304:**
 1. If the household that moved in 3/1/2018 has vacated the unit or does not qualify, follow the instructions in the applicable row of the table on the following page.
 2. If the household that moved in 3/1/2018 remains in the unit and qualifies for occupancy, certify them using their *current circumstances*, and submit the following:
 - a. New application using current circumstances*;
 - b. New verifications of each source of income and assets*;
 - c. New Tenant Income Certification*;
 - d. Lease and lease addendum;
 - e. Tenant Rights and Resources Guide Acknowledgment; and
 - f. Copy of the Tenant Selection Criteria in place at the time of application.

**Remember that items a-c above must be dated within 120 days of one another.*

-- Instructions continued from page 8 --

If unit 302 or 304 is vacant or the household does not qualify, follow alternate instructions below.

Circumstance with respect to units listed above	Instruction
I. If unit is occupied by a qualified household	<p>Either provide evidence of eligibility at the time of move-in, or recertify the household using their current circumstances. Submit for each unit:</p> <ul style="list-style-type: none"> A. Tenant application; B. Verifications of each source of income and assets; C. Tenant Income Certification; D. Lease and lease addendum; E. Tenant Rights and Resources Guide Acknowledgment; F. Copy of the Tenant Selection Criteria in place at the time of application. <p><i>Remember that items A-C above must be dated within 120 days of one another. If you do not have all of this information, you should get new documentation for items A-C that do fit within that timeline.</i></p> <p>If the unit is vacant or the tenant does not qualify, follow alternate instructions below.</p>
III. If unit is occupied by a nonqualified household on a month-to-month lease	<ul style="list-style-type: none"> A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.** B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 5/20/2020 is acceptable for this circumstance provided that Requirement A above is fulfilled.
IV. If unit is occupied by a nonqualified household with a non-expired lease	<ul style="list-style-type: none"> A. Issue a nonrenewal notice** to tenant and provide a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available. B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after 5/20/2020 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.
V. If unit has been vacant <i>more than</i> 30 days	<ul style="list-style-type: none"> A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA. B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 5/20/2020 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.

<p>VI. If unit has been vacant <i>less than 30 days</i></p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 5/20/2020 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by the that deadline.</p>
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**A full tenant file must include:*

- A. Tenant application;*
- B. Verifications of all sources of income and assets;*
- C. Tenant income certification;*
- D. Lease and lease addendum;*
- E. Tenant Rights and Resources Guide Acknowledgment; and*
- F. A copy of the tenant selection criteria under which the household was screened.*

Remember that items A-C above must be dated within 120 days of one another.

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

Exhibit 2

Tenant File Guidelines

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

**Important Note* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that period, you must recertify using current circumstances.*

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants **must** complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
 - a. **First hand verifications (required for HOME):** Paystubs or payroll printouts that show gross income. Ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
 - b. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
 - c. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
 - d. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
 - a. **First hand verifications (required for HOME)** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
6. **Lease:** Must conform to your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.

Tenant Rights and Resources Guide: Copies of the Guide and Acknowledgement form are available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm> In accordance with 10 TAC §10.613(l), you must customize the Guide for your property and post a laminated copy in a common area of the leasing office. Additionally, a representative of the household must receive a copy of the Guide and sign an acknowledgment of receipt (1) prior to, but no more than 120 days prior to, the initial lease execution date, and (2) upon any subsequent changes to the items described at paragraph b) below. The Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services. You must customize this information to your property.

Exhibit 3

Non-Material LURA Amendment Application Instructions

You have indicated that you are having leasing problems because Section 2.3 of the LURA requires occupancy by households of at least five people. To address this issue, you must submit a Non-Material LURA Amendment request on or before 5/20/2020, asking to decrease the number of required occupants per unit. To submit a Non-Material LURA Amendment request:

1. Details regarding the Non-Material LURA Amendment process begin at page 24 of the Post Award Activities Manual at this link: <https://www.tdhca.state.tx.us/asset-management/docs/19-PostAwardActivitiesManual.pdf>. You must follow the instructions under the sections labeled "All LURA Amendments" and "Non-Material LURA Amendments", and submit all required documentation to the attention of Rene Ruiz no later than 5/20/2020.
2. There is no processing fee since this is a HOME loan and the requested change has not already been implemented. You may therefore bypass any portions of the manual relating to required amendment fees.
3. Your asset manager is Rene Ruiz. He can be contacted at rene.ruiz@tdhca.state.tx.us or 512.475.1987 with questions about the amendment application.
4. Submit the application via email to Rene Ruiz at rene.ruiz@tdhca.state.tx.us, with a cc to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us no later than 5/20/2020.
5. corrective documentation via CMTS following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf> on or before 11/25/2017, then email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to let her know that the submission is ready for review

debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

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

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

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

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

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

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

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

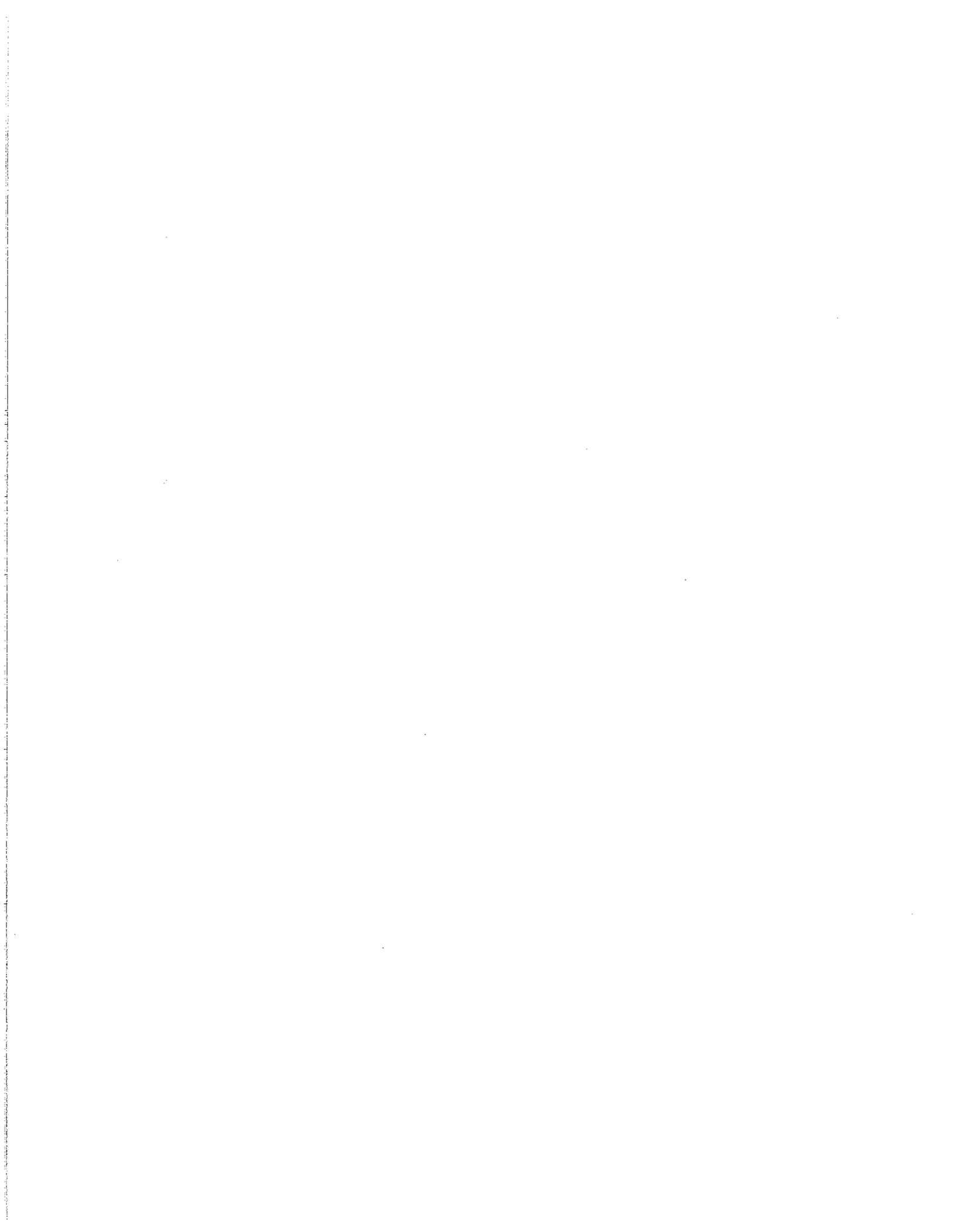
(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

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

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297



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BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 20, 2020

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Southeast Texas Community Development Corporation (HOME 537606 / CMTS 2680)

RECOMMENDED ACTION

WHEREAS, Southeast Texas CDC Rental Housing, owned by Southeast Texas Community Development Corporation, Inc. (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements for a low income apartment complex composed of 19 units, located in Port Arthur, Jefferson County;

WHEREAS, Owner representative has attended multiple informal conferences and signed prior Agreed Final Orders in 2015 and 2017;

WHEREAS, the 2015 Agreed Final Order was violated and the following violation remains unresolved to date: gross rent violations for two units;

WHEREAS, the 2017 Agreed Final Order was violated, with no corrective documentation received and the following violations remaining unresolved to date: failure to provide pre-onsite documentation; failure to provide written policies and procedures; failure to affirmatively market; and gross rent violations for four units;

WHEREAS, an administrative penalty of \$1,000 came due under the 2015 Agreed Final Order and the full administrative penalty was paid upon demand;

WHEREAS, an administrative penalty of \$2,500 came due under the 2017 Agreed Final Order and was referred to the Office of the Attorney General for collection, but closed as uncollectable, though some sporadic payments are being submitted;

WHEREAS, TDHCA performed a new onsite file monitoring review on May 21, 2019, identifying new violations that were not timely resolved, all of which remain unresolved to date, including: annual reporting violations; gross rent violations for failure to provide four units at 50% rent limits; noncompliance with tenant selection criteria requirements; noncompliance with lease requirements for all units; failure to submit Tenant Income Recertifications for five units; failure to provide pre-onsite documentation; failure to provide an affirmative marketing plan; and gross rent violations for five units;

WHEREAS, on January 28, 2020, an Owner's representative participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$9,200, with \$4,200 to be paid within 30 days of Board approval and the remaining \$5,000 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before May 20, 2020; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$9,200, subject to partial forgiveness as outlined above, for noncompliance at Southeast Texas CDC Rental Housing, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Southeast Texas Community Development Corporation (Owner) is the owner of Southeast Texas Community Development Corporation Rental Housing, a low income apartment complex composed of 19 units, located in Port Arthur, Jefferson County (Property). Records of the Texas Secretary of State list the following members and/or officers: Madison G. Hopson Sr. as Director and President, Joseph L. Williams as Director, and Rhonda G. Hopson as Director and Secretary. CMTS lists Madison Hopson as the primary contact(s) for Owner. The Property is self-managed.

The Property is subject to a Land Use Restriction Agreement (LURA) signed by Owner in consideration for an interest-free HOME loan in the amount of \$650,274 to build and operate the Property. This loan is delinquent, with no payments made since Hurricane Harvey damaged the Property in August of 2017. No casualty loss claim was submitted to the Department.

Owner has a history of noncompliance and has been referred to the Enforcement Committee for an administrative penalty multiple times. Initial penalty referrals were resolved with no administrative penalty after receiving training and extensive technical support from the Compliance Division and Legal Division. The property was referred again in 2015 and an Agreed Final Order calling for a fully forgivable \$1000 administrative penalty was signed. The Order was violated and the full \$1000 administrative penalty was paid upon demand. Owner has attended training and the number of violations improved as of 2017 when a second Agreed Final Order was signed, as had his responsiveness to the Department, but Owner continued to ignore certain violations, with some dating back to 2012. Owner also has difficulty adjusting when there are rule changes, such as the 2015 changes to the affirmative marketing plan rule, and the 2016 changes to the written policies and procedures rule. These problems have continued. A subsequent Agreed Final Order signed during December of 2017 called for a \$2,500 administrative penalty, with partial payment and full corrections due within 90 days of approval by the Board.

The Property is located in Port Arthur, and Owner indicated during an October 24, 2017, informal conference that the property had been severely impacted by Hurricane Harvey. Repairs were underway and were being funded by the owner personally because the property did not have wind or flood insurance. Owner had a waiting list for units and anticipated full occupancy as soon as units could be rehabilitated. Although the potential administrative penalty in 2017 was quite large, Hurricane Harvey was a significant consideration, and the Enforcement Committee ultimately voted to recommend a penalty of \$2,500 in 2017. No corrective documentation was submitted. Instead, the owner submitted a letter stating that Hurricane Harvey was the reason for his noncompliance, however, all findings were file related and could be resolved even while units were offline. The 2017 Order was referred to the Office of the Attorney General for collections, but was closed as uncollectable. Sporadic payments of \$210 have been made, but the bulk of the penalty remains unpaid.

The following new compliance violations were identified during a May 2019 file monitoring review. They were then referred for an administrative penalty and all findings remain unresolved, with no corrections submitted:

1. 2017 Annual Owners Compliance Report: Owners Financial Certification has not been submitted.
2. 2018 Annual Owners Compliance Report: Owners Financial Certification has not been submitted.
3. Gross rent findings for failure to provide four units at 50% rent limits;
4. Failure to comply with tenant selection criteria requirements for three units;
5. Failure to provide written policies and procedures, including tenant selection criteria;
6. Failure to post Tenant Rights and Resources Guide or provide copies to tenants for two units;
7. Failure to perform sixth year re-certifications for five units;
8. Failure to provide pre-onsite documentation, including an Entrance Interview Questionnaire and Unit Status Report;
9. Failure to provide Affirmative Marketing Plan; and
10. Gross rent violations for five units;

Owner participated in an informal conference with the Enforcement Committee on January 28, 2020, and indicated that he has hired a consultant to assist with resolving all past noncompliance. The consultant is qualified to make the necessary corrections if the Owner cooperates and provides necessary documentation. Owner has agreed to sign an Agreed Final Order with the following terms:

1. A \$9,200 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$4,200 portion of the administrative penalty on or before March 23, 2020;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before May 20, 2020;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$5,000 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Past Agreed Final Orders have been violated and the current file monitoring violations - particularly those relating to gross rents - are serious. Therefore, the Enforcement Committee recommended the maximum potential administrative penalty, but removed the potential daily penalty accrual for four primary reasons. First, the owner has done a significant amount of work toward restoring the physical condition of the property, including timely resolution of Uniform Physical Condition Standards violations identified by TDHCA and personally financing hurricane repairs. Second, the Committee recognized the lasting effects of Hurricane Harvey, noting that the property is located a Presidentially Declared Disaster area, but also noting that the restoration date passed on September 30, 2019, and did not affect the owner's ability to resolve file violations. Third, the owner has hired a qualified compliance consultant to address file violations; she is capable of correcting the violations if the owner cooperates. Finally,

TDHCA is the second lien mortgage lender for this property and there is a loan default, so any penalty payment diverts money from that loan. Further, although the 2017 administrative penalty remains unpaid, Enforcement Committee members thought that the owner's investment in the physical condition, coupled with hiring a qualified consultant to address the file monitoring violations are justification to offer a final opportunity to comply before the Department considers a second lien foreclosure. If the Agreed Final Order is ultimately not signed by the Owner or is violated, the Department will consider foreclosure, acknowledging that there are no further possibilities for informal resolution of the compliance violations

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$9,200 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
SOUTHEAST TEXAS COMMUNITY	§	TEXAS DEPARTMENT OF
DEVELOPMENT CORPORATION, INC.	§	HOUSING AND COMMUNITY
WITH RESPECT TO	§	AFFAIRS
SOUTHEAST TEXAS CDC RENTAL HOUSING	§	
(HOME FILE # 537606 / CMTS # 2680)	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 20th day of February, 2020, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION, INC.**, a Texas nonprofit corporation (Respondent).

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

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

WAIVER

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

FINDINGS OF FACT (FOF)

Jurisdiction:

1. During 1998, Respondent received an allocation of HOME funds totaling \$650,274 to build and operate Southeast Texas CDC Rental Housing Corporation Rental Housing in Port Arthur, Jefferson County (“Property”) (HOME file No. 537606 / CMTS No. 2680 / LDDL No. 96).
2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective September 15, 2000, and filed of record at Document Number 2000042415 of the Official Public Records of Real Property of Jefferson County, Texas (“Records”).
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. Property has a history of violations and previously signed two Agreed Final Orders.
 - a. The first was signed March 24, 2015, agreeing to pay a \$1,000 administrative penalty, which was to be fully forgivable provided that Respondent complied with all requirements of the Order. The Order was violated and the administrative penalty was paid in full upon demand. Findings of noncompliance remain unresolved to date.
 - b. The second was signed January 29, 2018, agreeing to pay a \$2,500 administrative penalty, which was to be partially forgivable provided that Respondent complied with all requirements of the Order. The Order was violated and a \$1,250 portion of the administrative penalty remains unpaid. Findings of noncompliance remain unresolved to date.
5. On May 11, 2018 and July 6, 2018, TDHCA sent notice that Respondent had failed to timely submit the financial certification portion of the 2017 Annual Owner’s Compliance Report that was due April 30, 2018, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report.
6. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit the financial certification portion of the 2018 Annual Owner’s Compliance Report that was due April 30, 2019, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

7. An on-site monitoring review was conducted on May 21, 2019, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a September 12, 2019, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
- a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review.
 - b. Respondent collected gross rents that exceeded income limits as a result of a miscalculated utility allowance affecting units 2838-B, 2848-A, 549-A, and 2929-C. The violation for unit 2848-A was then repeated for a second household. TDHCA publishes maximum rent limits for the tax credit program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Exceeding the maximum rent is a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations).
 - c. Respondent collected gross rents that exceeded income limits because of its failure to designate four units at the 50% income and rent limits, a violation of Section 2.3 of the LURA. Exceeding the maximum rent is a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations).
 - d. Respondent failed to provide an affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled.
 - e. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements.
 - f. Respondent failed to include the written tenant selection criteria under which units C were screened in the household files for units 808 10th St D, 2838 15th St A and 2848 15th St A, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements and include a copy in each tenant file.
 - g. Respondent failed to provide Tenant Income Certifications and verifications of income and assets for units 800 10th St, 808 10th St D, 2838 15th St A, 2848 15th A and 2829 18th St C., a violation of 10 TAC §10.612 (Tenant File Requirements), which requires HOME developments to complete recertifications with

verifications for each HOME assisted unit every sixth year of the Development's affordability period. The sixth year period was between September 15, 2017 through September 14, 2018.

- h. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office.
 - i. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 808 10th St D and 2838 E 15th St A., a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
8. All violations listed above remain outstanding at the time of this order.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.607 in 2018 and 2019 by failing to submit complete Annual Owner's Compliance Reports for the years 2017 and 2018.
4. Respondent violated 10 TAC §10.607 and §10.618 in 2019, by not submitting pre-on-site documentation in preparation for the monitoring review.
5. Respondent violated 10 TAC §10.622 repeatedly between 2011 and present, by charging gross rents exceeding the allowable limits, and not making timely corrections once the violations were discovered.
6. Respondent violated 10 TAC §10.617 in 2019, by failing to provide a complete affirmative marketing plan.
7. Respondent violated 10 TAC §10.610 in 2019, by not maintaining written tenant selection criteria meeting TDHCA requirements, and not including copies in tenant files.
8. Respondent violated 10 TAC §10.612 in 2017 and 2018, by failing to provide tenant income certifications and documentation for four units on the sixth year of the HOME affordability period.

9. Respondent violated leasing requirements in 10 TAC §10.613 in 2019, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office and by failing to have two households sign an acknowledgement of receipt.
10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
11. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
12. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
13. An administrative penalty of \$9,200 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$9,200, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$4,200 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before May 20, 2020.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this Order will be accepted in lieu of the remaining assessed administrative penalty in the amount of \$5,000, which will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$5,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on February 20, 2020.

By: _____
Name: Leslie Bingham-Escareno
Title: Vice Chair of the Board of TDHCA

By: _____
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 20th day of February, 2020, personally appeared Leslie Bingham-Escareno, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 20th day of February, 2020, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

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

Instructions:

6. **Annual Reports** – Submit the Annual Owner Financial Certification portions of the Annual Owners Compliance reports for 2017 and 2018. These reports cannot be completed on paper and the data must be entered directly into CMTS at <https://pox.tdhca.state.tx.us/aims2/pox>. Guides and resources are at this link if needed <http://www.tdhca.state.tx.us/pmcomp/reports.htm>.
7. **Pre-on-site documentation** – Submit the Entrance Interview Questionnaire for 5/6/2019 and submit an updated Unit Status Report via CMTS. These reports cannot be completed on paper and data must be entered directly into CMTS. Both can be found by logging into CMTS at <https://pox.tdhca.state.tx.us/aims2/pox> under the "Unit Status Report" link.
8. **Gross rent violations (50% AMI)** – The LURA requires four units at the 50% AMI income and rent limits. The Department was unable to identify any units at 50% rent limits.

To correct: Identify four households with an income less than (or equal to) the 50% income limit and reduce the tenant rent so that the gross rent is restricted to the 50% rent limit. Refund (not credit) the total amount to rent overcharged to the affected households. Update the Unit Status Report (USR) to reflect these changes. Submit a copy of 1) the updated lease reflecting the reduced rent; 2) notification to the household of the reduction; and, 3) a copy of the cancelled check to evidence that the overcharged rent has been refunded. Alternatively, if the household has vacated and the previous tenant cannot be located, a Trust Account must be established in the resident's name. The

excess monies must be deposited into a trust account and if the funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

9. **Gross rent violations (specific units)** – Rents were overcharged to multiple households. Two were caused by incorrectly calculated utility allowances (i-ii below) and three by failure to use the Low-HOME (50%) rent limits (iii-v below).
- i. Unit 2838-B (Date of noncompliance 6/1/2012)
 - ii. Unit 2848-A (Date of noncompliance 7/6/2011)
 - iii. Unit 549-A (Date of noncompliance 10/11/2013)
 - iv. Unit 2848-A (Date of noncompliance 1/22/2014)
 - v. Unit 2929-C (Date of noncompliance 11/4/2013)

HOME developments that collect rent in excess of the allowable limit are required to refund the amount of rent that was overcharged (not credit to amounts owed to the development.)

Follow these steps to correct for each unit listed at i-v above:

- a. Calculate the rent overages;
- b. Reduce the households' rents and notify the tenants in writing of the reduction of rent;
- c. Update/amend the lease contracts;
- d. Provide the Housing Authority or household a refund; the appropriate refund recipient depends on how rent was being paid;
- e. What to submit if the same household remains in the unit: Copies of the resident notices, the calculation of refunded rent (an excel spreadsheet is preferred but not required), copies of the updated lease contracts, copies of cancelled checks to the Housing Authority and current tenant ledgers.²
- f. What to submit if the household has moved out: Calculation of refunded rent (an excel spreadsheet is preferred but not required), and copies of cancelled checks to the Housing Authority.²

The Department will then determine whether the submitted materials sufficiently correct the noncompliance. Partial corrections are unacceptable and the Owner is responsible for ensuring that submissions are complete and satisfactorily address all findings. If there are questions, the Department urges you to ask them before the deadline so that a complete submission can be made.

² The Compliance Division is authorized to alter the lists at "e" and "f" above for the benefit of Respondent, if deemed appropriate by the Director of Compliance Monitoring. Respondent has represented that some of the tenant files and property records were damaged during Hurricane Harvey. This may mean that alternate documentation will need to be reviewed in lieu of some documentation requested above, but options cannot be evaluated without more information.

10. Written tenant selection criteria (property-wide) –

How to prepare compliant criteria: Update the written policies and procedures to address all requirements at 10 TAC §10.610. Staff recommends using that rule as a checklist. See Exhibit 2 for further details on information that must be included in your policies. Ensure that you include a new effective date for the policy.

The “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:

<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit: Complete written policies and procedures, including tenant selection criteria.

11. Written tenant selection criteria (units 808 10th St D, 2838 15th St A, and 2848 15th St A.) –

Technical support: Effective April 24, 2016, the Tenant Selection Criteria under which an applicant was screened must be included in the household's file. The Tenant Selection Criteria was not found in the files for units 808 10th St D, 2838 15th St A, and 2848 15th St A.

What to submit: Place a copy of the Tenant Selection Criteria in the files for the above units. Submit a certification signed by the Owner, certifying that this action has been completed and that all households that moved in after April 24, 2016 now include copies of the Tenant Selection Criteria under which they were screened, as required by 10 TAC §10.610.

12. Affirmative marketing plan –

Technical Support: First read the rule at 10 TAC §10.617 to gain a general understanding regarding affirmative marketing.

Steps to complete affirmative marketing plan:

- a. Get a copy of the plan form from <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. You can use any version of HUD Form 935.2A. This is the only acceptable form.
- b. Identify the appropriate housing market area in which outreach efforts will be made. A housing market area is the area from which you may reasonably expect to draw a substantial number of your tenants. As an example, the city in which your development is located may be an appropriate housing market area.
- c. Determine the groups that are least likely to apply and mark them in your plan.
To determine the groups, you must perform and document a reasonable analysis by which those groups were identified, and you must always include persons with disabilities. Some LURAs may also require marketing to veterans. This analysis must be included with the plan. If you use the current version of the HUD 935.2A, you will do this analysis by using Worksheet 1 to analyze your data versus the data for the census tract, housing market area, and (optional) expanded housing market area. See <https://factfinder.census.gov> for demographic data. When selecting groups, keep in mind that you typically would not market to groups that represent less than 1% of the population because they are not present in the marketing area.
- d. Identify and mark in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups that you have designated as least likely to apply. Specific examples:
 - i. Least likely to apply population - People with disabilities:
 - A. Local Center for Independent Living (CIL) – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html

- B. Aging and Disability Resource Center (ADRC) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 - C. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 - D. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
 - E. Local non-profits in your area serving people with disabilities
 - F. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
- ii. Least likely to apply population - White:
 - A. Examples of acceptable community contacts might include community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
 - iii. Least likely to apply population - Asian:
 - A. Local Asian real estate association
 - B. Local Asian Chamber of Commerce
 - C. Local Asian American Resource Center
 - D. Local organizations serving the Asian community
 - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
 - iv. Least likely to apply population - Black/African American:
 - A. Local Black/African American Chamber of Commerce
 - B. Local Black/African American Professionals Social Network
 - C. Weekly Black/African American newspaper / website for a city
 - D. Local community center or YMCA in a historically black/African American neighborhood;
 - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
 - v. Least likely to apply population - Hispanic:
 - A. Local Hispanic Chamber of Commerce
 - B. Local Young Hispanic Professional Association
 - C. The Hispanic Alliance
 - D. Mexican American Cultural Center
 - E. Local Spanish language publications
 - F. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
 - vi. Least likely to apply population – Not Hispanic:

- A. When this group is identified, no additional marketing is required, but the Development must refrain from targeting affirmative marketing efforts to Hispanic related groups.
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. The bottom section of the form regarding HUD approval can be ignored; you do not need their approval;
- g. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. A sample outreach letter was attached to the monitoring letter from TDHCA dated 6/17/2019. Ensure that the addresses and send dates are included so that TDHCA can verify that you have performed the required marketing. Remember that 10 TAC §10.617(c)(2) requires marketing materials to include the Fair Housing Logo and the contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms “reasonable accommodation” and must be in English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *“Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.”*
- h. Look over the “10.617 (affirmative marketing)” tab of the spreadsheet at the following link, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:
<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit: Once your Affirmative Marketing plan *and* outreach materials are complete, upload the following to CMTS: HUD Form 935.2A, documentation regarding how you determined the groups that are least likely to apply, and evidence of outreach marketing efforts.

9. Lease violations relating to the Tenant Rights and Resources Guide:

Actions to perform: Implement Tenants Rights and Resource Guide (Guide) as indicated at 10 TAC §10.613(l). Customize the Guide, which is available on the Forms webpage. Post customized and laminated Guide in a common area of the leasing office. Provide a copy to the households in units 808 10th St D and 2838 15th St A, and have each household sign the Tenant Rights and Resources Guide Acknowledgment available on the Forms webpage. Do not backdate. Going forward, provide a copy of the Guide to each household during the application process and upon any subsequent change to the amenities or services and have the households sign Acknowledgments.

What to submit: (A) A letter signed by the owner, certifying that a laminated copy of the Guide has been posted in a common area of the office, (B) a copy of the customized Guide, and (C) copies of the Acknowledgments signed by the households in units 808 10th St D and 2838 15th St A.

10. Tenant income certification and documentation – Property is required to perform recertifications with verifications of each HOME assisted unit every sixth year of the affordability period. The current period is 9/15/2017 through 9/14/2018. Recertifications were not performed for units 800 10th St, 808 10th St D, 2838 15th St A, 2848 15th A and 2829 18th St C.

How to correct: Recertify each household listed above and submit copies of the household's application, verifications of income (two months' worth check stubs) and assets (six months' worth of bank statements), executed Income Certification form (Do not backdate the form) and 1st and last page of the lease.

Exhibit 2

Written Policies and Procedures, including Tenant Selection Criteria

(see attached)

Each of the highlighted items in the attached documents must be added or altered in the policies.

Written Policies and Procedures

Development	Southeast Community Dev
CMTS #	2680
Review Date	05/21/19
Lead Monitor	Virginia Tucker-Vasterling

TSP received at onsite review

Reviewed Under §10.610(f)	
Has the written policies and procedures been approved in a batch review (or is in the process of a batch review) as permitted under §10.610(f)?	No
General Requirements	
Is there an effective date on the written policies and procedures?	Yes
Does the criteria allow applications to be accepted by mail and at the the development's site and/or leasing office? Needs to address how application can be submitted	No
Does the criteria allow applications to be submitted in alternative methods such as email, website, and/or fax? See above	No
Comments:	
Tenant Selection Criteria	
Does the criteria specifications reasonably related to the applicant's ability to perform under the lease?	Yes
Does the criteria include applicant's basic eligibility for the property, including any preferences, restrictions (if allowed), and any other tenancy requirements?	Yes
Does the criteria specify income/rent limits? Does not list income and rent limits specific for the HOME program	No
Does the criteria specify student occupancy restrictions and exceptions?	Yes
Does the criteria specify fees and or deposits as part of the application process? Does not give the amounts of application fees and required deposits	No
If HOME, NHTF, NSP, Section 811, and/or TCAP RF units, does the criteria require an application deposit? Deposit can not be taked at application for the HOME program.	No

If HTC, TCAP, and TCEP developments, does the criteria require an application deposit?	N/A
Is the development collecting any additional fees or security deposits for a household or applicant to be placed on the waiting list?	No
Does the criteria include what is screened for and what score or findings would result in ineligibility?	Yes
Does the criteria specify occupancy standards of 2 persons per bedroom?	Yes
Does the criteria contain the following statement: "Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas Federal Fair Housing Act, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules?"	Yes
Does the criteria indicate a specific age requirement if operating as an Elderly property either under the HOPA or the age related requirements by the use of federal funds?	N/A
Does the criteria include preferences for admission that are either not allowed under program rules, LURA, or did not receive written approval from HUD, USDA, or VA for such preference?	No
Is there anything in the criteria that would exclude households because of participating in a rental assistance program?	No
Does the criteria require households with rental assistance to have minimum income standard greater than 2.5 the tenant's share of rent (or \$2,500 annually if tenant rent is less than \$50)?	No
Does the criteria include notice to applicants and current residents about the Violence Against Women Reauthorization Act of 2013 (VAWA) protections?	Yes
Comments:	
Reasonable Accommodation Policy	
Is there a reasonable accommodation policy in effect?	No
Does the criteria contain information on how an applicant or current resident with a disability may request a reasonable accommodation?	No
Does the criteria list a time frame in which the owner will respond to the request (may not exceed 14 calendar days)?	No

Does the criteria require the household to make a reasonable accommodation request in writing?	No
Does the criteria require a third party documentation of a disability whose household need is readily apparent?	No
Does the criteria require a household to provide specific medical or disability information (other than the disability verification that may be requested)?	No
Does the criteria exclude a household with person(s) of disabilities from admission to the development because an accessible unit is not currently available; or, require a household to rent a unit that already been made accessible?	No
Comments:	
Waitlist Policy	
Does the criteria have a waitlist policy in effect?	Yes
Does the criteria list how the waitlist will be managed (e.g. opening, closing, and selection applicants)?	Yes
Does the criteria list how lawful preferences are applied?	N/A
Are there procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27?	Yes
If there are additional rent and occupancy restrictions, does the policy indicate how the wait list is maintained and the process to rent a lower rent unit?	No
Does the additional rent and occupancy wait list give preferences to prospective applicants over existing households?	No
If the Income Average minimum set-aside is elected, does the development have written policies regarding changes in income that addresses options in §10.615?	N/A
Comments:	
Denied Application Policy	
Policy	
Does the criteria have a denied application policy and notify denied residents of their rights?	Yes
Does the criteria address how rejected applications will be handled (including timeframes and appeal procedures)?	Yes

Additional Requirements	
For 811 units and HOME units owned by a CHDO that have been denied, have a 14 day appeals process and provide the applicant an opportunity to comply with other requirements in the HUD Handbook 4350.3, 4-9?	N/A
Is this an HTC development with market rate units or additional rent and occupancy restrictions?	N/A
Does the criteria have a written EIV policy that includes security practices and complies with the HUD 4350.3, Chapter 9 for the developments that participate in the Section 811 program?	Yes
Does the criteria specify for the HTC developments that elected Income Averaging minimum set-aside how the units will be leased and inform applicants of all the set-asides offered at the development?	N/A
Are units dispersed 20%, 30%, 40%, 50%, 60%, 70%, and 80% for each applicable designation across all units types?	N/A
Does the criteria specify that a separate waiting list for each of the set-asides offered at the development?	No
Based on a review of the Unit Status Report, are the lower tier designated units occupied by Section 8 voucher holders?	N/A
Is the waiting list available to both existing residents and prospective tenants?	Yes
Does the criteria have a preference for applicants over existing households?	No
Comments:	

Texas Administrative Code

TITLE 10

COMMUNITY DEVELOPMENT

PART 1

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10

UNIFORM MULTIFAMILY RULES

SUBCHAPTER F

COMPLIANCE MONITORING

RULES 10.610

Wait List Policies and Procedures

(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation. If an owner fails to follow their written policies and procedures it will be cited as noncompliance with this section.

(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section available in the leasing office and anywhere else where applications are taken. Developments that accept electronic applications must post to their website the tenant selection criteria and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

~~(3) All policies must have an effective date. Any changes require a new effective date.~~

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

~~(b) Tenant Selection Criteria: Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household file.~~

(1) The criteria must be reasonably related to the applicant's ability to perform under the lease and include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. ~~The tenant selection criteria must specifically list:~~

~~(i) The income and rent limits;~~

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and

~~(iii) Fees and/or deposits required as part of the application process. (Developments with HOME, NREDF, NSP, Section 811 and/or TCAP/RE units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit. No fees or deposits may be collected to place a household or applicant on a waiting list.)~~

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(C) Occupancy Standards. If fewer than two persons (over the age of six) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.

(E) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibility criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission. A property may not have a preference unless it is either in a recorded LURA which has been approved by the Department or is required by a program in which the Owner is participating which requires the preference. Owners that include preferences in their leasing criteria due to other federal financing must provide either written approval from HUD, USDA, or VA for such preference or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(d) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait list;

(B) Determining how lawful preferences are applied; and

(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27 and Chapter 1, Subchapter B of this title.

(e) Developments with additional rent and occupancy restrictions. Owners must maintain a written policy that addresses the availability of lower rent units and the process for renting lower rent units. Unless otherwise approved by applicants, underwriting and credit information must be available at the lower rent limits. The waitlist policy for Developments with additional rent and occupancy restrictions must address how waiting lists for lower rent units will be managed and maintained. Spots regarding changes in income that address the options available in §10.615 of this subchapter must be available to all interested applicants over a 12-month period. However, Developments may limit the number of spots available to certain prospective applicants.

(e) Developments that elect the income averaging test and all Developments with additional rent and occupancy restrictions must have written policies regarding changes in income that address the options available in §10.615 of this subchapter.

(f) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications and notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(A) Within 5 days after the determination of denial of an application, the Development must provide a written notification of the denial to the applicant that complies with the application process. A written notification of the denial must include the reasons for the denial.

(B) If specific reasons for the denial are provided, the specific leasing criteria on which the denial is based.

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and units at Developments that lease units under the Department's Section 811-PRA program. The appeals process must provide a 14 day period for the applicant to contest the reason for the denial and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The HUD-987 form based on HUD form 5380 "Notice of Occupancy/Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Sexual Assault, or Stalking and Allegate Documentation." This must accompany the Denial Notice

(D) The Development must keep a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process.

(B) The specific reason for which an applicant was denied, the date the decision was made, and

(C) The date the denial notice was mailed and delivered to the applicant.

(2) All HTD applications must be maintained in a file and the file must be specific to the applicant. The file must be maintained in accordance with the following:

(A) A copy of the written notice of denial and

(B) The letter of action taken by the policy under which an applicant was denied.

(5) If an 811 applicant is being denied, within three calendar days the Department point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(2) The owner of the development must maintain a written policy regarding procedures for households to request a unit transfer. The policy must be maintained in accordance with the following:

(A) The policy must be maintained in accordance with the following:

(a) A copy of the written notice of denial and

(b) The letter of action taken by the policy under which an applicant was denied.

(3) The owner of the development must maintain a written policy regarding procedures for households to request a unit transfer. The policy must be maintained in accordance with the following: (A) The policy must be maintained in accordance with the following: (a) A copy of the written notice of denial and (b) The letter of action taken by the policy under which an applicant was denied.

This must accompany the Non-renewal Notice and Notice to Vacates

(C) A copy of the written notice of denial and

(D) The letter of action taken by the policy under which an applicant was denied.

(h) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must be maintained in accordance with the following:

(A) The policy must be maintained in accordance with the following:

(a) A copy of the written notice of denial and

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.

(2) The owner of the development must maintain a written policy regarding procedures for households to request a unit transfer. The policy must be maintained in accordance with the following: (A) The policy must be maintained in accordance with the following: (a) A copy of the written notice of denial and (b) The letter of action taken by the policy under which an applicant was denied.

This must accompany the Application

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Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER F	COMPLIANCE MONITORING
RULE §10.610	Written Policies and Procedures

the FDIC's Average Income Test may be omitted

(j) HTC Developments that have elected average income test must describe in their leasing criteria how units will be leased and inform applicants of the set asides that the Development offers. Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units designations across all unit types in a manner that does not violate fair housing laws. HTC Developments that have elected the income averaging test must maintain separate waiting lists for each of the set asides offered by the Development. The waiting lists must be available to both existing households and prospective tenants. The Development cannot provide a preference for applicants over existing households. The Development is not required to place existing households that receive rental assistance on a waiting list for a lower rent unit. Owners are encouraged to designate households that receive rental assistance at the level indicated by the contract rent for the unit.

(k) Developments that participate in the Section 811 program must have a written EIV policy that includes security practices and complies with the HUD Handbook 4350.3, Chapter 9. Owners are discouraged from adopting policies that exceed the minimum requirements established by HUD.

(l) Policies and procedures will be reviewed during monitoring visits, through resident complaints or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to wpp@tdhca.state.tx.us. After review by the Department, Owners may make non-substantive changes to their policies. Significant changes to reviewed policies without Department approval may result in findings of noncompliance.

(m) Owners must allow applicants to submit applications via mail and at the Development site or leasing office. HUD requires that owners allow applicants to submit applications electronically through the Development's website, although owners may also allow applications to be submitted via email, website form or fax. The Development's tenant selection criteria must be available through the means of submission and include address, email, or other necessary contact information on the form or site attached leasing criteria.

Source Note: The provisions of this §10.610 adopted to be effective February 11, 2019, 44 TexReg 560

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Exhibit 3:

Texas Administrative Code

TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10 UNIFORM MULTIFAMILY RULES
SUBCHAPTER E POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406 Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-controlling limited partner, or other non-controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the

debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

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

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

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

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

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

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

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

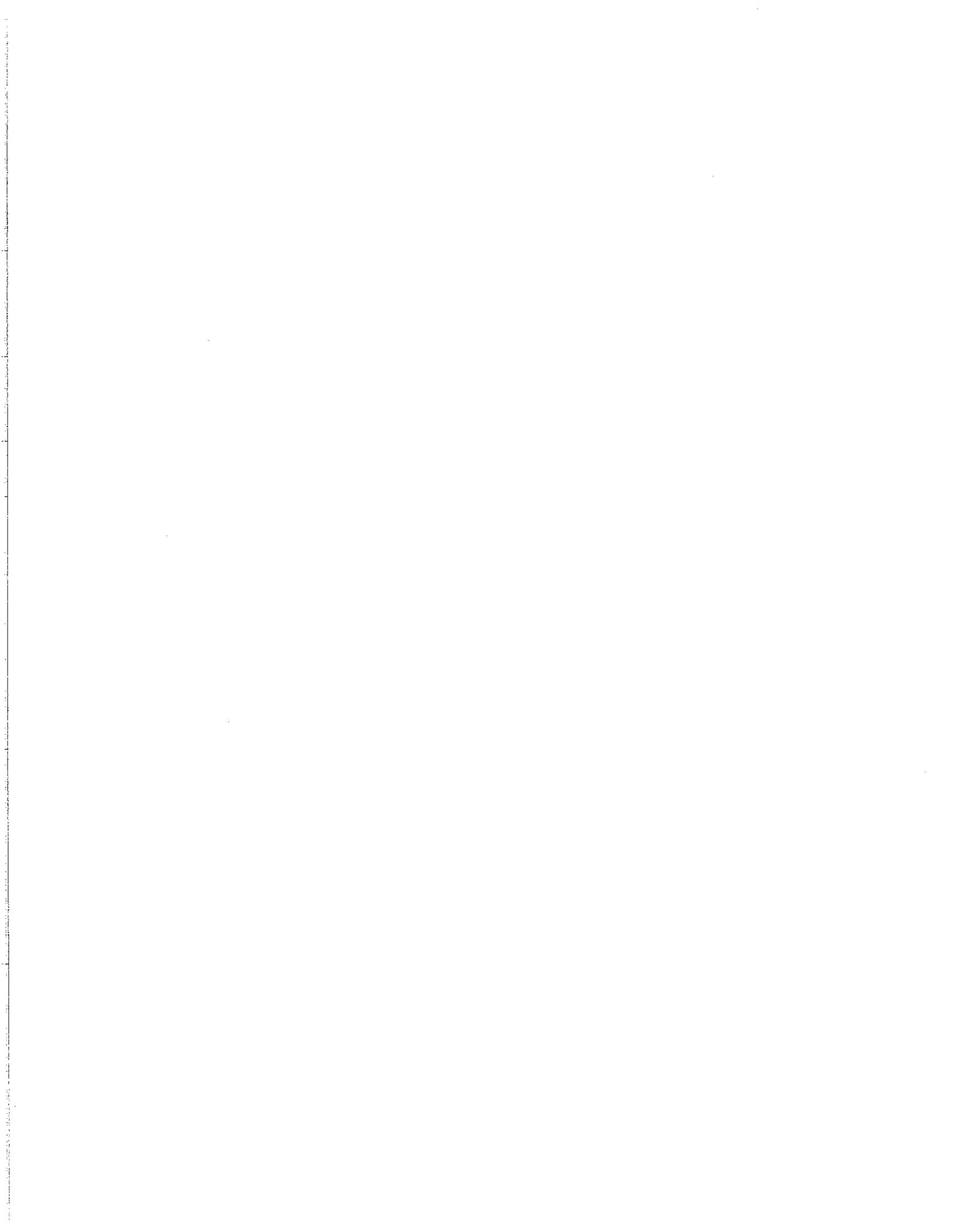
(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

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

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297



1h

BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 20, 2020

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Maryland I (HTC 91122 / CMTS 990)

RECOMMENDED ACTION

WHEREAS, Maryland I, owned by Avenada T. Carreon (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on January 28, 2020, an owner representative participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$500, to be probated and fully forgiven if all violations are resolved as specified in the Agreed Final Order on or before April 21, 2020;

WHEREAS, unresolved compliance findings that are eligible for an administrative penalty include failure to prepare compliant Tenant Selection Criteria; failure to implement a Utility Allowance; and failure to respond to a monitoring review request; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$500, subject to forgiveness as outlined above, for noncompliance at Maryland I, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Avenida T. Carreon (Owner) is the owner of Maryland I (Property), a low-income apartment complex composed of four units, located in Mission, Hidalgo County. The property is personally owned by Ms. Carreon, and she self-manages the property.

The Property is subject to a Land Use Restriction Agreement (LURA) signed by a prior owner in 1992 in consideration for a housing tax credit allocation in the annual amount of \$6,705 to build and operate the Property. The Owner acquired the property in 2006 and signed an Agreement to Comply with the LURA. Further, the LURA remains in effect per Section 2 of the LURA, which stipulates that its restrictions run with the land.

Owner was previously referred for an administrative penalty for reporting violations and file monitoring violations, but the referrals were closed informally when full corrections were received. Owner has been referred again, and problems seem to be getting worse over time. The informal conference highlighted Owner's lack of program knowledge and technological capabilities, and the need for training.

The following new compliance violations were identified during 2017. They were then referred for an administrative penalty and have been resolved:

1. Failure to provide pre-onsite documentation, including a Unit Status Report, Tenant Selection Criteria, Tenant Rights and Resources Guide, and Tenant Files for all units;

The following new compliance violations were identified during 2017. They were then referred for an administrative penalty, but have been dropped for the reasons outlined below:

1. Failure to provide Affirmative Marketing Plan. Developments are not required to affirmatively market unless there are five or more total units. There are four units at Maryland I.
2. Noncompliance with Notice Requirements. Compliance cited this violation when they were unable to contact the owner because Owners are required to update contact information with TDHCA. However, the finding was not accurate because the contact information in the system was correct. Owner explained that she was not checking her email because she receives too much junk mail.

The following new compliance violations were identified during 2017. They were then referred for an administrative penalty and have not been resolved:

1. Failure to implement Tenant Selection Criteria / Written Policies and Procedures that comply with TDHCA requirements;
2. Failure to implement updated Utility Allowance; and
3. Failure to report or allow monitoring. Owner is now cooperating and this finding will be resolved once all other findings are corrected.

Owner submitted partial corrective documentation in December of 2019, in response to an informal conference notice from the Enforcement Committee. That corrective documentation

resulted in significant additional noncompliance being identified, including household eligibility findings for all units; lease language violations for all units; and failure to include Tenant Selection Criteria in the files for all units. Those new findings of noncompliance are currently within the 90-day corrective action period set by the Compliance Division, which will expire April 21, 2020, and are therefore not yet eligible for an administrative penalty. It is the Committee's hope that the Agreed Final Order outlined below, with additional technical support and training opportunities provided, will lead to timely corrective documentation being submitted for these new findings. These new findings are not a component of the administrative penalty recommendation, but are mentioned here to prevent confusion.

Owner participated in an informal conference with the Enforcement Committee on January 28, 2020, and agreed to sign an Agreed Final Order with the following terms:

1. A \$500 administrative penalty, subject to forgiveness as indicated below;
2. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before April 21, 2020;
3. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$500 will be forgiven;
4. If Owner violates any provision of the Agreed Final Order, the full \$500 administrative penalty will immediately come due and payable;
5. A further administrative penalty may be considered during a future informal conference if the additional findings of noncompliance that are within the corrective action period are not timely corrected.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, forgivable administrative penalty in the amount of \$500 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
AVENADA T. CARREON	§	TEXAS DEPARTMENT OF
WITH RESPECT TO	§	HOUSING AND COMMUNITY
MARYLAND I	§	AFFAIRS
(HTC FILE # 911122 / CMTS # 990)	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 20th day of February, 2020, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **AVENADA T. CARREON**, a sole proprietor (Respondent).

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

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

WAIVER

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

FINDINGS OF FACT (FOF)

Jurisdiction:

1. During 1992, Ralph A and Mary A Talboys (Prior Owner) were awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$6,705 to build and operate Maryland I (Property) (HTC file No. 911122 / CMTS No. 990 / LDLD No. 161).

2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective February 10, 1992, and filed of record at Document Number 249126 of the Official Public Records of Real Property of Hidalgo County, Texas (Records). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent purchased the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Comply with Declaration of Land Use Restrictive Covenants for Low Income Housing Credits), effective December 12, 2006, thereby further binding Respondent to the terms of the LURA.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. A mail-in file monitoring review was attempted to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Notice of the review was sent on December 4, 2017, with a response deadline of December 15, 2017. No reply was received and multiple violations of the LURA and TDHCA rules were identified as a result. Notifications of noncompliance were sent and a May, 2, 2018, corrective action deadline was set and some corrective documentation was submitted on July 21, 2018, however, the following violations were not resolved and were referred for an administrative penalty during 2019:
 - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. This documentation included the Unit Status Report, Tenant Selection Criteria, and tenant files for all units. This finding was corrected on December 20, 2019.
 - b. Respondent failed to provide a compliant affirmative marketing plan. This violation was referred for an administrative penalty, however, 10 TAC §10.617 (Affirmative Marketing Requirements) only requires developments with five or more total units to maintain an affirmative marketing plan. Maryland I has four units and is therefore not subject to that rule, so this finding has been dropped.
 - c. Respondent failed to comply with notice requirements under 10 TAC §10.609 (Notices to the Department). This violation was referred for an administrative

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

penalty, however, the Department later learned that the contact information in CMTS was correct, but that Respondent was deliberately not checking email. This finding has been dropped.

- d. Respondent failed to maintain written policies and procedures, including written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. Respondent submitted incomplete corrective documentation on December 18, 2019. This finding remains unresolved.
 - e. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. Respondent submitted incomplete corrective documentation on December 20, 2019. The Utility Allowance Schedule submitted was not filled out and no Unit Status Report was submitted. This finding remains unresolved.
 - f. Property failed to report or allow monitoring, a violation of 10 TAC §10.618 (Onsite Monitoring), which requires all developments to allow the Department access to records. This finding will remain unresolved until all other findings of noncompliance are fully addressed.
6. The following violations remain outstanding at the time of this order:
- a. Written policies and procedures, including tenant selection criteria, violation described in FOF #5.d;
 - b. Utility Allowance violation described in FOF #5.e; and
 - c. Violation for failure to allow monitoring, described in FOF #5.f.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.607 and §10.618 in 2017, by not submitting pre-on-site documentation.

5. Respondent violated 10 TAC §10.610 in 2017, by not maintaining written policies and procedures, including written tenant selection criteria, meeting TDHCA requirements.
6. Respondent violated 10 TAC §10.614 in 2017 by failing to properly calculate and implement a utility allowance.
7. Respondent violated 10 TAC §10.618 in 2017 by failing to report or allow monitoring.
8. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
9. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
10. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
11. An administrative penalty of \$500 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Exhibit 1 and submit full documentation of the corrections to TDHCA on or before April 21, 2020.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the assessed administrative penalty and the full administrative penalty in the amount of \$500 will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$500 shall be immediately due and payable to the Department. Such payment shall be made

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

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

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

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

Instructions:

6. **Written policies and procedures, including tenant selection criteria** – Respondent submitted written tenant selection criteria, however, the criteria were incomplete.

How to prepare compliant criteria: Prepare updated written policies and procedures addressing all requirements of the rule at 10 TAC §10.610. Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy. The “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit: Once your written policies and procedures are complete, the owner must review the criteria, then submit a copy via CMTS.

Examples of problems observed include but are not limited to:

- All policies must have an effective date, which is required to be updated whenever any changes are made to the document.
- The criteria must allow for applications to be accepted by mail and at the development's site and provide contact information including addresses for both.
- Basic eligibility requirements:
 - Rent an income limits for the development (only specifying at the 60% AMI tier for this development)
 - Student occupancy restrictions and exceptions
 - Fees and deposits that are a part of the application process

- The criteria must specify what is screened for and any scores or findings that would result in ineligibility
- Any preferences and restrictions (if allowed) or other tenancy requirements in place
- The criteria must state the occupancy standard in place of no fewer than two persons (over the age of six) per bedroom for each rental unless otherwise directed by local building code or safety regulation, or an acceptable written justification is provided.
- The following statement: "Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas Federal Fair Housing Act, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules," must be present verbatim in the criteria.
- Statement number ten, concerning the Housing for Older Persons Act will need to be removed from the criteria since it is not applicable to this development.
- The notice to applicants and current residents about the Violence Against Women Reauthorization Act of 2013 (VAWA) protections will need to be expanded. Please review the TDHCA form based on HUD form 5380 and HUD form 5382 for more detail on what to include. These forms are available on the department website at: <https://www.tdhca.state.tx.us/pmcomp/forms.htm>. You may also include these forms (after customizing the documents for the development) as attachments to the criteria, as it is required to provide them to each adult in the household at time of application.
- A Reasonable Accommodation policy will need to be written in to the policy and provide the following information:
 - How and to whom an applicant or current resident can make a reasonable accommodation request. Please note this policy *cannot*:
 - Require requests to be made in writing
 - Require a household to provide specific medical or disability information
 - Exclude a household with person(s) of disabilities from admission to the development because an accessible unit is not currently available; or, require a household to rent a unit that has already been made accessible
 - The criteria must also state a timeframe (not to exceed 14 calendar days) in which the owner will respond to the request
- A Waitlist policy will need to be written in to the policy and provide the following information:
 - How the wait list will be managed
 - Under what conditions (number of applicants or timeframe) the waitlist will be closed and reopened
 - How applicants will be selected
 - How lawful preferences will be applied, if there are any in place
 - The procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27, the units must be offered as follows:
 - "First, to a current occupant ... having handicaps requiring the accessibility features of the vacant unit and occupy a unit not having such features, or, if no such occupant exists, then
 - Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit."
 - How applicants and current residents can be added to the waitlist

- A Denied Application policy will need to be added to the criteria and provide the following information:
 - The manner, by which rejections of applications will be handled, including timeframes and appeal procedures (if present at the development).
 - Please note a written notification must be delivered to the rejected or ineligible applicant within seven days after the determination is made. That notification must include:
 - The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;
 - Contact information for any third parties that provided the information on which the rejection was based,
 - The TDHCA form based on HUD form 5380 and HUD form 5382.
- A Non-Renewal and/or Termination policy will need to be added to the criteria and provide the following information:
 - The procedures under which the owner provides non-renewal and termination notices
 - The notice must:
 - Provide a specific and lawful reason for the non-renewal and termination,
 - Be delivered under applicable program rules,
 - Include the TDHCA form based on HUD form 5380 and HUD form 5382,
 - State how a person with a disability may request a reasonable accommodation relation to the notice,
 - Include information on an appeals process if one is used by the property.
- The Transfer policy statement, item six in the criteria, will need to be expanded to include how security deposits will be handled for both the current and the new unit in the event of a transfer. This section will also need to address how transfers related to reasonable accommodation will be addressed.

7. **Utility Allowance** – On 12/20/2019, Respondent submitted a Utility Allowance Schedule published by the Housing Authority of the City of Mission, however, there are a number of problems. You must submit corrections for each of the three problems outlined below.

- i. **The Utility Allowance Schedule was incomplete:** Mark the applicable boxes in Utility Allowance Schedule published by the Housing Authority of the City of Mission, calculate the total utility allowance, and then submit the completed utility allowance schedule via CMTS upload.
- ii. **The Utility Allowance needs to be implemented:** Update the Unit Status Report in CMTS to show that you have implemented the newly calculated Utility Allowance.

Remember that the Utility Allowance is not an amount that you will charge to tenants; it is an estimate of how much the households pay toward utilities, to ensure that their total housing expenses are appropriately restricted.

When determining the appropriate rent, ensure that the tenant-paid rent, plus the Utility Allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum rent limits set by TDHCA.

- iii. **Entrance Interview Questionnaire inconsistencies:** There was a discrepancy between the Entrance Interview Questionnaire submitted July 21, 2018

in response to this review and the questionnaire submitted March 28, 2013 in response to the previous review, concerning whether tenants are responsible for paying for trash collection or not. Per §10.614(f), developments may not change utility allowances methods, or start or stop charging residents for a utility without prior written approval from the Department. Submit a letter clarifying who pays for trash service, and how much it costs per month.

Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance for gross rent violations will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

Further technical support regarding utility allowances is available online at <https://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>.

Exhibit 2:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the

debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

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

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

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

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

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

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

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

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

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

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297

