



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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April 3, 2020

Writer's direct dial: 281.798.2499
Email: ysella.kaseman@tdhca.state.tx.us

Via Email and CMTS

Southeast Texas Community Development Corporation
Attn: Madison Hopson
mhopson@setcdc.org, mhopson@catholiccharitiesbmt.org, mhopson53@gmail.com

RE: SUPPLEMENTAL LETTER PAYMENT AGREEMENT FOR AGREED FINAL ORDER

Dear Mr. Hopson,

An Agreed Final Order ("Order") was approved by the Governing Board of the Texas Department of Housing and Community Affairs ("TDHCA") at their February 2020 board meeting. Under the terms of that Order, you were required to submit a \$4,200 portion of the administrative penalty within 30 days. Order excerpt:

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.

You did not send the signed and notarized Order or the \$4,200 penalty by the required deadline, however, you responded to TDHCA on 3/31/2020 to request a payment agreement. You indicated that you still wanted to settle the administrative penalty case with TDHCA, but asked to pay the \$4,200 penalty in two parts because you did not have sufficient funds to pay in a single check. A payment agreement has been administratively approved by Jeff Pender, Deputy General Counsel for TDHCA, so that we may settle this administrative penalty case without further delay. Terms of this agreement are as follows:

1. You must sign the Agreed Final Order, have it notarized, and return it no later than 4/10/2020;
2. You must sign this Supplemental Letter Payment Agreement, and return it no later than 4/10/2020;
3. This letter agreement amends the above Order excerpt, and requires you to submit the \$4,200 penalty payment in two parts:
 - a. A check^A in the amount of \$2,100 must be submitted to TDHCA no later than 4/10/2020; and
 - b. A second check^A in the amount of \$2,100 must be submitted to TDHCA no later than 5/4/2020.

^A TDHCA will accept business and/or personal checks instead of a cashier's check.



4. The address for submitting payment is:

| 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 |

5. All other ordering paragraphs under the Agreed Final Order remain effective and unchanged; and
6. Failure to comply with this Supplemental Letter Payment Agreement shall be considered a breach of the Supplemental Letter Payment Agreement and the Agreed Final Order.

Sincerely,

/s/ Ysella Kaseman
Ysella Kaseman
Asset Management and Compliance Enforcement
Specialist

If you accept these terms and conditions, please signify by signing below:

SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION, INC., a Texas nonprofit corporation

By: /s/ Madison G. Hopson
Name: Madison G. Hopson
Title: President

| | | |
|------------------------------------|---|-----------------------|
| 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 27th 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 / LDLD 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-onsite 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 27, 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 27, 2020.

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

By: /s/ James "Beau" Eccles
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 27th 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)

Kathleen M. Vale
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 27th 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)

Kathleen M. Vale
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, _____ (notary name), a notary public in and for the State of _____, on this day personally appeared _____ (person signing document), known to me or proven to me through circle one: personally known / driver’s license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. “My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs.”

RESPONDENT:
SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION, INC., a Texas nonprofit corporation

NOT SIGNED BY OWNER. OWNER DID SIGN ASSOCIATED PAYMENT AGREEMENT, HOWEVER.

By: _____
Name: _____
Title: _____

Given under my hand and seal of office this _____ day of _____, 2020.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

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/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
 - i. Do not backdate any documents listed below.

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-onsite 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 completer 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.

[OMITTED FROM WEB VERSION – NOT AVAILABLE IN AN ACCESSIBLE FORMAT]

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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