

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
TRAILS REDEVELOPMENT, LP	§	TEXAS DEPARTMENT OF
WITH RESPECT TO TRAILS	§	HOUSING AND
REDEVELOPMENT D/B/A	§	COMMUNITY AFFAIRS
SPANISH CREEK APARTMENTS		
(HTCFILE # 93173)		

AGREED FINAL ORDER

General Remarks and official action taken:

On this 10th day of April, 2014, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against TRAILS REDEVELOPMENT, LP, a Texas limited partnership (“Trails” or “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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE § 1.14, and 10 TEX. ADMIN. CODE Chapter 60.
2. On February 28, 1995, Northern Trails Apartments, Ltd (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$281,076 to build and operate Spanish Creek Apartments (“Property”) (HTC file No. 93173 / CMTS No. 2326 / LDLD No. 58).
3. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. A second corrected LURA was effective February 28, 1995, and filed of record at Volume 96067, Page 01510 of the Official Public Records of Real Property of Dallas County, Texas (“Records”) on April 4, 1996, replacing two previous versions that were

filed without required exhibits. 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.

4. Respondent took ownership of 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 Assume and Comply), effective March 31, 2005, and filed the same in the Records at Volume 2005063, Page 00134, thereby binding Respondent to the terms of the LURA.
5. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

6. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on December 19, 2005. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.1(m) (Compliance Monitoring Policies and Procedures: Inspection Standard). Reports were mailed to Respondent and, in conformance with 10 TEX. ADMIN. CODE § 60.1(n) (Compliance Monitoring Policies and Procedures: Notices to Owner), as amended, a 90-day corrective action deadline of June 1, 2006 was set to provide Respondent a reasonable opportunity to respond to the report and bring the property into compliance. Full corrective documentation was not received until December 20, 2011, after intervention by the Administrative Penalty Committee.
7. An on-site monitoring review was conducted between December 11-12, 2008, to determine whether Respondent was in compliance with LURA requirements, including but not limited to the requirement 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 corrective documentation was submitted for review, however, the following violations were not corrected before the April 30, 2009 corrective action deadline:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for six units, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA;

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer 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.

- b. Respondent collected gross rents that exceeded income limits as a result of an unsupported \$40 application fee charged to 143 units, a violation of 10 TEX. ADMIN. CODE § 60.118 (Special Rules Regarding Rents and Rent Limit Violations). 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. Application fees can only be charged for the actual cost of checking a prospective tenant's income, credit history and landlord references and owners are required to support the fees with invoices. Respondent was only able to provide invoices supporting a \$10.25 portion of the \$40 application fee; and
- c. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.112 (Requirements Pertaining to Households with Rental Assistance).

The final household income violation was corrected on November 18, 2011, after intervention by the Administrative Penalty Committee.

The gross rent violation was corrected on June 19, 2009.

The affirmative marketing violation was corrected on December 1, 2012, after intervention by the Administrative Penalty Committee.

- 8. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on May 1, 2009. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards). Reports were mailed to Respondent and, in conformance with 10 TEX. ADMIN. CODE § 60.117 (Notice to Owners), as amended, a 90-day corrective action deadline of September 28, 2009 was set to provide Respondent a reasonable opportunity to respond to the report and bring the property into compliance. Full corrective documentation was not received until December 20, 2011, after intervention by the Administrative Penalty Committee.
- 9. An on-site monitoring review was conducted on November 15, 2011, to determine whether Respondent was in compliance with LURA requirements, including but not limited to the requirement 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 multiple corrective submissions were submitted for review, however, the following violations were not corrected before the May 7, 2012 corrective action deadline:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1050, 1094, 1153, 2087, and 2127, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA. A further violation was identified on August 16, 2013 for unit 2135 after the Department reviewed corrective documentation relating to the Annual Eligibility Certification violation listed below.

- b. Respondent failed to maintain or provide Annual Eligibility Certifications for 173 units, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income), 10 TEX. ADMIN. CODE §60.111 (Annual Recertification for All Programs), and the LURA.

The household income violation for two units were corrected between May 22, 2012 and 2014, but the violations for units 1050, 2087, and 2135 remain uncorrected.

The Annual Eligibility Certification violations were resolved for 148 units between May 4, 2012 and January 27, 2014 after multiple follow-up on-site reviews and corrective submissions, but the violations remain unresolved for the following 14 units: 1011, 1026, 1037, 1068, 1125, 1132, 1148, 1151, 2075, 2093, 2100, 2148, and 2156.

10. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on January 25, 2012. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Respondent and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notice to Owners), as amended, a 90-day corrective action deadline of July 23, 2012 was set to provide Respondent a reasonable opportunity to respond to the report and bring the property into compliance. Full corrective documentation was not submitted until December 17, 2012, after intervention by the Administrative Penalty Committee.
11. On May 23, 2012, TDHCA sent notice that Respondent had failed to timely submit their 2011 Annual Owner's Compliance Report, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report.

Parts B, C, and D were submitted between May 24, 2012 and May 30, 2012, but Part A remains outstanding.

12. After an informal conference with the Administrative Penalty Committee and after the Department had provided technical support, an on-site monitoring review was conducted on January 11, 2013, to determine whether Respondent had fully resolved prior violations of LURA requirements to lease units to low income households and maintain records demonstrating eligibility. TDHCA was unable to verify correction of all violations. Further technical support was given during the on-site review, then a monitoring letter was sent to provide detailed technical support regarding each unresolved violation. In that letter, TDHCA indicated its intention to perform an additional monitoring review after February 26, 2013 to confirm resolution of the remaining violations.

13. A second on-site monitoring review was conducted on July 12, 2013, to determine whether Respondent had fully resolved prior violations of LURA requirements to lease units to low income households and maintain records demonstrating eligibility. TDHCA was again unable to verify correction of all violations and there were additional findings for failure to execute the required Fair Housing Disclosure Notice prior to move-in for units 1148, 2093, and 2157. A monitoring letter was sent to provide detailed technical support regarding each unresolved violation and additional corrective documentation was submitted, but full resolution has not been achieved.

The following violations remain outstanding at the time of this order:

- a. Household income violations for units 1050, 2087, and 2135, as described in FOF #9(a);
- b. Annual Eligibility Certification violations for units 1011, 1026, 1037, 1068, 1125, 1132, 1148, 1151, 2075, 2093, 2100, 2148, and 2156, as described in FOF #9(b);
- c. 2011 Annual Owner's Compliance Report, as described in FOF #11; and
- d. Fair Housing Disclosure Notice for units 1148, 2093, and 2157, as described in FOF #13.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
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 representations made on page 1 of the LURA, Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2009 and 2011, by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy. The following units remain in violation: 1050, 2087, and 2135.
5. Respondent violated 10 TEX. ADMIN. CODE §60.108 and 10 TEX. ADMIN. CODE §60.111 in 2011, by failing to maintain or provide Annual Eligibility Certifications. The following units remain in violation: 1011, 1026, 1037, 1068, 1125, 1132, 1148, 1151, 2075, 2093, 2100, 2148, and 2156.

6. Respondent violated 10 TEX. ADMIN. CODE § 60.1(m) in 2005, 10 TEX. ADMIN. CODE § 60.116 in 2009, 10 TEX. ADMIN. CODE § 60.118 in 2012, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
7. Respondent violated 10 TEX. ADMIN. CODE § 60.105 in 2012 by failing to submit Annual Owner's Compliance Reports for the year 2011. Part A remains outstanding;
8. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2008 by charging excessive application fees resulting in gross rents exceeding the allowable limits, and not making timely corrections once the violations were discovered;
9. Respondent violated 10 TEX. ADMIN. CODE § 60.112 in 2008 by failing to provide an affirmative marketing plan;
10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, 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 Chapter 2306 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 \$15,260 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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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 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 \$15,260.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay the full assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 12, 2014.

IT IS FURTHER ORDERED that Respondent shall correct the file monitoring violations as indicated in Attachments 1, 2, and 3, and submit full documentation of the corrections to TDHCA on or before May 12, 2014.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the Administrative Penalty Committee may reconvene to consider an additional penalty recommendation to be made to the Board in accordance with Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14, and 10 TEX. ADMIN. CODE Chapter 60.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS"), emailed to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us or mailed to one of the addresses below. 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

[Remainder of page intentionally blank]

Attachment 1

File Monitoring Instructions:

1. Submit signed Fair Housing Disclosure Notices for units 1148, 2093, and 2157, no more than 120 days and no less than 30 days prior to the date that each household is legally obligated to provide written notice of their intention to terminate or renew their lease. The form is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingChoiceDisclosureNotice.pdf>.
2. Submit the following fully acceptable file monitoring documentation on or before May 12, 2014:
 - a. Part A of the 2011 Annual Owner's Compliance Report;
 - b. Household income violations for units 1050, 2087, and 2135, as indicated below;
 - c. Annual Eligibility Certification violations for units 1011, 1026, 1037, 1068, 1125, 1132, 1148, 1151, 2075, 2093, 2100, 2148, and 2156, as indicated below.

Circumstance with respect to units listed above	Required Action
If unit is occupied by a qualified household	Follow the instructions that are outlined for each unit in Attachments 2 and 3. If the circumstances outlined in the instruction letter at Attachment 3 no longer exist, follow the instructions below.
If unit was occupied by a new qualified household after February 21, 2014 (date of the last documentation submission to TDHCA)	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none"> 1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after May 12, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none"> 1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice. Receipt after May 12, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.

If unit is vacant	<ol style="list-style-type: none">1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after May 12, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
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Attachment 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>.

1. **Intake Application:** Although the Department does not have a required form to screen households, we strongly suggest this form be used. It is required that households 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. Files previously reviewed on-site contained information indicating the presence of additional adult household members that were not reported or screened. The Department recommends that property staff implement procedures to obtain accurate household composition information.
2. **Verify Income:** Employment income must be documented with paystubs or payroll print-outs that show gross income. Please also obtain benefit statements for all other income such as child support, social security, or unemployment benefits.

Tenant affidavits regarding their employment income are not acceptable unless:

- A. Tenant is paid in cash;
- B. You can provide good cause for allowing an exception for a unit, including documentation regarding your efforts to verify the self-reported information by another method; and
- C. You receive specific permission from the file monitor assigned to the review, or the affidavit was requested by the file monitor in writing.

Files previously reviewed on-site contained employer letters and employment verification forms that may not have been completed by the employers. Therefore, although letters from employers and employment verification forms are typically acceptable methods to document employment income, these documents will not be accepted for Spanish Creek unless:

- A. You can provide good cause for allowing an exception for a unit, including documentation regarding your efforts to verify the self-reported information by another method; and
 - B. You receive specific permission from the file monitor assigned to the review, or the verification was requested by the file monitor in writing.
3. **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 balance, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application, 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 coincides and 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: If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to complete documentation requirements for assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed. If this form is not or cannot be used, all assets must be verified by submitting either (1) first hand verifications such as bank statements, or (2) 3rd party verifications using the TDHCA Asset Verification form.

5. **Lease:** Must conform with 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 calculating 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 Tex. Admin. Code §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 Tex. Admin. Code §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. The Texas Apartment Association 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.
6. **Fair Housing Choice Disclosure Notice:** This is a new form that must be signed by all new adult applicants at the time of their application, and no more than 120 days prior to the effective date of their lease.

If a household was not provided this notice prior to move in or transfer, the property must ensure that the form is signed no more than 120 days and no less than 30 days prior to the date that each household is legally obligated to provide written notice of their intention to terminate or renew their lease.

7. **NOTE - stop unnecessary transfers:** Spanish Creek has been transferring residents within the development and submitting the transferred residents' paperwork to TDHCA. Transfers within the development are allowed, however, they do not correct noncompliance. The units swap statuses and the noncompliance becomes associated with the now vacant unit.

Attachment 3

TDHCA instruction letter

[NOTE – THIS ATTACHMENT HAS BEEN OMITTED FROM THE VERSION OF THE AGREED FINAL ORDER TO BE UPLOADED TO THE WEB BECAUSE IT IS NOT AVAILABLE IN AN ACCESSIBLE FORMAT]