

ENFORCEMENT ACTION AGAINST 5700	§	BEFORE THE
CANYON DRIVE, LLC AND 4710 57TH STREET,	§	TEXAS DEPARTMENT OF HOUSING
LLC WITH RESPECT TO COTTONWOOD AND	§	AND COMMUNITY AFFAIRS
WESTWAY APARTMENTS (FKA ANNEX)	§	
(LIHTC FILE # 70111 / CMTS # 2298)	§	
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 21st day of March, 2019, 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 **5700 CANYON DRIVE, LLC AND 4710 57TH STREET, LLC**, both Texas limited liability companies (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 1991, D and F Investments, Inc. (Prior Owner) was awarded an allocation of Low Income Housing Tax Credits by the Board, in the aggregate amount of \$172,350 over ten years to rehabilitate and operate Cottonwood and Westway Apartments (fka Annex) (Property) (HTC file No. 70111 / CMTS No. 2298 / LDLD No. 39).
2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective December 16, 1991, and filed of record at Volume 1362, Page 130 of the Official Public Records of Real Property of Randall County, Texas (Records).

3. The Property was sold multiple times since 1991 without permission by the Department. 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. Daniel L. Rogers purchased the Property in his personal capacity on July 27, 2005 and transferred it to Respondent on December 7, 2012. Although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

6. An on-site monitoring review was conducted on March 27, 2018, 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 July 2, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to maintain complete 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.
  - b. Respondent failed to include copies of tenant selection criteria under which the households in units 13, 34, 37, 41, and 48 were screened, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to keep a copy of the criteria under which an applicant was screened in the household's file.
  - c. 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 and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
  - d. Respondent failed to properly implement a utility allowance for the Property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance.
  - e. 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.

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<sup>1</sup> 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.

- f. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 13, 28, 34, 41, and 48, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process.
  - g. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 34, 35, 37, and 41, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
  - h. Respondent failed to provide an Annual Eligibility Certifications for unit 35, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.
7. The following violations remain outstanding at the time of this order:
- a. Written tenant selection criteria violations described in FOF #6a and 6b;
  - b. Tenant Rights and Resources Guide violation described in FOF #6c;
  - c. Utility allowance violation described in FOF #6d;
  - d. Affirmative Marketing Plan violation described in FOF #6e;
  - e. Lease language violations described in FOF #6f;
  - f. Household income violations described in FOF #6g; and
  - g. Annual Eligibility Certification described in FOF #6h.

**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 §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements.
- 5. Respondent violated 10 TAC §10.610 in 2018, by not including copies of written tenant selection criteria in tenant files for five units.
- 6. Respondent violated leasing requirements in 10 TAC §10.613 in 2018, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.

7. Respondent violated 10 TAC §10.614 in 2018 by failing to properly implement a utility allowance;
8. Respondent violated 10 TAC §10.617 in 2018, by failing to provide a complete affirmative marketing plan and evidence of outreach marketing efforts.
9. Respondent violated 10 TAC §10.613 in 2018, by failing to execute required lease language for five units.
10. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2018, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for four units.
11. Respondent violated 10 TAC §10.609 in 2013 by failing to collect an Annual Eligibility Certification for one unit.
12. 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.
13. 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.
14. 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.
15. An administrative penalty of \$10,000 is an appropriate penalty 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 \$10,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$2,500 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, 2019.

**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 \$7,500, and that remaining amount of the administrative penalty 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 \$7,500 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](mailto: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:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> 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 March 21, 2019.

By: /s/ J.B. Goodwin  
Name: J.B. Goodwin  
Title: 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 21<sup>st</sup> day of March, 2019, personally appeared J.B. Goodwin, 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)

/s/ Leah Sargent Rosas  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 21<sup>st</sup> day of March, 2019, 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)

/s/ Leah Sargent Rosas  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF Potter §

BEFORE ME, Anita Earles (*notary name*), a notary public in and for the State of Texas, on this day personally appeared Daniel Rogers, 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 Daniel Rogers, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the offices of President and Director for Respondent, collectively 5700 Canyon Drive, LLC and 4710 57<sup>th</sup> Street, LLC. I am the authorized representative for both organizations, owners 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 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:**

**5700 CANYON DRIVE, LLC**, Texas limited liability company

**LLANO ESTACADO MANAGEMENT COMPANY, INC.**,  
a Texas Limited Liability Company, its manager

By: /s/ Daniel Rogers

Name: Daniel Rogers

Title: Director and President

Given under my hand and seal of office this 22 day of April, 2019.

/s/ Anita Earles

Signature of Notary Public

Anita Earles

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas

My Commission Expires: 5-31-2022

STATE OF TEXAS §  
§  
COUNTY OF Potter §

BEFORE ME, Anita Earles (*notary name*), a notary public in and for the State of Texas, on this day personally appeared Daniel Rogers, 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 Daniel Rogers, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the offices of President and Director for Respondent, collectively 5700 Canyon Drive, LLC and 4710 57<sup>th</sup> Street LLC. I am the authorized representative for both organizations, owners 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 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:**

**4710 57<sup>TH</sup> STREET, LLC**, Texas limited liability company

**LLANO ESTACADO MANAGEMENT COMPANY, INC.**,  
a Texas Limited Liability Company, its manager

By: /s/ Daniel Rogers

Name: Daniel Rogers

Title: Director and President

Given under my hand and seal of office this 22 day of April, 2019.

/s/ Anita Earles  
Signature of Notary Public

Anita Earles  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas

My Commission Expires: 5-31-2022



## 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>  
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.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.
  - 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:** You must submit fully compliant corrective documentation as follows:

6. **Written policies and procedures, including tenant selection criteria** – The version on site during the review was incomplete, missing items included: the effective date; income and rent limits; student requirements and exceptions; what scores or findings would result in ineligibility; occupancy standards were missing multiple required statements; a section regarding the Violence Against Women Reauthorization Act of 2013; a Reasonable Accommodation Policy; a Wait List Policy; a Denied Application Policy; a Non-renewal/Termination Policy; and a Unit Transfer Policy.

How to prepare compliant criteria: First watch the webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures addressing all requirements 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 to comply with this Order: Submit your updated written policies and procedures. They must meet all requirements of the rule at [10 TAC §10.610](#).

**7. Tenant Selection Criteria – units 13, 34, 37, 41, and 48.**

How to prepare corrections: Add a copy of the tenant selection criteria under which each household was screened in their tenant files.

What to submit to comply with this Order: Complete the Owner Certification of Corrected Noncompliance at Attachment 2 and submit via CMTS. No further documentation is required.

**8. Utility Allowance** – This is not an amount that you will charge to tenants, nor is it the precise amount that they are paying for utilities; it is an estimate of how much the households pay toward utilities, to ensure that their total housing expenses are appropriately restricted below maximum TDHCA rent limits.

How to prepare corrections: The Department received a copy of the current Utility Allowance schedule provided by the Amarillo Housing Authority. The cover letter stated that the new utility allowance has been implemented as of the date of the monitoring review. The current Unit Status Report (“USR”) reviewed does not show that the new utility allowance has been updated; therefore this issue cannot be corrected. The Department calculated the utility allowance, and the 1 Bedroom is \$154, 2 Bedroom is \$182 and the 4 Bedroom is \$256. When determining the 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 for the unit size.

What to submit to comply with this Order: Update the Unit Status Report in CMTS with the new utility allowances to demonstrate that it has been implemented. Submit the report via CMTS for review. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance 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>

**9. Tenant Rights and Resources Guide violation:**

How to prepare corrections: Implement Tenants Rights and Resource Guide (“Guide”) as indicated at [10 TAC §10.613\(l\)](#). Customize the Guide available on the Forms webpage to reflect the development’s common amenities, unit amenities, and any provided services. Post customized and laminated Guide in a common area of the leasing office. 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 to comply with this Order: Submit a copy of the revised/updated Guide, customized for your property, along with a photo of the Guide as posted in the office.

*[remainder of page intentionally blank]*

## 10. Affirmative marketing plan:

Technical Support: First read the rule at [10 TAC §10.617](#) and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, 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. Beginning in 2019, if you have a plan that has been approved by HUD or USDA, TDHCA will also accept that plan provided that copies of outreach marketing materials are included that comply with section “f” below.
- 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](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. 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 to comply with this Order: Once your Affirmative Marketing plan *and* outreach materials are complete, the owner or a supervisor must review them, then you must upload the Plan, documentation regarding how you determined the groups that are least likely to apply, and evidence of outreach marketing efforts.

**11. Lease language violation for units 13, 28, 34, 41, and 48:**

What to submit to comply with this Order: Correspondence submitted to the Department indicates that the prior households vacated these units. Complete the attached “Owner Certification of Corrected Noncompliance” that relates to lease language violations, ensuring that you have taken all actions listed in the Certification, and submit the executed certification. No additional documentation should be submitted with the Certification.

**12. Household income above limit upon initial occupancy for units 34, 35, 37, and 41:**

What to submit to comply with this Order: Follow the instructions below for units 34, 35, 37, and 41. The Department recognizes that some of these units may currently be vacant while a roof repair insurance settlement is pending, but you must also reply for those units by the 5/22/2019 deadline. Technical support about tenant files is at Attachment 3 if needed.

Circumstance for units 34, 35, 37 and 41	What to submit to comply with this Order:
<p>I. If unit is occupied by a qualified household</p>	<p>Either submit the following from the move-in file, or if that is incomplete, recertify the households using current circumstances, and submit the following for each unit:</p> <ul style="list-style-type: none"> <li>A. New application using current circumstances;</li> <li>B. New verifications of each source of income and assets,</li> <li>C. New Income Certification;</li> <li>D. Lease and lease addendum; and</li> <li>E. Tenant Rights and Resources Guide Acknowledgment.</li> </ul> <p>Remember that items A-C above must be dated within 120 days of one another.</p> <p>If the unit is vacant or the tenant does not qualify, follow alternate instructions below.</p>

<p>II. If unit is occupied by a nonqualified household on a month-to-month lease</p>	<p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.*</p> <p>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 5/22/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>IV. If unit is occupied by a nonqualified household with a non-expired lease</p>	<p>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.</p> <p>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 5/22/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>If unit is vacant while a roof repair insurance settlement is pending</p>	<p>A. Submit a letter certifying that the unit is vacant while a roof repair insurance settlement is pending. Include a copy of the claim paperwork as verification of the loss and claim. Confirm in the letter that you will begin roof repairs within 30 days of receiving the insurance settlement, and that the units will be made available for occupancy within 60 days of completion of the roof repairs.</p> <p>B. Roof repairs must commence within 30 days of the insurance settlement payment, and the unit must be made available for occupancy within 60 days of completion of the roof repairs. 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 5/22/2019 is acceptable for this circumstance if you comply with Requirement A and the repair timelines after insurance settlement, as outlined above.</p>
<p>V. If unit has been vacant <i>more than 30</i> days and the vacancy does not relate to the roof repair insurance settlement</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>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 5/22/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>

<p>VI. If unit has been vacant <i>less than 30</i> days and the vacancy does not relate to the roof repair insurance settlement</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 5/22/2019 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.</p>
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*\* 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\(g\)](#)*

*\*\*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.*

**Exhibit 2**

**Required Owner Certifications of Corrected Noncompliance**

(see attached)

The rules at 10 TAC §10 that are referenced in the attached certifications are available at this link:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&r=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&r=Y)

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## 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 time frame, you must recertify.*

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. **Income Verification for Households with Section 8 Certificates (HTC only):** If you use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. Since the necessary income and asset verifications were performed by the housing authority and were effective as of a specific date, this form must be signed within 120 days of that effective date, either at initial move-in or at recertification. This form must also be dated within 120 days of the application and Income Certification that you collect. If outside of that period, you must verify income and assets yourself.
  - b. **First hand verifications (required for HOME):** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
  - c. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If

you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

- d. **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;
  - e. **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;
  - f. **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. **Under \$5000 Asset Certification Form (HTC only):** 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 verify 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.
  - b. **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.
  - c. **3<sup>rd</sup> party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
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 with 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. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
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.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide and its acknowledgment form, copies of which 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. Development must also provide a copy of the guide to each household during the application process and 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.

Additionally, a representative of the household must receive a copy of the guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment.

**Exhibit 4:**

**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)

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(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