ENFORCEMENT ACTION AGAINST	§	BEFORE THE
RIO DE VIDA APARTMENTS, L.P.	§	TEXAS DEPARTMENT OF
WITH RESPECT TO	§	HOUSING AND
RIO DE VIDA APARTMENTS	§	COMMUNITY AFFAIRS
(HTC FILE # 3035 / CMTS # 3341)	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, 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 **RIO DE VIDA APARTMENTS, L.P.,** a Texas limited partnership ("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

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[1], both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.

2. During 2003, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $1,004,228.00 to build and operate Rio de Vida Apartments ("Property") (HTC file No. 03035 / CMTS No. 3341 / LDLD No. 317).

3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective November 1, 2004, and filed of record at Document Number 1418987 of the Official Public Records of Real Property of Hidalgo County, Texas ("Records"), as amended by a First Amendment executed on May 22, 2008, and filed in the Records at Document Number 1900766.

4. 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 Violations:

5. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on January 10, 2012. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Notifications of noncompliance were sent and an April 23, 2012, corrective action deadline was set. Partial corrective action was received but the violations at Attachment 1 were not corrected before the deadline.

6. An on-site monitoring review was conducted on October 19, 2011, 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 March 29, 2012, corrective action deadline was set, however, the following violations were not fully corrected before the deadline:
    a. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for units 111, 126, or 817, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.

[1] Within this Agreed Final Order, all references to the violations and procedures at 10 TEX. ADMIN. CODE §1.14, 10 TEX. ADMIN. CODE CHAPTER 10, AND 10 TEX. ADMIN. CODE, CHAPTER 60, refer to the versions of the code in effect on February 26, 2013, when the Administrative Penalty Committee held an informal conference with Respondent and recommended an administrative penalty. Procedures have since been replaced by 10 TEX. ADMIN. CODE §2 (Enforcement), but the findings and general procedures remain the same.

b. Respondent failed to maintain or provide tenant income certification and documentation for units 113, 121, 215, 217, 414, 421, 425, 426, 428, 511, 514, 521, 523, 616, 625, 627, 628, 1116, 1118, 1213, 1215, 1226, 1313, and 1316, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertification), which requires developments to annually collect an Annual Eligibility Certification form from each household.

c. Respondent failed to provide evidence of material participation by a qualified nonprofit, a violation of 10 TEX. ADMIN. CODE §60.117 (Monitoring for Non-Profit or HUB Participation) which outlines requirements for material participation, and a violation of Appendix A of the LURA which requires Bozrah International Ministries, Inc. to materially participate as one of the general partners or managing members in the development and operation of the property.

d. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114 **(**Requirements Pertaining to Households with Rental Assistance), which requires developments to approve and distribute an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled.

7. An informal conference was held on January 22, 2013, but Respondent did not appear. The informal conference was reset as a courtesy and was attended by Respondent on February 26, 2013. The Administrative Penalty Committee recommended a penalty and training, and set a deadline of June 3, 2013, to submit fully acceptable corrective documentation.

8. Partial documentation was submitted in response to the Committee's deadline and the following violations from above were unresolved:

   a. Failure to maintain or provide tenant's annual income recertification for unit 217, described at FOF #6b. Documentation submitted indicated that a new household occupied the unit on January 9, 2013, but the tenant is not eligible for the program.

   b. Failure to maintain or provide tenant's annual income recertification for unit 1118, described at FOF #6b. Documentation submitted for this unit actually related to unit 1313. Nothing submitted for unit 1118.

   c. Failure to provide evidence of material participation by a qualified nonprofit, described at FOF #6c. No documentation was provided.

9. Additional documentation was submitted on March 5, 2015, and the following finding remains unresolved at the time of this order:

   a. Failure to maintain or provide tenant's annual income recertification for unit 217, described at FOF #6b. Documentation submitted indicated that a new household occupied the unit on January 9, 2013 and received a lease renewal in 2014, despite never being eligible for the program. The nonqualified tenant's lease will expire August 31, 2015, and the tenant has received a notice of nonrenewal from the property manager.

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, both of which were replaced by 10 Tex. Admin. Code §2 as of November 19, 2014.

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 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.[2]

5. Respondent violated Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2011, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 111, 126, and 817.

6. Respondent violated 10 TEX. ADMIN. CODE §60.111 in 2011, by failing to maintain or provide tenant income certification and documentation for units 113, 121, 215, 217, 414, 421, 425, 426, 428, 511, 514, 521, 523, 616, 625, 627, 628, 1116, 1118, 1213, 1215, 1226, 1313, and 1316.

7. Respondent violated 10 TEX. ADMIN. CODE §60.117 and Appendix A of the LURA in 2011, by failing to provide evidence of material participation by a qualified nonprofit.

8. Respondent violated 10 TEX. ADMIN. CODE § 60.114 in 2011, by failing to provide an affirmative marketing plan, complete with marketing materials.

9. 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.

10. 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.

11. 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.

[2] HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TEX. ADMIN. CODE 10.616(a)

12. An administrative penalty of $10,670.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 $10,670.00.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a $5,335.00 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 18, 2015, to the following address:

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

IT IS FURTHER ORDERED that Respondent must make unit 217 available for occupancy by a qualified household on or before September 30, 2015, 30 days after the expiration of the current nonqualified tenant's lease.

IT IS FURTHER ORDERED that Respondent must keep the property in compliance by timely submitting corrective documentation to fully resolve any future compliance violations found by TDHCA during a 3 year probationary period, with the 3 year term beginning on the date the TDHCA Board approves this Agreed Final Order and ending 3 years later.

IT IS FURTHER ORDERED that in the event of a Department-approved sale to an unaffiliated third party, the 3 year probationary period shall terminate earlier, upon the date of sale consummation.

IT IS FURTHER ORDERED that Respondent must follow the requirements of 10 Tex. Admin. Code §10.406, a copy of which is included at Attachment 2, and obtain approval from the Department prior to consummating a property sale.

IT IS FURTHER ORDERED that timely correction of future compliance violations shall be determined in accordance with 10 Tex. Admin. Code §10.602 (Notice to Owners and Corrective Action Periods), a copy of which is included at Attachment 3. Any corrective documentation not submitted on or before a compliance monitoring deadline shall be considered untimely and will constitute a violation of this agreement provided that Respondent did not timely request and receive an extension in accordance with the rule.

IT IS FURTHER ORDERED that full resolution of future compliance violations will be determined by whether or not a timely submission includes all documentation that was requested

in a file monitoring or physical inspection letter that is sent to Respondent by the TDHCA Compliance Division via the Compliance Monitoring and Tracking System ("CMTS").

IT IS FURTHER ORDERED that if Respondent complies with the terms and conditions of this Agreed Final Order, the satisfactory performance under this Agreed Final Order will be accepted in lieu of the remaining assessed administrative penalty and the remaining $5,335.00 portion 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, then the remaining administrative penalty in the amount of $5,335.00 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Agreed Final Order.

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 April 16, 2015.

By: /s/ J. Paul Oxer
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: /s/ Barbara B. Deane
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 17th day of APRIL, 2015, personally appeared J. Paul Oxer, 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/ Peggy M. Henderson
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 17th day of APRIL, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Peggy M. Henderson
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF Harris §

BEFORE ME, Carol C. Workman, a notary public in and for the State of Texas, on this day personally appeared P. Rowan Smith, known to me or proven to me through known to me 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 P. Rowan Smith, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of managing agent for Respondent. I am the authorized representative of Respondent, owner of Rio de Vida Apartments, 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 Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

RIO DE VIDA APARTMENTS, L.P., a Texas limited partnership

RIO DE VIDA APARTMENTS I, L.L.C., a Texas limited liability company, its general partner

By: /s/ P. Rowan Smith

Name: P. Rowan Smith Jr

Title: Managing Agent

Given under my hand and seal of office this 21st day of April, 2015.

/s/ Carol C. Workman
Signature of Notary Public

Carol C. Workman
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas
My Commission Expires: 4/28/15

Attachment 1

2012 UPCS Violations

(see attached)

[intentionally omitted from web version]

Attachment 2:

Texas Administrative Code

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

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. 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, 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 §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, 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 members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved 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) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit 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 Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit

organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (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.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) 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 (5) years prior to the transfer request date.

(i) Penalties. 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 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.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

Attachment 3:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER F	COMPLIANCE MONITORING
RULE §10.602	Notice to Owners and Corrective Action Periods

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or if the Department discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, this subchapter, or other program rules and regulations, including §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a thirty (30) day corrective action period for failure to file the AOCR and a ninety (90) day corrective action period for other violations. During the corrective action period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the event of noncompliance has been corrected. Documentation of correction must be received during the corrective action period for an event to be considered corrected during the corrective action period. The Department may extend the corrective action period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law, events of noncompliance will not be reported to the IRS, referred for enforcement action, considered cause for debarment, or reported in an applicant's compliance history or previous participation review, until after the end of the corrective action period established in the notice described in this section.

Source Note: The provisions of this §10.602 adopted to be effective November 28, 2013, 38 TexReg 8410