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November 20, 2024

Via Electronic Mail

TDHCA Governing Board
Attention: Ysella Kaseman
221 East 11th Street
Austin, Texas 78701

RE: Appeal of Recommendation for Debarment
Developments: Estrada South I, f/k/a Park Meadows I
Estrada North, f/k/a Stone Hollow Village
TDHCA Nos. 03140 and 04057

Greetings:

Our Firm has been engaged to represent the following parties to appeal a recommendation for debarment:

- THF Housing Development Corporation ("**Non-Profit**")
- Mark Mayfield, Former Executive Director of Non-Profit
- Susan Hamm, Griffith Morris, Johnny White, Nancy Jackson, Phil Woods, John Moman, and Dave Edwards, Board Members of Non-Profit (the "**Non-Profit Board**")

For the reasons described below, the circumstances surrounding the foreclosure on the Developments do not merit a recommendation for debarment for these parties.

Background Information – The Developments

Each of the Developments was originally constructed using 9% Housing Tax Credits, with a for-profit developer and the Lubbock Housing Authority (the “**Housing Authority**”) as general partner. Equity financing was provided by The Related Companies, which subsequently sold its portfolio to Alden Torch. As the Developments reached the end of their 15-year Compliance Periods, the Housing Authority was no longer in a position to serve in the general partner capacity. To ensure the stability of the Developments, as they were relying upon the property tax exemption generated by the Housing Authority and underwritten by the lenders, Alden Torch reached out to the Texas Housing Foundation (“**THF**”), another housing authority, to enter the transaction. THF agreed to do so, inserting Non-Profit into the general partner position in October 2017. In 2019, with the Compliance Periods ended, Alden Torch sought to sell its limited partner interests. As is typical with Housing Tax Credit investors, the partnership agreements gave Alden Torch the right to assign their interests without consent from the general partner. The interests were sold to a third party (the “**First LP Buyer**”) that contractually assumed all control of the Development Owners and developed an acrimonious relationship with THF. Subsequent to this acquisition the Developments experienced significant storm damage and difficulty with receiving insurance proceeds, exacerbating the disharmony between the parties and putting the properties in distress. After a few years, the First LP Buyer decided to sell the limited partner interest to another third party (the “**Second LP Buyer**”) in 2022. As shown in the materials presented to the Enforcement Committee, the Second LP Buyer also had complete contractual control of the Development Owners and failed to address the distressed conditions on the two Developments. THF, Non-Profit, and Mr. Mayfield undertook every possible legal strategy, including litigation against the Second LP Buyer, to try to force the Second LP Buyer to perform its obligations or, alternatively, to extract themselves from the situation. Their efforts were unsuccessful, and the Developments were ultimately foreclosed upon in August 2024.

Background Information – Non-Profit

As noted above, THF is a housing authority, organized under Chapter 392 of the Texas Local Government Code in 2005. A housing authority “is a unit of government and the functions of a housing authority are essential governmental functions and not proprietary functions.” (Texas Loc. Gov’t Code § 392.006) THF, through its affiliates, owns a portfolio of 41 properties across the State, with more than 5,000 units serving low-income residents. Indeed, THF is a highly sought-after partner for developers and investors producing and preserving affordable housing. Aside from owning housing properties, THF provides valuable community service. For example, earlier this year, it partnered with State Representative King to support those affected by Texas wildfires. See **Attachment A**. THF also finances and runs a one-stop social service outreach center serving Blanco, Burnet, Llano, and Williamson counties with participating non-profit and state agencies all housed under one roof.

THF operates through its instrumentality, the Non-Profit, for purposes of owning these properties. THF and Non-Profit are operated by an employed staff and a volunteer board. It should be noted that none of the volunteer board members meets the qualifications of a “Controlling” party under the Department’s rules. 10 TAC § 2.401(a)(7) states that a Responsible Party may be debarred only if it Controls a Development that has been foreclosed upon. For a non-profit corporation, the definition of Control requires an individual to be an officer of the organization, authorized to sign on its behalf. None of the Non-Profit Board members are authorized to sign on behalf of Non-Profit, other than the authority of Susan Hamm, the Chair, to sign board resolutions. The Non-Profit Board members do not sign transactional or operational documents. The Executive Director is authorized to sign transactional and operational documents on behalf of Non-Profit. In accordance with the Rules, we respectfully request the non-Controlling Non-Profit Board members be removed from the debarment consideration. If you require additional information to address this Control issue, Non-Profit’s General Counsel can provide organizational documents as needed.

Debarment Rules

The Department’s rules provide that certain violations “may” lead to a recommendation of debarment, while other violations “shall” be cause for debarment. Violations where a recommendation for debarment is mandatory are those where the Responsible Party has “materially or repeatedly violated” a Department requirement. The foreclosure of the Development is not a violation for which debarment is required; it is discretionary. 10 TAC § 2.401(i)(5) states:

If Debarment is not mandatory, [the Informal Conference may result in] an agreement to dismiss the matter with no further action, an agreement to dismiss the matter with corrective action being taken, or any other action as the Committee deems appropriate.

Further, the recommendation with regard to Debarment:

. . . will be based on material factors such as repeated occurrences, seriousness or underlying issues, presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained.

Non-Profit acknowledges that the foreclosure of the Development, resulting in the loss of affordability restrictions, is not in line with its mission to create and preserve affordable housing. However, there is no evidence that Non-Profit caused, controlled, or otherwise participated in the factors that led to foreclosure. Indeed, Non-Profit took every step it legally could and incurred thousands of dollars in expenses to ensure the Developments’ compliance with TDHCA requirements. Given the size of Non-Profit’s portfolio, and the fact that this is the first foreclosure

of a Development in which Non-Profit has an indirect ownership interest, it is obvious that Non-Profit is not a habitual offender. Non-Profit stepped in, upon request, to support THF in helping a fellow housing authority and perform THF's public purpose. It maintained the property tax exemption for the Developments to ensure they would remain financially viable.

Debarment of a Non-Profit Organization Affiliated with a Public Housing Authority Would be Detrimental to the Production and Preservation of Affordable Housing in the State of Texas

Housing authorities participate in the Housing Tax Credit Program to expand their portfolios and fulfill their public purpose. Non-Profit has been doing that for THF for many years. Many of these properties are in rural areas where resources are otherwise limited. In this case, Non-Profit and Mr. Mayfield stepped in to help when the Housing Authority was unable to continue its participation with these two Developments. Had Non-Profit and Mr. Mayfield refused to do so, the Developments likely would have been foreclosed upon 7 years ago. TDHCA cannot and should not punish Non-Profit or Mr. Mayfield for attempting to help preserve properties that needed assistance. Debarring an instrumentality of a governmental agency and the individuals associated with it would be a tremendous disservice to the industry, discouraging public agencies and non-profit organizations alike from taking on the "challenging" properties that need special attention. Further, as demonstrated in the materials presented to the Enforcement Committee, this is a scenario where Non-Profit did not have significant control over the Developments from the very beginning. Investors providing equity capital for housing properties, whether they be Housing Tax Credit investors in the Compliance Period or capital partners for the Extended Use Period, often demand and receive a certain level of control over a partnership, to protect their investment capital. Non-Profit found itself in this position, unable to fully control the Developments or the decisions by its partners, but trying to preserve the housing nevertheless.

By way of comparison, in the Oasis Cove property in Canadian, Texas, Non-Profit has Control over the partnership and was able to fund \$927,946.83 to avoid foreclosure, when the limited partners refused to provide additional capital. This is evidence of Non-Profit's willingness and intent to avoid foreclosure for its properties, when it is legally permitted to do so.

Conclusion

Non-Profit and its principals understand that TDHCA wants to avoid foreclosures and the loss of affordable housing restrictions. But we ask the Governing Board to consider all of the relevant facts and what kind of message this decision will send. As the Housing Tax Credit portfolio ages, more and more properties will face challenges. As a State, we need to incentivize our non-profit and governmental agencies, and their individual leaders, to lend their support to these properties, as Section 42 of the Internal Revenue Code suggests. We may, however, need

to look more carefully at those institutions that would take advantage of distressed situations to enrich themselves.

For all these reasons, we respectfully request that the Board decline the recommendation for debarment for Non-Profit and Mr. Mayfield, acknowledging that the Non-Profit Board members are ineligible for debarment because they lack Control.

Sincerely,



Cynthia L. Bast

cc: THF Housing Development Corporation

Attachment A – THF Community Services

ATTACHMENT A

THF COMMUNITY SERVICES



****FOR IMMEDIATE RELEASE****

****Texas Housing Foundation Teams Up with State Rep. Ken King to Support Fire-Affected Individuals in the Panhandle****

[Canadian, TX, 2/29/2024] – In response to the devastating fires sweeping through the Texas Panhandle, the Texas Housing Foundation has announced a collaborative effort with State Representative Ken King to address the urgent housing needs of affected residents. This partnership aims to provide immediate relief and support to those displaced by the fires, ensuring safe and secure housing during this critical time.

As part of the initiative, the Texas Housing Foundation has successfully housed several individuals and families who have lost their homes or have been evacuated due to the ongoing fire emergencies. This effort underscores the Foundation's commitment to community support and rapid response in times of disaster.

"Our hearts go out to everyone impacted by the fires in the Texas Panhandle," said Allison Milliorn, Chief Operating Officer of the Texas Housing Foundation. "We are working tirelessly with State Rep. Ken King to ensure that all affected individuals and families have a safe place to stay. Our priority is the well-being of our community members, and we will continue to allocate resources and support to meet the emergent needs of those affected."

The Texas Housing Foundation, along with State Rep. Ken King, is calling on the community for support. Donations and volunteers are critically needed to assist in ongoing relief efforts and to help rebuild the lives of those affected. Interested parties are encouraged to contact the Texas Housing Foundation or State Representative Ken King's office to learn how they can contribute.

For more information on how to help or if you are in need of assistance, please visit www.txhf.org or call 830-693-8100.

"This collaborative effort is a testament to the strength and resilience of our community," stated State Rep. Ken King. "Together, we will overcome this adversity and emerge stronger."

The Texas Housing Foundation and State Rep. Ken King remain committed to providing ongoing support to the Texas Panhandle as it recovers from these tragic fires. Updates on relief efforts and housing initiatives will be provided as they become available.

****About the Texas Housing Foundation****

The Texas Housing Foundation is dedicated to ensuring that all Texans have access to affordable, safe, and quality housing. Through partnerships and community support, the Foundation addresses housing needs across the state, fostering stability and growth in Texas communities.

From: [Dominic Audino](#)
To: [Ysella Kaseman](#)
Cc: [Allison Milliron](#)
Subject: Possible Debarment
Date: Thursday, December 19, 2024 3:50:37 PM
Attachments: [image001.png](#)
[image002.gif](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi Ysella, Allison just asked me to send along this information.

I am sure you already know this, but I am including an excerpt from the current QAP. It seems to suggest Mark Mayfield, as former President/CEO of THF Housing Development Corporation; Susan Hamm - the Board Chair and Griff Morris - the Secretary are "controlling" parties. All other board members do not meet the definition under our interpretation of things.

(3029) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously. (A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder. (B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent.

We also looked at Texas Local Government Code Section 303.022, indicating all non-profits created by a housing authority (such as THF Housing Development Corporation) are considered PFCs and subject to Texas Local Government Code Chapter 303 ; and

Texas Local Government Code Section 303.036, identifying officers as President, VP (THF Housing Development Corporation has no VP), and Secretary.

We did not find anything in Texas Local Government Code Chapter 392 that clarified the roles or specifically identified authority or control by board members/Commissioners.

THF Housing Development Corporation's Board composition is as follows:

Allison Milliorn – Current President and CEO
Mark Mayfield – *former* President and CEO
Susan Hamm -Board Chair
Johnny White – Vice Chair
Griff Morris - Secretary
John Moman
Phil Woods
Dave Edwards
Nancy Jackson

Please let us know your thoughts.

Thank you for your consideration!

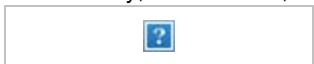
Best Regards,



Dominic “Nick” Audino*

General Counsel
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Future Days Off:

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From: Bast, Cynthia L. <CBast@lockelord.com>
Sent: Friday, December 20, 2024 3:13 PM
To: Ysella Kaseman
Subject: FW: Debarment Questions
Attachments: THF HDC-8th Amended and Restated Corp Bylaws.pdf; Park Meadows Closing Certificate.pdf; Stone Hollow - TDHCA Control Form.pdf

Ysella, per your request below, please find attached the current Bylaws of THF Housing Development Corporation. I call your attention to the following:

Per Section 4.01 of the Bylaws, the activities of the corporation are managed by the Board of Directors as a body. With seven directors, no one person has Control simply by virtue of being a director. That is consistent with the definition in the QAP, which says "A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have executive officer positions, which involved actual or apparent authority to exercise control."

Moving to Section 4.04 of the Bylaws, the Board of THF HDC has officers that include a Chair, Vice Chair, and Secretary. The Chair is authorized to see that resolutions of the Board are carried out. The Secretary has such duties as are typical to such office, which is usually to maintain the records of the Board meetings and certify to matters as needed for corporate governance. (Note THF HDC does not have a Vice Chair, but it does have a Chair (Susan Hamm) and Secretary (Griff Morris).) As described in Article Four, these offices do not control operational matters but rather are offices necessary for the Board to conduct its business.

Article Six of the Bylaws name the corporate officers. The President is identified in Section 6.03 of the principal executive officer of the corporation. Per Section 7.04, only the President and Secretary can sign contracts on behalf of the corporation, unless otherwise designated by the Board in a resolution.

When the tax credit limited partner sold its limited partner interests in LHA Park Meadows, LP to a for-profit investor, the general partner signed a Closing Certificate, indicating that only Mark Mayfield, the President, was entitled to sign on behalf of the general partner. See attached, at Paragraph 6. A similar Closing Certificate should have been signed when the tax credit limited partner sold its limited partner interests in LHA Stone Hollow, LP, but we are not presently able to find such certificate in our records.

Taken together, the Bylaws and Closing Certificate indicate that Mark Mayfield, as President, had execution authority for THF HDC.

Also, when the tax credit limited partner sold its limited partner interests in Park Meadows and Stone Hollow, the parties completed and submitted a TDHCA-promulgated Control Form for compliance matters. The form that was submitted should be in TDHCA's records. We have a copy of the Stone Hollow form attached. We have not been able to find the form for Park Meadows in our records.

I hope all of this is helpful. There are definitely Board members who have no Control over THF HDC and we hope they can be removed administratively before further action is taken. If additional information is required, please let me know.

Cynthia Bast (she)

Chair, Affordable Housing and Community Development Section

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