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December 18, 2024

By Email to bobby.wilkinson@tdhca.state.tx.us

TDHCA Governing Board
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711
c/o Bobby Wilkinson, Executive Director

RE: Appeal of Notice of Debarment Determination for the City of Lubbock Housing Initiatives; The Housing Authority of the City of Lubbock; Officers and Board Members for the Housing Authority of the City of Lubbock (including Mike Chapman, Toby Cecil, Ayda Chapa, Amanda Gray, Vecelia Mann, and Jerry Ramirez), dated December 11, 2024.

Dear Chair Vasquez and Board Members:

This is an appeal of the above-described Notice of Debarment Determination sent by Bobby Wilkinson, Executive Director and dated December 11, 2024 (the “Debarment Determination”). Each of the named entities and individuals was determined to be debarred for a period of one (1) year, subject to the TDHCA Board’s concurrence. The Debarment Determination was issued as the result of a foreclosure of the primary financing on Estrada South II f/k/a Park Meadows II (HTC #060058 / CMTS 4371) (the “Project”), which resulted in the loss of the TDHCA’s Land Use Restriction Agreement (“LURA”) relating to the Project. We ask the Board to disapprove Staff’s recommendation and to deny and dismiss the Debarment Determination.

1. Background.

The Project was one of three developments (collectively, the “Developments”) built with Housing Tax Credits to replace a public housing development owned by the Lubbock Housing Authority (the “Authority”). For each of the Developments, the Authority owned fee interest in the land, which was ground leased to the project owner, a Texas limited partnership of which City of Lubbock Housing Initiatives (“Lubbock Initiatives” - an affiliate of the Authority) was the sole member of the General Partner. This is the standard structure used to qualify for a governmental ad valorem tax exemption for affordable housing developments. The

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Developments were operated in concert by third party project managers until 2013, when the Authority and Lubbock Initiatives undertook their management until 2017. In 2017 Lubbock Initiatives was replaced as the sole member of the General Partner on two of the three Developments by Texas Housing Foundation (“THF”), but THF declined to replace Lubbock Initiatives in the ownership of the Project because the Project included public housing units. THF assumed property management of the operation of all the Developments.

In 2019 the Project’s lender required that THF be taken out of the ownership and control of the Project. A new entity, Lubbock Affordable Housing Group, LLC under the ownership and control of Jorge Mederos (collectively, the “New Investor”) acquired all of the partnership interests in the Project except that of the General Partner, which was left in Lubbock Initiatives. The Partnership interests were subsequently conveyed to Strata Capital. As part of the transaction, the New Investor provided financial guaranties to the lender that the Authority was not able to provide. To obtain the guaranties, the Project’s Limited Partnership Agreement was amended and restated and Section 4.3 provided that the General Partner delegated essentially all of its powers to the New Investor. From that time on, Lubbock Initiatives and the Authority had no involvement in the operation of the Project, except that the Authority pays a HUD public housing subsidy to the Project. The lender foreclosed upon the Project in August 2024, and as a result, the TDHCA’s subordinate LURA was wiped out and the Authority and Lubbock Initiatives lost all their ownership interests in the Project.

2. Three individuals named in the Debarment Determination are not Responsible Parties in Control and should not be subject to debarment.

The definition of “Control” in 10 TAC §11.1(29) provides:

(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.

Lubbock Initiatives is a nonprofit entity and the Authority is a governmental instrumentality. Three of their board members named in the Debarment Determination (Amanda Gray, Vecelia Mann, and Jerry Ramirez) are not officers, are not empowered to act on behalf of the organizations, and therefore do not have “Control” as defined in 10 TAC §11.1(29)(B). This debarment was brought under 10 TAC §2.401(a)(7), which applies to a Responsible Party, a Consultant and/or a Vendor Controlling a multifamily Development that was foreclosed after April 1, 2021, where the foreclosure or deed in lieu of foreclosure terminates a subordinate TDHCA LURA. Since Amanda Gray, Vecelia Mann, and Jerry Ramirez are not officers, they are not in Control of either Lubbock Initiatives or the Authority, and are therefore not subject to debarment pursuant to the stated provision. We request that their names be deleted from the Debarment Determination in accordance with the stated rule, and that this proceeding against them be dismissed.

3. Lubbock Initiatives and/or the Authority did not Control the Project when the foreclosure took place.

The Authority and its affiliate, Lubbock Initiatives, have always acted to preserve and protect the Project. The Authority owned the land and remains the Ground Lessor for the Project, and always anticipated that it would own the Project outright when the tax credit responsibilities were fulfilled. The Authority and Lubbock Initiatives had no incentive to permit the foreclosure of the Project's financing, wiping out the TDHCA LURA and with it, all of their ownership interests in the Project. Unfortunately, the Authority does not have the funds that were needed to stabilize the Project's financing in 2019. When the New Investor came into the deal, in order to get the financial support from the New Investor the Authority and Lubbock Initiatives had to cede essentially all of their Control over the Project to the New Investor.

In view of these economic circumstances, the Authority and Lubbock Initiatives were acting reasonably in providing the New Investor with the Control that is required by nearly all developers and investors coming into ownership of an economically uncertain multifamily development. Guaranties had to be provided in 2019 in order to avoid foreclosure at that time. The Authority and Lubbock Initiatives could not provide them, so the New Investor was brought into the deal. The New Investor wanted to make sure the Project was operated in a way that protected its guaranty exposure, so a precondition of the transaction was the delegating of Control to the New Investor. To refuse to delegate these powers would mean that the Project would likely have undergone foreclosure in 2019.

We point out that the rule under which this Debarment Determination was made only extends to a Responsible Party who has "Control" over a project where a foreclosure wipes out a subordinate TDHCA LURA. The rule says nothing about debarment of a person who contractually delegated their authority to another person, such as the New Investor. This is language being read into the rule by Staff. Under the specific language of 10 TAC §2.401(a)(7), the Authority and Lubbock Initiatives are not subject to debarment as a result of the LURA termination due to foreclosure. If the TDHCA wants to extend the reach of debarment to Responsible Parties who delegate their Control of a project, then the rules should be amended through the public rulemaking process to require this change so that stakeholders are aware of what such delegation of powers can entail. At this point in time, however, the Authority and Lubbock Initiatives do not fall within the stated terms of the rule and this debarment should be dismissed as against them and their officers as a debarment is not authorized by the plain language of the rule.

4. Policy of debarment of governmental entities is detrimental to tax credit program.

More and more frequently, housing authorities and housing finance corporations are being sought to partner with developers to provide ad valorem tax exemptions that will help to either save struggling tax credit developments or, at the front end, to make projects financially viable.

This is especially true of 4% tax credit deals that won't work economically without such assistance. Pursuing debarment against such governmental entities on projects over which they have no control will discourage them from participating in tax credit transactions. Frequently governmental entities do not have substantial expertise in the operation of multifamily housing, so they receive a small fee and the opportunity to acquire the development upon the investor's exit, but delegate the Control of the development to either the developer or the investor, depending upon who is providing the economic support. If there is a chance that involvement of this nature in struggling developments or in new transactions will bring potential exposure for debarment, it is likely that governmental entities will stop participating in these public/private partnerships that provide such needed assistance to tax credit transactions. We urge you to consider the long-term negative repercussions of adopting an aggressive debarment policy against entities that have no control of a project because it discourages the involvement of governmental entities. This is especially important in smaller cities like Lubbock, where there are limited governmental entities that are qualified to participate in the tax credit program. For instance, in Lubbock only the Authority and Texas Housing Foundation have been willing to partner with developers. There is a housing finance corporation, but while it issues bonds for the tax credit program, it does not participate as a public partner able to provide an ad valorem exemption to an affordable development. Debarring the Authority would close off this resource to the tax credit program in the City of Lubbock.

5. Authority has been actively trying to get the LURA reinstated.

Since the foreclosure took place in August 2024 and the Project was acquired by an affiliate of the lender, the lender's efforts to sell the Project to a third party buyer have been hamstrung by the continued existence of HUD restrictive covenants relating to the public housing, which were not terminated by the foreclosure. HUD must approve of any subsequent purchaser. The Authority has been actively seeking solutions that will result in the reinstatement of the TDHCA LURA, including offering to enter a partnership with the third party buyer to reinstate the ad valorem tax exemption to the Project but only on the condition that the TDHCA LURA is reinstated. The third party buyer has, for now, rejected that offer. A request for HUD approval of a proposed third party purchaser has been filed by the Authority, the lender and the proposed purchaser, and is pending. HUD typically does not approve owners of projects that have public housing units that do not have a public housing authority in the ownership, so HUD may make its approval contingent upon the Authority's involvement in the Project as a partner in order for the Project to continue to receive the public housing subsidy at the Project. The Authority has made it known that it is not willing to partner with any subsequent purchaser unless the purchaser agrees to reinstate the TDHCA LURA.

10 TAC §2.401(l) states: **"...The Board reserves discretion to impose longer or shorter Debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause."** In view of the Authority's efforts to get the LURA reinstated, we respectfully request that the suggested debarment of the Authority, Lubbock Initiatives and its officers be denied in recognition of these efforts to get the TDHCA LURA reinstated.

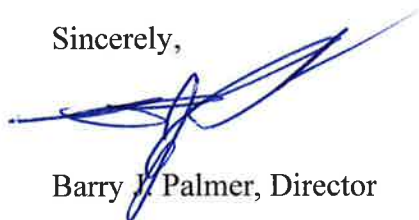
6. Summary.

In summary, on behalf of Lubbock Initiatives, the Authority, Mike Chapman, Toby Cecil, Ayda Chapa, Amanda Gray, Vecelia Mann, and Jerry Ramirez, we make the following requests in this appeal:

- a. Dismiss the Debarment Determination as against Amanda Gray, Vecelia Mann, and Jerry Ramirez, since they are not Responsible Parties in Control of the Project.
- b. Dismiss the Debarment Determination as against Lubbock Initiatives, the Authority, Mike Chapman, Toby Cecil and Ayda Chapa because each of them was not a Responsible Party in Control at the time that the foreclosure of the Project took place. The fact that Control of the Project had been ceded to the New Investor is not a factor that supports debarment under 10 T.A.C. TAC §2.401(a)(7). We submit that it is improper to impose a debarment on the Authority or Lubbock Initiatives when it could not have known the consequences of participating in the tax-credit program under TDHCA's current interpretation of 10 T.A.C §2.401(a)(7); in fact, a governmental partner may have elected to forego such risk.

Thank you for the opportunity to submit this appeal of the Debarment Determination. If there are any questions, we are glad to provide clarification.

Sincerely,



Barry J. Palmer, Director

cc: Bobby Wilkinson
Ysella Kaseman