

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
4753 DUNCANVILLE ROAD LLC	§	TEXAS DEPARTMENT OF
WITH RESPECT TO SOLAIRE	§	HOUSING AND COMMUNITY
(BOND MF011 / CMTS 2562)	§	AFFAIRS
	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 13th day of June, 2024, 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 **4753 DUNCANVILLE ROAD LLC**, a Texas limited liability company (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. Asmara Affordable Housing, Inc. (Prior Owner) acquired multiple properties in 1996 using proceeds from NHP Foundation – Asmara Project Series 1996A Bonds. The bonds were refinanced in 2003 using NHP Foundation – Asmara Project Series 2003 Bonds to refund Series 1996, and to finance capital improvements and necessary repairs to nine projects in Texas, including Solaire (Bond MF011 /CMTS 2562), formerly known as Heritage Square (Property).

2. Prior Owner signed an Amended and Restated Regulatory and Land Use Restriction Agreement (LURA) dated as of December 1, 2003, and filed of record at Document Number 200302687761 of the Official Public Records of Real Property of Dallas County, Texas, as amended by that first amendment dated April 1, 2013, and filed of record at Document Number 201300132550.
3. Respondent purchased the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof, via an Assignment, Assumption, and Consent Agreement dated as of December 13, 2017, and filed in the Records at Document Number 201700350453, thereby binding Respondent to the terms of the LURA.
4. Respondent is further bound to the terms of the LURA in accordance with Section 11 thereof.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

6. Property has a history of violations and previously signed an Agreed Final Order on November 24, 2020, agreeing to pay a \$2,500.00 administrative penalty. All noncompliance was resolved prior to signing.
7. The Department conducted an on-site monitoring review on January 19, 2023, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. TDHCA compliance monitors found violations of the LURA and TDHCA rules. The monitors sent notifications of noncompliance, setting a corrective action deadline of May 11, 2023. Respondent submitted partial corrective documentation on May 17, 2023, and a cure deadline of February 22, 2024, was set to submit final corrective documentation. The following violation was not resolved before the extended corrective action deadline, and was referred for an administrative penalty:
 - a. Respondent failed provide Tenant Income Certification and associated documentation for unit 713, a violation of 10 TAC §10.612 (Tenant File Requirements) and Sections 2(b) and 4(c) of the LURA, which require Bond developments with less than 100% of units set aside for low income households under 60% to collect data to annually recertify each household. The affected household later vacated the unit, and the violation will remain unresolved until Respondent submits a full tenant file for a new qualified household in this unit.

¹ 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.

8. The following violation remains outstanding at the time of this order:
 - a. Tenant income certification violation described in FOF #7a.

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. Respondent violated 10 TAC §10.612 and Sections 2(b) and 4(c) of the LURA in 2023, by failing to provide the annual recertification for unit 713.
4. 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.
5. 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.
6. 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.
7. An administrative penalty of \$100.00 is an appropriate penalty in accordance with 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 \$100.00.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$100.00 administrative penalty by check payable to the "Texas Department of Housing and Community Affairs" on or before July 15, 2024, or at least ten business days before a planned Property sale closing, whichever is first.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit complete documentation of the corrections to TDHCA on or before July 15, 2024, or at least ten business days before a planned Property sale closing, whichever is first.

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: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, Respondent must send an email to Ysella Kaseman at ysella.kaseman@tdhca.texas.gov to inform her that the documentation is ready for review. Penalty payment(s) must be submitted to the following address:

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

IT IS FURTHER ORDERED that Respondent may not sell the Property until the TDHCA Asset Management Division issues written approval.

IT IS FURTHER ORDERED that the TDHCA Asset Management Division may not issue written approval to sell the Property until the TDHCA Compliance Division has reviewed all corrective documentation submitted in response to this Order, and any administrative penalty due under this Order is paid.

IT IS FURTHER ORDERED that the TDHCA Compliance Division must have at least ten business days to review corrective documentation prior to any planned Property sale closing. The date that corrections are submitted to TDHCA and the date of an approved closing are excluded from that calculation.

IT IS FURTHER ORDERED that for purposes of determining compliance with this Order, the TDHCA Compliance Division will review one set of corrective documentation, after Respondent notifies TDHCA that the corrective documentation is ready for review.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

Approved by the Governing Board of TDHCA on _____, 2024.

By: _____

Name: Leo Vasquez

Title: Chair of the Board of TDHCA

By: _____

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 13th day of June, 2024, personally appeared Leo Vasquez, 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)

Notary Public, State of Texas

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 13th day of June, 2024, 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)

Notary Public, State of Texas

Given under my hand and seal of office this _____ day of _____, 2024.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

1. Refer to the following link for all references to the rules at 10 TAC Chapter 10 that are referenced in this Order:
[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:
<https://www.tdhca.texas.gov/compliance-forms>
3. Technical support and training presentations are available at:
Presentations: <https://www.tdhca.texas.gov/compliance-program-training-presentations>
Technical support guide: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/24-TechSupport-AvoidAdminPenaltyRefs.pdf>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents
<https://www.tdhca.texas.gov/sites/default/files/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:

1. **Failure to provide annual recertification:**
 - a. Unit 713 – This 50% AMI household initially occupied the unit on December 27, 2021. The file contained an Annual Eligibility Certification form instead of a full annual recertification, which is not acceptable for the BOND funding at this development. The affected household later moved out. To correct the noncompliance, Respondent must occupy this unit with a new qualified household at or below 50% AMI, and submit a full tenant file, including
 - i. *Tenant application;*
 - ii. *Verifications of all sources of income and assets;*
 - iii. *Verification of student status;*
 - iv. *Tenant income certification;*
 - v. *Lease and lease addenda; and*
 - vi. *Tenant Rights and Resources Guide Acknowledgment*

Remember that items i-iv above must be dated within 120 days of one another.

Exhibit 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as basic technical support. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for Income Determination Training in order to get a full overview of the process. Forms discussed below are available at: <https://www.tdhca.texas.gov/compliance-forms>.

A suggested tenant file checklist is available at this link: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/Suggested-File-Checklist.docx>.

**Important Note* The application, verifications, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that timeframe, 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, and student status. 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.” Applications must be signed and dated 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:** If you use this form, you do not need to verify income further, but you do need to collect all other components of the tenant file. The Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification, signs this form. Since the housing authority performed the necessary verifications. The form must include the following information: a certification date from the housing authority that is within 120 days of that effective date, either at initial move-in or at recertification, number of household members and the gross annual income before any adjustments. This form must also be dated within 120 days of the application and Income Certification that you collect. If the housing authority certification is outside of that period, you must verify income yourself.
 - b. **First hand verifications:** Paystubs or payroll printouts 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 (*at least two months' (60 days) worth of check stubs for MFDL² programs is required*);

- 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. If received by email, ensure the email address is was received from is evidenced and from the employer;
 - 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) are acceptable for social security and/or unemployment 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, including assets such as checking or savings accounts. 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 \$50,000 Asset Certification Form (HTC, Exchange, TCAP, THTF only):** If the total cash value of the assets owned by members of the household is less than \$50,000, as reported on the Intake Application, the TDHCA Under \$50,000 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**, such as bank statements to verify a checking account. If using this method, the most current statement will be needed for both checking and savings accounts. MFDL programs require two months of source documentation.
 - c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed

² *Multifamily Direct Loan Programs include HOME, National Housing Trust Fund, TCAP, TCAP RF, and NSP.*

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, If received by email, ensure the email address it was received from is evidenced and from the financial institution.

- d. Note: HOME, National Housing Trust Fund, TCAP, TCAP RF, NSP, and Bond developments must fully verify assets at initial occupancy, using method b or c above.*
5. **Verify Student Status:** Must screen for student status; can be collected on the Annual Eligibility Certification, the Certification of Student Eligibility Form, or the income Certification Form. If the household indicates they are students, there are two forms that *must* be used: the Certification of Student Eligibility form must be completed by the household, and the Student Verification form is used to verify and document their student status.
 - a. **With the changes from HOTMA, student income from financial assistance must be evaluated for inclusion/exclusion. A detailed training on this topic is available online: <https://www.tdhca.texas.gov/compliance-program-training-presentations>.**
6. **Verify Special Needs:** This form is generally optional, but is a great way to screen households for special needs. It is required if there is a Special Needs occupancy requirement under your LURA, unless there is another form of special needs verification in the file.
7. **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 <https://www.tdhca.texas.gov/income-and-rent-limits>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
8. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <https://www.tdhca.texas.gov/income-and-rent-limits>. Generally speaking, when determining the rent for MFDL programs, you must ensure that the tenant-paid rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limit set by TDHCA. For HTC, BOND, TCEP and TCAP programs, the tenant-paid rent, plus the utility allowance, plus any mandatory fees, must be below the maximum limit 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 housing 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.

9. **Written Policies and Procedures / Tenant Selection Criteria:** Written policies and procedures requirements are at [10 TAC §10.802](#).
10. **Violence Against Women Act of 2013 (VAWA):** The property is required to provide all prospective tenants the VAWA forms 5380 and 5382 at the time of application, at the time they are approved, at the time of denial, and at the time the household is given a notice to vacate or non-renewal. Forms are available at the Forms link above.
11. **Tenant Rights and Resources Guide:** 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 each 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. A copy of the signed acknowledgment must be maintained in the tenant file.