

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
PK COTTONWOOD APARTMENTS, LP	§	TEXAS DEPARTMENT OF
WITH RESPECT TO COTTONWOOD	§	HOUSING AND COMMUNITY
APARTMENTS (HTC # 12048 / HOME #	§	AFFAIRS
1001677 / CMTS # 544) AND	§	
PK ELMWOOD APARTMENTS, LP WITH	§	
RESPECT TO ELMWOOD APARTMENTS	§	
(HTC 12045 / HOME 1001679 / CMTS	§	
1130)		

AGREED FINAL ORDER

General Remarks and official action taken:

On this 17th day of January, 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 **PK COTTONWOOD APARTMENTS, LP**, a Texas limited partnership (“Cottonwood Owner”) and **PK ELMWOOD APARTMENTS, LP**, a Texas limited partnership (“Elmwood Owner”) (to be collectively known as “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 2012, Cottonwood Owner was awarded HOME funds in the amount of \$340,810, and an allocation of Low Income Housing Tax Credits, in an annual amount of \$193,506, to acquire and rehabilitate Cottonwood Apartments ("Cottonwood") (HTC 12048/ HOME 1001677 / CMTS 544).
2. During 2012, Elmwood Owner was awarded HOME funds in the amount of \$369,733, and an allocation of Low Income Housing Tax Credits, in an annual amount of \$205,380, to acquire and rehabilitate Elmwood Apartments ("Elmwood") (HTC 12045 / HOME 1001679 / CMTS 1130).
3. Cottonwood Owner signed two land use restriction agreements (collectively "Cottonwood LURAs") regarding the Property. The first was a HOME Land Use Restriction Agreement ("Cottonwood HOME LURA"), dated as of April 5, 2013, and filed of record at Document Number 626659 of the Official Public Records of Real Property of San Patricio County, Texas ("San Patricio Records"). The second was a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low Income Housing Credits ("Cottonwood HTC LURA"), dated as of December 5, 2013, and filed of record at Document Number 633859 of the San Patricio Records.
4. Elmwood Owner signed two land use restriction agreements (collectively "Elmwood LURAs") regarding the Property. The first was a HOME Land Use Restriction Agreement ("Elmwood HOME LURA"), dated as of April 17, 2013, and filed of record at Document Number 00396452 of the Official Public Records of Real Property of Leon County, Texas ("Leon Records"). The second was a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low Income Housing Credits ("Elmwood HTC LURA"), dated as of November 15, 2013, and filed of record at Document Number 00402201 of the Leon Records.
5. Respondent is subject to the regulatory authority of TDHCA.

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Compliance Violations¹:

6. An on-site monitoring review was conducted at Cottonwood on March 6, 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 June 21, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
 - a. Respondent failed to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Cottonwood by a Historically Underutilized Business (“HUB”), a violation of 10 TAC §10.620 which outlines requirements for material participation and a violation of Appendix A of the Cottonwood HTC LURA, which requires a HUB to hold at least 51% ownership interest in the general partner, and to materially participate in the development and operation of the property throughout the Compliance Period. At the time that the HTC LURA was signed, the HUB was National Urban Construction Inc. The HUB has indicated that they do not intend to materially participate, and the finding remains unresolved to date.
7. An on-site monitoring review was conducted at Elmwood on February 28, 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 3, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
 - a. Respondent failed to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Cottonwood by a Historically Underutilized Business (“HUB”), a violation of 10 TAC §10.620 (Monitoring for Non-Profit Participation, or HUB, or CHDO Participation) which outlines requirements for material participation and a violation of Appendix A of the Cottonwood HTC LURA, which requires a HUB to hold at least 51% ownership interest in the general partner, and to materially participate in the development and operation of the property throughout the Compliance Period. At the time that the HTC LURA was signed, the HUB was National Urban Construction Inc. The HUB has indicated that they do not intend to materially participate, and the finding remains unresolved to date.
 - b. Respondent failed to maintain complete written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all

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.

developments to establish written tenant selection criteria that meet minimum TDHCA requirements. Acceptable corrective documentation was submitted on November 27, 2018, 147 days past the deadline, after intervention by the Enforcement Committee.

- c. Respondent failed to provide a compliant affirmative marketing plan and evidence of outreach marketing, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), 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. Acceptable corrective documentation was submitted on November 27, 2018, 147 days past the deadline, after intervention by the Enforcement Committee.
 - d. Respondent failed to provide evidence that required supportive services were being provided, a violation of Appendix A of the Elmwood HTC LURA and 10 TAC §10.619 (Monitoring for Social Services). Acceptable corrective documentation was submitted on November 27, 2018, 147 days past the deadline, after intervention by the Enforcement Committee.
8. The following violations remain outstanding at the time of this order:
- a. HUB violation described in FOF #6a; and
 - b. HUB 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 §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 §10.620 in 2018, by failing to provide evidence of regular, continuous, and substantial participation in the development, operation, and ownership of Cottonwood and Elmwood.
5. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements for Elmwood.
6. Respondent violated 10 TAC §10.617 in 2018, by failing to provide a complete affirmative marketing plan for Elmwood.

7. Respondent violated 10 TAC §10.619 in 2018, by failing to provide evidence of required supportive services at Elmwood.
8. 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.
9. 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.
10. 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.
11. An administrative penalty of \$2,000 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 \$2,000, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$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 address the file monitoring violations as indicated in the exhibits and submit full documentation to TDHCA on or before April 17, 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 and the remaining \$1,500 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 \$1,500 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. An exception to this requirement is if a HUB is identified and incorporated into the general partnerships of Cottonwood Owner and Elmwood Owner, in which case the partial transfer will not trigger payment of the deferred administrative penalty amount of \$1,500.

IT IS FURTHER ORDERED that any administrative 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 shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, 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]

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared Ronald Potterpin, known to me or proven to me through _____ 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, who being by me duly sworn, deposed as follows:

1. "My name is Ronald Potterpin, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Director and Member for M&A Elmwood GP, LLC, the general partner of PK Elmwood Apartments, LP. I am the authorized representative of that organization, the owner of Elmwood, 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. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

PK ELMWOOD APARTMENTS, LP, a Texas limited partnership

M&A ELMWOOD GP, LLC, a Texas limited liability company, its general partner

By: /s/ Ronald Potterpin

Name: Ronald Potterpin

Title: Director and Member

Given under my hand and seal of office this 24th day of JANUARY, 2019.

/s/ Katrina Greeley

Signature of Notary Public

Katrina Greeley

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Michigan

My Commission Expires: 4/22/2024

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 in this Agreed Final 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. **All corrections must be submitted via CMTS or as otherwise directed by the TDHCA Asset Management Division:** See link for steps to upload documents
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

Instructions:

3. **HUB Violation** – Cottonwood Owner and Elmwood Owner must each perform one of the following on or before April 17, 2019:
 - A. If you choose to admit a new HUB, with at least 51% ownership interest in the general partners for Cottonwood Owner and Elmwood Owner:
 - i. Submit complete ownership transfer requests via email to Rene Ruiz (rene.ruiz@tdhca.state.tx.us) and Lee Ann Chance (leeann.chance@tdhca.state.tx.us), with Ysella Kaseman (ysella.kaseman@tdhca.state.tx.us) as a cc.
 - a. The Ownership Transfer Form is available in the “Ownership Transfers” section at this link: <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm>. There are 10 electronic tabs that represent separate forms or documents that all transfer requests must contain. A complete ownership transfer request will consist of one bookmarked PDF file. Full instructions are in the Post-Award Activities Manual.
 - b. The Post-Award Activities Manual at the following link provides complete instructions for submitting a complete ownership transfer request in the “Ownership Transfers (All Multifamily Developments)” section beginning at page 44: <https://www.tdhca.state.tx.us/asset-management/docs/18-PostAwardActivitiesManual.pdf>.
 - c. You must submit a separate ownership transfer request for Cottonwood and Elmwood.
 - ii. Submit an ownership transfer fee of \$1,000 for each property, for a total of \$2,000, per the current fee schedule at <https://www.tdhca.state.tx.us/asset-management/activity-fees.htm>.
 - iii. Final ownership transfer approval by TDHCA is not required on or before April 17, 2019, but you must submit complete ownership transfer requests and the required fees by that date. We urge you to submit the requests early in case additional information is requested by TDHCA.

- B. If you choose to submit a material LURA amendment request for Cottonwood and Elmwood:
- i. Submit complete material LURA amendment requests via email to Rene Ruiz (rene.ruiz@tdhca.state.tx.us) and Lee Ann Chance (leeann.chance@tdhca.state.tx.us), with Ysella Kaseman (ysella.kaseman@tdhca.state.tx.us) as a cc.
 - a. The amendment request coversheet is available in the “Amendments” section at this link: <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm>. A complete amendment request will consist of one bookmarked PDF file. Full instructions are in the Post-Award Activities Manual.
 - b. The Post-Award Activities Manual at the following link provides complete instructions for submitting a complete material LURA amendment request in the “Amendments to the LURA (All Multifamily Developments)” section beginning at page 23: <https://www.tdhca.state.tx.us/asset-management/docs/18-PostAwardActivitiesManual.pdf>.
 - c. You must submit a separate material LURA amendment request for Cottonwood and Elmwood.
 - ii. Submit a LURA amendment fee of \$2,500 for each property, for a total of \$5,000, per the current fee schedule at <https://www.tdhca.state.tx.us/asset-management/activity-fees.htm>.
 - iii. Final amendment approval by TDHCA is not required on or before April 17, 2019, but you must submit complete amendment requests and the required fees by that date. We urge you to submit the requests early in case additional information is requested by TDHCA.

Exhibit 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