

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
EAST AUSTIN DEVELOPMENT	§	TEXAS DEPARTMENT OF
CORPORATION WITH RESPECT TO	§	HOUSING AND
EBENEZER SENIOR HOUSING	§	COMMUNITY AFFAIRS
(HOME FILE # 532339 / CMTS # 2681)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 25<sup>th</sup> day of February, 2016, 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 **EAST AUSTIN DEVELOPMENT CORPORATION**, a Texas nonprofit corporation (“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. During 1995, Respondent was awarded an allocation of HOME funds by the Board, in the original principal amount of \$701,720 to build and operate Ebenezer Senior Housing (“Property”) (HTC file No. 532339 / CMTS No. 2681 / LDLD No. 78).

2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 18, 1995, and filed of record at Volume 12595, Page 1096 of the Official Public Records of Real Property of Travis County, Texas (“Records”), as amended by a First Amendment executed on July 7, 2012, and filed in the Records at Document Number 2012111152.
3. Respondent is a Texas nonprofit corporation that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. An on-site monitoring review was conducted on November 22, 2013, 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 16, 2014, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
  - a. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.607 (Utility Allowances), which requires all developments to establish a utility allowance. Partial corrective documentation was received, but was not fully acceptable and the finding remains unresolved.
  - b. Respondent failed to provide the Fair Housing Disclosure Notice for units 1 and 10, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a “Tenant Rights and Resources Guide.” Acceptable corrective documentation to resolve the finding for each unit was submitted December 21, 2015, 394 days past the corrective deadline, after an administrative penalty informal conference notice was sent.
5. The following violations remain outstanding at the time of this order:
  - a. Utility allowance violation described in FOF #4a;

**CONCLUSIONS OF LAW**

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer 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.

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE 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. Respondent violated 10 TEX. ADMIN. CODE § 10.607 in 2013 by failing to properly calculate a utility allowance;
4. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 1 and 10;
5. 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.
6. 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.
7. 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.
8. An administrative penalty of \$250 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 \$250, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in Attachment 1 and submit full documentation of the corrections to TDHCA on or before March 28, 2016.

**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 full assessed administrative penalty and the full amount 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 full administrative penalty in the amount of \$250 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.

**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: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

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

**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 2/25, 2016.

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

By: /s/ James "Beau" Eccles  
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 25<sup>th</sup> day of February, 2016, 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 Henderson  
Notary Public, State of Texas

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 25<sup>th</sup> day of February, 2016, 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)

/s/ Peggy Henderson  
Notary Public, State of Texas



## **Attachment 1**

### **File Monitoring Violation Resources and Instructions**

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

[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. Technical support and training presentations are available at the following links:

Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

3. Utility Allowance – Respondent must:

- i. Obtain the most recent utility allowance schedule from the Austin Housing Authority and upload a copy to CMTS;
- ii. Calculate the utility allowance;
- iii. Update the Unit Status Report / Quarterly Vacancy Report in CMTS with the most current tenant paid rent, utility allowance, and the rental assistance amounts for each of the Property's 12 units;
- iv. Email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) once all of the above have been completed.