

ENFORCEMENT ACTION AGAINST  
LAS VILLAS DE MERIDA  
APARTMENTS, L.P. WITH RESPECT TO  
LAS VILLAS DE MERIDA APARTMENTS  
(HTC FILE # 2009 / CMTS # 3210)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND COMMUNITY  
AFFAIRS

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 18<sup>th</sup> day of January, 2018, 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 **LAS VILLAS DE MERIDA APARTMENTS, L.P.**, a Texas limited partnership (“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 2002, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$917,770 to acquire and operate Las Villas De Merida Apartments (“Property”) (HTC file No. 2009 / CMTS No. 3210 / LDLD No. 552).
2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective February 27, 2004, and filed of record at Document Number 20040276733 of the Official Public Records of Real Property of Bexar County, Texas (“Records”), as amended by a First Amendment executed on January 6, 2008, and filed in the Records at Document Number 20080010182.

3. Respondent is subject to the regulatory authority of TDHCA.
4. Respondent has entered into a contract to sell the property to ZGLVDM, LLC (“Buyer”). The Department has approved the sale and Buyer is not subject to the terms this Agreed Final Order.

Compliance Violations<sup>1</sup>:

5. An on-site monitoring review was conducted on September 19, 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 January 15, 2014, corrective action deadline was set. The following violation was not corrected before the deadline:

Respondent failed to address structural and habitability problems with Building 8 (BIN TX-0200907) that rendered the building uninhabitable and unavailable for occupancy, resulting in the Department reporting the building to the Internal Revenue Service with a finding that the project was no longer in compliance and was no longer participating in the program. These failures were in violation of the representations made on page 1 of the LURA, which requires 75% of the units to be leased to households whose income is 60% or less of area median income, and in violation of Appendix A of the LURA, which defines a minimum applicable fraction of 75% for BIN TX-0200907, a violation of 10 TAC §10.616 (Property Condition Standards), which requires units to be decent, safe, sanitary, in good repair, and suitable for occupancy.

6. A Uniform Physical Condition Standards (“UPCS”) inspection was conducted on December 2, 2013. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a May 5, 2014, corrective action deadline was set. Partial corrective action was received but violations listed at *Exhibit 1* were not corrected before the deadline.
7. A Uniform Physical Condition Standards (“UPCS”) inspection was conducted on September 7, 2016. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a December 3, 2016, corrective action deadline was set. Partial corrective action was received but violations listed at *Exhibit 2* were not corrected before the deadline.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC §§ 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.

8. The following violations remain outstanding at the time of this order:
  - a. Violations for BIN TX-0200907 no longer being in compliance and no longer participating in the program as described in FOF #5.
  - b. UPCS violations described in FOF #6; and
  - c. UPCS violations described in FOF #7

### **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 §10.621 in 2013 and 2016, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.<sup>2</sup>
5. Respondent violated representations made on page 1 of the LURA, which requires 75% of the units to be leased to households whose income is 60% or less of area median income, as further defined by Appendix A, which requires a minimum applicable fraction of 75% for BIN TX-0200907;
6. 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.
7. 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.
8. 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.
9. An administrative penalty of \$10,000 is an appropriate penalty in accordance with 10 TAC §2.

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<sup>2</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a)

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 \$10,000, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated in *Exhibit 1*, and submit work orders in the correct format, including all necessary parts, to document the corrections to TDHCA on or before April 18, 2018.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated in *Exhibit 2*, and submit work orders in the correct format, including all necessary parts, to document the corrections to TDHCA on or before April 18, 2018.

**IT IS FURTHER ORDERED** that Respondent shall restore Building 8 (BIN TX-0200907) to a condition appropriate for habitation and provide complete evidence of the restoration to TDHCA as indicated in *Exhibit 3* on or before April 18, 2018.

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at *Exhibit 4*, and obtain approval from the Department prior to consummating a sale of the Property to any organization other than ZGLVDM, LLC.

**IT IS FURTHER ORDERED** that the Department shall have ten business days ("Department Review") to review any corrective documentation received from Respondent via CMTS.

**IT IS FURTHER ORDERED** that if the sale to ZGLVDM, LLC or another buyer approved by the Department is scheduled within 10 business days of submitting corrective documentation to the Department, the \$10,000 administrative penalty shall be held in escrow at closing pending the result of the Department Review. Upon completion of the Department Review, a letter shall be issued electronically, notifying Respondent of the result. If no corrective documentation is submitted, no letter will be issued.

**IT IS FURTHER ORDERED** that if the Department Review letter indicates that Respondent has timely and fully complied 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 assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven. If the \$10,000 administrative penalty has been paid into escrow, the full administrative penalty shall be refunded to Respondent.

**IT IS FURTHER ORDERED** that if the Department Review letter indicates that Respondent has failed to satisfy any conditions or has otherwise violated any provision of this Order, or if the property is sold before the terms and conditions of this Order have been fully satisfied, then the full administrative penalty in the amount of \$10,000 shall be immediately due and payable to the Department. Such payment shall be made upon the earlier of (a) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (b) the property closing date if sold before the terms and conditions of this Order have been fully satisfied. Payment shall be made either (a) by cashier's check payable to the "Texas Department of Housing and Community Affairs", or (b) held in escrow at closing and released to TDHCA if the Department Review shows that corrective documentation did not fully resolve all violations.

**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]*





## **Exhibit 1**

### **2013 UPCS Instructions**

1. UPCS violations that must be corrected: See attached list. Corrected violations are marked with the word “Cert”, referencing an Owner’s Certification of Corrected Exigent Health and Safety Violations dated 12/5/2013. All other violations are uncorrected.
2. Prepare corrective documentation following these guidelines:  
<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
3. Submit corrective documentation via CMTS following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf> on or before 4/4/2018, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review. Remember that TDHCA has 10 business days to review the corrective documentation.

*[Violation list has been omitted from web version because it is not in an accessible format]*

## Exhibit 2

### 2016 UPCS Instructions

1. UPCS violations that must be corrected: See attached list. Corrected violations are marked with a date. Uncorrected violations are indicated by the absence of a date and/or marked as “Uncorrected”.
2. Prepare corrective documentation following these guidelines:  
<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
3. Submit corrective documentation via CMTS following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf> on or before 4/4/2018, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review. Remember that TDHCA has 10 business days to review the corrective documentation.

*[Violation list has been omitted from web version because it is not in an accessible format]*

### Exhibit 3

#### **Instructions for BIN TX-0200907 (Building 8)**

1. Building must be fully restored and ready for occupancy on or before 4/4/2018. The following information is provided to assist Respondent in its restoration efforts to ensure that the building will meet minimum Department requirements upon completion:
  - a. The Department rule describing how TDHCA monitors properties for Uniform Physical Condition Standards violations is 10 TAC §10.621, available at [http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_floc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=10&rl=621](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_floc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=10&rl=621).
  - b. The Department uses HUD's Uniform Physical Condition Standards for inspection purposes. The UPCS checklist is available at the following link. <https://www.tdhca.state.tx.us/pmcomp/inspections/docs/REAC-UPCS-Inspection-Checklist.pdf>. Please note that this form does not need to be submitted to TDHCA and the link is provided as a tool only.
  - c. The Department uses the Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition available at <https://www.irs.gov/pub/irs-utl/lihc-form8823guide.pdf> for identifying reportable findings of noncompliance. See Chapter 6, Category 11c and Chapter 21, Category 11p.
2. Upon completion of restoration and no later than 4/4/2018, Respondent must demonstrate complete restoration of Building 8 by submitting:
  - a. A narrative explanation of work completed to address the physical condition of the building;
  - b. Supporting documentation such as invoices, completed contracts, and work orders; and
  - c. Either dated and labeled photographs of the building and units, or a video of a full building walk-through;
  - d. Certificate of occupancy or comparable documentation issued by the City of San Antonio for building 8.
3. Submit corrective documentation via CMTS following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf> on or before 4/4/2018, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review. Remember that TDHCA has 10 business days to review the corrective documentation. If a video is done and cannot be uploaded to CMTS, it may be emailed to [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us).

Exhibit 4:

**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)

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(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