

ENFORCEMENT ACTION AGAINST
PLAINVIEW VISTAS, L.P. WITH
RESPECT TO PLAINVIEW VISTAS
(HTC FILE # 04154 / CMTS # 4073)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 19th day of February, 2015, 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 **PLAINVIEW VISTAS, 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 Administrative Penalties 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. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.

2. In 2004, Plainview Vistas, L.P. (“Respondent”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$668,428.00 to build and operate Plainview Vistas (“Property”) (HTC file No. 04154 / CMTS No. 4073 / LDLD No. 514).
3. Respondent signed a Land Use Restriction Agreement (“LURA”) regarding the Property. The LURA was effective June 30, 2006, and filed of record under Volume 1039, Page 5045 of the Official Public Records of Real Property of Hale County, Texas (“Records”).
4. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on August 14, 2013, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility, and comply with other LURA requirements outlined in its Appendices. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a December 22, 2013, corrective action deadline was set, however, the following violation was not corrected before the deadline and remains unresolved as of the date of this Agreed Final Order:
 - a. Respondent failed to provide evidence of material participation and an ownership interest by a Historically Underutilized Business (“HUB”) that maintains regular, continuous, and substantial participation in the development and operation of the Property, a violation of Appendix A of the LURA and 10 TEX. ADMIN. CODE §10.615 (Monitoring for Non-profit Participation or HUB Participation). At the time that the LURA was filed, the HUB holding an ownership interest in the Property was Lone Star Housing Corporation. When the monitoring review was performed, owner representatives were able to show that Lone Star Housing Corporation, now known as Bexar Lone Star Housing Corporation (“Lone Star”), was materially participating as required and that the entity was controlled by a woman, however, they were unable to demonstrate that it held the required ownership interest, the entity’s HUB status had lapsed, and its corporate status had been revoked by the Texas Secretary of State for failure to maintain reporting requirements. Lone Star has since resolved its problems with the Texas Secretary of State and is back in good standing, however, the organization has not submitted evidence of their ownership interest, nor have they restored their status as a HUB.

¹ 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.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TEX. ADMIN. CODE §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 Appendix A of the LURA and 10 TEX. ADMIN. CODE §10.615 by failing to provide evidence of an ownership interest and material participation by a qualified HUB.
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 \$250.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §§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 \$250.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall complete all requirements to restore Plainview Vistas, L.P. to good standing with the Texas Secretary of State and Texas Comptroller, and provide evidence of that good standing to the Department on or before April 20, 2015.

IT IS FURTHER ORDERED that Respondent shall submit all application materials required by the Texas Comptroller in order to apply to re-qualify Lone Star as a HUB, and provide evidence to the Department on or before April 20, 2015, to demonstrate that the application has been submitted in full.

IT IS FURTHER ORDERED that Respondent shall submit evidence to the Department on or before April 20, 2015, to prove that Lone Star holds an ownership interest in Plainview Vistas, L.P. See Attachment 1 for an excerpt from the LURA regarding this requirement.

IT IS FURTHER ORDERED that Respondent shall submit evidence to the Department on or before April 20, 2015, regarding how Lone Star materially participates in the operation of the development. See Attachment 2 for a copy of a section from Chapter 11 of the 8823 Guide for Completing Form 8823, which is a document that TDHCA uses as a basis to determine whether a nonprofit or HUB is materially participating.

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 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 \$250.00 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

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>. If it comes due and payable, the penalty payment 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 the terms of this Agreed Final Order shall be published on the TDHCA website.

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Approved by the Governing Board of TDHCA on 2/19, 2015.

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

By: /s/ Barbara B. Deane
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 19TH day of February, 2015, 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/ Leah Sargent Rosas
Notary Public, State of Texas

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 19TH day of February, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Leah Sargent Rosas
Notary Public, State of Texas

Given under my hand and seal of office this 2nd day of April, 2015.

/s/ Sandra Beltran
Signature of Notary Public

Sandra Beltran
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My Commission Expires: 1-23-18

Attachment 1:

Excerpt from Appendix A of the LURA, regarding HUB requirement

Historically Underutilized Businesses (HUB)

Throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall hold an ownership interest in the Project. The HUB must also maintain regular, continuous, and substantial participation in the development and operation of the Project. At the time this Declaration is filed, the HUB which holds an ownership interest in the Project is

Lone Star Housing Corporation

The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified HUB.

Attachment 2:

Chapter 11, Category 11q from the 8823 Guide for Completing Form 8823, providing details regarding TDHCA material participation expectations

[INTENTIONALLY OMITTED FROM WEB VERSION]

Note – although the guide only discusses material participation by a nonprofit, the Department uses the same guidance to monitor for material participation by a HUB