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|-----------------------------------|---|-----------------------|
| ENFORCEMENT ACTION AGAINST        | § | BEFORE THE            |
| STELLAR EQUITY FOUNTAIN OAKS, LLC | § | TEXAS DEPARTMENT OF   |
| WITH RESPECT TO FOUNTAINS AT      | § | HOUSING AND COMMUNITY |
| CHIMNEY ROCK APARTMENT            | § | AFFAIRS               |
| (HTC FILE # 93048 / CMTS # 1129)  | § |                       |

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 25<sup>th</sup> day of April, 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 **STELLAR EQUITY FOUNTAIN OAKS, 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. During 1994, Partners LaPlace, Ltd. (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$295,973 to build and

operate Fountains at Chimney Rock Apartment (“Property”) (HTC file No. 93048 / CMTS No. 1129 / LDLD No. 834).

2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 14, 1994, and filed of record at Document Number R150412 of the Official Public Records of Real Property of Harris County, Texas (“Records”), as amended by a First Amendment executed on November 22, 2013, and filed in the Records at Document Number 20130600185. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on September 21, 2017 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

5. An on-site monitoring review was conducted on March 20, 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 an August 30, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to provide a complete affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), 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. An affirmative marketing plan was present during the review, but omitted the required marketing materials to prove that the development was carrying out marketing efforts. The finding was resolved on March 20, 2019, after intervention by the Enforcement Committee.
  - b. Respondent failed to maintain compliant written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. The finding was resolved on February 8, 2019, after intervention by the Enforcement Committee.

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<sup>1</sup> 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.

- c. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. At the time of the review, there was a utility allowance in place, but for the Harris County Housing Authority instead of the applicable Houston Housing Authority. The finding was resolved on March 14, 2019, after intervention by the Enforcement Committee. No gross rent violations were identified in association with this finding.
  - d. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 159, 309, 448, and 461, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office, and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
6. All violations listed above are considered resolved at the time of this Order.

### **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 §10.617 in 2018, by failing to provide a complete affirmative marketing plan.
5. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements.
6. Respondent violated 10 TAC §10.613 in 2018, by failing to properly calculate the utility allowance for the property.
7. Respondent violated leasing requirements in 10 TAC §10.613 in 2018, by failing to provide a Tenant Rights and Resources Guide to four households and have the households sign acknowledgment forms.
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. It is appropriate to assess no administrative penalty in accordance with the policies situated at 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 not be assessed an administrative penalty.

**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 April 25, 2019.

By: /s/ J.B. Goodwin  
Name: J.B. Goodwin  
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 27th day of June, 2019, personally appeared J.B. Goodwin, 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 M. Henderson  
Notary Public, State of Texas

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

Before me, the undersigned notary public, on this 27th day of June, 2019, 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 M. Henderson  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF Harris §

BEFORE ME, Jocelyn Williams (notary name), a notary public in and for the State of Texas, on this day personally appeared Stephanie Bryson (person signing document), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Stephanie Bryson, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Manager for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**STELLAR EQUITY FOUNTAIN OAKS, LLC**, Texas limited liability company

By: /s/ Stephanie Bryson

Name: Stephanie Bryson

Title: Manager

Given under my hand and seal of office this 6<sup>th</sup> day of June, 2019.

/s/ Jocelyn Williams  
Signature of Notary Public

Jocelyn Williams  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas  
My Commission Expires: 9/26/2022