

RESOLUTION OF CONTRACT ISSUE WITH	§	BEFORE THE
PROVISION AT WEST BELLFORT, LP	§	TEXAS DEPARTMENT OF
	§	HOUSING AND COMMUNITY
WITH RESPECT TO	§	AFFAIRS
PROVISION AT WEST BELLFORT	§	
(HTC FILE # 16258 / CMTS # 5236)	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 22nd day of July, 2021, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of a proposed resolution of a contract issue regarding the Carryover Agreement entered into by **PROVISION AT WEST BELLFORT, LP**, Texas limited partnership (Owner).

This Agreed Order is executed pursuant to the authority of the Texas Government Code Section 2306.267, which authorizes the Department to order a housing sponsor to perform or refrain from performing certain acts in order to, among other things, comply with terms of a contract or agreement to which the housing sponsor is a party. In a desire to conclude this matter without further delay and expense, the Board and Owner agree to resolve this matter by this Agreed Final Order.

Upon recommendation of the Asset Management Division, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT (FOF)

1. During 2016, Owner was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,500,000 to build and operate Provision at West Bellfort (Property) (HTC file No. 16258 / CMTS No. 5236 / LDLD No. 972).
2. The Underwriting Report issued by the Department’s Real Estate Analysis (REA) Division on June 27, 2016, and later amended on July 11, 2017, included conditions regarding environmental issues identified in the Environment Site Assessment (ESA) report, including one condition¹ due at Cost Certification that required an architect certification

¹ The report identified asbestos products in the operating room of the previously existing salvage yard and grocery center, in fiber backing associated with brown ceramic tile, and in gray sheet flooring and mastic associated with multiple layers of linoleum. According to information submitted by the Owner, the combined materials equaled 180 square feet with 100 additional square feet of black mastic.

that asbestos survey recommendations were successfully implemented in the completion of the Development.

3. Owner submitted as part of its application an additional ESA Certification signed on February 25, 2016, in which it agreed to comply with any and all recommendations made by the ESA provider.
4. Owner signed a Housing Tax Credit Program Commitment regarding the Property on September 22, 2016 (Commitment), incorporating conditions noted by the Department in the Underwriting Report.
5. Owner signed a Carryover Allocation Agreement regarding the Property on October 25, 2016 (Carryover Agreement). The Carryover Agreement incorporates the conditions noted in the Underwriting Report and Commitment, and states that failure to comply with the terms of any such conditions may result in cancellation of the tax credit allocation, along with other remedies.
6. Construction of the Development has been completed, and all buildings were placed in service by November 25, 2019.
7. Owner could not locate any records regarding required asbestos remediation, and therefore, could not obtain an architect certification at Cost Certification to clear this condition for the issuance of IRS Forms 8609.
8. Through documentation obtained from the Texas Department of State Health Services through an open records request, associates of Owner confirmed that the previously existing buildings were demolished with no notice of demolition having been filed, and asbestos mitigation not done. In August 2018, Gardner Capital and Cannon Construction Company, signed Agreed Final Orders with the Texas Department of State Health Services, each paying an administrative penalty of \$1,000.
9. Demolition has already occurred, therefore, no mitigation or alternative solutions are available to the Department.
10. In lieu of the Department withholding issuance of IRS Forms 8609, Owner has agreed to enter into an Agreed Final Order to pay \$17,400 (\$150/unit) to resolve the dispute relating to their failure to comply with environmental conditions.
11. On June 17, 2021, the Board authorized TDHCA staff to resolve this dispute regarding the Carryover Agreement by entering into this Agreed Final Order, to be brought to the Board for adoption at a future meeting.
12. A payment of \$17,400 to the Department is an appropriate resolution of this contract issue.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.267.
2. Owner is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to 10 TAC §10.402(j), 10 TAC 11 Subchapter D, and Section §42(m)(2)(C)(i)(III) of the Internal Revenue Code, the Department conducts a Cost Certification feasibility analysis upon completion of a development in order to make a final determination on the allocation of Low Income Housing Tax Credits.
4. Owner violated requirements of the Underwriting Report, Housing Tax Credit Program Commitment, Carryover Agreement, and 10 TAC §10.402(j)(3)(E) by demolishing buildings without implementing required asbestos survey recommendations.
5. Because Owner is a housing sponsor, TDHCA may order Owner 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 Owner and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the 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 **Owner** shall pay and is hereby directed to pay \$17,400 by check payable to the "Texas Department of Housing and Community Affairs" within 30 days of approval of this Agreed Final Order by the Board, 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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STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, Kelli McShane (notary name), a notary public in and for the State of Texas, on this day personally appeared Willie Tedoe, 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 Willie Tedoe, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I am an authorized representative of Owner and I am duly authorized to execute this document.
3. Owner 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."

OWNER:

PROVISION AT WEST BELLFORT, LP, Texas limited partnership

By: PROVISION AT WEST BELLFORT GP, LLC, a Texas limited liability company, its general partner

By: PROVISION AT WEST BELLFORT MM, LLC, a Texas limited liability company, its managing member

By: /s/ Willie Tedoe

Name: Willie Tedoe

Title: Authorized Representative

Given under my hand and seal of office this 23rd day of July, 2021.

/s/ Kelli McShane
Signature of Notary Public

Kelli McShane
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My Commission Expires: 6-17-24