

**MULTI-FAMILY PRIVATE ACTIVITY BOND PROGRAM  
COMPLIANCE POLICY**

**FOR THE**

**TEXAS STATE AFFORDABLE HOUSING CORPORATION**

This PRIVATE ACTIVITY BOND COMPLIANCE POLICY was adopted on the 9<sup>th</sup> day of November, 2007 by the Board of Directors of the Texas State Affordable Housing Corporation, a Texas public non-profit corporation (together with its successors and assigns the “**Corporation**”). This policy shall be binding on the employees of the Corporation.

Section 1. **Affordability Requirements.** Any applicant that utilizes private activity bonds issued by the Corporation for the development of affordable multi-family housing (the “**Applicant**”) shall agree to provide all requested documentation and complete all on-line reporting according to the terms and conditions set forth in any agreement between the Applicant and the Corporation to show compliance with affordability requirements therein or in any regulatory agreement related to the Applicant’s development.

Section 2. **Section 8 Policy:** The Applicant shall agree that with respect to any prospective resident who qualifies for and intends to supplement their monthly rent with funds and/or other assistance under the United States Housing Act of 1937, 42 U.S.C.A. Section 1437f, and the regulations promulgated pursuant thereto (“**Section 8 Residents**”), shall only be required to provide evidence to the Applicant that such Section 8 Residents monthly income is two and one-half times greater than the actual out-of-pocket amounts to be paid by the Section 8 Resident rather than two and one-half times greater than the actual monthly rent for the applicable unit, in order to qualify for such unit. For project based Section 8 properties, the Applicant shall agree to accept a HUD 50058 or 50059 as adequate income certification.

Section 3. **Asset Oversight Agent Agreement.** The Applicant shall agree to enter into an asset oversight agent agreement (the “**Asset Oversight Agreement**”) between the Corporation, or an agent of the Corporation, and such agent shall conduct a review of the Applicant’s development and provide recommendations.

Section 4. **Resident Services.** The Applicant shall provide a minimum of five resident services (chosen from the TSAHC Resident Services Program Guidelines for the applicable calendar year) offered at least once per quarter to the residents for any service provided. A resident services program plan is subject to review and approval on an annual basis (and can be amended throughout the year upon request) by the Issuer to show the upcoming years activities (the “**Program Plan**”). A line item budget must accompany the resident service Program Plan. The Applicant shall maintain a dedicated budget for such services, and to the extent feasible, the budget should include salaries for on-site staff to provide or coordinate services. If services are provided off-site, transportation costs may not be charged to the residents.

Section 5. **Management of the Properties.** The Corporation shall have the following rights and remedies, subject to reasonable limitations:

- (a) To approve any management agreement that may be assigned to the Issuer if an Event of Default has occurred and is continuing under any agreement entered into in accordance with this policy;
- (b) the Corporation shall have the authority to approve all Managers, including the initial Manager, which approval shall not be unreasonably withheld, conditioned or delayed;
- (c) the Corporation shall have the authority to remove the Managers in the event that:
  - (i) the Properties are not maintained in a manner which complies with Section 2306.186 of the Texas Government Code, as required by Section 2306.269 of the Texas Government Code; or
  - (ii) the Applicant does not follow the reasonable recommendations of an asset oversight agent of the Corporation in accordance with the Asset Oversight Agreement or as required by any agreement entered into in accordance with this policy.

Section 6. **Replacement Reserves.** The Applicant shall maintain the development and make repairs as necessary and shall otherwise comply with Section 2306.186(e), (f) and (g) of the Texas Government Code (the Corporation shall be considered the “department” under such statute) and the Asset Oversight Agreement. The Applicant shall grant the Corporation any and all rights to enter upon the Properties and such right of access thereto as necessary to comply with Section 2306.186(e), (f) and (g) of the Texas Government Code, this Compliance Policy and the Asset Oversight Agreement.

The Applicant shall further agree, subject to reasonable limitations, to grant the Corporation the right to withdraw an amount from available replacement reserves equal to the reasonable cost to maintain the physical needs of the development in order to comply with Section 2306.186(e), (f) and (g) of the Texas Government Code, the Asset Oversight Agreement and all requirements of any agreement entered into in accordance with this policy.

Section 7. **Annual Compliance Audit.** The Corporation, or a third party compliance monitoring agent selected by the Corporation (the “**Independent Consultant**”), will conduct at its own cost (other than cost of providing information) an annual audit to verify compliance with any agreement entered into in accordance with this Compliance Policy (including the Asset Oversight Agreement) and any further agreements between the Corporation and the Applicant. The Applicant shall agree to provide any documentation or information requested either by Corporation or by the Independent Consultant related to such audit that is reasonably available to the Applicant.

Section 8. **Corporation's Compliance/Asset Oversight Agent Fees.** For monitoring services to be performed by the Corporation, or its agent, for compliance and asset oversight, the Applicant shall pay all fees annually to TSAHC directly as an "Operating Expense" of any development.

Section 9. **Default; Enforcement by the Corporation.** Following the declaration of an Event of Default (after any applicable cure period) as set forth and defined in any agreement entered into in accordance with this policy, the Corporation, subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Applicant to perform their obligations and covenants or enjoin any acts or things which may be unlawful or in violation of the rights of the Corporation;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Applicant pertaining to the Properties during regular business hours following reasonable notice;
- (c) pursuant to Section 5, remove the Manager and replace the Manager with a Manager reasonably acceptable to the Corporation;
- (d) pursuant to Section 6, withdraw funds from replacement reserves to make repairs/replacements to the development(s);
- (e) pursuant to Section 10, the ex parte appointment of a receiver;
- (f) pursuant to Section 11, assess reasonable penalties for non-compliance; and
- (g) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Applicant;

The Applicant shall agree that specific enforcement of any Agreement entered into in accordance with this policy may be the only means by which the Corporation may obtain the benefits of such agreements made by the Applicant, and the Applicant therefore shall agree to the imposition of the remedy of specific performance against them in the case of any Event of Default by the Applicant.

Section 10. **Appointment of Receiver; Corporation in Possession.** As provided in Section 2306.125(b) of the Texas Government Code, if and only if all of the following have occurred; (i) a "Material Event of Default", defined below, has occurred and is continuing, and (ii) the Corporation has already pursued any remedies in accordance with Section 5 and 6 above and such Material Event of Default still remains, the Applicant shall agree that the Corporation as a matter of strict right and without notice to the Applicant, without the showing of any insolvency, fraud or mismanagement

on the part of the Applicant and without the necessity of filing any judicial or other proceeding other than for the appointment of a receiver, the Corporation shall be entitled to the ex parte appointment of a receiver to take possession of, protect, control, manage and operate any development in order to remedy the Material Event of Default with respect to such development but for only so long as the Material Event of Default is continuing and remains uncured. The Applicant shall irrevocably agree, consent to, waive any notice of or defense to the appointment of a receiver for any development subject to any agreement entered into in accordance with this policy. The Applicant shall further agree that, following an Extraordinary Additional Cure Period, the equitable appointment of a receiver hereunder is the only remedy available for the Corporation to ensure compliance with the terms of any agreement entered into in accordance with this policy and the safety and well-being of the residents of the development owned by the Applicant who has committed a Material Event of Default. Any receiver appointed shall have all usual powers and duties in such matters as ordered by a court, including, without limitation, the power to take possession of, enter upon, hold, develop, rent, lease, manage, maintain, operate and otherwise use and operate the development upon such terms and conditions as the receiver may deem to be prudent and reasonable under the circumstances in order to remedy the Material Event of Default with respect to such development.

During an Extraordinary Cure Period, the Corporation shall agree to cooperate fully with all parties (or their successors and assigns) that are named parties in the transaction and hold a significant financial interest in the development to rectify the Event(s) of Default in a diligent manner.

**“Material Event of Default”** means an Event of Default that materially adversely affects the health, welfare and/or safety of the tenants of the development that is continuing after the Extraordinary Additional Cure Period has passed.

**“Extraordinary Additional Cure Period”** means a period of an additional 90 days from the cure periods provided in any agreement entered into in accordance with this policy that begins on the date that the Applicant receives written notice from the Corporation that it intends to appoint a receiver as an enforcement remedy for a Material Event(s) of Default. If corrective action is instituted to cure such Material Event(s) of Default within this 90 day period, the Corporation shall agree this Extraordinary Additional Cure Period shall last so long as, in the reasonable discretion of the Corporation, the Applicant is diligently pursuing a remedy for such Material Event(s) of Default; provided, however in no event shall the Extraordinary Additional Cure Period last for more than 1 year from the date the Applicant receives notice as described above.

Section 11. **Assessment of Penalties by Corporation.** The Applicant shall grant to the Corporation the right to assess reasonable penalties for non-compliance against the defaulting Applicant. All penalties assessed will be for the compliance action and amounts per time period as provided in Appendix A attached hereto (the **“Penalties”**); provided that these amounts and time periods may be adjusted by the Corporation from time to time in its sole, but reasonable, discretion. All Penalties assessed shall be paid by the Applicant within 30 days of receipt of a written complaint

and assessment of penalties provided by Corporation to the Applicant. If any penalties remain unpaid for a period of 60 days after receipt by the Applicant of any written complaint and assessment of Penalties, additional Penalties may be assessed by the Corporation. Upon receipt of the written complaint and assessment of Penalties by the Applicant from the Corporation, the Applicant shall have 10 days to request an appearance before the Board of Directors of the Corporation (the “**Board**”) to contest the assessment of such Penalties by the Corporation by written notice to the Corporation within such 10 day period.

Section 12. **Assessment Lien.** The payments due under any agreement made in accordance with this policy shall be made a charge on the property of the development and, in order to secure the payment of the sums due, the Applicant shall grant a subordinate continuing lien (the “**Assessment Lien**”) upon such property against which the payments are due, and shall also be the continuing obligation of the Applicant. The Applicant shall further agree that the Assessment Lien may be foreclosed upon by non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code (or any successor statute).

Section 13. **Compliance Agreement and Asset Oversight Agreement.** A representative form of a compliance agreement and asset oversight agreement that accords to this policy shall be available on the Corporation’s website; however, the form provided on the website is merely for illustrative purposes and the Corporation reserves the right to revise and/or modify the agreement in whole or in part and in all respects.

Section 14. **Indemnification.** Any agreement made between the Corporation and the Applicant shall include an indemnification provision that shall indemnify the Corporation from and against all liability, losses, damages, costs, expenses arising in any manner from the Corporation’s exercise of its rights under said agreement.

## APPENDIX A

### SCHEDULE OF PENALTIES

(Penalty Amounts and Time Periods Subject to Change)

<u>Compliance Action</u>	<u>Required Action to Regain Compliance</u>	<u>Potential Penalty for Continued Non-compliance and Time Periods</u>
Units leased to households that are not eligible because their income is in excess the allowable limit; occupied by non-eligible full time students; or noncompliance with senior age restrictions.	Lease labeled "Do not renew lease - as soon as possible, lease the unit to eligible household;" Lease to eligible household.	Compliance penalty up to \$500 for violation of do not renew restriction; Compliance penalty of up to \$500 for repeated violation.
Rents charged exceed allowable limits or improperly calculated utility allowance.	Borrower/manager demonstrates reduction in rent and/or recalculation of utility allowance and refund difference to tenants.	Compliance penalty up to the amount of uncorrected overcharge.
Failure to submit reports timely and or failure to execute and record program documents.	After written notice of failure to receive report owner must provide corrective action support within 30 days.	Compliance penalty of up to \$250 per additional notice sent for every 30 days of no response.
Failure to follow fair housing or federal laws providing access by the general public or failure to comply with Section 8 minimum income to rent standard.	Borrower must enter into a corrective action agreement and amend leasing requirements if appropriate.	Report for possible fair housing violation. Compliance penalty of up to \$250 per violation.
Failure to maintain adequate documentation or certification for compliance.	Borrower to recertify accordingly and provide documentation upon completion.	Compliance penalty of up to \$100 per request per day period of failure to provide documentation.
Low income units used on transient basis.	Borrower should execute at least six month lease and provide evidence.	Compliance penalty of up to \$100 per request per day for failure to provide documented lease.
Property condition violations	Appropriate repairs completed and provide evidence.	Compliance penalty based on severity of violation up to \$500 per violation.
Failure to provide agreed to resident services	Corrective action within 30 days.	Compliance penalty of up to \$500 per listed service not provided per month.
Failure to pay compliance review fees or compliance penalties timely.	After notice of fees due and payable within 30 days of notice.	Begin collection proceedings. Add State maximum interest rate and additional penalty of up to

<u>Compliance Action</u>	<u>Required Action to Regain Compliance</u>	<u>Potential Penalty for Continued Non-compliance and Time Periods</u>
Failure to meet minimum Rehabilitation Standards.	If discovered during development, potential correction of building. If discovered after building, establish an account to fund necessary modifications.	\$250 per 30 day period of nonpayment. Penalty up to \$500 per 30 day period of non-compliance.
Failure to remove Manager or replacement of Manager.	Remove Manager or replace Manager pursuant to Section 7 of the Compliance Agreement.	Penalty up to \$500 per 30 day period of non-compliance.
Failure to follow recommendations under the Asset Oversight Agreement.	Complete Actions required in recommendation of Asset Oversight Agreement or request such recommendations be modified.	Penalty up to \$500 per 30 period of non-compliance.
Determination of material non-compliance for more than the sum of all cure periods provided in the Compliance Agreement.	After notice of violation, corrective action plan developed with Issuer.	Institution of Appointment of Receivership and Possession by Issuer proceedings with all costs payable by Borrower.