

Texas State Affordable Housing Corporation

2012 Multifamily 501(c)(3) Bond Policies

1. Introduction.

- a. The Texas State Affordable Housing Corporation (the “Corporation”) is a public nonprofit corporation that serves the housing needs of low, very low and extremely low-income Texans and other underserved populations who do not have comparable housing options through conventional financial channels. The Corporation has produced these policies in order to codify its administration of the Multifamily 501(c)(3) Bond Program, pursuant to §§2306.554 and 2306.564 of the Texas Government Code.
- b. The Corporation shall accept applications from qualified nonprofit 501(c)(3) organizations (the “Developer”) to acquire and rehabilitate, or construct a new affordable multifamily rental development (“Development”). Properties currently owned by a Developer may apply to utilize 501(c)(3) bonds for the purpose of refinancing existing debt for affordable housing units already covered by a land use restriction agreement (a “LURA”), or a Regulatory Agreement, as applicable, if, in the sole determination of the Corporation, the proposed refinancing will either (1) significantly extend the affordability of a Development, or (2) will assist in preserving the affordability of a Development that may be infeasible as currently financed.
- c. This Policy has been adopted by the Corporation’s Board of Directors based on a review of the State’s housing needs and shall be reviewed annually pursuant to §2306.564 of the Texas Government Code. This Policy defines the methodology that staff shall use to review applications and creates the criteria for scoring and ranking applications, if applicable.
- d. Contact Information. All questions about the Policy and Application Process can be directed in writing to:

Manager of Development Finance
Texas State Affordable Housing Corporation
2200 E. Martin Luther King Jr. Blvd.
Austin, Texas 78702
Tel. 512-477-3555; Fax 512-477-3557
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2. Targeted Housing Needs.

The Corporation may consider any eligible Development for funding under the 501(c)(3) bond program, however the Corporation targets the use of this financing to the following specific types of Development (“Targeted Housing Needs”) within the State of Texas.

- a. *Preservation and Rehabilitation of Affordable Housing.* The preservation and rehabilitation of existing affordable rental housing developments shall be defined as existing affordable housing in need of significant structural repairs and mechanical systems updates. The housing must currently have a LURA, or Regulatory Agreement placed on it by a public body and recorded in the appropriate real estate records along with the deed of trust. The rehabilitation of housing units must involve at least \$15,000 per unit of rehabilitation, but not more than \$5,000 per unit in site work costs may be included in the calculation. Developments shall include temporary tenant relocation expenses, but may not cause the permanent relocation of existing low-income tenants.

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- b. *Rural and Smaller Urban Markets.* The Corporation is dedicated to expanding access to rental housing in rural and smaller urban markets that are not generally targeted for housing expansion. Rural rental housing developments must be located within an area that is: (a) outside the boundaries of a primary metropolitan statistical area (PMSA) or metropolitan statistical area (MSA); or (b) within the boundaries of a PMSA or MSA, if the area has a population of 20,000 or less and does not share a boundary with an urban area. Smaller Urban rental housing developments must be located within a city of less than 100,000 persons, but not within or adjacent to a PMSA or MSA of more than 500,000 persons.
 - c. *Senior and Supportive Housing Developments.* Senior and *Supportive Housing* Developments must meet at least one of the following definitions in order to qualify under this Targeted Housing Need category.
 - i. A proposed Development that meets the requirements of the federal Fair Housing Act and: a) is intended for, and solely occupied by, individuals 62 years of age or older; or b) is intended and operated for occupancy by at least one individual 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one individual who is 55 years of age or older; and where the owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older. (See 42 U.S.C. Section 3607(b));
 - ii. Is a Development financed under the PAB program in accordance with limitations set by the Internal Revenue Service on Assisted Living Developments, and is a) affordable rental housing combined with minimal medical or supportive services; b) targeted to persons with disabilities, but with at least 60% of units open to any qualified renter; and c) at least 10% of the units are affordable to persons earning less than 30% of the area median income; or
 - iii. A Development that will be primarily marketed to high risk populations and will include common space for intensive supportive services to be provided on-site. This may include developments targeted to at-risk youth populations, persons facing homelessness, or other special needs populations, as approved by the Corporation. Supportive Housing Developments must be designed so that at least 30% of all units are accessible to persons with mobility impairments as defined by the Fair Housing Accessibility Design Standards.
3. **Application Submission.** The Corporation shall publish an application package to its website. Developers should download and complete the application pursuant to the guidelines for completion as included in the application instructions. The Corporation requires an application submission fee of \$2,500.
4. **Application Review.**
- a. The Corporation shall accept applications on an ongoing basis. The Corporation requires at least 35 days to review an application prior to presenting a recommendation for inducement to the Corporation's Board. The Corporation shall bring before the Board only those applications received in a timely manner that have completed the review process.

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b. The Corporation may delay the presentation of an application to the Board if there are errors, omissions or insufficient documentation that the Corporation deems necessary to complete its review. If an application fails to fulfill the minimum threshold criteria for the 501(c)(3) Bond Program the application may be terminated by the Corporation.

5. **Threshold Criteria.** All applications submitted to the Corporation shall be required to meet the following minimum Threshold Criteria (“Threshold Criteria”) in order to be considered for an allocation of bonds by the Corporation. Applications not meeting the criteria listed below shall be subject to termination by the Corporation.

a. *Affordability Threshold.*

i. The Corporation seeks to provide housing to a mix of eligible households, including low, very-low and extremely-low income persons. Developers who are successful at receiving an allocation of 501(c)3 bonds shall agree to the following minimum terms and conditions through a Regulatory Agreement. At a minimum, all Developments will be required to meet the following income and rent restrictions:

A. A minimum of twenty percent (20%) of the units must have gross rents that are restricted to households with incomes no greater than fifty percent (50%) of the Area Median Income (“AMI”), adjusted for family size, **or** at least forty percent (40%) of the units must be affordable to households with incomes at or below sixty percent (60%) of the AMI, adjusted for family size; and

B. At least seventy-five (75%) of the units must be rented to households earning 80% or below the AMI, adjusted for family size, and in accordance with Section 145 of the Internal Revenue Service Code.

C. Rent Restrictions. Gross monthly rent charged on an income restricted unit will not exceed 30% of the applicable AMI.

ii. The length of Affordability Requirements shall be maintained for a period of at least 15 years, or for the term of the bonds, whichever is longer.

b. *Experience Threshold.* All Developers must be able to demonstrate sufficient experience in the development, ownership and/or management of affordable housing developments in order to be considered for an allocation. Developers shall submit evidence that they have been involved in the development or ownership of the greater of 75 units or 50% of the total proposed Development units. The Corporation will only count projects that are determined to be successful examples of affordable housing development, which includes properties in continuing operation, historical and current compliance reporting, and any other factors that the Corporation determines to be relevant.

c. *Construction Threshold.* Developments must adhere to all construction, energy efficiency, accessibility and site development standards set by and approved under the most current Housing Tax Credit Qualified Allocation Plan (“QAP”) as approved and signed by the Governor of Texas. The Corporation’s Board reserves the right to set standards more stringent than the QAP, and Developers are encouraged to review both this Policy and the QAP for any differences.

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- d. *Compliance Threshold.* All Developments must adhere to the Corporation's Compliance Policies, which can be viewed on our website at: www.tsahc.org. Developers and their affiliates shall also be reviewed for compliance history with the Corporation's and any other state or federal affordable housing programs. The Corporation shall require the submission of compliance information and references in order to research a Developer's compliance history. Developers may be disqualified if there is any evidence of continuing noncompliance at the Developer's other Developments.
- e. *Public Benefit Threshold.* Pursuant to §2306.563 of the Texas Government Code and this Policy, the Corporation requires that all nonprofit organizations that receive an issuance of qualified 501(c)(3) bonds must invest at least one dollar in projects and services that benefit income-eligible persons for each dollar of property taxes that is not imposed on the Development as a result of a property tax exemption received under §§11.182 and 11.1825, of the Texas Tax Code. Projects and services must benefit income-eligible persons in the county in which the Development supported with the tax exemption is located and must consist of: (1) rent reduction; (2) capital improvement projects; or (3) social, educational, or economic development services, referred to hereafter as qualified public benefits ("QPB"). The Corporation has determined that the following guidelines are reasonable for the calculation and accounting of QPB:
- i. The Corporation shall require that the value of any property tax exemption be included in the operating budget of the Development and escrowed with the Trustee in an account (the "QPB Account") prior to the repayment of any debt, management fees, performance fee, or any other fees that the Corporation determines relevant. The QPB account may be funded in advance with funds withdrawn for repayment of QPB activities, or may be included on the operating ledger as an account payable with QPB expenditures credited against the balance. On or before January 1st of each calendar year starting after the closing of the bonds, the Developer shall provide to the Corporation an estimate of the value of property tax exemption for that calendar year based on the appraised value provided to the Development by the county tax appraiser where the Development is located. The balance of funds to be escrowed, or credited in the QPB Account may be reduced each month in an amount equal to the value of QPB expended by the Development each month. In the event that the QPB Account has a balance of funds existing, or owed as an account payable, if applicable, at the end of the calendar year the Developer or its guarantors shall advance the balance to the appropriate taxing entities on a pro rata basis. The QPB Account imposed by this section shall be reduced by an amount equal to each dollar that, in lieu of taxes, a Developer pays to a taxing unit for which the Development receives an exemption prior to the end of the calendar year.
 - ii. The Corporation has determined that the value of QPBs shall be calculated in the following manner:
 - A. The value of rent reductions shall be calculated using the difference between the most recent fair market rent (the "FMR") published by the U.S. Department of Housing and Urban Development, (the "HUD") and the actual rent collected in each lease agreement. This includes rent concessions granted to households upon move-in, but not the absence or forgiveness of

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deposits. Rent reductions must be accounted for on a monthly basis, documented in each individual lease agreement that receives the benefit, and a notice given to each resident of the annual value of their rent reduction. Units that receive rental assistance payments of any kind are excluded from rent reduction calculations.

- B. The value of capital improvements shall be determined on a case-by-case basis for each Development and be specific to each Development or property within a pooled transaction. Capital improvement costs shall not include regular maintenance, general repairs, or make ready costs associated with the daily operations of the Development. The Development may include the cost of rehabilitation to be completed as part of the issuance of new 501(c)(3) bonds or approved capital improvements paid for with proceeds from grants, tax credit equity, bond proceeds, loans or other forms of taxable debt, and may amortize the cost of those capital improvements over a five (5) year period. The repayment of taxable debt for capital improvements pursuant to this section B that actually reduces the equivalent amount of such taxable debt payable shall be paid out of escrowed funds or credited against the QPB Account. Capital improvements may not account for more than 75% of the total annual QPB requirement.
- C. The value of social, educational, or economic development services may be based on (1) the actual dollar amount expended by the Development towards such services at the time such services are provided to residents; (2) the value of volunteer services provided and coordinated by the Developer or its affiliates; and (3) the cost saving provided to tenants through services such as free on-site day care, free after school care and free lunch programs. The Development may only include the cost of services approved by the Corporation and shall not include the value or cost of services provided to residents free of cost by third party entities.
- iii. The Corporation shall require each Developer to certify that the Public Benefit Threshold has been met in accordance with this policy, and any future revisions of this policy, in their annual audit, to be filed with the Corporation within 120 days of the beginning of each fiscal year of the Development.
- f. *Resident Services Threshold.* The Corporation strives to maintain one of the nation's best resident services programs in properties that are financed by the Corporation. To obtain this goal and better serve low-income tenants, Developers shall be required to maintain a sustained resident services program that provides at least six (6) approved services to tenants on a quarterly basis. Developers must ensure a dedicated budget for services, free transportation to services if off-site, and preferably on-site staff to direct services. The six (6) services must be listed in the Corporation's Resident Services Program Guidelines, as approved by the Corporation.
- g. *Energy Efficiency Threshold.* All Developments must adhere to U.S. Department of Energy's Energy Star program standards, unless otherwise exempted by approval of the Corporation's Board. Developments including either new construction or rehabilitation shall meet these standards. Developers may obtain additional information regarding these standards directly

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from the Energy Star website: http://www.energystar.gov/index.cfm?c=business.bus_index. This threshold must be certified to by the Development architect, consulting engineer, or other third party energy efficiency consultant, prior to closing and based upon a review of the construction specifications or scope of work provided by the Development's general contractor. Additional incentives for Green Building methods and energy efficiency are included as scoring items.

- h. *Environmental Review Threshold.* Prior to the sale of the obligations, the Developer will be required to conduct a Phase I Environmental Site Assessment. At bond closing, the Developer will be required to provide an environmental indemnity in the form to be provided by counsel to the Corporation.
- i. *Relocation Threshold.* All Developments involving the rehabilitation, reconstruction or demolition of existing housing must provide evidence that all tenants, lease holders, property owners and/or residents have been notified at least 30 days prior to the submission of the bond reservation application to the Texas Bond Review Board, that:
 - i. The Developer intends to rehabilitate, reconstruct or demolish existing housing units; and
 - ii. The Developer shall ensure that tenants' rights under all federal, state and local housing laws are upheld, including by not limited to extended lease agreements, rental assistance, and relocation assistance.
- j. *Accessibility Threshold.* All Developments shall be designed, built and rehabilitated to adhere with the Federal Fair Housing Accessibility Standards, and §2306.514 of the Texas Government Code. Developers are encouraged to review these guidelines with their architect and/or construction team prior to application submission. Developments involving rehabilitation or reconstruction must include the specifications and cost of updating accessibility features in their development cost summary.
- k. *Unit Amenities Threshold.* All housing Developments must adhere to the standard unit and Development amenity requirements of the 2012 QAP.
- l. *Community Support Threshold.* Developers are encouraged to collect community input on their Development proposals. Any letter of support or opposition must be provided to the Corporation as they are received. Developers shall submit with their application two (2) of the following documents in order to demonstrate community support for each proposed Development:
 - i. A letter of Support from one or more of the following: Mayor; City Manager; City Administrator; Director of the Local Housing Finance Agency; Director of the Local Public Housing Agency; School District Superintendent ; or County Judge, from where the development is located;
 - ii. A resolution of support from the City Council, Local School Board or County Commissioner's Court;
 - iii. A letter of support from an affected neighborhood association; chamber of commerce or tenant council of a Development to be acquired;

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- iv. Evidence that a local government (city or county) entity is providing funding for the development; and/or
 - v. A letter of support from the State Representative or Senator representing the district in which the proposed Development is located.
- m. *Underwriting Threshold.* The Corporation shall require third party reports, including, but not limited to, Property Condition Assessments, Environmental Reports, Market Analysis and Appraisals, as necessary to complete its underwriting review. The Corporation shall determine the financial feasibility of Developments using financial ratios and analysis techniques acceptable to the Corporation including the following minimum requirements:
- i. All Developments must maintain a minimum Debt Coverage Ratio (“DCR”) of 1.20. HOPE VI and USDA Rural Development transactions may underwrite to a DCR less than 1.15 based upon documentation provided by HUD or USDA;
 - ii. The Corporation generally requires an amortization period of not more than 40 years. The Corporation may consider longer amortization schedules for Supportive Housing and extremely low-income housing Developments;
 - iii. The Corporation shall include a reserve of replacement expense of not less than \$300 per unit annually. The Corporation may require a higher reserve amount based on information provided in the Property Condition Assessment (the “PCA”);
 - iv. Compliance fees shall be included in the estimate of operating expenses and shall include, at a minimum, the Corporation’s Asset Oversight Agent Fee and Compliance Fee, as well as any fees required by other financial sources; and
 - v. The Development’s financial structure must include equity investments, grants, or other forms of financial equity that are equivalent to at least 15% of the total Development costs or value, as calculated by the Corporation.
- n. *Property Tax Exemption.* Developers shall certify that they will, or will not, apply for a property tax exemption or payment in lieu of taxes agreement (“PILOT”) to reduce the property taxes due to local taxing entities. If a Developer agrees not to apply for a tax exemption or PILOT agreement, the Corporation shall require a restriction be added to the bond documents that prohibits any future application for exemption. If a Developer states that they will or may apply for a tax exemption or PILOT agreement, the Corporation shall require a notification to the local tax appraisal district, school district superintendent and the County Judge where the Development is located that such an exemption or agreement will be requested. Developers will also be required to submit confirmation of any exemptions or final agreements to the Corporation. In addition, all of the QPB requirements must be met.
6. **Scoring.** The Corporation’s Board has adopted the following criteria to score applications to the 501(c)(3) bond program. The Corporation’s scoring system is not intended to rank applicants for competitive purposes, rather it is intended to advance certain Development standards and policy initiatives. Developers may choose any combination of scoring items in order to achieve a score of at least 45 points. Forty-Five (45) points is the minimum score required in order to be considered for an inducement.

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- a. *Proposed Rents.* Applications may receive up to 15 points for proposing Developments that ensure a percentage of rents are affordable to very-low and extremely low-income households. Developments will be required to reserve units for the selected income groups regardless of the availability of rental assistance.
 - i. 15 points – at least 10% of units will be reserved for families who earn 30% or less than the area median income; or
 - ii. 10 points – at least 40% of units will be reserved for families who earn 50% or less than the area median income.
- b. *Income Range for Residents.* The Corporation is interested in promoting mixed income housing as a means to improve the lives of residents and build stronger communities. Applications that propose to ensure the following mixed income guidelines shall receive 15 points:
 - i. Not more than 80% of the housing units will be reserved for persons earning 60% or less than the area median income; and
 - ii. At least 15% of the housing units will be reserved for persons earning more than 80% of the area median income.
- c. *High Income Areas.* Applications shall receive 10 points for proposing Developments located in a census tract that has a median income at least 110% of the County's median income.
- d. *Small and Mid-sized Cities.* Applications shall receive 10 points for developments located in communities with populations less than 100,000, but not located adjacent to a PMSA or MSA with a total population of more than 500,000.
- e. *At-Risk Preservation.* Applications shall receive 10 points for the acquisition and rehabilitation of Developments at-risk of losing affordable housing rental contracts or land use restrictions. Developments must demonstrate that the current LURA or Regulatory Agreement is within 3 years of expiration.
- f. *Supportive Housing.* Applications shall receive 10 points for reserving at least 15% of their units for Supportive Housing, as defined by this Policy.
- g. *Green Building Features.* Applications will receive 10 points for obtaining a certification from a qualified third party that the Development meets the minimum certification requirement of the U.S. Green Building Council's LEED ("LEED") program. Applications will receive an additional 5 points (maximum of 15 points for this criterion) for meeting the Gold or Platinum certification standards for the LEED program. Certification may be based on the proposed construction plans, and the Development shall obtain an official certification after completion of construction or rehabilitation.
- h. *Accessible Housing Features.* Applications will receive 10 points for certifying that the Development will meet the following housing accessibility standards. Rehabilitation Developments are not exempt from meeting these requirements, if the scoring item is selected:
 - i. All housing units accessible through a ground floor entrance shall have at least one no-step entry with a 36" entrance door;

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- ii. All housing and community spaces will be accessible via pathways (sidewalks, ramps, etc...) that meet ADA and Fair Housing accessibility standards;
 - iii. All door ways in ground floor units (including closets, bathrooms, storage areas, etc...) shall have doors with at least a 32 inch clear opening;
 - iv. All doors shall have lever handles, and windows shall have accessible release and opening mechanisms;
 - v. All ground floor units shall have at least one ground floor bathroom with an accessible bath tub or roll in shower, and at least one ground floor bedroom;
 - vi. All electrical outlets, switches and control panels shall be no higher than 48 inches and no lower than 15 inches; and
 - vii. All ground floor units shall have kitchens that are accessible pursuant to the Fair Housing Accessibility Guidelines.
- i. *Local Public Funding.* Applications shall receive 10 points for providing evidence that a commitment of financial support, equal to at least \$100 per unit, has been committed by a unit of government to the proposed Development. The only qualifying units of government shall be counties, cities, municipal utility districts, and councils of government. The Corporation considers fee waivers, grants and loans as financial support.
 - j. *Resident Services.* Applications shall receive 10 points for agreeing to provide at least four (4) approved resident services to tenants on a monthly basis. This scoring criterion is a higher standard than the Corporation's threshold criteria for resident services.
 - k. *Developer Experience.* Applications shall receive 5 points for providing evidence that the Developer currently owns, and maintains in compliance, a number of multifamily housing units at least twice the amount proposed in the Application.
7. **Subsequent Filing Requirements.** Prior to final approval of the Bonds by the Corporation's Board or the Texas Bond Review Board, Developers may be required to file such additional documents or statements in support of their Development, as considered relevant and appropriate by the Corporation, which may include, but are not limited to;
- a. Such additional information as requested by the Corporation's Financial Advisor, Bond Counsel, or Issuer's Counsel;
 - b. A draft of any official statement, prospectus, or other offering memoranda through the use of which the proposed obligations are to be offered, sold or placed with a lender, purchaser, or investor, which offering, sale or placement materials shall contain prominent disclosure substantially to the effect that;
 - i. Neither the Corporation nor the State has undertaken to review or has assumed any responsibility for the matters contained therein except solely as to matters relating to the Corporation and to a description of the obligations being offered thereby;
 - ii. All findings and determinations by the Corporation and the State, respectively, are and have been made by each for its own internal uses and purposes in performing its duties under the legislation enabling the Corporation and this Policy;

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- iii. Notwithstanding its approval of the obligations and the Development, neither the State, nor the Corporation endorses or in any manner, directly or indirectly, guarantees or promises to pay such obligations from any source of funds of either or guarantees, warrants, or endorses the creditworthiness or credit standing of the Developer or of any Guarantor of such obligations, or in any manner guarantees, warrants, or endorses the investment quality or value of such obligations; and
 - iv. Such obligations are payable solely from funds and secured solely by property furnished and to be furnished and provided by the Developer and any Guarantor and are not in any manner payable wholly or partially from any funds or properties otherwise belonging to the Corporation or the State.
- 8. Public Hearings and Meetings.**
- a. The Corporation's Board, at its own discretion, may call any Developer to a scheduled meeting to review the Developer's experience, qualifications, and/or the characteristics of a Development.
 - b. The Corporation requires Developers to attend a public hearing in each of the communities where a Development is proposed. If the Development includes multiple sites in several cities, the Corporation may require an additional hearing to be conducted at a central location to all development sites. All public hearings shall be held prior to the final approval of the Bond Resolution by the Corporation's Board.
 - c. With respect to public hearings required by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), the Corporation shall plan and publish notice, at the expense of the Developer, of the hearing in the *Texas Register* and the local newspapers of general circulation in the participating jurisdictions at least fifteen (15) days prior to the planned TEFRA hearing. The *Texas Register* is published only on Fridays and such notice must be provided in advance pursuant to the requirements of the *Texas Register* guidelines. The Corporation will schedule an appropriate date, time and location for TEFRA hearings based on the schedule of publication.
 - d. The TEFRA Hearing may not be held (and notice of such Hearing may not be published) prior to the date the Corporation approves the Inducement Resolution; provided, however, that such hearings may be scheduled and publication of the hearing notice may be prepared prior to selection as long as (a) the Corporation's staff determines that such action is appropriate, (b) the hearing and publication of notice do not actually occur until after selection by the Corporation and (c) the Borrower provides the deposit to the Corporation set forth herein.
 - e. The Corporation also provides notice of TEFRA hearing(s) to certain members of the Texas Legislature, local public libraries, homeowners' associations or other recognized neighborhood organizations or groups, and other interested parties designated by the Corporation. The Corporation will publish on its website a hearing information form (the "Hearing Information Form"), which must be completed at least seven (7) days prior to the date notice must be provided to the *Texas Register*. The Corporation will not publish notice of a public hearing until it has received the Hearing Information Form, which shall include the following information from the Developer:

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- i. The names and addresses of any affected homeowners' associations; and
- ii. The names of the state legislators, city council members, Mayor, County commissioners, County Judge, School District Superintendent and School Board President, in whose district or precinct (as applicable) the Development(s) are located. Failure to timely provide this information to the Corporation may result in a delay in public notice and accordingly, a delay in the closing of the financing for the Development.

9. Awards.

- a. The Corporation's Board may select Developers for an inducement of 501(c)(3) bonds based on the results of threshold and scoring criteria review from an application and oral presentations. The Corporation reserves the right not to approve any inducement of 501(c)(3) bonds to any Developer(s), even one that fulfills the Corporation's threshold and scoring criteria.
- b. The Corporation reserves the right in its sole discretion to modify, suspend or amend this program at any time, with or without further notice to any interested party. All costs incurred in the response or application process are the sole responsibility of the Developer. All decisions of the Corporation are subject to such additional conditions, restrictions and requirements as determined by the Corporation in its sole discretion. In addition, the Corporation's selection of proposed Developments for possible allocation of 501(c)(3) bonds is subject to final allocation approval by the Texas Bond Review Board.

10. Bond Review Board Approval.

- a. Obligations issued by the Corporation are subject to approval by the Texas Bond Review Board (the "TBRB"). TBRB rules provide an optional exemption from the formal approval process for Texas State Affordable Housing Corporation multifamily conduit transactions unless such transactions involve an ad valorem tax reduction or exemption. If no ad valorem tax exemption or reduction is requested with respect to the Development, the formal TBRB approval process may not be required. However, if one or more TBRB members request it, the formal TBRB approval process must be followed. If so, representatives of the Developer are expected to attend any TBRB planning session and any TBRB meeting at which the Development will be considered for approval. Additional information may be requested by TBRB members and the Developer's cooperation in providing this information is required.
- b. If the formal TBRB approval process is required, the Corporation, with the assistance of its Bond Counsel, will prepare and file the notice of intent and the TBRB Application for the Development. The Corporation will file the notice of intent and the TBRB Application with the TBRB only if it has timely received all required information and documentation for the completion of the TBRB Application from the Developer.

11. **Fees.** Developers shall be responsible for fees and expenses incurred as a result of bonds issued on their behalf (the "Cost of Issuance"). Up to two percent (2%) of the Cost of Issuance may be financed through bond proceeds and will be considered part of the obligations authorized for issuance by the Corporation, where eligible under the Code. Developers shall commit to pay from other sources any Costs of Issuance not payable from tax-exempt bond proceeds. The

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following fees are payable at the times and in the amounts as described below. ALL FEES ARE NONREFUNDABLE, EXCEPT AS OTHERWISE PROVIDED HEREIN.

- a. *Application Fee.* Developers shall submit a nonrefundable fee of \$2,500, made payable to the Corporation, upon submission of the Application.
- b. *Inducement Fee.* Developers shall pay a deposit of \$7,500, and an additional \$1,000 for each property for Developments involving more than one (1) site, to cover expenses related to public hearings and application to the Texas Bond Review Board, within ten (10) business days of the date the Inducement Resolution is approved by the Corporation's Board. Additional reimbursements for expenses related to public hearings and application may be requested by the Corporation.
- c. *Professional Fee Deposit.* After inducement and prior to the submission of the application for 501(c)(3) bonds to the Texas Bond Review Board, Developers shall make a deposit with the Corporation which shall be credited against fees and expenses incurred by Bond Counsel, the Financial Advisor and Issuer's Counsel in connection with the proposed financing. Such deposit shall be \$30,000, which represents a \$15,000 deposit for Bond Counsel fees, a \$7,500 deposit for Financial Advisor's fees, and a \$7,500 deposit for Issuer's Counsel fees. All fees and expenses incurred by Bond Counsel, the Financial Advisor and Issuer's Counsel in connection with the Developer's transaction shall be deducted from such deposit whether or not the obligations are issued. If the accrued fees and expenses of Bond Counsel, the Financial Advisor and/or Issuer's Counsel exceed the amount of such initial deposit, the Corporation may require the Developer to submit an additional deposit payment.
- d. *Corporation Expenses.* Developers shall reimburse the Corporation for all costs and expenditures incurred by the Corporation, prior to and after the selection of the Development by the Board, to analyze the appropriateness and willingness of the Corporation to provide bond financing for the Developer's transaction, including, but not limited to, the reimbursement of costs and expenditures for (i) on-site visitation of multifamily residential developments to be financed (or the site[s] therefor), (ii) any reports deemed necessary or appropriate by the Corporation and not otherwise provided by the Developer, (iii) all costs and expenses (including travel and related expenses) of conducting public hearings and related meetings [described herein] and (iv) such other activities, inspections and investigations as are deemed necessary or appropriate by the Corporation in connection with its determination of the suitability of the Proposed Development for financing assistance to be offered by the Corporation. The Corporation will invoice the Developer for such costs and expenditures, and the Developer shall pay such invoices within ten (10) days of receipt. Failure to make prompt payment of such invoices may result in a termination of the participation of the Corporation and its consultants in the financing.
- e. *Financial Advisor Fees.* The fee to be paid to the Corporation's Financial Advisor, acting in a standard Financial Advisor role, shall be 1) for the first \$15,000,000 of bond principal, the fee shall be \$10,000 plus \$2.00/\$1,000 of the principal amount of debt issued with a minimum fee of \$20,000 (unless otherwise agreed to by the Corporation's Financial Advisor) and 2) for amounts above \$15,000,000 the fee shall be reduced to \$1.00/1000 for that amount over \$15,000,000. In addition, the Corporation's Financial Adviser shall also serve as the bidding agent for an additional fee with respect to all investment contracts to be entered into in connection with the investment of bond proceeds and revenues of the

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Developments. If the financing structure proposed by the Developer requires non-standard services to be performed by Financial Advisor or involves unique financing features including, but not limited to, multiple sites or complexes in a project, extreme credit quality concerns, hedge agreements, swap agreements, or trust structures the fees to be charged by the Financial Advisor shall be subject to adjustment. Any such adjustment must be agreed to in writing by the Developer before the submission of the Bond Application to the Bond Review Board.

- f. *Bond Counsel Fees.* The fee to be paid to Bond Counsel, acting in a standard Bond Counsel role, shall be \$4/\$1,000 of the principal amount of debt issued for the first \$20,000,000 of the principal amount of debt issued, \$3/\$1,000 of the principal amount of debt issued for the next \$20,000,000 of the principal amount of debt issued, and \$2/\$1,000 of the principal amount of debt issued thereafter, with a minimum fee of \$30,000 (unless otherwise agreed to by Bond Counsel). If the financing structure proposed by the Developer requires non-standard services to be performed by Bond Counsel or involves unique financing features including, but not limited to, multiple sites or complexes in a project, extreme credit quality concerns, hedge agreements, swap agreements, or trust structures the fees to be charged by Bond Counsel shall be subject to adjustment. Any such adjustment must be agreed to in writing by the Developer before the submission of the Bond Application to the Bond Review Board. In addition to the fees paid to Bond Counsel, the Developer will reimburse Bond Counsel for all out-of-pocket expenses incurred by Bond Counsel in connection with the Development. Such expenses include TEFRA notice publication, public hearing notices, Attorney General filing fees, and the preparation and filing of the TBRB Applications and supplements thereto.
- g. *Issuer's Counsel Fees.* The fee to be paid to Issuer's Counsel, acting in a standard Issuer's Counsel role, shall be \$1.00/\$1,000 of the principal amount of debt issued for the first \$10,000,000, \$0.80/\$1,000 of the principal amount of debt issued for the next \$10,000,000, and \$0.70/\$1,000 of the principal amount of debt issued thereafter, with a minimum fee of \$7,500 (unless otherwise agreed to by Issuer's Counsel.) In addition to the fees paid to Issuer's Counsel, the Developer will reimburse Issuer's Counsel for all out-of-pocket expenses incurred by Issuer's Counsel in connection with the Development. If the financing structure proposed by the Developer requires non-standard services to be performed by Issuer's Counsel or involves unique financing features including, but not limited to, multiple sites or complexes in a project, extreme credit quality concerns, hedge agreements, swap agreements, or trust structures the fees to be charged by Issuer's Counsel shall be subject to adjustment. Any such adjustment must be agreed to in writing by the Developer before the submission of the Bond Application to the Bond Review Board.
- h. *Closing Fees.* Concurrently with the closing of the financing, the Developer shall pay or cause to be paid all fees and expenses in connection with the issuance of the obligations including, Bond Counsel Fees, Financial Advisor Fees, Issuer's Counsel Fees, and the actual amount of any closing or acceptance fees of any trustee for the obligations, any fees and premiums for casualty and title insurance, any security filing costs, any fees for placing the obligations, any fees and expenses of any compliance agent appointed in connection with the review of any property, any out-of-pocket expenses incurred by professionals acting on behalf of the Corporation, and any other costs and expenses, including issuance expenses, relating to the obligations, their security, and the Development. Developers shall pay or cause to be paid a

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closing fee to the Texas Bond Review Board the greater of \$1,000 or 2.5 basis points (0.025%) of the principal amount of the bonds certified as provided by §1372.039(a)(1), Government Code. Additionally, the Corporation shall receive a Closing Fee of five (5) basis points (.05%) on the principal amount of obligations issued, with a minimum closing fee of \$5,000.

- i. *Administrative Fee.* Until the final maturity of the obligations, the Developer will pay an Administrative Fee, remitted through the respective bond trustee to the Corporation on such basis as designated by the Corporation, in an amount equal to ten (10) basis points (.10%) annually of the aggregate principal amount of the obligations outstanding, with a minimum annual fee of \$5,000. The first annual payment of the Administrative Fee shall be paid at closing. The Administrative Fee is exclusive of the trustee's fee, compliance agent fee, rebate analysts' fee, asset-oversight management fee, audit fee, independent analyst fee, and any other costs or extraordinary costs as permitted under the respective bond documents. Payment of the Administrative Fee is to be covered by the bond credit enhancement and/or secured under the first mortgage on the property assigned to the bond trustee. The Corporation may require the payment of the Administrative Fee to be guaranteed by the Development owner and/or general partner(s).
- j. *Trustee's Fees.* The Developer shall select a bond trustee from a list of bond trustees approved by the Corporation to administer the funds and accounts pursuant to the trust indenture between the Corporation and the trustee bank. All trustee fees and expenses, including fees of trustee's counsel, shall be approved by the Corporation, and will be paid by the Developer.
- k. *Auditor's Fees.* The Corporation may at any time over the life of the Development appoint an auditor to review the financial transactions under the bond documents, the compliance agent, and a rebate analyst to perform an analysis of rebate requirements with respect to the issue. Such fees and costs shall be paid by the Developer.
- l. *Continuing Costs.* Developers shall pay to the Corporation, in the manner described in the Development documents, the following amounts:
 - i. An annual asset oversight and compliance fee the greater of \$45 per unit or \$2,500 for each property included in the Development (as such fee may be adjusted in accordance with the Asset Oversight and Compliance Agreement). The Corporation may require the owner of the Development and/or related entities or person to guaranty the payment of these fees;
 - ii. Any amounts payable pursuant to any indemnity contract or agreement executed in connection with any financing by the Corporation completed as herein contemplated, and
 - iii. The amount allocable to each Developer (whose financing has been completed) of costs and expenses incurred by the Corporation in the administration of the indemnity contract or agreement, any program established in connection with the financing of a Development, and any obligations of the Corporation, including an annual accounting and/or audit of the financial records and affairs of the Corporation. The amount of costs or expenses paid or incurred by the Corporation

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under this clause shall be divided and allocated equally among all Developers whose financings have been completed.

- m. *Changes in Fees.* The Corporation reserves the right at any time to change, increase or reduce the fees payable under this Policy. All fees imposed subsequent to closing by the Corporation under this Policy will be imposed in such amounts as will provide funds, as nearly as may be practical, equal to that amount necessary to pay the administrative costs of conducting the business and affairs of the Corporation, plus reasonable reserves therefore.
 - n. *Failure to Timely Pay Fees and Costs.* The Corporation will not consider submissions for future transactions proposed by Developers who are delinquent in the payment of any fees described herein.
12. **Document Preparation.** Bond Counsel shall have the primary responsibility for the preparation of the legal instruments and documents to be utilized in connection with the financing of the Development by the Corporation. No bonds or other obligations will be sold or delivered unless the legality and validity thereof have been approved by Bond Counsel. The Developer, Bond Purchaser and their respective legal counsels shall cooperate fully with Bond Counsel, the Financial Advisor, the Issuer's Counsel and the Corporation's agents in the preparation of such materials.
13. **Material Changes to Financing Structure.** Any and all material proposed changes to the financing structure, ownership of the Development, or scope or materials of or for the proposed Development, from that set forth in the application must be disclosed to the Corporation immediately in writing and approved by the Corporation.
14. **Time Limits.** In the event that the Development does not close within the time frame established by the Corporation, the Corporation reserves the right to terminate its participation in the financing.
15. **Final Approval by the Corporation.** The Corporation's Board shall consider final action on the Bonds after the completion of the public hearings and upon recommendation by the Corporation's staff. If approved, the Board shall adopt a resolution, in such form as is recommended by Bond Counsel, authorizing the issuance of obligations to provide financing for the Development. Final approval will be granted only upon:
- a. Receipt by the Board of evidence satisfactory to it that the Developer has complied in all material respects with this Policy not otherwise waived by the Board; and
 - b. An affirmative determination of the Board that:
 - i. All requirements for and prerequisites to final approval under this Policy have either been satisfied or waived and are in form and substance satisfactory to the Board; and
 - ii. The operation of the Development(s) will constitute a lawful activity, is qualified for approval by the State, complies with and promotes the purposes of the Corporation and satisfies the requirements of the Corporation.
16. **Closing of the Transaction.** Following the public hearing(s) and final approval by the Corporation and the TBRB, if necessary, the Corporation will proceed to close the financing in accordance with the documents approved by the Corporation and when finally approved by the

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Texas Attorney General and Bond Counsel in accordance with the terms of the sale or placement.

- a. *Structure of Bond Sale.* Developers shall be responsible for determining the structures of the sale of bonds, but are encouraged to contact the Corporation's Financial Advisor for information regarding Bond transactions in Texas. Developers are required to execute an agreement in connection with awarding the sale of the Corporation's obligations to an underwriter or to an institutional purchaser through a private placement that obligates the Developer to the payment of the costs of issuing such obligations as more fully described herein.
- b. *Public Sale Requirements.* Bonds to be sold publicly, whether by competitive bid or negotiated sale, shall have and be required to maintain a debt rating the equivalent of at least an "AA" rating assigned to long-term obligations by a nationally recognized rating agency acceptable to the Corporation. If the Bond Rating is based upon a credit enhancement agreement provided by an institution other than the Developer or Development Owner, the form and substance of the credit enhancement must be approved by the Corporation and its Financial Advisor, and through the Bond Resolution, approved by the Corporation's Board. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.
- c. Obligations with an investment grade rating of "AA" or higher may be in minimum denominations of \$5,000, if any. For the Corporation to approve transactions that are rated "A-" (or its equivalent) or higher but less than "AA," the obligations must be sold in minimum initial denominations of \$25,000 and in integrated multiples of any amount for amounts in excess of \$25,000.
- d. *Limited Offering Requirements.* If the obligations do not have an investment grade rating of "A-" (or its equivalent) or higher, the Corporation will consider such obligations to be non-rated for purposes of this subsection. The Corporation may require that the obligations be rated or permit, at its sole discretion, the issuance of the obligations without a rating. The Corporation requires that non-rated obligations be privately placed or offered on a limited basis with transfer and other restrictions. In order for a non-rated transaction to be considered by the Corporation, the placement must comply with the following minimum requirements: (i) the sale must be made to a "qualified institutional buyer" as defined in Rule 144A of the Securities Act of 1933 (a "QIB") or an Institutional Accredited Investor as defined in Rule 501(a)(1), (2), or (3) of Regulation D under such act (an "Institutional Accredited Investor") and cannot be an underwriting or purchase with an intent to resell any portion of the obligations, (ii) if they are sold to QIBs or Institutional Accredited Investors, the obligations must be issued in minimum denominations of not less than \$250,000 and integral multiples of any amount in excess thereof, (iii) at such time as the bond financing is presented to the Corporation for final approval, the Developer (or placement agent, if applicable) must (a) identify the Purchaser of the obligations and (b) provide a written commitment from the Purchaser in form and content customarily used by real estate lending institutions outlining the terms and conditions of such commitment to purchase the obligations, (c) the Purchaser must represent that it is in the business of originating or acquiring and owning for its account, tax-exempt bonds or mortgage loans on multifamily rental housing properties, (d) there shall be no offering statement of the Corporation, or

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when a placement agent is involved in the sale of the obligations, there may be a placement memorandum prepared by the agent for the Purchaser, and (e) the Corporation may require that one physical obligation be issued with a legend stating that the initial and any subsequent purchaser(s) of such bond shall be a QIB or an Institutional Accredited Investor, as applicable. In the case of a private placement transaction, the Developer or placement agent, upon delivery of the obligations, shall provide the Corporation with an executed investment letter from the investor purchasing the obligations substantially to the effect that: (1) it is engaged in the business, among others, of investing in tax-exempt securities and is a QIB or an Institutional Accredited Investor, as applicable; (2) it has made an independent investigation into the financial position and business condition of the Developer and therefore waives any right to receive such information; (3) it has received copies of the financing documents pursuant to which such obligations are issued; and (4) that it has purchased for its own account and not with the intent to sell them. A complete form of such investment letter will be provided by the Corporation.

- e. Any variation to the requirements set forth above must be requested in writing by the Developer and must be approved by the Corporation, and be acceptable to the Bond Counsel, Financial Advisor, and Issuer's Counsel.
- f. *Required Approvals.* No Developer, or any representative of any Developer or the Corporation, shall represent, directly or indirectly, to any lender (interim or otherwise) supplier, contractor, or other person, firm, or entity that the Corporation has agreed or is firmly committed to issue any obligations in relation to any Development detail until the Board has given final approvals for the issuance thereof under this Policy, and then subject to the governmental approvals required by this Policy and the approval of the Attorney General of the State of Texas, the approval of Bond Counsel and subject to any requirements imposed by the Corporation's Articles of Incorporation.
- g. *Offering Statement.* No Developer, or any representative of the Developer or the Corporation, shall ever make any representation, directly or indirectly, express or implied, of any fact contrary to the disclosures required to be made by this Policy.
- h. *Registration.* Neither the Developer nor any securities firm, underwriter, broker, dealer, salesman, or other person, firm, or entity shall offer, sell, distribute, or place any obligations authorized by the Corporation by any process, method, or technique or in any manner, transaction, or circumstances or to any person or persons, the effect of which would be to require such obligations to be registered or would require filings to be made with regard thereto under the laws of the state or jurisdiction where such offer, sale, distribution, or placement is made without first registering the same or making the filings regarding the same required by such laws.

17. Failure to Comply with this Policy. The Corporation will not consider submissions from Developers for a potential Development if the Developer is a borrower (or a related party thereto) in connection with obligations previously issued by the Corporation and such borrower (or related party) is not in compliance with the Corporation's requirements or is delinquent in the payment of any fees or costs with respect to such previously issued obligations of the Corporation.

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18. **OTHER REQUIREMENTS.** THE CORPORATION MAY IMPOSE ADDITIONAL OR DIFFERENT REQUIREMENTS ON A DEVELOPER THAN THOSE PROVIDED IN THIS POLICY IN THE EVENT THAT THESE ADDITIONAL OR DIFFERENT REQUIREMENTS BECOME NECESSARY TO PROVIDE THE BEST OPPORTUNITY FOR APPROVAL BY THE CORPORATION'S BOARD OF DIRECTORS AND/OR THE TEXAS BOND REVIEW BOARD.