

**MULTI-FAMILY 501(C)(3) AND PRIVATE ACTIVITY BOND PROGRAM
COMPLIANCE POLICY**

FOR THE

TEXAS STATE AFFORDABLE HOUSING CORPORATION

This MULTIFAMILY 501(C)(3) AND PRIVATE ACTIVITY BOND COMPLIANCE POLICY was adopted on the 12th day of January, 2012 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 Compliance Policy shall be binding on the employees of the Corporation.

Section 1. **Affordability Requirements.** Any applicant, developer, owner or borrower (collectively defined as the “**Borrower**” hereafter) that utilizes the benefits of qualified 501(c)(3) bonds or private activity bonds issued by the Corporation for the development of affordable multi-family housing 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 Borrower and the Corporation (or any other applicable agreement, including any tax or other regulatory agreement) to show compliance with affordability and habitability requirements set forth in any such agreement.

Section 2. **Section 8 Policy:** The Borrower 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 1437(f), and the regulations promulgated pursuant thereto (“**Section 8 Residents**”), such prospective resident shall only be required to provide evidence to the Borrower that such resident’s monthly income is two and one-half times greater than the actual out-of-pocket amounts to be paid by such 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 Borrower shall agree to accept a HUD form 50058 or 50059 as adequate income certification.

Section 3. **Asset Oversight Agent Agreement.** The Borrower shall agree to enter into an asset oversight agent agreement (the “**Asset Oversight Agreement**”) between the Corporation, or an agent of the Corporation, and the Borrower, pursuant to which the Corporation or such agent shall conduct a review of the Borrower’s related development or developments and its compliance records and other documents and records as specified by the Corporation.

Section 4. **Resident Services.** The Borrower shall provide a minimum of six resident services (chosen from the Corporation’s Resident Services Program Guidelines) for each calendar year quarter and such resident services shall be free of charge and available to all residents. The Borrower shall also submit a resident services program plan (the “**Program Plan**”) that explains the services to be provided on an annual basis

and which is subject to review and approval by the Corporation. The Borrower shall submit an updated Program Plan on or before December 1st of each year. The Program Plan may be amended throughout the year upon written request of the Borrower and the written approval by the Corporation. A line-item budget must accompany the Program Plan and the Borrower shall maintain a dedicated budget for such resident services. To the extent feasible, the budget should include salaries for on-site staff to provide or coordinate resident services, and if services are provided off-site, transportation costs (which transportation costs may not be charged to the residents).

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

- (a) To approve all managers, including the initial manager, which approval shall not be unreasonably withheld, conditioned or delayed;
- (b) To approve all management agreements including those that may be assigned to the Corporation as bond issuer, if an event of default has occurred and is continuing under any agreement entered into in accordance with this Compliance Policy;
- (c) The Corporation shall have the authority to remove the manager in the event that:
 - (i) the related 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 Borrower does not follow the reasonable recommendations of the Corporation, or its agent in accordance with the Asset Oversight Agreement or as required by any agreement entered into in accordance with this Compliance Policy; or
 - (iii) The Borrower does not correct the findings noted within the applicable Asset Oversight Observation Report and Compliance Observation Report, within the timeframes set forth in this Compliance Policy.

Section 6. **Replacement Reserves.** The Borrower shall maintain the related properties and make necessary repairs thereto, 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 related Asset Oversight Agreement. The Borrower shall grant the Corporation any and all rights to enter upon the related 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 Borrower 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 Compliance Policy. The Corporation may begin the process of withdrawing funds from the replacement reserves 90 days after the initial corrective action period ends.

Section 7. **Annual Compliance Audit.** The Corporation, or a third party compliance monitoring agent selected by the Corporation (the “**Independent Consultant**”), will conduct an annual audit to verify compliance with one or more of the agreements entered into in accordance with this Compliance Policy, including the Asset Oversight Agreement and any tax regulatory or other agreement. The Borrower shall agree to provide any documentation or information requested either by the Corporation or the Independent Consultant related to such audit that is reasonably available to the Borrower. The costs related to any annual audit (excluding the costs incurred by the Borrower in providing information to the Corporation or the Independent Consultant) will be paid from the fees and other amounts payable to the Corporation or the Independent Consultant under the related agreements.

The Corporation will provide the Borrower with its preferred resident file organization standard to be used for each related property. The Corporation will work with the Borrower to determine what file standard will satisfy the requirements for all relative financing arrangements and management company policies. Any changes to the file organization standard must be approved by the Corporation in writing.

Section 8. **Notice of Health and Safety.** The Borrower shall provide all residents with a copy of the Corporation’s Notice to Residents of Assistance Available for Resolving Health and Safety Issues. Each resident file must annually maintain a copy of this letter updated and signed annually, and each resident must be given a copy.

The purpose of the Notice to Residents of Assistance Available for Resolving Health and Safety Issues is to make each resident aware that if management fails to maintain certain levels of habitability, the resident may contact the Corporation. The Corporation will then take appropriate action.

Section 9. **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 Borrower shall pay all fees at least annually to TSAHC directly as an “operating expense” of the related property or properties and prior to the payment of any related bond or other debt service, except as otherwise agreed to in writing by the Corporation.

Section 10. **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 Compliance Policy (each an “Event of Default”), 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 Borrower 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 Borrower 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 related property or properties;
- (e) pursuant to Section 11, undertake the ex parte appointment of a receiver;
- (f) pursuant to Section 12, 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 Borrower;

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

Section 11. **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 Borrower shall agree that the Corporation as a matter of strict right and without notice to the Borrower, without the showing of any insolvency, fraud or mismanagement on the part of the Borrower 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 Borrower 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 Compliance Policy. The Borrower 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 Compliance Policy and the safety and well-being of the residents of the development owned by the Borrower 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 Additional 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 Compliance Policy that begins on the date that the Borrower 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 Borrower 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 one year from the date the Borrower receives notice as described above.

Section 12. **Assessment of Penalties by Corporation.** The Borrower shall grant to the Corporation the right to assess reasonable penalties for non-compliance against the defaulting Borrower. 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 changed by the Corporation from time to time in its sole, but reasonable, discretion. All Penalties assessed shall be paid by the Borrower within 30 days of receipt of a written complaint and assessment of penalties provided by the Corporation to the Borrower. If any penalty remains unpaid for a period of 60 days after receipt by the Borrower 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 Borrower from the Corporation, the Borrower shall have ten 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 ten-day period.

Section 13. **Assessment Lien.** The payments due under any agreement made in accordance with this Compliance Policy shall be made a charge on the property of the development and, in order to secure the payment of the sums due, the Borrower shall grant a subordinate continuing lien (an “**Assessment Lien**”) upon such property against which the payments are due, and shall also be the continuing obligation of the Borrower. The Borrower shall further agree that any such 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 14. **Compliance Agreement and Asset Oversight Agreement.** A representative form of a compliance agreement and an asset oversight agreement that is consistent with this Compliance Policy shall be available on the Corporation’s website; however, the form provided on the website shall be merely for illustrative purposes and the Corporation reserves the right to revise and/or modify any such agreement at any time in whole or in part.

Section 15. **Indemnification.** Any agreement made between the Corporation and the Borrower 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.

Section 16. **Board Waivers.** The Board may consider and approve a waiver to one or more of the provisions of this Compliance Policy at any time. A Borrower may request that the Board consider a waiver one or more of the provisions of this Compliance Policy at a public meeting of the Board.

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 of the allowable limit; occupied by non-eligible full time students; or noncompliance with senior age restrictions. | Change unit designation to market if the household is not qualified within 30 days of initial notification. | Compliance penalty of \$500 for failure to change unit designation; Compliance penalty of \$500 for repeated violation. |
| Failure to meet set-aside requirement as stated in the compliance and/or regulatory agreements. | Only qualified households are eligible for move in. No market households should be moved in until the set aside requirement is met. | Compliance penalty of \$500 for each market household moved in during the time the set aside requirement is not being met. |
| 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 of the amount of uncorrected overcharge. |
| Failure to submit reports timely and or failure to execute and record program documents. | The Borrower must provide corrective action within 30 days after receiving a notice of failure to submit reports/documents. | Compliance penalty of \$250 for every 30 days of non-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 \$250 per violation. |
| Failure to maintain adequate documentation or certification for compliance. | Borrower to recertify accordingly and provide documentation within 30 days of initial notification. | Compliance penalty of \$100 per 15 day period of failure to provide documentation. |
| Low income units used on transient basis, unless otherwise approved by the Corporation. | Borrower should execute at least six month lease and provide evidence of such lease. If Borrower is unable to extend lease terms, the unit must take market designation. If the unit is being held vacant and was previously occupied by a qualified household on a transient basis, the unit designation must be changed to Market. | Compliance penalty of up to \$100 per 15 days for failure to provide documented lease. |

| <u>Compliance Action</u> | <u>Required Action to Regain Compliance</u> | <u>Potential Penalty for Continued Non-compliance and Time Periods</u> |
|--|--|--|
| The property has physical condition violations. | Appropriate repairs must be completed and evidence must be provided. (Health and Safety violations must be completed within 24 hrs, and all other violations must be completed within 30 days.) | Compliance penalty of \$500 per violation. |
| Failure to provide the minimum number of agreed to resident services. | If the minimum number of resident services is not provided in any quarter the deficit of that quarter must be made up in the following quarter. | Compliance penalty of \$500 per listed service not provided per quarter. |
| Failure to pay compliance review fees or compliance penalties timely. | Fees due and payable must be submitted 30 days after initial notice. | Begin collection proceedings. Add State maximum interest rate and additional penalty of up to \$250 per 30 day period of nonpayment. |
| Failure to meet minimum rehabilitation standards. | If discovered during development, the Borrower would be required to make necessary corrections per the specifications in the related loan agreement. If discovered after building, establish an account to fund necessary modifications. | Compliance 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 5. | Compliance penalty of \$500 per 30 day period of non-compliance. |
| Failure to correct Findings under the Asset Oversight Observation Report and/or Compliance Observation Report. | Complete corrective actions required in the Asset Oversight Observation Report and/or Compliance Observation Report. | Compliance penalty of \$500 per 30 day period of non-compliance. |
| Determination of material non-compliance for more than the sum of all cure periods provided in the related compliance agreement. | After notice of violation, corrective action plan developed with bond issuer. | Institution of appointment of receivership and possession by bond issuer proceedings with all costs payable by Borrower. |
| Failure to notify and gain approval from the Corporation of change in ownership or General Partner. | Discuss change of ownership or General Partner with the Corporation to ensure the Corporation is in agreement. | Penalty of \$1,000 per violation. |

Compliance Action

Required Action to Regain Compliance

Potential Penalty for Continued Non-compliance and Time Periods

Determination of a Fair Housing violation.

The property must assess the property and staff to determine if any additional Fair Housing violations exist. If so, staff must be trained immediately. Additionally, the owner must provide documentation to certify that all staff has received Fair Housing training.

Penalty of \$1,000 per violation