

Texas State Affordable Housing Corporation

DRAFT - Joint Venture Development Guidelines

The Texas State Affordable Housing Corporation (TSAHC) has adopted these guidelines to direct staff in the creation of joint ventures, limited liability companies or partnerships (hereinafter Joint Ventures) for the purpose of acquiring, constructing, rehabilitating or equipping affordable multifamily properties (Development). These guidelines set forth the circumstances under which TSAHC will consider undertaking a Joint Venture, the process for reviewing such requests, organizing the Joint Venture and expectations for the operation and management of the Development.

1. Eligible Developments:

In order to ensure that TSAHC adheres to its legislative mandate, only Developments that meet at least one of the following housing needs may be considered:

- a. Small scale developments (50 units or less) located in urban areas that will reserve at least 50 percent of the units for individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size;
- b. Developments serving extremely low-income households, with at least 10% or more of total units reserved for households earning 30% or less than median income and that providesprovide onsite, or free access to off sight, supportive services targeted to households at risk of homelessness. These developments will be defined as Permanent Supportive Housing, per these guidelines;
- c. Developments located in rural or smaller urban areas. 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 Markets rental housing Developments must be located within a city of less than 150,000 persons; but not within or adjacent to a PMSA or MSA of more than 500,000 persons; and
- d. Developments that are intended for individuals 62 years of age or older or intended and operated for occupancy by at least one individual 55 years of age or older; and at least 20% of total units are affordable and reserved for households earning 50% or less than the area median income.

2. Application and Approval Process:

TSAHC will make available an application for potential Joint Venture partners to complete to assess if the Development will meet TSAHC's underwriting and program requirements. TSAHC's application will include, but is not limited to:

- Financial proformas and summary of sources and uses to assess the financial feasibility of the project in accordance with TSAHC's program requirements, including projected gaps in financing sources and proposed solutions and proposed fee splitting;
- Summary of the Applicant's previous experience with affordable housing development;
- Summary of property tax implications (i.e. the anticipated savings TSAHC's involvement creates and implications to the local property tax base);
- Summary of proposed ownership structure in the form of an organization chart (with owner entity preferably to be organized as a limited liability company) identifying owner entities, developer entities and guarantors;

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- List of all parties involved as financial sources (i.e. lenders, foundation, etc.) and development team members (i.e. architects, property managers, etc.), disclosing any affiliations with applicant;
- Term sheets for all development sources of funds and/or descriptions and applications for any pending sources;
- Whether a sales tax exemption will be sought through TSAHC serving as general contractor and, if so, the identity of the master contractor (if known) and bonding capacity;
- Summary of developer's proposed long-term timeline for development, including securing of financial resources, closing date of acquisitions and occupancy by qualified low-income households.

Once TSAHC has determined, based on its own assessment, that the proposed Joint Venture meets these Guidelines, a project summary, along with initial underwriting will be presented to TSAHC's board of Directors for Approval. If approved, TSAHC will then negotiate and enter into a Memorandum of Understanding ("MOU") with the Applicant, or Applicant's affiliates.

Prior to the closing any Development, TSAHC will be required to obtain approval, in the form of a resolution, of the final financing structure and ratifying the creation of subordinate entities from its Board of Directors.

If the Development includes the issuance of Private Activity Bonds, with TSAHC, or any other entity, as Issuer, TSAHC will not permit the submission of a reservation for bond allocation to the Texas Bond Review Board until such time as TSAHC has agreed to and executed the MOU.

3. Ownership Structure:

The owner entity should in almost all cases be a limited liability company. TSAHC may create one or more affiliated entities in connection with the undertaking of its duties in connection with the Development. In addition, TSAHC will require the formation of a development member (or similar entity) to act in conjunction with the TSAHC-affiliated Managing Member (or General Partner) in connection with the development and management of the Development in such a manner so as to preserve eligibility for a property tax exemption as TSAHC's attorneys may determine. TSAHC may create one or more of the following entities, in its sole discretion, to manage specific functions of the Development and ownership of the property.

- a. **Managing Member (or General Partner) Entity.** A separate entity, established and wholly controlled by TSAHC, may be established by TSAHC to serve as Managing Member (or General Partner). The Managing Member or General Partner Entity will be the de facto managing entity of the Development in cooperation with any development members (or limited partners or similar entities). The Managing Member (or General Partner) must have authority to review and approve all financing terms and commitment letters, as well as contracts with the owner including without limitation development team members and will have authority to approve engineering and architectural plans for the Development. The Managing Member (or General Partner) may also receive a percentage of any typical or customary developer fees due from development proceeds, an asset oversight fee from rental revenues of the Development and a percentage of ongoing net revenues or cash flow after the payment of all debts and obligations of the Development. The Managing Member

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(or General Partner) will also be entitled to sales proceeds and will have an option and/or right of first refusal to purchase the development and/or the other members' (or partners') interests in the owner entity upon disposition on or before year 15 of operations and thereafter. TSAHC and its affiliates will not be required to provide any guaranties or indemnities and will be fully indemnified by the Owner and the developer and such other joint venture entities for their participation in the Development except to the extent of TSAHC's gross negligence or willful misconduct.

- b. **General Contractor Entity.** A separate entity, established and wholly controlled by TSAHC, may be used by TSAHC to serve as General Contractor. The General Contractor will be used to administer all construction contracts, oversee the approval of draws, and conduct other customary due diligence needed to complete the Development. TSAHC may utilize a pre-existing General Contractor entity that has been used in previous developments. TSAHC's affiliate will earn a fee equal to a percentage of the sales tax savings.
- c. **Land Ownership Entity.** TSAHC or a separate entity, established and wholly controlled by TSAHC, may be used by TSAHC to serve as owner of the land for the Development. In general, (1) the land will be leased to the limited partnership (or limited liability company) for a term not to exceed 99 years, and (2) the Development owner will own the Development structures, including existing structures, improvements, equipment and new construction. TSAHC, as ground lessor, will have a continuing option to buy the improvements and leasehold estate from the Owner entity so as to qualify for the property tax exemption. TSAHC will earn a fee in exchange for providing the property tax-exempt structure.
- d. **Developer Entity.** A separate entity, established and wholly controlled by TSAHC, may be used by TSAHC as a development-related entity, to manage development activities related to the Development and earn TSAHC's share of the developer fee.

Note: Each of the foregoing affiliated entities, together with TSAHC, are required to be indemnified by the Developer (and/or other entity specified by TSAHC) for such affiliated entity's actions or omissions that do not constitute willful misconduct.

4. Fees:

- a. **Application Fee:** \$500 (this fee is in addition to TSAHC's standard multifamily bond application fee, if applicable, or any other fees associated an application for financing to TSAHC).
- b. **Start-Up Fee:** Applicants will be required to fund TSAHC's organization and legal costs of establishing TSAHC's subordinate entities through the Start-Up Fee. A deposit of \$15,000 towards the Start-Up fee will be due and payable to TSAHC upon the approval of the Joint Venture by TSAHC's Board of Directors.
- c. **Asset Management Fee:** As part of TSAHC's Joint Venture responsibilities, the Development's annual operating budget must include an Asset Management Fee of \$10,000, with an annual increase during Development operations of 3%.
- d. **Developer Fee:** For participating in a Joint Venture, TSAHC will receive a portion (minimum of 25%) of the Developer Fee paid from the Development's financing sources and revenues. TSAHC will be paid proportionally with the Developer for any deferred payments of the

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Developer Fee (regardless of source). TSAHC will consider lowering the minimum developer fee to 20% for projects considered to be Permanent Supportive Housing.

- e. General Contractor Fee: If TSAHC or its affiliates serve as the general contractor of record, it will be entitled to a fee equal to ~~25~~10% of the sales tax savings (no less than \$~~20~~30,000) and must be fully indemnified. The closing documents, including the master subcontract, must include specific indemnification language provided by the Corporation in the MOU.
- f. Cash Flow and Revenue Sharing: Following the repayment of all amounts owed to the Developer and TSAHC for the Developer Fee, cash flow from the Development may be (1) used to fund supportive services in addition to any services required by the Development's compliance or regulatory agreements; (2) escrowed by TSAHC in a fund (the "Local Services Fund") to support local educational, health and welfare service providers or agencies that benefit residents of the Development; and/or (3) shared by the Developer member and Corporation affiliated managing member (or general partner). At a minimum, TSAHC's share of net cash flow and capital event proceeds shall be 30%. The inclusion of subordinate financing, either from a third party or an affiliate of the development team, will require the creation of a supportive service fee ("Supportive Service Fee") to be paid from either the project's operating income or prior to any distribution of cash flow.
- g. Professional Fees: TSAHC's Joint Venture Counsel will provide services related to the creation of affiliated entities and TSAHC's duties in its related roles, the terms of the limited partnership or limited liability company documents, the terms of applicable indemnifications, and other ancillary matters. The Joint Venture Counsel shall charge a fixed fee (or an hourly based fee) to be established based on the facts of the financing structure to be used and approved by TSAHC.

Issuer Fees Not Included. For the avoidance of doubt, TSAHC's fees as bond issuer (if applicable) will be provided under separate cover.

5. Community Outreach:

TSAHC is intent on ensuring that local support is in place prior to approving its participation in a Joint Venture. In order to identify such support, Applicants shall be required to submit at least two letters that clearly state the project will be exempt from property taxes from the following entities or persons:

- a. The City or County housing department;
- b. The City or County housing finance agency;
- c. The City or County public housing agency;
- d. The office of the Mayor or County Judge;
- e. A member of the City Council or County Commissioner's Court;
- f. The State Representative or Senator serving the district where the property is located; or
- g. The Superintendent of Public Schools serving the project site.

Projects utilizing housing tax credits will also be required to obtain a resolution from the city or county government where the development is located, that meets the standards for low-income housing tax credit program pursuant to section 2306.67021 of the Texas Government Code. The submission of this

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resolution may be done after application but must be received prior to the reservation of private activity bonds, if included in the financing structure.