



## Joint Venture Development Guidelines

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The Texas State Affordable Housing Corporation (Corporation) has adopted these guidelines to direct staff in the creation of joint ventures (hereinafter Joint Ventures) for the purpose of acquiring, constructing, rehabilitating or equipping affordable multifamily properties (Development). These guidelines set forth the circumstances under which the Corporation 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 the Corporation adheres to its legislative mandate, only Developments that meet the following criteria may be considered:

- a. Developments that meet at least one of the Corporation's Multifamily Tax-Exempt Bond Programs Targeted Housing Needs as defined by the Policies in effect at the time of the Corporation's approval of the Development, including Developments that are not financed with tax-exempt bonds; or,
- b. Developments that reserve the greater of 10% or five housing units for persons with disabilities, Permanent Supportive Housing or persons earning up to 30% of the Area Median Income; or
- c. Small scale developments (less than 50 units) 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.

## **2. APPLICATION AND APPROVAL PROCESS.**

The Corporation will post to its website an application for potential Joint Ventures to complete for the Corporation to determine if the Development will meet its underwriting and program requirements. The Corporation'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;
- Balance sheet and financial statements for proposed guarantors (and indemnitors) that collectively demonstrate a \$1 million minimum liquidity and \$5 million net worth (the "Net Worth Covenants"), which will be required as a continuing obligation as long as the Corporation and/or its affiliates remain in the Joint Venture;
- Summary of the Applicant's previous experience with affordable housing development;
- Summary of property tax implications (i.e. the anticipated savings the Corporation'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;
- List of all parties involved as financial sources (i.e. lenders, foundation, etc.) and development team members (i.e. architects, attorneys, accountants, general contractor, property managers, etc.);
- Term sheets for all development sources of funds;
- A timeline for development, including securing of financial resource, closing date of acquisitions and occupancy by qualified low-income households.

In order to assess the financial strength of every Borrower, the Corporation will require:

- i. From Non-Profit Borrowers with annual expenditures greater than \$750,000 the most recent 2-years of audited financial statements, and year-to-date balance sheet and income statements;
- ii. From Non-Profit Borrowers with annual expenditures less than \$750,000 the most recent 2-years of financial statements that include an Independent Accountants' Review Report, and year-to-date balance sheet and income statements.
- iii. From For-Profit Borrowers the most recent 2-years of income tax statements, audited financial statements, and year-to-date balance sheet statements. If the Borrower does not conduct an annual corporate audit, an Independent Accountants' Review Report with financial statements for the most recent 2-years, and year-to-date balance sheet and income statement will be acceptable.

Once the Corporation staff has, in its discretion based on advice from counsel and other advisors, determined that the proposed Joint Venture is in substantial compliance with these Guidelines, a project summary (which will highlight any aspects, if any, of the Joint Venture that may depart from these Guidelines), along with initial underwriting will be presented to the Corporation's board of Directors for consideration. If approved, the Corporation will then negotiate and enter into a Memorandum of Understanding ("MOU") with the Applicant, or Applicant's affiliates.

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

### **3. OWNERSHIP STRUCTURE.**

The owner entity should in almost all cases be a limited liability company. The Corporation may create one or more affiliated entities in connection with the undertaking of its

duties in connection with the Development. In addition, the Corporation will require the formation of a development member (or similar entity) to act in conjunction with the TSAHC-affiliated Managing Member in connection with the development and management of the Development. The Corporation 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 Entity.** A separate entity, established and wholly controlled by the Corporation, may be established by the Corporation to serve as Managing Member. In almost all Joint Venture transactions, the Corporation's affiliate will serve as managing member of an owner entity organized as a limited liability company, and will be fully indemnified by entities or individuals that satisfy the Net Worth Covenants. The Managing Member (or in extraordinary circumstances, general partner entity formed by the Corporation) will have the level of control over decision-making as is required to generate any proposed ad valorem property tax exemption. in cooperation with any development members. The Managing Member 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 shall receive an asset management 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 will also be entitled to sales proceeds and will have an option and/or right of first refusal to purchase either the development or the other members' interests in the owner entity upon disposition of the property. The option and/or right of first refusal will be exercisable starting on or before year 15 of operations, and a separate option to purchase the property in the ground lease will be structured to demonstrate equitable ownership by the ground lessor in Joint Ventures proposing ad valorem property tax exemptions.
- b. **General Contractor Entity.** A separate entity, established and wholly controlled by the Corporation, may be used by the Corporation 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. The Corporation may utilize a pre-existing General Contractor entity that has been used in previous developments.
- c. **Land Ownership Entity.** A separate entity, established and wholly controlled by the Corporation, may be used by the Corporation to serve as owner of the land for the Development. In general, (1) the land will be leased to the 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.

- d. Developer Entity. A separate entity, established and wholly controlled by the Corporation, may be used by the Corporation as a development-related entity, to manage development activities related to the Development.

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

Based on the Corporation's review of the financial statements, Borrowers may be required to provide a personal guarantee or letter of credit to meet the Corporation's financial strength requirements.

#### 4. FEES.

- a. Application Fee: \$500 (this fee is in addition to the Corporation's standard multifamily bond application fee or any other fees associated with the issuance of tax-exempt bonds).
- b. Start-Up Fee: Applicants will be required to fund the Corporation's organization and legal costs of establishing the Corporation's subordinate entities through the Start-Up Fee. A deposit of \$15,000 towards the Start-Up fee will be due and payable to the Corporation upon the approval of the Joint Venture by the Corporation's Board of Directors.
- c. Asset Management Fee: As part of the Corporation's Joint Venture responsibilities, the Development's annual operating budget must include a fee of up to \$45 per door, with an annual minimum fee of \$2,250. The fee covers the physical and financial inspection of the asset and other Asset Management responsibilities. The Fee outlined above would be the maximum fee. However, Fees may vary based on the following factors:
  - If the Corporation is also the Bond Issuer for the transaction.
  - If the applicant has property management experience.
  - If the applicant has funding program compliance experience.
  - If the Development will receive Compliance Oversight from TDHCA or another oversight agency.
- d. Annual Audit and Accounting Fee: The Corporation shall be paid from the operating fund of the Development an Annual Audit and Accounting Fee of \$10,000.
- e. Developer Fee and General Contractor Fee: For participating Joint Venture, the Corporation will receive a portion (minimum of 20%) of the Developer Fee paid from the Development's financing sources and revenues, with the Corporation share to be paid at least pro rata or preferably as a priority payment in advance

to compensate for the payroll and other expenses likely to be incurred through participation in Joint Ventures. If the Corporation or its affiliate serves as general contractor, it will be entitled to a fee that will be no less than \$20,000. The Corporations, its developer entity, and its general contractor entity must be fully indemnified by entities and/or individuals satisfying the Net Worth Covenants, to the maximum extent allowed by Texas law.

- f. **Cash Flow and Revenue Sharing:** Following the repayment of all amounts owed to the Developer and Corporation 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 the Corporation 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 . The Corporation's minimum share of cash flow will be 25% of the final cash flow amount, after deduction listed above, and in any event must be in an amount sufficient to cover the Corporation's estimated costs (including payroll expenses and other incidental expenses) to maintain its oversight and decision-making role and satisfy its contractual obligations in the Joint Venture.
- g. **Professional Fees:** The Corporation's Joint Venture Counsel will provide services related to the creation of affiliated entities and the Corporation's duties in the its related roles, the terms of the 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 the Corporation.

## 5. COMMUNITY OUTREACH.

The Corporation 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 the following documentation with their inducement application:

- a. A resolution from the city or county government where the development is located, stating support for the proposed development, including resolutions that meet the standards for low income housing tax credits pursuant to section 2306.67021 of the Texas Government Code. The submission of this resolution may be done after application, but must be received prior to the reservation of private activity bonds, if included in the financing structure;
- b. A letter of support from the local housing finance corporation stating support for the proposed development, unless no local housing finance corporation or other similar entity is available; and

- c. At least two additional letters of support fulfilling the Corporation's Community Support Threshold as defined by the most recent Multifamily Tax-Exempt Bond Program Policies and Request for Proposals.