Tax Credit Assistance Program
Federal Requirements

Following is federal guidance provided by HUD (Notice CPD-09-03) issued May 4, 2009, which outlines certain federal requirements which must be complied with by each property owner who receives assistance under the Tax Credit Assistance Program ("TCAP") authorized by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (the "Recovery Act") Additional requirements and guidance from HUD will be issued in the future, and such supplemental instructions and guidance will be applicable to this project and incorporated by reference when and as issued by HUD. PHFA will use its best efforts to provide such additional guidance to each owner in the form of an addendum to this agreement. Such guidance may address, among other things, such items as recordkeeping, reporting, data collection, expenditure and accounting requirements, and additional federal grant and program requirements.

F**EDERAL GRANT REQUIREMENTS**

TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Property Owners receiving TCAP must comply with the following federal requirements:

- **Fair Housing Act** (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.

- **The Age Discrimination Act of 1975** (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."

- **Affirmatively Furthering Fair Housing**

HUD has responsibility to affirmatively further fair housing in the programs it administers. To meet this obligation, PHFA must establish an affirmative fair housing marketing plan for its TCAP projects and require project owners to follow its plan when marketing TCAP units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The affirmative marketing requirements and procedures adopted must include:

- Methods for informing the public, owners and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy:
- Requirements and practices each owner must adhere to in order to carry out the grantee's affirmative marketing procedures and requirements;
- Procedures to be used by owners to inform and solicit applications from persons in the housing market areas that are not likely to apply for the housing without special outreach. Special outreach, as appropriate, includes but is not limited to, the translation of marketing material for persons who are limited English proficient; the placement of translated marketing material in minority owned media; and the provision of meaningful access concerning the residential rental

project (e.g. providing translated information about application procedures, tenancy and other project amenities);

- Records that will be kept describing actions taken by the grantee and by owners to affirmatively market units and records to assess the results of these actions; and
- A description of how the grantee will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

Owners must follow ongoing PHFA guidance regarding reporting and data collection, participation in outreach programs and use of ongoing tools such as the apartment locator and related programs for expansion of housing and employment opportunities in furtherance of fair housing.

- **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development."

Section 504 of the Rehabilitation Act of 1973 applies to all TCAP projects. For new construction projects and projects undergoing substantial rehabilitation, five percent of the units must be accessible to persons with mobility impairments and two percent of the units must be accessible to persons with hearing or vision impairments. (See 24 CFR 8.22.) Substantial rehabilitation for a multifamily rental project is defined in Section 24 CFR 8.23 as a project with 15 or more units for which the alterations would equal more than 75 percent of the replacement cost for the facility.

Modifications to projects to comply with Section 504 requirements are eligible costs under TCAP. However, compliance with Section 504 requirements may be infeasible or impracticable for some projects, depending on where they are in the development process. If a new construction or substantial rehabilitation project is underway or has already been completed, and it cannot be modified to meet the accessibility requirements established by Section 504, it is ineligible to receive TCAP assistance.

For projects in which the rehabilitation would not be considered substantial, the Section 504 provisions are applicable only to the maximum extent feasible, i.e., not required if it would impose undue financial and administrative burden. See 24 CFR 8.23.

- **National Environmental Policy Act and Related Laws** (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.

The Recovery Act expressly applies section 288 of the HOME statute, which requires the State to assume responsibility for environmental review under the National Environmental Policy Act (NEPA) of 1969 and related federal environmental authorities and regulations at 24 CFR Part 58 "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities." The "State", as defined in the HOME program statute (42 USC 12704(2)), means "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act." Accordingly, the State is responsible for the

environmental review, but the State may designate, if it so chooses, the state housing credit agency to perform the environmental reviews for TCAP projects on behalf of the State. ***No TCAP funds may be committed to a project before completion of the environmental review process.***

Once an owner applies for TCAP funds, committing TCAP or any other funds to or undertaking any "choice-limiting" activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds), is prohibited. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposition of real property. **Performing a choice-limiting action may disqualify a project from receiving any federal funds.**

See 24 CFR Part 58 for general information about environmental review requirements at http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html or http://www.hud.gov/offices/cpd/environment/index.cfm.

If a federal environmental review has already been completed for a project, providing TCAP funds to the project may not require an additional environmental review. For example, if the state housing credit agency or another agency or department of the State performed an earlier environmental clearance for HUD assistance on the project that is now receiving TCAP assistance from the state, and neither the project nor the environmental conditions have changed since the previous review, then no new environmental clearance is required. See 24 CFR 58.35(b)(7).

- **The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992** and implementing regulations at 24 CFR Part 35 are applicable to housing that receives Federal assistance.

Additional guidance on the applicability of these requirements to TCAP projects will be forthcoming and will be applicable as of the date hereof.

- **Davis-Bacon Prevailing Wages** Under section 1606 of Division A of the American Recovery and Reinvestment Act of 2009, contractors and subcontractors hired with Recovery Act funds are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act. In the case of projects already under construction, it may be possible to obtain a determination, under 29 CFR 1.6(g), that Davis-Bacon requirements apply prospectively to the construction project, as of the date of the TCAP award.

- **"Anti-Lobbying" Restrictions** (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 "New Restrictions on Lobbying".) This statute prohibits the use of funds appropriated by any act by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with covered Federal action.

- **The Drug-Free Workplace Act of 1988** (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 "Government-Wide Requirements for Drug-Free Workplace (Grants)**"**.) This

statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

- 2 CFR Part 2424 “Non-procurement Debarment and Suspension.”