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**TENNESSEE HOUSING DEVELOPMENT AGENCY**

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**Section 1602 Program**

**2009 Program Description**

**(June 23, 2009 DRAFT)**

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**TENNESSEE HOUSING DEVELOPMENT AGENCY  
SECTION 1602 PROGRAM DESCRIPTION**

**PART I. Introduction & Overview**

The American Recovery and Reinvestment Act and the American Recovery and Reinvestment Tax Act (collectively, the “Act”) which were signed into law on February 17, 2009, included two provisions involving low income housing tax credits (“Tax Credits”), the Tax Credit Assistance Program (“TCAP”) and a tax credit exchange program under Section 1602 of the Act (the “Section 1602 Program”).

This document sets forth the Tennessee Housing Development Agency (“THDA”) program for use of the Section 1602 Program.

This Program Description is subject to revision based on changed circumstances, such as, but not limited to statutory changes and revised, new or additional guidance from federal agencies. THDA will announce and make information about such changes available on its website.

THDA encourages any developments with Tax Credits that can proceed without Section 1602 Program funding or other additional assistance to do so.

Terms used in this Program Description shall have the same meaning as in Section 42 of the Internal Revenue Code of 1986, as amended (“Section 42”), applicable federal statutes and regulations, the relevant THDA QAP (the “QAP”), Section 1602 of the Act, U.S. Treasury Department Guidance dated May 2009 (the “Treasury Guidance”) and/or in any agreements between THDA and the owner of a development that receives a Section 1602 Program funding.

The Section 1602 Program amounts are expected to temporarily fill the gap caused by lack of investor interest for tax credits. Section 1602 Program amounts can be used for developments that have or are expected to receive an award of tax credits and may also be used for developments that do not have an award of tax credits, as specified further in this Program Description.

All Section 1602 Program funds awarded must be fully expended and drawn down on or before December 31, 2010.

**PART II. Funds Available**

- A. THDA will maximize the amount of low income housing tax credits that can be exchanged for a cash grant to THDA under the Section 1602 Program. THDA has received an award of \$48,600,424, which replaces \$5,717,697 in 2009 Tax Credits and is the maximum amount of new 2009 Tax Credits that can be exchanged, plus \$4,434,761, which replaces \$521,739 of Tax Credits returned to THDA as of June 4, 2009. As the National Pool amount becomes known and as THDA receives additional amounts of returned Tax Credits, THDA expects to make subsequent applications for additional Section 1602 Program amounts.
- B. THDA's model for the financing structure of developments receiving Section 1602 Program funding incorporates the following elements (the “THDA Model”):
  - 1. Reasonable costs
  - 2. Private financing based on achievable rental income within Section 42 rent limits
  - 3. Sale of tax credits (equity/syndication)

- 4. Gap financing provided by resources made available under the Act
- C. THDA expects to fill financing gaps with Section 1602 Program funds, but only to a level necessary, as determined by THDA in its sole discretion, to achieve financial feasibility as affordable rental housing and for an amount not to exceed THDA approved eligible basis for the development. THDA will evaluate each request for funds to determine which developments should receive Section 1602 Program funds, and the amount of such funds, based on funding sources for the development and progress of the development.
- D. ***The availability of all Section 1602 Program funding is subject to the availability of funds and to all applicable program requirements.***
- E. THDA will require the return of existing Tax Credits, in whole or in part, as needed to fulfill Section 1602 Program requirements and to maximize use of all ARRA resources.

<b>PART III. Other Federal Requirements</b>
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- A. The federal cross cutting requirements that apply to TCAP funding, based on the requirements of the Act, do not apply to Section 1602 Program funding.
- B. Federal requirements that normally apply to Tax Credit developments continue to apply. For example, without limitation, the Fair Housing Act and the Americans With Disabilities Act, together with attendant federal regulations, continue to apply to developments that receive an award of Tax Credits and/ or Section 1602 Program funding.

<b>PART IV. Eligibility</b>
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- A. For Developments **WITH** an Award of Tax Credits:
  - 1. Eligibility Requirements:
    - (a) The development must have received an award of Tax Credits under Section 42(h) no earlier than 10/01/2006 and no later than 09/30/2009. An award of Tax Credits is defined as the date on which the scoring and ranking was posted to THDA's web site for the program year.
    - (b) Tax Credit pricing reported to THDA as of June 15, 2009 must be less than projected Tax Credit pricing reflected in the Initial Application for the development submitted to THDA.
    - (c) The development must contain buildings which are qualified low-income buildings under Section 42 and otherwise meet all Section 42 requirements and the requirements of the relevant QAP.
    - (d) All applicants must be eligible under applicable federal requirements and be in good standing with THDA and all applicable requirements.
    - (e) All applicants must be in compliance with the reservation notice or carryover allocation agreement issued for their development, as applicable.
    - (f) THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that all fair housing and non-discrimination requirements have or will be met.

- (g) THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that 100% completion of construction for the development can occur no later than December 31, 2010 or that sufficient financing has been secured to complete construction after December 31, 2010.
- (h) All applicants and developments must meet tax credit and financial feasibility requirements and all other requirements of Section 42 and the QAP for the year in which the application is submitted.

Based upon THDA's existing criteria for Tax Credit developments, THDA will ensure that the Section 1602 Program funding amount is consistent with the requirements of the relevant QAP and Section 42(m). In particular, the Section 1602 funding amount shall not exceed the amount deemed necessary by THDA, in its sole discretion, to ensure the financial feasibility of the approved development.

2. Good Faith Requirement:

Evidence satisfactory to THDA, in its sole discretion, that the applicant has made a good faith effort to secure an adequate equity commitment including, without limitation, a written description of efforts to obtain an equity investment, a list of all syndicators and investors contacted, together with telephone numbers and e-mail addresses, and copies of documentation evidencing responses from all syndicators and investors contacted. THDA reserves the right to contact equity syndicators and investors for verification.

3. Private Financing Requirement:

Evidence satisfactory to THDA, in its sole discretion, that the applicant has made a good faith effort to secure the maximum amount of private financing based on potential rents including, without limitation, a written description of efforts to obtain maximum private financing, a list of all providers of private financing contacted, together with telephone numbers and e-mail addresses, and copies of documentation evidencing responses from all providers of private financing contacted. THDA reserves the right to contact providers of private financing for verification.

B. For Developments **WITHOUT** an Award of Tax Credits:

1. THDA anticipates that Section 1602 Program funding will only be made available to developments without an award of Tax Credits after all determinations with respect to developments with an award of Tax Credits have been concluded. THDA will announce a deadline or deadlines for submission of applications and attendant documentation for developments without an award of tax credits. Acceptance and review of these applications will be subject to the availability of Section 1602 Program funds. THDA will not be the sole source of funds for the construction or rehabilitation of developments without an award of Tax Credits and will not provide permanent financing.

2. Private Financing Requirement:

Evidence satisfactory to THDA, in its sole discretion, that the applicant has made a good faith effort to secure the maximum amount of private financing based on potential rents including, without limitation, a written description of efforts to obtain maximum private financing, a list of all providers of private financing contacted, together with telephone numbers and e-mail addresses, and copies of documentation evidencing responses from all providers of private financing contacted. THDA reserves the right to contact providers of private financing for verification.

3. Eligibility Requirements:

- (a) Developments that are proposed in rural areas, or that are rehabilitation of existing developments with USDA Rural Development assistance, or that propose 100% of the housing units for special needs populations (new construction or rehabilitation).
- (b) The development must contain buildings which are qualified low-income buildings under Section 42.
- (c) All applicants must be eligible under applicable federal requirements and be in good standing with THDA and all applicable requirements.
- (d) THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that all fair housing and non-discrimination requirements have or will be met.
- (e) All applicants and developments must meet tax credit and financial feasibility requirements and all other requirements of Section 42 and the QAP for the year in which the application is submitted.
- (f) THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that 100% completion of construction for the development can occur no later than December 31, 2010 or that sufficient financing has been secured to complete construction after December 31, 2010.
- (g) THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that an acceptable amount of private financing (construction and permanent) is available for the proposed development.

4. Increase in Total Funds to the State Requirement:

Evidence satisfactory to THDA, in its sole discretion, that the applicant has secured financing that increases the total amount of funds available in Tennessee to build or rehabilitate affordable housing in Tennessee, ie not a refinancing.

<b>PART V. Concessions</b>
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- A. Developments requesting Section 1602 Program funding that is 15.0% to 19.9% of total development costs shall waive the right to give the written notice specified in Section 42(h)(6)(I).
- B. Developments requesting Section 1602 Program funding that is 20.0% or more of total development costs will be required to:
  - 1. Waive the right to give the written notice specified in Section 42(h)(6)(I); and
  - 2. Set aside a minimum of 20% of the units for households with incomes no higher than 50% of the area median income with rents maintained at or below 50% of area median income. This is in addition to any units set aside for purposes of lowest income preference points in the Application under the relevant QAP

## PART VI. Application Submission

### A. Complete Application

1. To be considered complete, an application must meet **ALL** of the following requirements:

- (a) Have content, formatting and pagination identical to that of the application form;
- (b) Be computer generated or typed (**hand written Applications are prohibited**);
- (c) Bear original signature(s);
- (d) Include all required Attachments and supporting documentation, with all such Attachments and supporting documentation containing correct, complete, consistent, and current information, all as determined in THDA's sole discretion, as required in this Program Description and bearing original signatures;
- (e) Have no missing information or any information that is erroneous, incomplete or inconsistent;
- (f) Include a complete original and one complete copy;
- (g) Be submitted by the application deadline specified in this Part VI

### B. Application Requirements

THDA will make available documentation that must be completed to request Section 1602 Program funding and submitted to demonstrate eligibility, good faith effort and selection criteria.

### C. Application Delivery

An Application must be identified as a "Section 1602 Program Application" and be delivered to:

**Tennessee Housing Development Agency  
Suite 1200  
404 James Robertson Parkway  
Nashville, TN 37243-0900**

Applications may be delivered to THDA by mail, in person, by courier, or by other means of physical delivery. **(Applications by express delivery services should be sent to the address above but at Zip Code 37219-1598.)** Telecopy, facsimile, or other transmission or delivery of "copies" or "representations" of the Application or other documents **will not be accepted.**

THDA assumes no responsibility for late delivery or delivery to locations other than stated above. **Only those Applications arriving at the location stated above by the Application deadline specified in Part QQQ will be considered.**

### D. Application Deadline

THDA will announce the date or dates for taking applications for Section 1602 Program funding.

E. Fees

THDA will charge various fees depending on the activities involved for specific developments, including without limitation, application, origination, document preparation, loan closing and/or other similar fees. The owner of each development that receives Section 1602 Program funding shall pay all closing costs incurred in connection with closing the Section 1602 Program funding, including all THDA-appointed attorneys' fees and expenses, if any.

THDA will charge an asset management fee and a compliance monitoring fee for each development that receives Section 1602 program funding.

In the event THDA elects to engage a private entity to carry out activities for which fees will be charged, the cost of such services shall be charged to and paid by or on behalf of each development with Section 1602 Program funding.

**PART VII. Scoring System**

Using the following point scoring system, THDA will award points to developments that best meet listed criteria.. THDA encourages the participation of equity providers by giving a priority to applicants that are able to secure equity for, at least, the original allocation of Tax Credits, but due to equity pricing are unable to complete the development. Applicants that could not secure equity or declined to sign a commitment letter will be given a lower priority. THDA will provide Section 1602 Program funding, subject to the requirements of this Program Description, but only to a level necessary, in THDA's sole discretion, to achieve financial feasibility based on THDA's underwriting criteria.A. Completion of construction maximum 31 points

- 1. No later than 02/06/2012.....5 points
- 2. No later than 12/31/2011.....15 points
- 3. No later than 06/30/2011.....25 points
- 4. No later than 12/31/10.....31 points

Completion of construction will be based on an approved expenditure schedule and a fully executed construction contract (in the form of AIA Document A101, 1997 Edition, Standard Form of Agreement Between Owner and Contractor, together with AIA Document A201 the Conditions of the Contract for Construction 1997 Edition).

- B. Ability to close sale of LIHTC at or above \$0.70 maximum 30 points
- 1. At least \$0.600 up to \$0.649 .....10 points
  - 2. At least \$0.650 up to \$0.699 .....20 points
  - 3. \$0.700 and above .....30 points

Equity pricing will be based on information provided to THDA as of June 15, 2009 and supported by a firm, executed equity commitment from an equity provider.

- C. Smallest financing gap maximum 24 points
- 1. request of 20.0% or more of total cost .....5 points
  - 2. request of 15.0% to 19.9% of total cost .....15 points
  - 3. request of less than 15.0% of total cost .....24 points

- D. Ability to begin construction within 120 days of funding commitment                    maximum 15 points
  - 1. Fully executed construction contract.....10 points
  - 2. Item 1. above plus building permits.....15 points
- E. Tie Breaker
  - 1. Syndication Price – highest price gets priority

***The applicant must provide documentation of all scoring and eligibility items satisfactory to THDA, in THDA's sole discretion.***

Section 1602 Program funding will be made available only to developments that meet all eligibility requirements and the good faith requirement, as determined by THDA in its sole discretion. THDA anticipates making Section 1602 Program funding available to developments, beginning with the highest scoring applications based on the selection criteria described herein, until all Section 1602 Program funds are exhausted. THDA also anticipates making Section 1602 Program funding available to developments that do not have an award of Tax Credits, but who otherwise meet the requirements of Part IV-B.

<b>PART VIII. Disbursement of Funds</b>
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- A. Section 1602 Program funding will be made available to approved developments as a full recourse loan. The loan will be at 0% interest with no repayment required. If an approved development remains in compliance with applicable program requirements for a full fifteen (15) years, the full amount of the loan will be forgiven. If an approved development falls out of compliance with applicable program requirements at any time during the fifteen (15) year compliance period, the full amount of the loan must be repaid.
- B. Section 1602 Program funding will be made available as follows:
  - 1. For eligible developments that meet all requirements of this Program Description and the relevant QAP, and have a funding gap, at such time as THDA may permit based on the circumstances of each approved development.
  - 2. THDA will coordinate the funding of draws with the construction lender. THDA will release Section 1602 Program funds for payment of construction costs no more often than monthly and only upon receipt of a requisition approved by the development owner, the construction lender and all construction consultants engaged by the lender and/or THDA. THDA reserves the right not to fund draws based upon standard exceptions for construction lenders, including without limitation, any default by the owner, the existence or alleged existence of any lien on the project (other than liens securing the construction loan or in favor of THDA) or payment disputes with subcontractors or suppliers. THDA reserves the right to contract, at the expense of the development owner, with third parties for administration of construction draws, including without limitation construction consultants or a construction lender.
- C. All obligations with respect to the Section 1602 Program funding shall be secured by a deed of trust that may be a first lien or may be subordinate to a construction deed of trust, if approved by THDA in its sole discretion. The property proposed for the development and all improvements, whether existing or proposed, shall be subject to the lien of the deed of trust. A collateral assignment of rents and leases and personal guaranties are also required. Additional collateral may be required at the sole discretion of THDA, based on the nature of the transaction involved.

- D. The owner of an approved development shall execute a legally binding written agreement prior to any disbursement of any Section 1602 Program funds. The written agreement will set forth (explicitly, or incorporated by reference) all Section 1602 Program requirements, Section 42 requirements, relevant QAP requirements applicable to the approved development. The written agreement shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the approved development remains in compliance for the entire 15-year compliance period. The written agreement shall also contain a firm, realistic expenditure schedule including, without limitation dates for commencement of construction/groundbreaking, 50% completion, and 100% completion. The written agreement shall require the owner to provide sufficient information to THDA to report on the use of funds. THDA expects that it will be required to use the state approved language for all Section 1602 Written Agreements.
- E. In connection with the closing of Section 1602 Program funding, THDA will require all documents, representations and warranties normally and customarily associated with a full recourse loan, including without limitation, note, deed of trust, guarantees, assignments and various other agreements, certifications, opinions and any other documentation as determined necessary by THDA, in its sole discretion. All such documents will be non-negotiable.
- F. The Developer fee for developments without an equity investor will be paid as follows:
  - 1. Twenty percent (20%) when the Section 1602 Program funding is closed.
  - 2. Forty percent (40%) when the full amount of the Section 1602 Program funding is expended.
  - 3. Forty percent (40%) when the final cost certification for the development is approved by THDA and ninety percent (90%) occupancy has been achieved for ninety (90) consecutive days.
- G. THDA will coordinate with the syndicator, equity investor and/or entity providing private financing regarding required reserves, including without limitation, replacement reserves, operating reserves, compliance reserves. THDA reserves the right to require reserves, as it determines necessary in its sole discretion, for developments without a syndicator or equity investor or if THDA determines, in its sole discretion, that required reserves are inadequate. All reserve accounts must be cash deposits. No letters of credit will be allowed to cover any reserve requirements.

**PART IX. Expenditure Deadlines**

The full amount of Section 1602 Program funding awarded to a particular development must be fully expended and drawn down no later than December 31, 2010. THDA will set deadlines and documentation requirements prior to this deadline to ensure that it is met.

**PART X. Recapture of Funds**

Any failure to comply with applicable program requirements at any time during the fifteen (15) year compliance period triggers the obligation to repay the full amount of the Section 1602 Program funding provided. This requirement is in addition to any action permitted or required to be taken based on the Land Use Restrictive Covenants and Section 42, including without limitation, the filing of an IRS Form 8823.

The full amount of the Section 1602 Program funding due upon a default is a debt owed to the United States payable to the General Fund of the Treasury and is enforceable by all available means against all assets of the owner, the individuals making up the owner and all guarantors.

## PART XI. Reporting/Compliance Requirements

- A. Each approved development that receives Section 1602 Program funding shall provide the following information to THDA on at least a quarterly basis in a form and substance satisfactory to THDA in its sole discretion:
1. Owner name
  2. Name of development
  3. Brief description of development
  4. Location of development – city, county, state and zip code
  5. Number of construction jobs created
  6. Number of construction jobs retained
  7. Number of non-construction jobs created
  8. Number of non-construction jobs retained
  9. Number of total housing units newly constructed
  10. Number of total housing units rehabilitated
  11. Number of low-income housing units newly constructed
  12. Number of low-income housing units rehabilitated
  13. Other reports and information deemed necessary by THDA in its sole discretion
- B. In the event of a failure to comply with Section 1602 Program requirements during construction and thereafter, THDA may, in its sole discretion, take any of the following actions:
1. Temporarily halt disbursements until the material failure is corrected
  2. Disallow all or any part of the cost of any activity or action that is not in compliance with Section 1602 Program requirements
  3. Suspend or terminate, in whole or in part, the Section 1602 Program funding
  4. Withhold Section 1602 Program funding to developments with related parties
  5. Change the structure of the ownership entity (including adding or removing parties)
  6. Replace the management company
  7. Recapture the full amount of the Section 1602 Program funding
  8. Enforce guarantees
  9. Take any and all other legal remedies as may be available including, without limitation, seeking specific performance

## **PART X. Other Requirements**

- A. THDA may elect to contract with independent individuals or independent entities to conduct some or all of the activities required or determined necessary hereunder to ensure compliance with the Act, Treasury Guidance, Section 42, the relevant QAP and all applicable federal statutes and regulations. The owner of a development that receives Section 1602 Program funding will be expected to bear all fees and costs associated with the entity or entities performing functions with respect to the approved development.
  
- B. THDA reserves the right to modify this program description, in its sole discretion, in response to statutory changes, changed or modified Treasury Guidance or other federal guidance applicable to the Section 1602 Program, or as needed to correct oversights, misstatements or lack of clarity.