

**THE HEALTH, EDUCATIONAL AND HOUSING
FACILITY BOARD OF THE
CITY OF MEMPHIS, TENNESSEE**

**MULTIFAMILY HOUSING BOND FINANCINGS
POLICIES AND PROCEDURES**

In Cooperation With The

CITY OF MEMPHIS, TENNESSEE

MEMPHIS HOUSING AUTHORITY

And The

TENNESSEE HOUSING DEVELOPMENT AGENCY



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**THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE
CITY OF MEMPHIS, TENNESSEE**

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MULTIFAMILY HOUSING BOND FINANCINGS

POLICIES AND PROCEDURES

THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE CITY OF MEMPHIS, TENNESSEE



INTRODUCTION

General

The Health, Educational and Housing Facility Board of the City of Memphis, Tennessee is a public not-for-profit corporation duly organized and validly existing under the laws of the State of Tennessee (the “**HEHFB**”, “**Board**” or “**Issuer**”). The HEHFB was created pursuant to Tennessee Code Annotated Section 48-101-301 *et seq.*, as amended (the “**Act**”) for the purposes, among other things, to provide quality, safe, affordable, and sanitary housing through issuing revenue bonds and exploring other methodologies for financing the acquisition, development, and maintenance of residential rental facilities for the benefit of low and/or moderate-income families and individuals as set forth in the Act. The HEHFB is authorized under the Act to acquire and develop residential rental facilities for low and moderate-income families or individuals as an aid to facilitate the preservation, growth, and development of quality and affordable multifamily housing. It is the intention of the HEHFB to conduct its activities consistent with its statutory and public purpose pursuant to the provisions of the Act, any and all other laws of the State of Tennessee, and with the enactments of the local legislative bodies of the Memphis City Council applicable to the HEHFB.

The HEHFB created its Policies and Procedures with the intent to ensure compliance with applicable laws and regulations, give appropriate guidance to applicants and bondholders for better informed decision-making, and streamline internal and external processes (the “**Policies and Procedures**”). Similarly, the HEHFB created Policies and Procedures each for its PILOT program and for the Memphis Housing Authority PILOTs, wherein the HEHFB administers all PILOTs on behalf of the Memphis Housing Authority.

The HEHFB reserves the right to amend or waive these Policies and Procedures, all Bond applications, and other related documentation duly adopted and approved by the Board of Directors, as necessary, for good cause shown, upon a majority vote of the Board of Directors, in order to effectively perpetuate its mission of fostering the preservation and financing the acquisition, development, and maintenance of quality and sustainable affordable multifamily housing through exploring other methodologies and economic avenues to appropriately meet the health, educational and affordable housing needs of low and moderate-income families and individuals residing in the City of Memphis, including the adoption, incorporation, and implementation of any available laws, programs, or other measures made available under the laws of the State of Tennessee and the City of Memphis.



Types of Bonds

There are two main types of bonds that can be used to finance affordable housing projects: (i) governmental bonds that are defined as tax-exempt bonds issued to finance projects owned by a governmental entity, and (ii) private activity bonds that are defined as tax-exempt bonds issued to finance projects owned by a private entity, not-for-profit entity or a 501(c)(3) entity. Qualified Exempt Facility Bonds, a type of private activity bond, are the most common type of affordable multifamily housing bonds utilized by the Board and are issued pursuant to Section 142(d) of the Internal Revenue Code, as amended (the “Code”), and are eligible to receive the four percent (4%) low-income housing tax credits (“LITHC”) allocation.

LITHCs provide an economic incentive for the private markets to invest in affordable housing by providing a certain amount of tax credits (which reduce tax liability dollar-for-dollar) to affordable residential rental facilities based on a certain formula. Typically, LIHTCs are then sold to investors in exchange for an equity investment in the proposed project. In order to receive the four percent (4%) LIHTC allocation, at least fifty percent (50%) of a project’s aggregate basis must be financed with the proceeds of Qualified Exempt Facility Bonds. LIHTCs are not available for public housing units financed with the proceeds of governmental bonds.

“**Qualified Exempt Facility Bonds**” must satisfy the requirements of Section 142 of the Code, which requires that ninety-five percent (95%) or more of the net proceeds of any qualifying bond issue must be used to provide one or more qualified residential rental projects, being any project for residential rental property that meets to set-aside requirements under Section 142(d) of the Code during the Qualified Project Period (as hereinafter defined). The income set aside requirements are the 20/50 Test (i.e. 20% or more of the residential units must be occupied by individuals whose income is 50% or less of the area median gross income) or the 40/60 Test (i.e. 40% or more of the residential units occupied by individuals whose income is 60% or less of area median gross income).

“**Qualified Project Period**” begins on the first day on which ten percent (10%) of the residential rental units in a project are occupied and ending on the latest of: (i) the date that is 15 years after the date on which fifty percent (50%) of the residential rental units are occupied; (ii) the first day on which no issued tax-exempt bond and maturity therewith is outstanding; or (iii) the date on which any assistance provided to the project under Section 8 of the United States Housing Act of 1937 terminates. If the issue date of such tax-exempt bond occurs after the first day on which at least ten percent (10%) of the residential rental units are occupied, then the Qualified Project Period begins on the issue date of such tax-exempt bond. For example, with many tenant-in-place rehabilitation projects, the Qualified Project Period begins when the tax-exempt bonds for the project are issued.

Type of Bond Transactions

The Board’s Policies and Procedures regarding publicly sold and privately placed multifamily housing bond issues include the following:

Public Sale – wherein the tax-exempt bonds are offered for sale to the general public in the retail securities market. In connection with any public sale of tax-exempt bonds, such bonds



shall: (i) involve the necessary public disclosure through an Official Statement or other related public offering document or related disclosure; (ii) be purchased by a nationally recognized underwriter or broker-dealer; (iii) be rated or insured to provide at least an “A” rating by Moody’s Investors Service, Inc., Standard & Poor’s Corporation, or provide a substantially equal credit enhancement satisfactory to the Board.

Private Placement – wherein the tax-exempt bonds are placed with a single purchaser through a private placement, whereby the marketing of the tax-exempt bonds is limited to fewer than thirty-five (35) potential “Accredited Investors” as defined under Regulation D under the Securities Act of 1933. These transactions involve a placement agent, usually an underwriter who acts in a limited capacity to identify investors and facilitate the sale. Private placements are similar to a public offering but can allow borrowers to negotiate deal terms directly with investors. In connection with any private placement of tax-exempt bonds, the Board will require that the bonds and applicable bond documents contain provisions restricting transfers only to institutional investors, limiting participation in the purchase of bonds and setting minimum denominations on the bonds satisfactory to the Board.

Direct Purchase – wherein the tax-exempt bonds are acquired by an institution through a direct purchase. Many financial institutions, including banks, insurance companies, large corporations, including the Federal National Mortgage Association (“**Fannie Mae**”) and the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) have programs that allow them to purchase tax-exempt bonds directly from the Board.

The Board requires that with all above-mentioned bond issues for multifamily housing residential rental facilities, the Applicant must utilize the services of a Bond Trustee (the “**Trustee**”). The Trustee acts as representative of the bondholders, generally administers the bonds and its scheduled payments, and is authorized by the Trust Indenture (as hereinafter defined) to take certain actions and enforce certain rights and remedies on the bondholders’ behalf. Trustees are typically corporate trust departments of large national or regional banks. **The Board retains final approval of any bank or related entity selected as Trustee.**

No financing will be approved unless the Board has first determined that such proposed bond financing is in the public interest as required by the Act. All Applicants will be required to appear before the Board to respond to questions from the Board prior to approval of any bond application and related documentation. Prior to approval of any bond financing, the Applicant must make satisfactory arrangements with the Board with respect to payment of its closing costs, legal fees, and administrative expenses in connection with the proposed bond financing.

THE BOARD DOES NOT MAKE ANY RECOMMENDATIONS WITH REGARD TO THE PURCHASE OF BONDS OR NOTES, NOR SHOULD ITS APPROVAL OF A FINANCING BE CONSTRUED AS A REPRESENTATION OF ANY SORT WITH REGARD TO THE FINANCIAL CONDITION OR SUITABILITY OF ANY FIRM RECEIVING FINANCING THROUGH THE BOARD. ALL BOND OR NOTE PURCHASERS/INVESTORS ARE EXPECTED TO MAKE AN INDEPENDENT INVESTIGATION OF THE BONDS OR NOTES ISSUED BY THE BOARD AND THEIR RESPECTIVE SECURITY AND SOURCE FOR REPAYMENT THEREWITH.



BOND APPLICATION SUBMISSION AND APPROVAL PROCESS

Bond Application Submission

All Bond applications must be complete and timely submitted a minimum of thirty (30) days prior to the scheduled regular meeting of the Board of Directors at which time the submitted application will be considered. Incomplete Bond applications will not be accepted nor reviewed by the Issuer. The Issuer meets every first Wednesday of the month, subject to change as needed. Public meeting notices and meeting dates can be found on the Issuer's website at <http://www.memphishehf.com>. The Bond application must be submitted in compliance and conformity with these Policies and Procedures. If the format of the submitted Bond application does not comply with these Policies and Procedures and the guidelines set forth and more fully described herein for submission, then the Bond application will not be accepted or reviewed.

To appropriately submit a Bond application to the HEHFB staff, the Applicant shall submit: (i) an electronic copy of the Bond application in portable document format (PDF) to the HEHFB staff and (ii) the non-refundable application fee due and payable upon submission of the Bond application. If minor errors exist within a submitted Bond application, then the HEHFB staff may, in its sole discretion, allow the Applicant up to ten (10) business days to make the necessary corrections.

The submitted Bond application must contain the following subject line in the email:

“HEHFB Bond Financing (Type of Application) (Name of Applicant); (Month/Year)”

All Bond applications shall be collectively emailed to the individuals listed below:

Stephanie Bryant, Office Manager: Stephanie.Bryant@memphishehf.com

Martin Edwards, Jr., Executive Director: Martin.Edwards@memphishehf.com

Charles E. Carpenter, Esquire: Issuer's Counsel: Charlesc@386beale.com

Corbin I. Carpenter, Esquire: Issuer's Counsel: Corbinc@386beale.com

Upon submittal of a Bond application, all application fees associated therewith must be paid in full prior to the Bond application being added as an action item for consideration for approval at the Board of Directors' next scheduled regular meeting.

The Applicant acknowledges and agrees that any and all paid Bond application fees are non-refundable.

Bond applications for all properties that are participating in any current United States Department of Housing and Urban Development (“HUD”) program must include the: (i) HUD application; (ii) HUD approval notifications; and (iii) latest HUD REAC inspection report and/or other third-party related report, as applicable.



Bond Application Fee

The Bond application must be completed and submitted to the HEHFB staff in the appropriate format, inclusive with the applicable application fee, pursuant to the Total Project Costs calculated for the proposed project. Total Project Costs shall mean all costs except property appraisals, market studies, environmental studies, reporting and monitoring fees, rent-up costs, project reserves or capitalized interest (“**Total Project Costs**”).

The Bond application fee is defined as a non-refundable fee that is due and payable contemporaneously with the submission of the Bond application. Domestic wire and ACH transfers to the HEHFB are acceptable and preferred for this payment. Checks must be made payable to “The Health, Educational and Housing Facility Board of the City of Memphis, Tennessee.”

The Bond application fee is calculated on the following basis:

- (a) **Four Thousand Dollar (\$4,000) application fee** for all projects with Total Project Costs of less than Five Million Dollars (\$5,000,000);
- (b) **Five Thousand Dollar (\$5,000) application fee** for all projects with Total Project Costs between Five Million Dollars (\$5,000,000) through less than Ten Million Dollars (\$10,000,000);
- (c) **Six Thousand Dollar (\$6,000) application fee** for all projects with Total Project Costs between Ten Million Dollars (\$10,000,000) through less than Fifteen Million Dollars (\$15,000,000); and
- (d) **Seven Thousand Dollar (\$7,000) application fee** for all projects with Total Project Costs of Fifteen Million Dollars (\$15,000,00) or greater.

Any checks received for payment of the Bond application fee that cannot be processed shall warrant a penalty fee of Five Hundred Dollars (\$500) due and payable to the Issuer. The Bond application fee is a non-refundable separate fee that shall not be credited against the traditional closing fees for the bond financing. The Bond application fees listed above are subject to amendment, at any time, at the sole discretion of the Board of Directors.

Board of Directors Review and Approval Considerations

The Issuer generally meets on the first Wednesday of each month at 12 Noon. All regular meetings for the Board of Directors are held both in-person at the principal offices of the Issuer located at 65 Union Avenue, Suite 1120, Memphis, Tennessee 38103, and through virtual Zoom platform, wherein such virtual Zoom link is posted on the Issuer’s website on a monthly basis. The HEHFB’s staff and Issuer’s Counsel conduct the necessary due diligence and makes the subsequent recommendations to the Board of Directors regarding approvals of all Bond applications. Following a favorable recommendation, Applicants will have an opportunity to present to the Board of the Directors which will deliberate on all Bond applications and render its decisions for approval on all Bond applications through majority vote at each regular meeting.



Consideration for approval by the Board of Directors will be based on: (i) the above-mentioned positive recommendation from the HEHFB staff and Issuer’s Counsel based on the Applicant’s compliance with the applicable project requirements as set forth and more fully described in “PROJECT REQUIREMENTS” hereinbelow; (ii) compliance with these Policies and Procedures; and (iii) the structure of the bond financing being in compliance with applicable federal and state laws along with any additional requirements that the Board of Directors may impose from time to time, including, but not limited to, the following:

(a) An explanation of the economic feasibility of the bond financing and the financial structure of the residential rental project being financed, including an explanation of the total economic and social impact this bond-financed project will bring to the City of Memphis;

(b) An explanation of the description of the residential rental project, including an explanation of the total number of residential rental units and the percentage of rental units: (i) that qualify as affordable; (ii) with project-based rental assistance; and/or (iii) that are occupied by the elderly and tenants with disabilities; and

(c) The proposed monthly rental rates for new construction and/or the projected monthly rental rate increase per unit type due to the proposed rehabilitation.

(d) The Applicant, development team and the property management company’s professional experience, reputation and knowledge regarding overall real estate and banking finance, including applicable experience regarding housing transactions with (i) HUD, Fannie Mae and Freddie Mac, (ii) affordable multifamily, (iii) public and low-income, and (iv) senior housing.

Bond Closing Extension Fees

Following majority approval from the Board of Directors of a Bond application at its regular meeting, an Applicant will have up to **six (6) months from the time of approval** to close the Bond transaction. If the Bond transaction has not been closed within that time frame, the Applicant may apply to the Issuer for an additional six (6) month extension period. After one (1) closing extension is granted, any additional closing extensions will require good cause shown to the Board of Directors at its regular meeting to receive approval for the requested extension.

Each Bond closing extension fee is equal to the original Bond application fee and shall be due and payable before each requested Bond closing extension shall be approved by the Board of Directors. **Domestic wire and ACH transfers to the HEHFB are acceptable and preferred for this payment.** Any checks received for payment of the Bond closing extension fee that cannot be processed shall warrant a penalty fee of Five Hundred Dollars (\$500) due and payable to the Issuer. The Bond closing extension fee is a non-refundable separate fee and shall not be credited against the traditional closing fees.

Additionally, all Bond transactions not closed within **one (1) year of approval** are subject to withdrawal by the Board of Directors, at their sole discretion. **Any fees expended up to that point by the Applicant to the Issuer in connection with the approval process for the Bond application shall be non-refundable and will not be credited towards any future Bond application submitted for consideration.**



ISSUER AND BOND DOCUMENTATION

General

In connection with the Applicant's approval of its Bond application the Issuer's General Counsel along with Bond Counsel shall commence drafting certain Issuer Documentation and Bond Documentation.

Issuer Documentation

The required Issuer Documentation following an approved Bond application shall include, but not limited to, the following:

(a) **Inducement Resolution** – is approved by majority vote of the Issuer's Board of Directors at its regular meeting. The Inducement Resolution describes how the Applicant intends to use the proceeds of the bonds, sets the applicable parameters for the bond financing including the maximum principal amount of the bonds expected to be issued for the project, and contains a general description of the proposed project and (the "**Inducement Resolution**").

(b) **Memorandum of Understanding** – that is entered into by and between the Issuer and the Applicant setting forth certain conditions, terms and estimated fees and expenses in connection with the contemplated bond financing (the "**Memorandum of Understanding**").

(c) **TEFRA Approval/Mayoral Certificate** – pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 ("**TEFRA**"), all private activity bonds must be approved by the applicable elected representative of both the governmental entity that issues the bonds and each governmental entity having jurisdiction over the area in which the proposed residential rental facility to be financed is located. TEFRA notices are published in a public newspaper of general circulation within the City of Memphis and published on the Issuer's website under the tabs "**Public Hearing**" or "**News and Events**" with seven (7) days' of the scheduled TEFRA hearing. This public notice must be posted continuously under these tabs for at least seven (7) days prior to the TEFRA hearing. Following the TEFRA hearing the Mayor of the City of Memphis will execute the Mayoral Certificate confirming that the TEFRA hearing, and the public notices published therewith were done so in compliance with applicable law (the "**TEFRA Approval**").

(d) **Final Bond Resolution** – is approved by majority vote of the Issuer's Board of Directors at its regular meeting, wherein the Issuer requires that "substantially final bond documents" for the transaction be presented at this meeting. The Final Bond Resolution will approve the issuance of the bonds, the documents related to the issuance of the bonds (including the use of any official statement or other offering document in connection with the bond sale), and the final terms and conditions of the sale. The Final Bond Resolution establishes and sets forth certain parameters of the bond financing, including the applicable interest rates and the maturity dates (the "**Final Bond Resolution**", and together with the Inducement Resolution, the Memorandum of Understanding, the TEFRA Approval are hereinafter called the "**Issuer Documentation**").



Bond Documentation

The legal documentation typically required for execution and delivery following an approval of a Bond application will likely include, but not be limited to the following (collectively defined as the “**Bond Documentation**”):

(a) **Trust Indenture** – that is entered into by and between the Issuer and the Trustee. It establishes the term of the bonds, the funds and accounts to be created with respect to the bond proceeds, scheduled payments, and typically includes the prescribed form of the bond itself.

(b) **Loan Agreement** – that is typically entered into by and between the Issuer and the Applicant, as Borrower therein, and establishes the terms upon which the Issuer will lend the proceeds of the bonds to the Applicant. The Loan Agreement typically contains the form of the promissory note that sets forth the Applicant’s obligation to repay the loan at the times and in the amounts necessary to fulfill the Issuer’s obligation to bondholders to repay the bonds.

(c) **Security Agreement** – to the extent the property itself provides the security for the financing (as opposed to other forms of collateralized bonds), there will be a deed of trust or mortgage securing the borrower’s obligations under the loan agreement and the promissory note.

(d) **Land Use Restriction Agreement and Land Use Restrictive Covenants** – this document sets forth the various restrictions that apply to the facility to be financed, including the income set asides and various prohibitions on the use of the property for certain purposes. This document is recorded in the local land record (Shelby County Register’s Office) and constitutes a covenant that runs with the land for the Qualified Project Period. The Land Use Restrictive Covenants sets forth the requirements for monitoring and reporting compliance with the project restrictions set forth therein.

(e) **Tax Agreement/No-Arbitrage Agreement** – this document establishes that the proceeds of the bonds will not be used in any manner that would make them “arbitrage bonds”. Also, it sets forth the manner in which the proceeds will be used to finance the project and also establishes the issue price of the bonds.

(f) **Bond Purchase Agreement** – that is entered into by and among the Issuer, Applicant, as borrower therein and the purchaser, wherein this agreement that establishes the sale date and specific terms upon which the bonds are sold.

(g) **Official Statement** – this document is used if bonds are being sold to the public, the underwriter, with assistance from its counsel is required to prepare and distribute the official statement.

(h) **Continuing Disclosure Agreement** – this document sets forth the quarterly and annual obligations of the Applicant, or in some cases, the Issuer to provide certain information to bondholders on an ongoing basis for a limited period of time.



Tennessee Housing Development Agency

Tennessee Housing Development Agency (“**THDA**”) operates as a housing finance agency and, among other things, has authorized the allocation of Multifamily Tax-Exempt Bond Authority (“**Volume Cap**”) to the Issuer and other local issuers to finance multifamily housing residential rental units in Tennessee pursuant to Section 142(d) of the Code. Volume Cap refers to the overall limitation on the amount of private activity bonds that can be issued in any year. Section 146 of the Code establishes the formula for determining the Volume Cap allocable to each state.

The Volume Cap allocated can be used only for tax-exempt private activity bonds issued to finance qualified residential rental projects through new construction of multifamily housing residential rental units, conversion of existing properties to multifamily housing residential rental units through adaptive reuse, or acquisition and rehabilitation of existing multifamily housing residential rental units. The Volume Cap is available in each of Tennessee’s three Grand Divisions (i.e. West, Middle and East), on a first-come-first-served basis, subject to Volume Cap availability.

Following approval of the Applicant’s Bond application by the Issuer’s Board of Directors and receipt of the TEFRA Approval, the Applicant will subsequently submit the appropriate application and documentation to THDA for consideration to receive the necessary Volume Cap allocation for its proposed project. All Applicants, in accordance with their submission, must comply with all THDA and federal tax requirements and all other applicable federal, state, and local laws or ordinances. Following submission of the application and payment of the non-refundable application fee to THDA, if approved, the Applicant will receive a THDA Multifamily Tax-Exempt Bond Authority Firm Commitment Letter (“**MTBA Letter**”). The MTBA Letter will set forth certain fees, terms and conditions that must be satisfied prior to and leading up to the closing. The MTBA Letter shall be executed by the Chairman of the Issuer’s Board of Directors and the Applicant, as Borrower therein.

PROJECT REQUIREMENTS

Eligibility Requirements

For any Applicant applying for approval for the issuance by the HEHFB of its multifamily revenue bonds to facilitate the preservation, growth, and development of low and moderate-income multifamily housing through new construction, acquisition and/or substantial rehabilitation must, upon submission of the Bond application, be compliance with these Policies and Procedures and meet the following eligibility requirements to be considered for approval:

- (a) **Site Control** – the Applicant must own the property and provide evidence of ownership in the form of a deed or have an option or right to purchase the property in order to be eligible to apply for approval of a bond financing. The Issuer will not approve any project that lacks proper indicia of ownership by the Applicant, whether through option contract or otherwise.
- (b) **Zoning of Property** – The Issuer will not approve any proposed bond financing where the property in interest has not been appropriately zoned by or received all required



variances from the governing body having jurisdiction over the land on which the facilities are to be constructed. A certificate from the Zoning Department of the appropriate governing body evidencing that all zoning and variance requirements have been met must be attached to the Bond application. Additionally, should changes in design necessitate zoning variances after approval of the Inducement Resolution, then the Issuer reserves the right to withdraw its Inducement Resolution and to refuse to finance such multifamily residential rental facilities until and unless the appropriate variances are obtained and substantiated by certificate provided to the Issuer.

(c) **Valid Legal Entity** – the Applicant must be a valid legal entity that: (i) is duly authorized to conduct business under the laws of the State of Tennessee; (ii) is in good standing under the laws of the State of Tennessee; (iii) has the experience and the sophistication in addition to the power and authority to execute any and all bond documents and related financing documents contemplated thereby in connection with the issuance, sale and delivery of the revenue bonds.

Project Qualifications

In connection with these Policies and Procedures, in order for any residential rental housing facility to qualify to be financed, such residential rental facility shall meet the following requirements:

(a) The residential rental facility shall consist of multifamily residential rental units to be acquired, rehabilitated or constructed with proceeds of the bonds or due to the issuance of the bonds.

(b) The residential rental facility shall be operated in a manner such that the interest on the bonds shall continue to be exempt from federal income taxation under Sections 141-150 of the Code, including any regulations promulgated heretofore or hereafter, from time to time, which are applicable to the rental facility, including specifically, but without limitation, the following:

(i) Either at least twenty percent (20%) of the completed units in the facility, at all times, shall be rented to and occupied by individuals whose income is fifty percent (50%) or less of the Median Gross Income for the Memphis MSA most recently established by HUD as determined in the latest published distributions; or at least forty percent (40%) of the completed units in the facility, at all times, shall be rented to and occupied by individuals whose income is sixty percent (60%) or less of the Median Gross Income for the Memphis MSA most recently established by HUD as determined in the latest published distributions.

(ii) Except for those units rented to elderly and/or handicapped persons or families, the remaining units must be rented either: (i) to persons or families earning not more than one hundred fifty percent (150%) of the Median Gross Income for the Memphis MSA most recently established by HUD as determined in the latest published distributions; or (ii) at a rental rate, including utilities, not more than thirty percent (30%) of an amount equal to one hundred fifty percent (150%) of the Median Gross Income for the Memphis MSA most recently established by HUD as determined in the latest published distributions.



(iii) At least ninety-five percent (95%) of the proceeds of the bonds shall be used in connection with the acquisition of land or the acquisition, rehabilitation, construction or improvement of the project, including payment of amounts which are, for federal income tax purposes, chargeable to the capital account of the project or would be so chargeable either with a proper election by the Applicant (for example, under Section 266 of the Code), or but for a proper election by the Applicant to deduct such amounts.

The required covenants of the Applicant as set forth hereinbelow to comply with the restrictions codified in Sections 141-150 of the Code shall be deemed to constitute covenants of the Applicant running with the land and an equitable servitude for the benefit of the holders of the bonds and shall be binding upon any owner of the project until such time shall expire under their own terms, or the Trustee consents to the release of such restrictions in the event that the Trustee and the Issuer are provided an opinion satisfactory to both the Issuer and the Trustee by nationally recognized Bond Counsel knowledgeable in such matters to the effect that the requirements set forth under this Section and under these Policies and Procedures need no longer be complied with in order to maintain the exemption from federal income taxation of the interest to be received on the bonds.

The Issuer and the Trustee shall have the right to seek specific performance of the above-listed qualifications, at all times, while the bonds are outstanding.

Internal Revenue Code Requirements

In connection with these Policies and Procedures, in order for any proposed residential rental housing facility to remain in good standing under the Code and other applicable federal, state and local law, the Applicant and Bond Counsel must ensure the following:

- (a) The weighted average maturity of the bonds may not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the residential rental facilities financed with the bonds.
- (b) The portion of the bond proceeds that may be used to acquire an interest in the land must be less than twenty-five percent (25%) of the net proceeds.
- (c) Office space financed with the bonds must be used predominately in activities related to the operation of the project (i.e. only a de minimis amount of unrelated activities is permitted).
- (d) No portion of the proceeds of the bonds may be used to finance any airplane, skybox, or other private luxury box, health club or any facility primarily used for gambling or the sale of alcoholic beverages for consumption off premises.
- (e) No more than two percent (2%) of the bond proceeds may be used to pay the costs of issuing the bonds.
- (f) The bonds must be in registered form unless an exception applies.



(g) Form 8038 or Form 8038-G must be filed with the Internal Revenue Service no later than forty-five (45) days after the bonds are issued.

(h) The bonds should be expected to be spent within three (3) years of the issue date and no more than fifty percent (50%) of the bond proceeds should be invested in investments having a substantially guaranteed yield for at least four (4) years.

(i) Proceeds of the bonds must satisfy certain rules on investment of proceeds and expenditures of the bonds under arbitrage and rebate rules under the Code.

The Issuer and the Trustee shall have the right to seek specific performance of the above-listed requirements, at all times, while the bonds are outstanding.

Issuer Rights

In connection with these Policies and Procedures, the Issuer shall have the following rights:

(a) The right of access, at any time, to the project, subject to the rights of the tenants.

(b) The right to inspect the Applicant's books and records relating to the project, including any loans involved in financing construction or acquisition thereof for the purpose of determining compliance with these Policies and Procedures.

(c) The right to receive periodic reports relating to the operation of the project from the Trustee, the Applicant, and/or the Applicant's on-site property management company.

(d) The right to enforce compliance and specific performance regarding the project with the requirements contained in these Policies and Procedures and the applicable Bond Documentation.

The Issuer shall have the right to seek specific performance of the above-listed rights, at all times, while the bonds are outstanding.

Applicant Covenants

The Issuer requires that the Bond Documentation or other similar documents contain at least the following covenants relating to the Applicant and the project:

(a) The Applicant must covenant that it will comply with all restrictions set forth in these Policies and Procedures, specifically the restrictions set forth under this "PROJECT REQUIREMENTS" section in order to keep the bonds in compliance with the Code and exempt from federal income taxation.

(b) The Applicant will, at all times during the Qualified Project Period, assure that: (i) at either at least twenty percent (20%) of the completed units in the facility, at all times, shall be rented to and occupied by individuals whose income is fifty percent (50%) or less of the Median



Gross Income for the Memphis MSA; or at least forty percent (40%) of the completed units in the facility, at all times, shall be rented to and occupied by individuals whose income is sixty percent (60%) or less of the Median Gross Income for the Memphis MSA; and (ii) except for those units rented to elderly and/or handicapped persons or families, the remaining units must be rented either: to persons or families earning not more than one hundred fifty percent (150%) of the Median Gross Income for the Memphis MSA; or at a rental rate, including utilities, not more than thirty percent (30%) of an amount equal to one hundred fifty percent (150%) of the Median Gross Income for the Memphis MSA.

(c) The Applicant will permit any duly authorized representative of the Issuer, the Trustee, the United States Treasury Department, or the Internal Revenue Service to inspect the books and records of the Applicant pertaining to the project.

(d) The Applicant will prepare and submit to the Issuer and the Trustee not less than annually after the project is placed in service, a “Certification for Continuing Program Compliance” in the form approved by the Issuer executed by the Applicant certifying at least the percentage of units required by the applicable Bond Documentation, the Code and these Policies and Procedures to be occupied were occupied by or held available for occupancy by low and/or moderate income tenants at all times during the preceding year.

(e) The Applicant will not knowingly take or permit any action that would adversely affect the exemption from federal income taxation of the interest on the bonds and, if it should take or permit any such action, it shall take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof.

(f) The Applicant will take such action or actions, including amendment of the applicable Bond Documentation as may be necessary in the opinion of nationally recognized Bond Counsel or tax counsel acceptable to the Issuer and the Trustee, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Sections 141-150 of the Code and affecting the project.

(g) The Applicant will furnish to the Issuer and the Trustee not later than the closing of any loan to finance construction or acquisition of the project, such opinion of its counsel and certified resolutions evidencing necessary or appropriate action, and such other documents as may be reasonably requested by other parties to the transactions contemplated.

(h) The Applicant will not sell, transfer or otherwise dispose of the project without obtaining the prior written consent of the Issuer, which shall be conditioned upon receipt of evidence reasonably satisfactory to the Issuer that the Applicant’s purchaser or transferee: (i) has assumed in writing and in full the Applicant’s duties and obligations under the Bond Documentation; and (ii) has the financial capability to carry out such obligations and is knowledgeable in the operation and management of such residential rental facilities or has engaged a managing agent knowledgeable in the operations and management of such residential rental facilities to so effectively and appropriately operate and manage the project. The Applicant further agrees that any sale, transfer or other disposition of the project in violation hereof shall be null,



void and without effect, shall cause a reversion of title to the Applicant and shall be ineffective to relieve the Applicant of its obligations under the Bond Documentation.

(i) The Applicant will proceed with due diligence to complete the acquisition, rehabilitation, and/or construction of the project after the appropriate approval of the Inducement Resolution and Memorandum of Understanding.

The Issuer shall have the right to seek specific performance of the above-listed covenants, at all times, while the bonds are outstanding.

CLOSING COSTS, EXPENSES AND ANNUAL FEES

Issuer Closing Costs

The Issuer shall charge for each long-term bond issue (greater than five years) for initial financing by the Issuer an Issuer Fee to be paid at closing of two-tenths of one percent (20 basis points) (.0020) of the par amount of the bond issue, **effective January 1, 2023.**

In connection with the refunding of the Issuer's bonds, the Issuer shall charge an Issuer Fee to be paid at closing of two-tenths of one percent (20 basis points) (.0020) of the par amount of the bond issue, **effective January 1, 2023.**

Issuer's Counsel Fees

All fees of Issuer Counsel shall be paid by the Applicant; typically, as a part of the costs of issuance of the financing, or directly as stated hereinafter. The fees of Issuer Counsel shall be fees normally and customarily charged in the industry and shall be based on the level of legal services required, complexity of the transaction and the amount of time required, and therefore, will vary by transaction.

For a bond financing induced and closed by the Issuer, the minimum legal fee for Issuer Counsel, in the typical transaction shall be \$45,000, with additional fees being assessed for expedited closing timetables, unusual complexities, or extraordinary services.

In the event an induced bond financing is granted a second (2nd) closing extension by the Issuer, as a part of the approval, the Applicant shall be required to pay fifty percent (50%) of the minimum fee of Issuer Counsel, in addition to the extension fee imposed by the Issuer. If the assessed fees of the Issuer and Issuer Counsel are not paid in full within thirty (30) days of the approval of the Board of Directors, then the closing extension will become null and void and the Inducement Resolution for the project shall lapse.

In the event an induced bond financing fails to close for any reason, legal fees of Issuer Counsel will be assessed and shall be due and payable by the Applicant for the reasonable time incurred for legal services rendered by Issuer's Counsel's at its then prevailing hourly rate, minus any credits paid by the Applicant. If the assessed fees are not paid within thirty (30) days after



billing, the Applicant shall be disqualified from applying for future bond or PILOT consideration from Issuer.

Issuer and Administration Annual Fees

The Issuer shall charge annual Issuer and Administration Fees (“**I&A Fees**”) which shall be billed by the Issuer to the Applicant at the end of each bond year based on the respective issue date of the outstanding bonds. These I&A Fees shall be assessed at an amount equal to **(6.75 basis points) (.000675), effective January 1, 2023**, of the amount of the principal amount of the outstanding bonds as of the end of each issue’s respective bond year. These I&A Fees shall be annually assessed to each bond issued by the Issuer, whether it is a primary issuance or a refunding of any of the Issuer’s outstanding bonds.

MISCELLANEOUS

Indemnification

The Applicant (or the lender if a lender loans bond proceeds to the Applicant) will covenant and agree in the applicable Bond Documentation that it shall indemnify and hold harmless the Issuer and its officers, directors, officials, Issuer’s Counsel, employees and agents, including the Trustee and any applicable financial advisor to the Issuer, from and against: (i) any and all claims of or on behalf of any person arising from any cause whatsoever in connection with the project or the bond financing thereof except for the payment of principal and interest on the bonds, including any expenses arising from the failure to make payment of principal and interest on the bonds; (ii) any and all claims arising from any act or omission of the Applicant or lender or any of its agents, contractors, servants, employees or licensees, in connection with the project or financing thereof; and (iii) all costs, legal counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon.

In the event that any action or proceeding is brought against the Issuer or any of its officers, directors, officials, Issuer’s Counsel, employees or agents, including the Trustee, with respect to which indemnity may be sought hereunder, the Applicant and/or lender, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of separate and independent legal counsel (acceptable to the Issuer) in addition to the payment of all expenses incurred in connection therewith.

Events of Default

Unless otherwise approved by the Issuer prior to the issuance of the bonds, the applicable Issuer Documentation authorizing issuance of the bonds shall provide that failure to comply with these Policies and Procedures shall constitute an “Event of Default” and shall provide that the Trustee, at the direction of the Issuer, may accelerate the maturity and require immediate payment of the bonds in the event that the Applicant fails to observe or perform in any material respect any covenant, condition or agreement required by these Policies and Procedures to be observed or performed and fails to take and complete corrective action to comply with these Policies and



Procedures within a period of sixty (60) days after receipt of written notice, specifying such failure and requesting that it be remedied, given to the Applicant by the Issuer or the Trustee; however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold consent to an extension of such time if corrective action is instigated by the Applicant within the applicable period and diligently pursued until the “Event of Default” is corrected.

Amendments, Changes and Modifications

The Issuer may amend or modify these Policies and Procedures as it deems necessary; however, any amendment to these Policies and Procedures occurring after initial issuance of bonds or any refunding issue for the bonds for a particular project shall not apply to such project unless written approval is obtained from the Applicant and the Trustee obtains an opinion satisfactory to the Issuer, the Trustee and the Applicant by nationally recognized Bond Counsel knowledgeable in such matters, to the effect that such amendments if made applicable to the project will not adversely affect the rights of holders of the bonds issued in connection with the project.

Conflicts of Interest

To avoid conflicts of interest, no financing will ordinarily be approved if the Issuer’s Counsel or Bond Counsel has a professional legal relationship or direct or indirect ownership in the Applicant or any sponsor of the financing other than incidental representation or representation in connection with the proposed financing or similar issues; however, the Issuer may administratively waive this condition for good cause shown in the appropriate circumstances.

In addition, no project shall be approved if any current Board member has a direct or indirect interest in the Applicant, unless said Board member shall first disclose publicly his or her interest and shall abstain from any participation in and/or voting on the Bond application and consideration of financing of said project. No Board members shall make, participate in making, or use their official position to influence a project in which he or she knows or has reason to know that he or she has a financial interest or will receive a future financial benefit therewith.

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CONTACTS

All notices, certificates or other written communications required to be provided herein shall be transmitted through electronic mail or physically delivered through certified mail, postage prepaid to the parties located at the addresses as set forth below, or delivered to such other addresses provided through written request from any party listed hereinbelow:

The Health, Educational Housing Facility Board of the City of Memphis, Tennessee:

Martin Edwards, Jr., Executive Director

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Memphis, Tennessee 38103

Office Telephone: (901) 527-6400

Email Address: Martin.Edwards@memphishehf.com

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Stephanie Bryant, Officer Manager

65 Union Avenue, Suite 1120

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Office Telephone: (901) 527-6400

Email Address: Stephanie.Bryant@memphishehf.com

Website: www.memphishehf.com

Issuer's Counsel:

Carpenter Law, PLLC

Three Eight Six Beale Street

Memphis, Tennessee 38103

Attention: Charles E. Carpenter, Esquire

Attention: Corbin I. Carpenter, Esquire

Office Telephone: (901) 523-7788

Email Addresses: Charlesc@386beale.com

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