***HOUSING FINANCE AUTHORITY***

 ***of***

 ***MANATEE COUNTY, FLORIDA***

 **MULTI-FAMILY TAX EXEMPT**

 **BOND PROGRAM**

 **APPLICATION PROCEDURES &**

 **PROGRAM GUIDELINES HANDBOOK**

###### Revised December 2023

 **HOUSING FINANCE AUTHORITY of**

 **MANATEE COUNTY, FLORIDA**

 **MULTI-FAMILY TAX EXEMPT BOND PROGRAM**

 **APPLICATION PROCEDURES AND PROGRAM GUIDELINES**

## Program Guidelines

##### OVERVIEW

The Housing Finance Authority of Manatee County (the "Authority") will consider providing tax‑exempt revenue bond financing for qualified multifamily housing developments which meet the goals of the Authority and comply with applicable federal and state law. The Authority has adopted the following guidelines to set forth the general requirements and procedures that apply to the financing of multifamily housing developments. The Authority may waive specific provisions of these guidelines where good cause is shown and adequate supporting documentation is provided. Any waiver is at the sole discretion of the Authority. In addition, these guidelines may be amended, revised, repealed or otherwise altered by the Authority with or without notice.

The Authority will not issue obligations to provide financing for any development unless the applicant has satisfied the general requirements set forth in these guidelines. The Authority reserves the right to impose additional requirements on any particular development. Compliance with these guidelines does not and shall not create any right by an applicant to a commitment or assurance that the Authority will provide the requested financing.

The Authority provides below market rate loans of bond proceeds for construction, rehab­ilitation and permanent financing of multifamily housing developments (the "Program"). The funds are made available by the Authority’s issuance of revenue debt obligations (the "Obligations"). If the Authority requires credit enhancement on the Obligations, the borrower must arrange to secure or collateralize the Obligations. The Obligations are secured solely by the credit enhancement provided by the borrower and/or by revenues from the development. In no event shall the Obligations ever be secured by public revenues. The Authority is merely a conduit and shall not be liable on any Obligations. From time to time, the Authority may approve other financing structures, to the extent permitted by law.

The Program has been undertaken by the Authority in order to alleviate the shortage of affordable housing available to persons and families in Manatee County; to generate affordable multifamily rental capital for investment in Manatee County; to stimulate economic development; and to create jobs.

All proposed developments will be assessed by the Authority's Financial Advisor. Each development financed by the Authority, in whole or in part, will not interfere with but rather will contribute to the housing stock, housing market, and economic stability of Manatee County.

**ALL Developments ARE SUBJECT TO THE REQUIREMENTS OF THE AUTHORITY'S RULES AND REGULATIONS AND PROGRAM GUIDELINES**

The Program includes the following basic stages as outlined in the Application and these Guidelines:

A. Submission of Application.

B. Recommendation by Financial Advisor and Selection by Authority.

 C. Official Action of Authority (Inducement). Inducements are valid for one year.

D. TEFRA Hearing and TEFRA Approval (which may occur at the same time as Inducement, at the Authority's discretion). TEFRA approvals are valid for one year.

 E. Document Preparation and Credit Underwriting.

F. Final Approval by Authority of Obligations and Acceptance of Credit Underwriting Report.

 G. Closing.

Applicants may request additional information regarding the Program from the Authority’s website at: www.manateehfa.org or from the Authority’s professional team identified below (or as otherwise identified by the Authority from time to time):

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**Investment Banker:**

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Tim.Wranovix@RaymondJames.com

The Authority’s Bond Counsel and Financial Advisor will act as bond counsel and financial advisor, respectively, to the Authority in each issuance of Obligations by the Authority.

It is the policy of the Authority to select the investment banking firm (the "Investment Banker") to act as senior managing underwriter and remarketing agent or placement agent, as applicable, for the issuance of the Authority's Obligations. The Authority will consider requests by Applicants to add co-managing underwriters for the said Applicant's bond financing and determine the division of fees among such underwriters, in the sole discretion of the Authority. In the event of a public offering, the Authority’s Investment Banker will act as the underwriter and in the event of a private placement, the Investment Banker will act as a placement agent.

**II. APPLICATION PROCESS AND APPLICATION FEES**

**A.** **Form of Application**

An Applicant may submit the Application on the Authority’s website for Developments that are using SAIL funds (a "SAIL Development Application") or for Developments that are not using SAIL funds (a "Non-SAIL Development Application").

These Guidelines and the respective Applications will specify where requirements relate only to one category of Application. The Application must be submitted to the Authority at the addresses contained within the form of Application in the number and manner provided in the Application.

For a SAIL Development Application, upon receipt of SAIL award and commencement of the credit underwriting process, SAIL Development Applications must be supplemented with the regulatory agreement resident programs, development and unit amenities and energy efficiency features, as well as other requirements of the Non-SAIL Development Application prior to or simultaneously with commencement of the credit underwriting process.

**B.** **Timing of Application**

The Authority periodically posts a Notice of Funding Availability ("NOFA") on its website indicating availability of volume cap for financing Developments. All Applications to be considered for funding available pursuant to such NOFA must be submitted to the Authority by the deadline established in such NOFA. Failure to file by the NOFA deadline will result in the Application not being considered with other Applications filed in connection with the NOFA. After the NOFA deadline, Applications are accepted on a first-come, first-evaluated basis.

 **C.** **Special Requirements for Application**

1. Expense and Indemnity Agreement – In conjunction with the filing of the Application, the Applicant will be required to execute an Expense and Indemnity Agreement, in the form attached hereto as Exhibit A, whereby the Applicant agrees to pay all bond issuance expenses, including, without limitation, the fees and disbursements of the Authority's Bond Counsel, Financial Advisor, Investment Banker, credit underwriters, and any other administrative charges or out‑of‑pocket expenses which relate to the issue, and to indemnify the Authority and its members, officers, agents, attorneys and employees against any and all claims and liability arising out of the issuance of the Obligations.

2. Preliminary Agreement -- The Applicant will be required to execute a Preliminary Agreement, in the form attached hereto as Exhibit B, setting forth, among other things certain undertakings on the part of the Authority and the Applicant, including certain deposits to be made by the Applicant.

2. Site Control -- The Authority is not involved in site selection, but rather finances Developments that are proposed by Applicants. However, location of the proposed Development may be a factor utilized by the Authority in its determination of whether to finance the Development. Prior to submitting an Application to the Authority, site control by deed, contract or option is required.

3. Applicant Legal Formation -- The Applicant must be a legally formed, existing entity when the Application is filed.

**D.** **Application Fees, Development Feasibility Analysis Fee, Credit Underwriting Fee and Good Faith Deposit (ALL FEES NON-REFUNDABLE)**

1. SAIL Development Application Fee -- $500 payable to the Authority, due upon submission of the Application. (**Applies to a SAIL Development Application only)**

2. Full Application Fee -- the greater of 0.1% (ten basis points) of the requested amount or $7,500, payable to the Authority

-due upon Application for Non-SAIL Development Applications

-due upon receipt of the SAIL award and commencement of the Development financing process for SAIL Development Applications

3. Development Feasibility Fee -- $5,500 payable to the Financial Advisor upon submission of the Application

-due upon Application for Non-SAIL Developments

-due upon receipt of the SAIL award and commencement of the Development financing process for SAIL Developments

4. Credit Underwriting Fee -- Upon invitation to credit underwriting by the Authority, a credit underwriting fee is payable to the credit underwriter in the amount required by the credit underwriter. If an updated application is submitted, an updated credit underwriting report may be required. Applicant is also responsible to pay all other costs of credit underwriting

5. Commitment Fee -- The greater of $75,000 or one percent (1.00%) of the aggregate principal amount of the obligations to be issued, whichever is greater. The maximum Commitment Fee is $150,000, payable to the Authority, due upon commencement of Development financing and document production process for all Developments. If closing takes place, this fee will be returned to the Applicant. If closing does not take place, this fee will be applied towards costs and expense incurred by the Authority and/or its professional team.

6. Additional Application Fee and Development Feasibility Fee -- If an issue fails to close prior to the expiration of the allocation obtained for the issue, and the issue does not qualify for carry forward allocation under the rules, and the Applicant wishes to apply for new allocation, then the Applicant shall submit an updated Application reflecting any changes from the original Application and detailing the expected closing date. An application fee of $7,500 shall be payable to the Authority and a Development Feasibility Fee of $5,500 shall be payable to the Financial Advisor upon submission of the updated Application. If allocation is awarded for the updated Application, the fees and costs of the Authority’s professionals through that date shall be paid directly by the Applicant within 10 days so that the Commitment Fee will remain whole moving forward.

**E. Application Process**

1. Initial Review by Financial Advisor -- The Application, and any updated Application, will be received and reviewed by the Authority’s Financial Advisor, who shall prepare a report for the Authority. Such analysis shall include an analysis of the proposed Development and financing, including but not limited to, financial feasibility, ability to proceed, public purpose, and all other selection factors.

2. Preliminary Selection by the Authority -- The Authority’s Board of Directors (the "Board"), upon review of the Financial Advisor’s analysis, and upon independent review of the Applications, and any updated applications, may select one or more Applicants to move forward into the remaining process to determine the amount of private activity bond allocation to be requested for the Development (subject to County approval), and the total amount of financing to be considered for the Development. The Board may establish conditions and timetables related to the financing as part of this selection process. The Board will make its determinations based on a number of factors, including, but not limited to, those stated below. This initial "selection" by the Board does not bind the Authority to finance any or all of the proposed Development. Instead, it allows the Applicant to move forward into the remaining process that will determine if the Board elects to finance any or all of the proposed Development. The initial selection process by the Board does not prioritize or guarantee selection of any updated Application submitted.

3. Items to be Considered by the Board in the Preliminary Selection Process **(Note that many of the following factors are necessarily subjective)**

* + The financial soundness of the Applicant and the Development, including the experience of the Applicant and other Development team members.
	+ Readiness of the Applicant to proceed with the financing of the Development.
	+ Conformance of the Development with legal restrictions governing the issuance of the Obligations.
	+ The impact of the Development upon the County's housing shortage, and on any neighborhood development or redevelopment plan.
	+ The relative affordability of the Development to those persons of middle, moderate and lesser income.
	+ Ability of the Applicant to complete financing and development on a timely basis, including the status of a commitment for credit enhancement or private placement of the Obligations, a commitment from the purchaser of any low income housing tax credits associated with the financing, and the status of the Applicant in the permitting process.
	+ Economic impact of the Development, including the impact of jobs created by substantial rehabilitation and/or new construction.
	+ Applicant’s formal agreement to abide by the loan conditions established in the credit underwriting report.
	+ Applicant’s agreement to provide resident income set-asides in excess of those required by State and Federal law.
	+ Applicant’s agreement to agree to extended low income compliance periods. The minimum affordability period is 50 years.
	+ Applicant’s agreement to provide services to the residents relevant to the needs of the residents, such as day care, financial and credit counseling, or other services detailed in the Application.
	+ Appropriateness of the Development design.
	+ Development design and amenities that provide enhanced quality of life, energy efficiency, increased security, handicapped accessibility, or other features detailed in the Application.
	+ The proposed financing structure, including the proposed credit enhancement or private placement and its related bond rating and term, as applicable.
	+ Leveraging of the Authority’s tax-exempt bond allocation by providing a portion of the financing from non-County sources, including, but not limited to taxable bonds, and state or city loans or grants.
	+ Impact of the proposed Development on existing developments, i.e., market saturation.
	+ Proximity of the proposed Development to employment centers.
	+ Developer agreement to rent at least 5% of the units in the Development to **s**pecial needs populations (e.g., homeless, persons with disabilities, youth aging out of foster care).

4. Special Requirements for Applicants

* + Any Applicant that (i) has been convicted or charged with a state or federal felony based on dishonesty, fraud, deceit, or misrepresentation, or that has been convicted of any crime involving theft of government property, (ii) has been convicted or charged with a "public entity crime" as such term is defined in Section 287.133, Florida Statutes, (iii) is an "affiliate" as such term is defined in Section 287.133, Florida Statutes, or (iv) otherwise falls under the categories described in Section 420.518(1)(a) through (f), Florida Statutes, with respect to any local, state or national affordable housing program, may not be considered for funding, at the sole discretion of the Authority.

"Applicant" includes any person or entity that:

(a) Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or any developer of the Development (each, a "Developer");

(b) Serves as an officer or director of the Applicant or a Developer;

(c) Serves as an officer or director of any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or a Developer;

(d) Directly or indirectly receives or will receive a financial benefit from a Development except as further described in Rule 67-48.0075, F.A.C.;

(e) Is the spouse, parent, child, sibling, or relative by marriage of a person described in paragraph (a), (b), (c) or (d) above.

* + No bond issue may be made for an Applicant to finance the acquisition of a Development from an affiliated party, without prior approval by the Authority and confirmation by the credit underwriter that the sales price reflects a fair market value for the property, without considering the benefit of the tax exempt financing. The Authority’s Bond Counsel must review any affiliated party transaction to determine that it will not preclude delivery of Bond Counsel’s opinion that the interest on any Authority bonds intended to be issued as tax-exempt bonds is excluded from gross income.
	+ If the Application involves the sale of Obligations not subject to the unified volume cap due to the 501(c)(3) status of the Applicant, the Applicant must demonstrate at a minimum that (i) the organization is a 501(c)(3) in good standing, with affordable housing as part of their charter, and with a legal opinion relating to the organization and its role in the transaction, (ii) the organization should have a role in the community beyond that as a conduit financing vehicle**,** and (iii) the organization must have a meaningful role in the Development. Payment of a minimal fee with no real on-going role would not qualify as "meaningful".

**F. Credit Underwriting Process**

Once a Development has been invited to credit underwriting, the Applicant will be responsible for paying the credit underwriting fees and assisting the credit underwriter in the credit underwriting process. The credit underwriter shall use the standards established by the Florida Housing Finance Corporation unless directed otherwise by Authority staff. The Authority will not approve the issuance of the Obligations until a final credit underwriting report has been presented to and accepted by the Board.

**G. Documentation and Closing**

After selection of a Development by the Authority, the Authority shall consult with Bond Counsel and initiate appropriate steps leading to the preparation of documents for the Obligations. The Authority will not begin conference calls or document preparation until all application fees and the Commitment Fee have been paid in accordance with the Preliminary Agreement.

**H. Validation**

Obligations of the Authority may be required to be validated in the manner provided by Section 159, Florida Statutes, as amended, and by Chapter 75, Florida Statutes, as from time to time amended and supplemented. If a validation is necessary, Bond Counsel will prepare validation pleadings for filing by Counsel to the Authority in the Circuit Court in and for Manatee County, Florida. Applicant shall pay any fees and expenses (including legal fees of the Authority’s bond counsel) relating to any validation.

**I. Private Activity Bond Allocation**

The Authority may submit an application for private activity bond allocation for a Development at such point as it is deemed appropriate in the process. Unless specifically provided in writing by the Authority, no Applicant shall have any legal right to "carryforward" private activity bond allocation held by the Authority.

**III. TRANSACTION FEES (OTHER THAN APPLICATION FEES) AND REQUIRED TRANSACTION DOCUMENTS**

**A.** **Transaction Fees**

In addition to the Application fees outlined above and in the Application, the Applicant will be responsible for all fees and expenses related to the financing, including, without limitation, the fees described below. The Authority and its professionals reserve the right to charge additional or increased fees above the standard contract rates on deals of unusual nature or with exceptionally complex structures.

***Authority Closing Administration Fee*** -- the greater of $20,000 or 0.25% of the principal amount of the Obligations at closing, due at closing of the Obligations.

***Authority On-Going Administration Fee*** -- the greater of $20,000 or 0.20% of the outstanding principal amount of the Obligations on the payment date (without regard to principal reductions on such date). For transactions that will be paid in full prior to five years after issuance, the Authority On-Going Administration Fee will always be based on the original principal amount of the Obligations. This fee is payable semi-annually in arrears beginning on the first payment date following Closing. For transactions that contemplate significant reduction in the amount of the Obligations within the first five years after closing, see Short Term Obligation Fee below.

 In a structure where there is a holder of the Obligations that is related to the Applicant, the Authority On-Going Administrative Fee structure will be determined by the Authority after consultation with the Financial Advisor and Bond Counsel. All Applicants should make the Authority aware of this situation at the very outset of the transaction.

***Short Term Obligation Fee*** --In addition to the Authority Closing Administration Fee and the Authority On-Going Administration Fee, the Authority will charge a short term early reduction fee for transactions that contemplate significant reduction in the amount of the Obligations upon construction completion or conversion to permanent financing. This fee will be determined using one of the following alternatives in the discretion of the Authority.

1. One Time Fee Due upon Closing. The Authority On Going Fee is charged up front at closing in an amount equal to the present value of what would have been due as the Authority On-Going Administrative Fee for fifteen years following issuance of the Obligations if the Obligations were outstanding for such time period.

2. Additional Short Term Principal Reduction Fee. A one-time additional fee is charged at the time a significant reduction in the principal amount of the Obligations is made based on the following percentages of the original principal amount of the Obligations, with a minimum fee of $25,000:

|  |  |
| --- | --- |
|  | **Prepayment Date** |
| **Bond Amount** | **≤ 18-Month** | **18+ to 24-Months** | **24+ to 36-Months** |
| Up to $15 million | 33 bps | 25 bps | 18 bps |
| Over $15 million, up to $20 million | 32 bps | 24 bps | 17 bps |
| Over $20 million, up to $25 million | 31 bps | 23 bps | 16 bps |
| Over $25 million, up to $30 million | 30 bps | 22 bps | 15 bps |
| Over $30 million, up to $40 million | 29 bps | 21 bps | 14 bps |
| Above $40 million | 28 bps | 20 bps | 13 bps |

***Bond Counsel Fee*** -- per bond counsel contract with the Authority and/or engagement letter with the Applicant.

***Financial Advisor Fee*** -- per financial advisor contract with the Authority.

***Authority Counsel Fee* --** per attorney/administrator contract with the Authority.

***Compliance Monitoring Fee, Authority Construction Loan Servicing Fee, Financial Monitoring Fee*** -- Third party fees for compliance monitoring, construction loan servicing and financial monitoring in an amount and for a duration to be determined at closing of the Obligations will be payable directly to the provider of such services pursuant to the servicing documents, which provider will be selected by the Authority.

**B.** **Transaction Documents**

The Applicant will be required to enter into the Authority’s form of the following transaction documents:

***Land Use Restriction Agreement***

***Compliance Monitoring Agreement with Authority Compliance Monitor***

***Construction Loan Servicing Agreement with Authority Servicer***

***Financial Monitoring Agreement with Authority Financial Monitor***

The Applicant will be required to provide the Authority’s forms of the following guarantees by guarantors recommended by the credit underwriter. Personal guaranties are expected:

***Guaranty of Completion***

***Guaranty of Recourse Obligations***

***Environmental Indemnity Agreement***

***Guaranty of Operating Deficits***

Forms of the agreements and guarantees described in this paragraph B have been approved by the Authority containing restrictions and requirements of the Authority.

**IV. REQUIREMENTS FOR FINANCINGS**

**A.** **Housing Laws**

All applicable Federal, State, and Local Fair Housing requirements must be followed.

**B.** **Securitization**

All Obligations must be securitized through a securitization structure.

**C.** **Rating/Placement**

Each financing must be rated by a national rating agency in one of the three highest rating categories (without regard to gradations) or must be privately placed with an Accredited Investor or Qualified Institutional Buyer ("Sophisticated Investor") which agrees to hold the Bonds for its own account and not for resale.

**D. Investor Letters**

Investor Letters acceptable to the Authority are required to be delivered at closing by the purchaser of the Obligations, unless the Obligations are rated as described above. Obligations that are privately placed will be transferrable only upon delivery of an Investor Letter by the purchaser in the form delivered by the initial purchaser at closing.

**E.** **Minimum Denominations**

All Obligations not rated in one of the three highest rating categories by a nationally recognized rating agency must be issued in minimum denominations of $250,000 each and multiples of $5,000 in excess of such minimum denomination. The intent of this paragraph is applicable not only to the initial sale of the bonds, but also to resales, if any, in secondary markets and shall be incorporated in the transaction documents as restrictions on transfer.

**V. POST-CLOSING TRANSACTIONS**

 **A. Process**

Action of the Authority post-closing (subordinations, defeasances, amendments, transfers of property, transfers of ownership, for example) must be requested by letter addressed to the Authority and submitted to the Financial Advisor. Such request must provide a thorough explanation of the background, the events that require the action and the requested action item and must be submitted two weeks prior to a meeting of the Authority to be considered at such meeting.

**B. Fees**

An administrative fee in connection with action to be taken post-closing pursuant to A. above in the amount of $2,000 must be paid to the Authority at the time the request for action is made. Such fee does not cover the fees of the Authority’s professionals, including but not limited to, Bond Counsel, Financial Advisor and credit underwriter, involved in preparing or reviewing said action items. The Borrower will be responsible for all professional fees incurred as a result of any action requested post-closing. Such fees will vary depending on the action item.

**C. Special Considerations**

***Change of Ownership of Borrower.*** Any change in ownership structure of the Borrower must be consented to by the Authority in accordance with the transaction documents. In connection therewith, the Authority shall charge a fee equal to the greater of 1% of the outstanding principal amount of the Obligations at the time of application or $75,000, which shall be non-refundable.

***Sale of Development.***  Any transfer of any ownership interest in the Development by the Borrower must be consented to by the Authority in accordance with the transaction documents.

**VI. WAIVER; AMENDMENT.**

The Authority, in its sole discretion, reserves the right to waive any of the aforesaid guidelines and procedures, not otherwise required to be met by law, upon good cause shown by Authority personnel or any corporation, firm or business concerned with the proposed financing. In addition, the aforesaid guidelines and procedures may be amended, revised, repealed or otherwise altered by the Authority with or without notice.

**EXHIBIT A**

**FORM OF EXPENSE AND INDEMNITY AGREEMENT**

Housing Finance Authority of Manatee County, Florida

RE: HOUSING FINANCE AUTHORITY OF MANATEE COUNTY, FLORIDA

MULTIFAMILY OBLIGATIONS

Ladies and Gentlemen:

The undersigned (the "Applicant") has requested that the Housing Finance Authority of Manatee County, Florida (the "Authority") consider its application (the "Application") for the issuance of obligations by the Authority (the "Obligations") for the benefit of the Applicant, and as an inducement to such consideration hereby agrees with the Authority as follows:

Section 1. Payment of Expenses. Whether or not the Obligations are offered, sold or issued, the Applicant agrees to pay and be liable for, and to hold the Authority harmless against the payment of, any and all expenses whatsoever arising out of or related to the Obligations and/or the Application, including, without limitation, the fees and expenses of bond counsel, investment bankers, financial advisor, credit underwriters, and if any, counsel to the Authority, administrative expenses, recording charges, expenses of printing offering circulars or official statements, the cost of printing the Obligations and advertising the sale thereof (collectively, the "Expenses"). The Applicant acknowledges and agrees that the application fee is a separate fee that is non‑refundable and shall not be used for the payment of any of the Expenses.

Section 2. Indemnity. Whether or not the Obligations are offered, sold or issued, the Applicant agrees to indemnify and hold harmless the Authority, and each of its members, officers, agents, attorneys and employees against any and all claims and liability whatsoever arising out of or related to the Obligations or the Application, including, without limitation, actual or alleged misrepresentation, fraud or other tortious conduct or breach of contractual relationships, whether predicated upon federal or state statutes, common law, principles of equity or otherwise, excepting only claims based upon willful misfeasance or nonfeasance of the Authority. In furtherance of the foregoing, the Applicant agrees to pay any and all attorneys' fees and court costs, including those relating to appeals, incurred in the defense of any of the claims or liabilities herein referenced upon the Authority’s written demand thereof. It is further understood and agreed that the Authority or any of the persons herein above indemnified shall be entitled to retain counsel acceptable to the Authority or them to defend any such claim, but that neither the Authority nor any such person will enter into any settlement of the same without the prior written approval of the Applicant, which approval may not be unreasonably withheld, conditioned or delayed.

 Section 3. Survival of Agreement. This Agreement shall survive the closing of the Obligations and shall not merge into or be superseded by any other agreement other than by a written amendment hereto specifically denominated as such and executed by the Authority and the Applicant.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ NAME OF APPLICANT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Accepted and Agreed:

**HOUSING FINANCE AUTHORITY**

**OF MANATEE COUNTY, FLORIDA**

By:

Name:

Title:

**EXHIBIT B**

**FORM OF PRELIMINARY AGREEMENT**

This Agreement between the Housing Finance Authority of Manatee County, Florida (the "Authority"), a body corporate and politic of the State of Florida and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Company"), a Florida limited liability limited partnership organized and validly existing under the laws of the State of Florida.

**W I T N E S S E T H:**

**1. PRELIMINARY STATEMENT.** Among the matters of mutual understanding which have resulted in the execution of this Memorandum of Agreement are the following:

(a) The Florida Housing Finance Authority Law (Chapter 159, Part IV, Florida Statutes), as amended, and other provisions of applicable law (the "Act") and the policies and procedures of the Authority in effect on the date hereof (herein "Authority Guidelines") provides that the Authority may issue its revenue bonds and notes and loan the proceeds thereof to one or more persons, firms or private corporations, or use such proceeds to defray the cost of acquiring, by purchase or construction, certain qualifying facilities.

(b) The Company is acquiring, constructing, equipping and developing a \_\_\_\_\_ unit multifamily residential housing facility known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for persons or families of low, middle or moderate income (the "Project") to be located within the boundaries of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Florida. It is estimated that the additional cost of the acquisition, construction, equipping and development of the Project will be in excess of $\_\_\_\_\_\_\_\_\_\_\_.

(c) The Authority intends this Memorandum of Agreement to constitute its official binding commitment, subject to the terms and conditions set forth herein and in the Resolution authorizing the Authority to enter into this Memorandum of Agreement, to issue its Multifamily Housing Revenue Bonds in a principal amount not to exceed of $\_\_\_\_\_\_\_\_\_\_\_ (the "Bonds") in one or more series or issues pursuant to the Act and Authority Guidelines in an amount to be agreed upon by the Authority and the Company and to loan the proceeds thereof to the Company, and to use such proceeds to finance a portion of the cost of acquiring, constructing, equipping and developing the Project, including all costs incurred in connection with the issuance of the Bonds by the Authority, up to an amount not to exceed $\_\_\_\_\_\_\_\_\_\_.

(d) The Authority considers the issuance and sale of the Bonds, for the purpose hereinabove set forth, consistent with the objectives of the Act. This commitment is an affirmative official action of the Authority toward the issuance of the Bonds as herein contemplated in accordance with the purposes of the Act, the Internal Revenue Code of 1986, as amended, and the applicable United States Treasury Regulations, provided, however, the commitment is specifically subject to the terms and conditions set forth in this Preliminary Agreement and creates no rights of specific performance on the part of the Company.

2. **UNDERTAKINGS ON THE PART OF THE AUTHORITY.** Subject to the terms and conditions set forth herein and in the Authority's Resolution dated \_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (the "Inducement Resolution") authorizing the Authority to enter into this Memorandum of Agreement, the Authority agrees as follows:

(a) The Authority will authorize the issuance of the Bonds in the aggregate principal amount necessary and sufficient to finance a portion of the cost of acquiring, constructing, equipping and developing the Project as the Authority and the Company shall agree in writing, but in all events, the principal amount of such Bonds shall not exceed $\_\_\_\_\_\_\_\_\_.

(b) The Authority will cooperate with the Company and purchaser(s) of the Bonds and the Authority's Counsel with respect to the issuance and sale of the Bonds and will take such further action and authorize the execution of such documents as shall be mutually satisfactory to the Authority and the Company for the authorization, issuance and sale of such Bonds and the use of the proceeds thereof to finance the cost of acquiring, constructing, equipping and developing the Project.

(c) Such actions and documents may permit the issuance from time to time in the future of additional Bonds on terms which shall be set forth therein, whether pari passu with the Bonds, for the purpose of defraying the cost of completion, enlargements, improvements and expansion of the Project, or any segment thereof, or refunding of the Bonds.

(d) The project loan or financing agreement(s) (the "Project Loan Agreement") among the Authority, the Company and the fiscal agent (or trustee) shall, under the terms agreed upon by the parties, provide for payments to be made by the Company in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable.

(e) In authorizing the issuance of the Bonds, the Authority will make no warranty, either expressed or implied, that the proceeds of the Bonds will be sufficient to pay all costs of acquiring, constructing, equipping and developing the Project, or that those facilities encompassed by the Project will be suitable for the Company's purposes or needs.

(f) The Bonds shall specifically provide that they are payable solely from the revenues derived from the applicable Project Loan Agreement or other agreements approved by the Authority, except to the extent payable out of amounts attributable to Note proceeds. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit of the Authority, the City of Palmetto, Florida, Manatee County, or of the State of Florida, or any other political subdivision of the State of Florida and such fact shall be plainly stated on the face of the Bonds.

(g) Due to the tax exempt volume cap limitations established by the State of Florida on the issuance of tax exempt obligations, the Authority reserves the right, in its sole and absolute discretion, to determine if, in what amount, and when to file a Request for Allocation for the Project with the State of Florida Division of Bond Finance. Subject to the foregoing, at any time after receipt of this Memorandum of Agreement properly executed by the Company (but before the expiration date), the Authority may file with the State of Florida Division of Bond Finance a Request for Allocation. Nothing contained herein shall be deemed to be a guarantee of the tax-exempt private activity allocation for the Company's Project.

(h) The Company has advised the Authority of the need to proceed timely to develop the Project. In that regard, assuming that the proposed financing of the Project and other matters are ultimately worked out and acceptable to the Authority, including a satisfactory third­party credit underwriting review, the Authority is desirous of assisting the Company in the financing of the Project. Accordingly, the Authority is entering into this Memorandum of Agreement so as to assist the Company in obtaining its financing for the Project. However, it is specifically understood and agreed by the Authority and the Company that the Authority, in its sole discretion, reserves the right not to issue the Bonds if it does not ultimately approve the financing, including approval of the financing documents.

 (i) Nabors, Giblin & Nickerson, P.A., Bond Counsel, has, upon review of the Company's application, determined that the Project is suitable for tax-exempt financing.

3. **UNDERTAKINGS ON THE PART OF THE COMPANY.** Subject to the terms hereof, the Company acknowledges and agrees as follows:

(a) Although the Authority has approved the proposed Project, it has reserved the right, in its sole and absolute discretion, to determine whether or not to proceed with the issuance of the Bonds as set forth in Section 2(h) above. The Company acknowledges, understands and agrees that the Authority retains said right.

(b) Unless the volume cap received is turned into carry-forward, the Company has been advised that the State of Florida has adopted rules and regulations regarding the use of allocations and requires that an issuer issue its Bonds in substantially the entire amount of the allocation within one hundred and fifty-five (155) days from the date of the granting of an allocation, unless it is extended under certain circumstances.

(c) The Company will use reasonable efforts to ensure that the Bonds in the aggregate principal amount as stated above are timely sold; provided, however, that the terms of such Bonds and of the sale and delivery thereof shall be mutually satisfactory to the Authority and the Company.

(d) Prior to the issuance of the Bonds in one or more series or issues from time to time as the Authority and the Company shall agree in writing, the Company will enter into the applicable Project Loan Agreement with the Authority, the terms of which shall be mutually agreeable to the Authority and Company, providing for the loan or use of the proceeds of the Bonds, as applicable, to finance a portion of the Project. Such agreement will provide that the Company will be obligated to pay the Authority (or pay to the fiscal agent or trustee for holders of the Bonds on behalf of the Authority, as the case may be) sums sufficient in the aggregate to enable the Authority to pay the principal of and interest and redemption premium, if any, on the Bonds, as and when the same shall become due and payable, and all other reasonable expenses related to the issuance and delivery of the Bonds. The Company will agree in such documents that if the cost of acquisition and construction of the Project exceeds the amounts allocated therefor, it shall not be entitled to any reimbursement for any such excess either from the Authority, the Bondholders or the fiscal agent for the Bondholders.



(e) The Company shall be responsible for and timely pay the Commitment Fee required by the Authority Guidelines, the issuance fee in effect at the time the Bonds are issued and the reasonable fees and costs of Counsel to the Issuer, the reasonable fees and costs of Bond Counsel to the Authority, the reasonable fees and expenses of the Authority's co-financial advisors, plus such other reasonable fees and costs as may be required.

(f) The Company shall, in addition to paying the amount set forth in the Project Loan Agreement, pay all costs of operation, maintenance, taxes, governmental and other charges that may be assessed or levied against or with respect to the Project.

(g) The Company will hold the Authority free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Project.

(h) The Company will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

(i) All fees and costs that the Company is required to pay, including but not limited to, the issuance fee, and counsel fees and costs not paid at the time of application shall be paid in full at the time of the sale and delivery of the Bonds.

(j) The number of multi-family units to be constructed by the Company will not decrease more than five (5%) percent from the number of multi-family units that it represented that it would construct in its Application to the Authority that resulted in the issuance of the Inducement Resolution and this Memorandum of Agreement.

(k) The closing of the sale of the Bonds shall occur on or before one hundred and fifty days from the date of the granting of a tax exempt volume allocation, unless extended by the Authority at its sole and absolute discretion. In the event that the closing on the sale of the Bonds does not occur on or before said time, and the Authority chooses not to extend the closing date, the Company shall have no further rights under this Memorandum of Agreement. Further, in such event, the Authority may apply for and use the tax exempt volume allocation, if available, for the funding of such other multifamily housing projects or single family housing as it deems best serves the interests of the residents of Manatee County, Florida.

(1) The ownership and control of the Company and its principals shall not vary more than five (5%) percent from what has been represented in the Company's Application to the Authority without the prior written consent of the Authority, excluding the admission of a tax-credit limited partner to the Company and as otherwise specifically approved by the Authority.(m) The Company shall take all such actions such that the Bonds shall be issued in compliance with the applicable terms and conditions of the Authority’s Multifamily Bond Allocation Policies and Procedures (revised \_\_\_\_\_\_\_\_).

(n) Should the Company cancel this Memorandum of Agreement in accordance with the terms hereof, the Company shall pay any and all of the Authority's fees and expenses including, without limitation, the fees and expenses of Authority's counsel and bond counsel and financial advisor.

(o) The Company and its principals shall have fully and timely complied with the terms of the Authority Guidelines, including, but not limited to the timely payment of all fees and costs due to the Authority, its Counsel and its Bond Counsel.

(p) The Company and certain related parties or guarantors as determined by the Authority shall be required to enter into an environmental indemnity and certain other guaranties.

4. **GENERAL PROVISIONS.** All commitments of the Authority under Section 2 hereof and of the Company under Section 3 hereof are subject to the conditions that the following events shall have occurred not later than one hundred and fifty-five days from the date of receipt of a tax exempt volume allocation, or such other date as shall be mutually satisfactory to the Authority and Company:

(a) The Authority shall be lawfully entitled to issue the Bonds as herein contemplated.



(b) The Authority and Company shall have agreed on mutually acceptable terms for the Bonds and the sale and delivery thereof and mutually acceptable terms and conditions of any trust instrument in respect thereto and Project Loan Agreement(s) or other agreements incidental to the financing or referred to in Sections 2 and 3 hereof.

(c) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Company and to the Authority as to such matters with respect to the Bonds the Project, the Project Loan Agreement, a funding loan agreement and any other instrument, as shall be specified by the Company or the Authority, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competence or jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Bonds.

(d) Notwithstanding the designation as an "official binding commitment" for purposes of the Act and federal tax law, the Company and the Authority each reserve the absolute right to unilaterally cancel this Memorandum of Agreement at any time prior to the time the Bonds are issued by the Authority upon written notice of cancellation. The Authority Guidelines will govern the treatment of fees already paid by the Company.

(e) If the events set forth in this Section 4 do not take place within the time set forth or any extension thereof, or if the Company exercises its right of cancellation as set forth in this Section 4, the Company agrees that it will reimburse the Authority for all the reasonable and necessary direct or indirect expenses which the Authority may incur at the Company's request arising from the execution of this Memorandum of Agreement, and the performance by the Authority of its obligations hereunder, including legal fees and expenses for counsel to the Authority, the reasonable fees and expenses of the Authority's co-financial advisors and Bond Counsel. In addition, the Authority shall be entitled to keep all fees paid to it pursuant to the Authority Guidelines.

(f) The Company acknowledges that the Authority may, during the time this Memorandum of Agreement is in effect, issue similar "inducement" agreements to other companies for other multifamily housing projects, and/or may issue bonds or notes or participate jointly with other authorities to issue bonds for single family housing. This Memorandum of Agreement will create no priority or rights vis-a-vis subsequent agreements for the issuance of multifamily or single family housing bonds or other indebtedness.

(g) The Authority shall have obtained the consent of the Manatee County Board of County Commissioners as to the issuance of the Bonds. Further, the Authority shall have obtained private activity allocation sufficient to allow the issuance of the Bonds from the State of Florida Division of Bond Finance.

5. **DEPOSIT FROM THE COMPANY.** Notwithstanding anything herein to the contrary, the Company has represented to the Authority that it expects to complete the financing of the Project on or before the [\_\_\_\_\_\_\_\_\_\_\_], [\_\_\_\_]. The Company acknowledges and agrees that failure to consummate the sale and delivery of not less than [\_\_\_\_\_\_\_\_\_\_\_\_\_] of the Bonds on or before [\_\_\_\_\_\_\_\_\_\_\_], [\_\_\_\_] will result in substantial damages to the Authority which cannot be easily or adequately measured. Consequently, in addition to the non-refundable application fee of the greater of 10 basis points or $7,500 paid to the Authority, the $500 non-refundable development feasibility fee payable to the Authority's financial advisor and the amount paid to the Authority’s creditor underwriter for the requisite credit underwriting fee to prepare the credit underwriting report, the Company shall deliver to the Authority on or before [\_\_\_\_\_\_\_\_\_\_\_], [\_\_\_\_\_\_] a cashier's check in an amount equal to the greater of $75,000 or one percent (1%) of the aggregate principal amount of the Bonds (subject to a maximum fee of $150,000), which reflects the required Commitment Fee (the "Deposit"), which shall be immediately cashed by the Authority. If Bonds in the principal amount of not less than [\_\_\_\_\_\_\_\_\_\_\_\_\_] are sold and delivered on or before the [\_\_\_\_\_\_\_\_\_\_\_], [\_\_\_\_], the Authority will deliver to the Company a check in the amount of the Deposit simultaneously with the sale and delivery of the Bonds. If for any reason Bonds in the principal amount of not less than [\_\_\_\_\_\_\_\_\_\_\_\_\_] are not sold and delivered on or before [\_\_\_\_\_\_\_\_\_\_\_], [\_\_\_\_], the Deposit shall be retained by the Authority and applied to pay the fees and expenses of the Authority, including the fees of the Authority's financial advisor, counsel and bond counsel. The Authority and the Company hereby agree that time is of the essence and it is the intent of the parties hereto that the provisions of this Memorandum of Agreement be strictly construed.

6. **BINDING** **EFFECT.** All covenants and agreements herein contained by or on behalf of the Authority and the Company shall bind and inure to the benefit of the respective successors and assigns of the Authority and the Company whether so expressed or not.

**IN WITNESS WHEREOF,** the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_.

**HOUSING FINANCE AUTHORITY OF MANATEE COUNTY, FLORIDA**

By:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

 Name: Title: