



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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MEMO

To: TCAC stakeholders
From: Mark Stivers, Executive Director
Date: April 12, 2017
Re: Leasehold riders

Since October, 2016, the Tax Credit Allocation Committee has been utilizing a “Lease Rider and Estoppel Agreement” as part of regulatory agreements being executed between sponsors and the Committee. While some have been executed with minor changes, we also have received numerous comments, suggestions, and opposition to use of the document. Initially we acknowledged that there were some minor clerical or drafting errors and ambiguities in the document, and we corrected them for continued use. However, representatives of lessors, lenders, investors, and developers have made a number of substantive objections as well, so we undertook a complete review of the document. Many of those substantive objections have resulted in significant changes to the document, although for the reasons below, we have not incorporated many others into the new document.

Use of a lease rider is not an unusual instrument in the housing finance industry. To the extent that many lease riders required by lenders are merely recorded against the lease interest, that is consistent with the lender’s obligation to secure its funds. In this case, TCAC’s interest is not in repayment of funding, but ensuring performance, and TCAC’s interest is definitely not in merely declaring a default that results in negative tax consequences for investors.

There were several underlying principles governing our review. First and foremost, of course, was the necessity of ensuring that the Allocation results in an affordable housing development which, for the term of use, is operated in accordance with the TCAC regulatory agreement as well as other funding sources. In reviewing the comments we received, not only did they generally reflect the stakeholder represented by the person commenting, but they also often were in conflict with comments received by other stakeholders for differing interests.

Secondly, while we acknowledge that each of the stakeholders has the same basic interest in ensuring the provision of long-term affordable housing, we also believe that those stakeholders have a more direct interest and greater opportunities for oversight and initial enforcement of any defaults than TCAC. Thus, we anticipate that the protections of the Lease Rider and remedies in

the regulatory agreement will not be triggered unless all the other stakeholders fail to take appropriate action in the event of a default. We would not anticipate TCAC stepping in, and/or a Transferee being appointed, unless all other stakeholders have failed to act in accordance with their transactional documents.

Thirdly, a primary purpose of the Lease Rider is for TCAC's consistent and cost-effective processing, monitoring and enforcement of obligations. A number of commenters, in various ways, sought to have the Lease Rider merely reference various procedures and obligations in the underlying Lease as the governing principles and procedures. This is not realistic or cost effective. Each of the parties to each development have only one lease and one lease rider to consider in determining rights and obligations; TCAC cannot realistically review each lease for each development receiving an allocation in order to determine its rights and obligations.

Fourth, we recognize that in extremely limited circumstances, there may be a need to customize the lease rider for a development with respect to a specific issue. The new draft of the rider provides an opportunity for that circumstance.

It has been the intent of the Committee that the lease rider be an obligation for those regulatory agreements executed on or after January 1, 2017. Given the common use of lease riders in these types of affordable developments, this document generally should not be an unreasonable burden. However, on a case-by-case basis, TCAC will consider additional exemptions in the event that the sponsor can demonstrate unique and significant negative consequences of its requirement.

I am attaching a red-line version of the amended Lease Rider in order to facilitate your review. I am willing to consider additional comments for seven days from the date of this transmittal. Please submit comments to me at mark.stivers@treasurer.ca.gov. After that date, I will review comments and decide upon any further revisions. At that time, the form will be final.

Thank you for your assistance.