

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT  
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 365  
AFFORDABLE HOUSING BOND PROGRAM

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**AUTHORITY:** Implementing Sections 7.19 and 7.25 of the Illinois Housing Development Act [20 ILCS 3805/7.19 and 7.25] and authorized by Sections 4 and 7(e) of the Illinois Affordable Housing Act [310 ILCS 65/4 and 7(e)].

**SOURCE:** Emergency Rules adopted at 18 Ill. Reg. 1596, effective January 12, 1994, for a maximum of 150 days; adopted at 18 Ill. Reg. 8633, effective May 25, 1994; amended at 22 Ill. Reg. 3846, effective February 4, 1998.

**SUBPART A: GENERAL RULES****Section 365.101 Authority**

This Part is authorized by and implemented pursuant to the Illinois Housing Development Act [20 ILCS 3805] and the Illinois Affordable Housing Act [310 ILCS 65] and shall govern the Program.

**Section 365.102 Purpose and Objectives**

This Part is established to accomplish the general purposes of the Act and the Affordable Housing Act and in particular the making of mortgages or other loans from the proceeds of Bonds or Notes to be issued by the Authority pursuant to the Act to acquire, construct, preserve, improve, renovate, rehabilitate, maintain, finance, refinance and assist Affordable Housing, including, without limitation, Financially Troubled Developments.

**Section 365.103 Definitions**

As used in this Part, words and phrases defined in the Act shall have the meanings ascribed to them therein. In addition, the following words or terms mean:

"Act": The Illinois Housing Development Act [20 ILCS 3805].

"Advisory Commission": The Illinois Affordable Housing Advisory Commission, established by and acting pursuant to Section 6(a) of the Affordable Housing Act.

"Affordable Housing": Residential housing that, so long as the same is fully or partially occupied by Low-Income Households or Very Low-Income Households, requires payments of monthly housing costs, including charges to such households for heat, electricity and water, of no more than 30% of the maximum allowable income as stated for such households as set forth in Section 365.1204(b)(1) and (2) of this Part.

"Affordable Housing Act": The Illinois Affordable Housing Act [310 ILCS 65].

"Applicant": The person or entity applying for a Loan from the Program.

"Application": An application for a Loan.

"Assistant Director": The Assistant Director of the Authority.

"Authority": The Illinois Housing Development Authority.

"Bonds": The bonds issued by the Authority pursuant to the Act from time to time to finance the Program, including bonds issued from time to time to replace or refund Bonds or Notes previously issued.

"BSPRA": The builders'/sponsors' profit and risk allowance, if any, given to an Owner against the Equity requirements for a Loan. BSPRA shall not exceed an

amount equal to ten percent (10%) of the total estimated replacement cost of the Development.

"Chairman": The Chairman of the Authority.

"Clearinghouse": The person in the Office of the Governor designated by the Governor of the State to provide notice to appropriate State and local agencies of proposed Developments.

"Commercial Tenant": Any entity leasing commercial facilities in a Development.

"Construction Completion Date": The date that construction or rehabilitation of a Development is substantially completed, as determined in writing by the Authority.

"Cost Certification Cutoff Date": The last day of the month in which the Construction Completion Date falls.

"Cumulation Date": The date from which an Owner's right to make Distributions shall begin cumulating, which date shall be the Initial Closing Date.

"Cumulative Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution unpaid but cumulated by an Owner in a prior fiscal year.

"Current Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution earned by an Owner in a current fiscal year.

"Deputy Director": The Deputy Director of the Authority.

"Development": A multi-family housing project made up of five or more units consisting of the Real Estate, together with all improvements, buildings, equipment, and personal property appurtenant thereto.

"Development Funds": All cash, rent subsidies, gross Development income, bank accounts, certificates of deposit, trust funds, reserves, escrows, accounts receivable, and other such assets of a Development, excluding security deposits which, pursuant to contract, an Owner may be required to return to a Tenant.

"Director": The Director of the Authority.

"Distribution": Any withdrawal or taking of Surplus Cash and/or Residual Receipts, including segregation of amounts of Surplus Cash and/or Residual Receipts for subsequent withdrawal, for payment to or on behalf of an Owner pursuant to the Authority's written authorization of such Distribution or any transfer of Development property to or on behalf of an Owner.

"Eligible Mortgagor": Any Limited-Profit Entity or Nonprofit Corporation, or any Illinois land trust the sole beneficiary of which is a Limited-Profit Entity or Nonprofit Corporation, but only if such Eligible Mortgagor's ownership of the Development (including any partnership interest or stock ownership interest in such Mortgagor), or such beneficiary's interest in such Illinois land trust (including the ownership of any partnership interest or stock ownership interest in such beneficiary), shall not cause any tax-exempt Bonds, if any, used to finance the Development to become taxable for federal income tax purposes and the organizational documents of such Mortgagor or such beneficiary referred to in Section 365.502 of this Part at all times are in compliance with (or such Mortgagor or beneficiary has executed a written agreement meeting) the requirements of Section 365.502 of this Part.

"Equity": The amount of funds provided by Owner for a Development, including an allowance for BSPRA, as determined by the Authority in its sole discretion.

"Final Closing Date": The date on which the Authority issues its final closing memorandum.

"Financially Troubled Development": A Development financed by a Loan from the Program which subsequently fails to meet its Mortgage obligations.

"Initial Closing Date": The date on which the Authority issues its initial closing memorandum.

"Limited-Profit Entity": Any individual, joint venture, partnership, limited partnership, trust or corporation organized or existing under the laws of the State or authorized to do business in the State (including, without limitation, a limited liability company) and having articles of incorporation or comparable documents of organization (or a written agreement with the Authority) which, in addition to meeting other requirements of law, meets the requirements of Section 2(k) of the Act.

"Loan": The loan financed through the Program made by the Authority to a Mortgagor to be used in connection with a Development.

"Low-Income Household": A single person, family or unrelated persons living together whose adjusted income is more than 50%, but less than 80%, of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437).

"Members": The Members of the Authority.

"Mortgage": The mortgage, or other instrument in the nature of a mortgage, and all other security documents encumbering a Development, together with supplements thereto and modifications or amendments thereof.

"Mortgage Note": The document executed as evidence of a Mortgagor's indebtedness under a Loan secured by a Mortgage, and any supplements thereto and modifications or amendments thereof.

"Mortgagor": The Limited-Profit Entity, Nonprofit Corporation or Trustee for either entity, holding title to a Development who has executed and delivered to the Authority a Mortgage.

"Nonprofit Corporation": A not-for-profit corporation incorporated pursuant to the provisions of the Illinois General Not-for-Profit Corporation Act of 1986 [805 ILCS 105] or the State Housing Act [310 ILCS 5] and having articles of incorporation or a written agreement with the Authority which, in addition to meeting other requirements of law, meet the requirements of Section 2(m) of the Act.

"Notes": The notes issued by the Authority pursuant to the Act from time to time to finance the Program.

"Owner": The Limited-Profit Entity or Nonprofit Corporation holding title to Real Estate or a Development or, when such Real Estate or the Development is held in an Illinois land trust, the Limited-Profit Entity or Nonprofit Corporation owning the entire beneficial interest in a Trust. Under no circumstances shall Owner mean the Authority or a Trustee.

"Part": This Part 365.

"Program": The Illinois Affordable Housing Bond Program.

"Real Estate": The real property upon which a Development is to be or has been constructed.

"Residual Receipts": Any Surplus Cash remaining as of the end of an annual fiscal period after the deduction of the amount of any repayment of any subordinate loans, if any, evidenced by a note to be repaid from Surplus Cash and all Distributions from Surplus Cash.

"Resolution": Any resolution or indenture adopted by the Authority pursuant to the Act authorizing the issuance of Bonds or Notes and setting forth the general terms and conditions under which the Authority may issue, deliver and sell Bonds and Notes, as amended and supplemented from time to time.

"Rules": The rules and regulations of the Authority as amended from time to time.

"Series Resolutions": The series resolutions adopted by the Authority from time to time pursuant to the Act and the Resolution authorizing the issuance of a series of Bonds or Notes.

"Staff": The Director, Deputy Director, Assistant Director and the other employees of the Authority.

"State": The State of Illinois.

"Surplus Cash": That part of Development income, calculated on an accrual basis of accounting remaining as of the end of a fiscal year after deductions for expenses, reserves, escrows and other similar items have been made in accordance with priorities established by the Authority in writing.

"Tenant": The person, family or unrelated persons leasing a dwelling unit in a Development.

"Tenant Selection Plan": The tenant selection plan approved by the Authority for a Development.

"Trust": The Illinois land trust (if any) which holds legal title to a Development.

"Trustee": The trustee of a Trust.

"Trust Fund": The Illinois Affordable Housing Trust Fund.

"Trust Fund Moneys": All moneys, deposits, revenues, income, interest, dividends, receipts, taxes, proceeds and other amounts or funds deposited or to be deposited in the Trust Fund pursuant to Section 5 of the Affordable Housing Act



and any proceeds, investments or increase thereof.

"Utility Allowance": The cost of electricity, heat and water based on reasonable consumption of these utilities.

"Very Low-Income Household": A single person, family or unrelated persons living together whose adjusted income is not more than 50% of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437).

#### **Section 365.104 Borrowing by the Authority**

To the extent allowed by the Act, and in the manner determined by the Authority, the Authority may borrow funds with which to make Loans or incur other obligations under the Program.

#### **Section 365.105 Compliance with Law**

Notwithstanding anything herein to the contrary, this Part shall be construed in conformity and compliance with applicable Federal law. Whenever reference is made in this Part to applicable law, statute, rule or regulation, the same shall be construed to mean the law, statute, rule or regulation in effect at the time of reference.

#### **Section 365.106 Standards**

In administering the Program, the Authority, the Chairman and the Staff shall, in the exercise of discretion, consider, in addition to the criteria specifically set forth: the purposes of the Program to provide decent, safe, and sanitary multi-family rental housing; the requirements of applicable State and Federal law; the financial condition and previous experience of the Applicant and potential and participating Owners; the Authority's ability to purchase or redeem any Notes or Bonds and to comply with the requirements of the Resolution and the applicable Series Resolutions authorizing any Notes or Bonds; the Authority's ability to comply with the terms and provisions of any Notes or Bonds; the financial integrity of the Program; the housing needs of the State; architectural and construction quality; preservation of the value of the Development as security for a Loan; the ability of the Owner to repay a Loan out of Development income; the desirability of achieving a reasonable geographic distribution of Developments throughout the State; the number of units reserved for Low-Income Households and Very-Low Income Households; the heterogenous mix of Tenants; the standards and practices of a prudent lender; the requirements of local housing codes and zoning laws; specific standards set forth in Authority agreements and documents; or any other factors relevant under the circumstances. The Authority shall give preferential consideration to Developments which will be newly constructed or substantially rehabilitated. Except as permitted in Section 365.601(c), the Authority shall not

refinance any existing Development unless, in connection with the making of such Loan, the Development shall be transferred to an Owner who is not affiliated with a prior Owner.

#### **Section 365.107 Authority Determinations**

Whenever, pursuant to this Part, a determination, election or approval may be made by the Authority, such determination, election or approval unless otherwise expressly stated herein shall be at the Authority's sole discretion.

#### **Section 365.108 Forms and Procedures for the Program**

The Staff may prepare, use, supplement and amend such forms, agreements and other documents and such procedures as it may determine to be necessary or desirable for the purposes of implementing the Program, all as may be prescribed by the Director, or, in the Director's absence, the Deputy Director or Assistant Director.

#### **Section 365.109 Fees and Charges of the Authority**

In connection with the Program, the Authority may establish and collect such fees and charges as may be established by the Authority from time to time. Such fees and charges may be paid from the proceeds of Notes or Bonds issued by the Authority. Such fees and charges may be used by the Authority for its general corporate purposes, including costs of administering the Program. Such fees and charges may be waived at the Authority's election, may vary from Development to Development, and may vary from time to time. In making such an election, the Authority may consider the Authority's costs in underwriting the proposed Development, costs of administering the Program, the financial condition of the Development, and other factors the Authority deems relevant.

#### **Section 365.110 Waiver (Repealed)**

(Source: Repealed at 22 Ill. Reg. 3846, effective February 4, 1998)

#### **Section 365.111 Amendment**

This Part may be supplemented, amended, or repealed by the Members, from time to time and in such manner as the Members may determine. This Part shall not constitute or create any contractual rights.

#### **Section 365.112 Severability**

If any clause, sentence, paragraph, subsection, Section, or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, subsection,

Section, or Subpart hereof to which such judgment is rendered.

### **Section 365.113 Gender and Number**

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

### **Section 365.114 Titles and Captions**

Titles and captions of Subparts, Sections, and subsections are used for convenience and reference and are not a part of the text.

### **Section 365.115 Calendar Days**

Days shall mean calendar days. Due dates falling on a Saturday, Sunday, or legal State or Federal holiday shall be deemed to fall on the next calendar day that is not a Saturday, Sunday, or a legal State or Federal holiday.

## **SUBPART B: ELIGIBILITY**

### **Section 365.201 Eligible Activities**

- a) Any Trust Fund Moneys transferred to the Authority pursuant to Section 8(b) of the Affordable Housing Act, or otherwise obtained, paid to or held by or for the Authority, or pledged pursuant to a resolution of the Authority, for the Bonds or Notes under the Act, and all proceeds, payments and receipts from investments or use of such moneys, including any residual or additional funds or moneys generated or obtained in connection with any of the foregoing, may be held, pledged, applied or dedicated by the Authority as follows:
  - 1) as required by the terms of any pledge of or Resolution of the Authority authorized under the Affordable Housing Act in connection with Bonds or Notes issued pursuant to the Act;
  - 2) to or for:
    - A) costs of issuance and administration and the payments of any principal, interest, premium or other amounts or expenses incurred or accrued in connection with Bonds or Notes, including rate protection contracts and credit support arrangements pertaining thereto;

- B) the Authority's expenses and servicing, administration and origination fees and charges in connection with any Loans, Mortgages, or Developments funded or financed or expected to be funded or financed, in whole or in part, from the issuance of Bonds or Notes, provided that such expenses, fees and charges are obligations, whether recourse or nonrecourse, and whether financed with or paid from the proceeds of Bonds or Notes, of the Owner, Mortgagors or other users;
- 3) to or for costs of issuance and administration and the payments of principal, interest, premium, Loan fees, and other amounts or other obligations of the Authority, including rate protection contracts and credit support arrangements pertaining thereto, for loans, commercial paper or other notes or bonds issued by the Authority pursuant to the Act, provided that the proceeds of such loans, commercial paper or other notes or bonds are paid or expended in connection with, or refund or repay, loans, commercial paper or other notes or bonds issued or made in connection with bridge loans or loans for the construction, renovation, redevelopment, restructuring, reorganization of Affordable Housing and related expenses, including development costs, technical assistance, or other amounts to construct, preserve, improve, renovate, rehabilitate, refinance, or assist Affordable Housing, including a Financially Troubled Development, permanent or other financing for which has been funded or financed or is expected to be funded or financed in whole or in part by the Authority through the issuance of or use of proceeds from Bonds or Notes;
- 4) to or for direct expenditures or reimbursement for Development costs, technical assistance, or other amounts to construct, preserve, improve, renovate, rehabilitate, refinance, or assist Affordable Housing, including Financially Troubled Developments, permanent or other financing which has been funded or financed or is expected to be funded or financed in whole or in part by the Authority through the issuance of or use of proceeds from Bonds or Notes; and
- 5) for deposit into any residual, sinking, reserve or revolving fund or pool established by the Authority, whether or not pledged to secure Affordable Housing Program Bonds or Notes, to support or be utilized for the issuance, redemption, or payment of the principal, interest, premium or other amounts payable on or with respect to any existing, additional or future Bonds or Notes, or to or for any other expenditure authorized by the Act or the Affordable Housing Act.

- b) All or a portion of the Trust Fund Moneys on deposit or to be deposited in the Trust Fund not already certified for transfer or transferred to the Authority pursuant to the Affordable Housing Act may be used to secure the repayment of Bonds or Notes or otherwise to supplement or support Affordable Housing funded or financed or intended to be funded or financed, in whole or in part, by Bonds or Notes.

### **Section 365.202 Market Rate Developments**

Pursuant to Section 10(d) of the Affordable Housing Act and to Sections 4 and 12 of the Act, the Authority may make Loans for Developments which are to be occupied partly by Low-Income Households or Very Low-Income Households provided that the number of units to be occupied by Low-Income Households or Very-Low Income Households shall be acceptable to the Authority in its sole discretion, and shall be in compliance with any Federal law and the regulations promulgated thereunder, if applicable. A minimum of 10% of the units in any Development must be set aside for Very Low-Income Households. A minimum of 20% of the units in any Development must be set aside for Very Low-Income and Low-Income Households; provided, however, that the majority of moneys appropriated to the Trust Fund in any given year, including moneys transferred and certified for transfer in such year for the purposes and uses specified in Sections 8(c) and 9 of the Affordable Housing Act will be used for Affordable Housing for Very Low-Income Households.

### **Section 365.203 Eligible Mortgagors Who May Receive Loans**

The recipients of Loans funded by the proceeds of Bonds or Notes are required at all times to be Eligible Mortgagors.

### **Section 365.204 Land Trusts**

Whenever title to the Real Estate is held in an Illinois land trust, the agreement creating the Trust and establishing the respective rights, powers, and duties of the Trustee and Owner shall be in a format approved by the Authority. The beneficial interest of such land trust shall be collaterally assigned to the Authority as additional security for the Loan.

## **SUBPART C: APPLICATION**

### **Section 365.301 Application**

Applicants shall submit Applications on forms provided by the Authority.

### **Section 365.302 Site and Market Study**

The Authority shall conduct or cause to be conducted at the Applicant's expense a site study and

a market study when an Applicant seeks a Loan. The provisions of this Section shall not relieve the Owner of its responsibility to provide a marketing and management plan as provided in Section 365.1101 of this Part.

#### **Section 365.303 Staff Recommendation to the Advisory Commission**

After initial review, the Staff shall prepare and present to the Advisory Commission a report concerning those Applications that the Staff recommends should be approved. The Staff shall inform the Advisory Commission, as to each Application, whether such Application is being recommended for funding, not recommended for funding or rejected due to being ineligible for funding.

#### **Section 365.304 Authority Determination**

The Staff shall present to the Members all positive recommendations for Loans under the Program along with the recommendations therefor from the Advisory Commission. The proceeds of Bonds or Notes used to make Loans can only be allocated to Loans for Developments approved by resolution of the Members for funding with such proceeds.

#### **Section 365.305 Conditional Commitment**

After approval of an Application by the Members, the Staff shall prepare and deliver to the Applicant a conditional commitment that commits the Authority to make a Loan expressly conditioned upon and subject to the Applicant's meeting all of the requirements of the conditional commitment and the availability of funds from the Program. If the conditional commitment expires prior to the consummation of the Loan, the Authority shall have no obligation to make such Loan. The Applicant shall forfeit all fees paid to the Authority and the Applicant shall be liable for any fees or charges then due and owing to the Authority.

### **SUBPART D: NOTICE OF PROPOSED MULTI-FAMILY DEVELOPMENTS**

#### **Section 365.401 Applicability and Purpose of Notification**

- a) Purpose  
The purpose of this Subpart is to set forth requirements for notifying certain persons and agencies when an Applicant proposes to acquire, construct, rehabilitate, finance, or refinance a Development in their district, county or municipality.
- b) Applicability  
The provisions of this Subpart shall apply only to Developments subject to this Part.

- c) **Compliance and Proof of Compliance**  
An Application shall not be deemed to be complete until the Applicant has complied with the provisions of this Subpart applicable to it and has submitted to the Authority evidence of such compliance satisfactory to the Authority. An Applicant's failure to comply with this Subpart shall relieve the Authority of all obligations regarding the Development.
- d) **Applicant Does Not Represent Authority**  
In responding to comments, attending hearings or undertaking any other activities pursuant to this Subpart, an Applicant shall not hold itself out as representing the Authority and shall not take or suffer any action which would incur any obligation on behalf of the Authority.

### **Section 365.402 Notification by Authority**

- a) **Notice of Development**  
Before the Staff submits to the Members the Staff's recommendation that the Authority should issue a conditional commitment to make a Loan to fund a Development, the Authority shall give written notice of the proposed Development to the following persons and agencies:
  - 1) the chairman of the county board of the county in which the Development is located or is proposed to be located;
  - 2) the mayor or other chief executive of the municipalities, if any, in which the Development is located or is proposed to be located;
  - 3) in municipalities with a population of more than 1,500,000 persons, the alderman of the ward in which the Development is located or is proposed to be located and the Planning Commission;
  - 4) appropriate Clearinghouses; and
  - 5) each member of the General Assembly from the legislative district in which the Development is located or is proposed to be located.
- b) **Forms**  
Notice under this Section shall be given on Authority forms.
- c) **Contents**  
The notice shall set forth the name and address of the proposed Development; the name, address and telephone number of the Applicant; the estimated amount of the Loan; the type of any other assistance of any other governmental body

proposed to be sought by the Applicant; the total number of units; the total number of any assisted units; the type of Development (for example, elderly, family or handicapped); and any other information that the Authority deems relevant.

### **Section 365.403 Comments and Responses**

- a) **Comments**  
The persons and agencies receiving notice of a proposed Development pursuant to Section 365.402 of this Part shall have 30 days from the date of mailing to submit written comments to the Applicant.
- b) **Applicant's Responses**  
The Applicant shall respond in writing to all comments received under this Subpart, with a copy thereof to the Authority.

### **Section 365.404 Compilation of Comments and Responses**

- a) **Documents**  
The Applicant shall submit to the Authority the following documents within ten (10) days after expiration of the notice period described in Section 365.403(a) of this Part:
  - 1) a copy of every written comment pursuant to Section 365.403 of this Part and a written summary of any oral comment received;
  - 2) a copy of every response made pursuant to Section 365.403 of this Part;
  - 3) a history of conferences, hearings and other activities undertaken in relation to comments on the proposed Development;
  - 4) a brief summary of the Applicant's actions in response to comments; and
  - 5) a certification from the Applicant that the information provided under this Section is accurate and complete.
- b) **Information**  
The Applicant shall provide sufficient information under this Section to enable the Authority to determine whether the Applicant has adequately considered and responded to comments received pursuant to Section 365.403 of this Part.
- c) **Denial**  
The Authority may at any time deny an Applicant's Application for, among other



reasons, failure to comply with the provisions of this Subpart. Such denial shall be in writing and shall set forth the conditions, if any, that must be met for the Authority to continue to consider the Application.

d) Assistance of Authority

It shall be the Applicant's responsibility to seek the assistance of the Authority, if needed, in addressing comments received pursuant to this Section.

### **Section 365.405 Hearings**

The Applicant shall provide written notice to the Authority of any public meeting or adjudicatory hearing which may be held in connection with the proposed Development. The Applicant shall mail such notice to the Authority within 2 days after receiving notice or otherwise becoming aware of such hearing. It shall be the Applicant's responsibility to prepare for and attend such hearings and to respond to any inquiry made at or in connection with such hearings regarding the proposed Development.

## **SUBPART E: OWNER OF MULTI-FAMILY PROJECTS**

### **Section 365.501 Eligible Mortgagors**

The Authority may make Loans under the Program to Eligible Mortgagors. The Owner of a Development shall at all times be an Eligible Mortgagor. If the Authority learns that an Owner is not or has ceased to be an Eligible Mortgagor, then the Authority may take any action which the Mortgage or the Mortgage Note entitle or permit the Authority to take in the case of a failure to make timely payment of principal or interest on the Loan, including but not limited to declaration of default and pursuit of remedies.

### **Section 365.502 Organizational Documents**

To qualify and maintain the Owner as a Limited-Profit Entity or Nonprofit Corporation as defined in the Act and this Part, to qualify and maintain the Trustee or the Owner, as the case may be, as Eligible Mortgagors as defined in this Part, and to ensure that the Owner, and each person or entity which has an ownership interest in the Owner and/or Trustee, are required to comply with the Act and this Part and shall not cause the interest on the Bonds or Notes used to finance the Development, which was excludable from Federal income tax, if any, to become taxable for Federal tax purposes, such Owner shall either provide in its organizational documents or execute a written agreement with the Authority, that such owner shall at all times be a Limited-Profit Entity or Nonprofit Corporation and that the Authority shall have the rights and remedies to enforce such provisions of such entities' organizational documents or written agreement as are provided in the Act. The provisions of such documents of organization as are required by this Section shall not be amended without prior written Authority approval. Any such written agreement acceptable to the Authority, and duly authorized by an Owner, shall

satisfy the requirements of this Section.

### **Section 365.503 Books and Records**

The books and records of the Development and the Owner shall be prepared and maintained in accordance with Authority requirements and shall be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires for the purpose of determining compliance with the Rules, the Act, the Affordable Housing Act and all contracts and agreements relating to the Program. The books and records of the Owner, if separate from the books and records of the Development, shall likewise and to the same extent be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires.

### **Section 365.504 Audits**

Any Development offices, architectural plans and specifications, apparatuses, devices, books and records, contracts, documents, and other papers relating thereto of the Development and the Owner shall at all times be maintained in reasonable condition for proper audit and shall be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires. All audits, certifications, and financial reports that the Owner is required by contract with the Authority to allow, undertake, or prepare shall be made by and certified to the Authority by an independent certified public accountant acceptable to the Authority.

### **Section 365.505 Annual Financial Report**

Within the time period prescribed by the Authority after the end of the Development's fiscal year, the Owner shall provide to the Authority a complete annual financial report based upon the books and records of the Development and the Owner, prepared in accordance with Authority requirements, and certified to the Authority by the Owner and an independent certified public accountant acceptable to the Authority.

### **Section 365.506 Furnishing Information**

The Owner shall furnish such reports, projections, certifications, analyses, budgets, operating reports and tax returns as are required by the Authority or by applicable Federal or State statutes, regulations or subsidy or assistance programs, and shall furnish specific answers to the Authority's questions about the Owner's income, assets, liabilities, and contracts and, if applicable, about the administration, operation, maintenance, occupancy, financial soundness, and physical condition of the Development.

**Section 365.507 Standards for Approval of Conveyance**

In determining whether to approve and/or impose restrictions on the conveyance, assignment, leasing, mortgaging, pledging or other transfer of the Development, and the beneficial interest in and power of direction over the Trust, or any partnership interest or stock ownership interest or other ownership interest in the beneficiary of the Trust, the Authority shall grant such approval, with any necessary restrictions, only if the Authority determines in its discretion that such action will not have an adverse effect upon the financial stability of the Development, the status or ratings of the Bonds or Notes that are providing all or any part of the financing for such Development, or the ability to repay such Bonds or Notes or the likely value of the Development as security for the Loan.

**Section 365.508 Purchase of Authority Bonds and Notes**

No Owner, including any "related person," as defined in Section 147 of the Internal Revenue Code of 1986, 26 I.R.C. 147 (1992), as amended from time to time, shall pursuant to any arrangement, formal or informal, direct or indirect, agree to purchase any Bonds, Notes or other obligations of the Authority, the interest on which is excludable from Federal income tax, in an amount related to the aggregate principal amount of the Loan to be made to the Owner or such related person.

**SUBPART F: MORTGAGE LOANS TO DEVELOPMENTS****Section 365.601 Maximum Loan Amount for Developments**

- a) Establishing Amount. The maximum Loan amount shall be an amount which can be repaid out of the Development's expected net operating income after deductions for operating expenses, reserves and escrows, as determined by the Authority in its sole discretion, and without taking into account any income from any Commercial Tenant, based upon a debt service coverage ratio of not less than 1.10 to 1.0 or such higher amount as may be required by the Resolution or applicable Series Resolution.
- b) The Owner shall invest as Equity in the Development an amount no less than 10% of the total estimated replacement cost of the Development or 10% of the total cost of the Development, as those costs may be determined and approved by the Authority in its sole discretion, whichever cost is less. The Authority may, in its discretion, require the Owner to invest Equity in an amount greater than the minimum amount required pursuant to this Section. In calculating the total estimated replacement cost of the Development, the Authority shall consider: the design architect's fees; the supervisory architect's fees; legal, accounting and other organizational fees; marketing, consulting and purchasing agent fees; construction interest; the Authority's service and Development fees; real estate and other taxes;

title and recording fees; financial contingency and construction contingency; the development cost escrow, if any; BSPRA; relocation costs; off-site improvements; land costs; carrying charges; and any other costs approved by the Authority. In calculating the total cost of the Development, the Authority shall consider trade payments to contractors and subcontractors, general overhead, bond premiums, insurance, builder's profit (if any), change orders, discounts, rebates and any other costs approved by the Authority.

- c) **Troubled Affordable Housing.** The Authority may, at the Authority's election, restructure Loans made from the proceeds of Bonds or Notes under the Program that the Authority determines, in its sole discretion, are in jeopardy of not being repaid or that have been made to Developments in jeopardy of not being completed. In any such restructuring, the Authority may, subject to any covenants contained in the Resolution or applicable Series Resolution, reduce the principal amount of or interest rate on the Loan upon such terms and conditions as the Authority may determine in its sole discretion. In making such election to restructure a Loan, the Authority shall consider whether the financial strength of the Program would be enhanced more by restructuring the Loan than by pursuing and enforcing the Authority's rights and remedies under the Mortgage and the Mortgage Note.

### **Section 365.602 Maturity of Loans**

The maximum maturity of a Loan to be made by the Authority for permanent financing of multi-family rental housing under this Program shall not exceed 40 years and may be shorter at the sole discretion of the Authority. In determining the term of a Loan, the Authority shall take into account its:

- a) ability to pay when due the principal (including any sinking fund installments) and interest on any Bonds or Notes;
- b) ability to purchase or redeem any Bonds and to comply with the requirements of the Resolution and Series Resolution authorizing any Bonds;
- c) ability to comply with the terms and provisions of any Notes;
- d) the feasibility of the proposed Development;
- e) the financial integrity of the Program;
- f) the requirements of applicable State and Federal law; and
- g) any other relevant factors.

**Section 365.603 Recapture of Assistance**

Within each set of Loan documents the Authority shall establish requirements regarding use, occupancy and rent levels as required by the Act, the Affordable Housing Act and this Part. If the Owner violates any of the provisions of the agreement or agreements containing such requirements, such violation shall be deemed a default under the Loan documents whether or not expressly so stated therein.

**Section 365.604 Prepayment of Loan**

The Authority may prohibit the prepayment of a Loan when, in the Authority's determination, such prepayment will diminish the supply of Affordable Housing as contemplated by the Act and the Affordable Housing Act, or when the Bonds or Notes issued to provide the Loan prohibit prepayment of the Bonds or Notes.

**SUBPART G: RETURN ON EQUITY****Section 365.701 Statutory Authorization Establishing Rate of Return**

Pursuant to Section 8 of the Act, the Authority is required to establish Equity at the time of final disbursement of Loan proceeds. It is the purpose of this Subpart to set the criteria by which a permitted rate of return will be established.

**Section 365.702 Equity and Distributions**

- a) Right to Distributions. An Owner may have the right, commencing as provided in subsection (b) below, to make annual Distributions following the completion of a Development's fiscal year in an amount not to exceed a sum equal to the product of the Equity in the Development multiplied by a factor equal to two hundred percent (200%) of the yield paid on 30-year GNMA mortgage certificates, or such lesser sum as the Authority may determine, set and fixed as of the date of the conditional commitment letter to the Development. The Chief Financial Officer of the Authority shall certify to the GNMA rate as of such date. If a Distribution cannot be made as provided in subsections (c) and (d) below, an Owner may cumulate the right to make a Distribution. In any partial fiscal year following the Cumulation Date, the amount of a Distribution shall be cumulated pro rata. If GNMA mortgage certificates cease to be issued for 30-year terms, the annual Distributions shall be calculated based on the yield paid on the instrument most nearly comparable in character and credit to such GNMA mortgage certificate, as determined by the Authority.

- b) Cumulation Date. An Owner's right to a Distribution shall begin to cumulate on the Initial Closing Date.
- c) Source of Distributions. An Owner may make Current and Cumulative Distributions only out of Surplus Cash and/or Residual Receipts. If Surplus Cash or Residual Receipts are unavailable in a given fiscal year, an Owner shall make no Current Distribution, but the right to make such Distribution shall cumulate. If Surplus Cash and/or Residual Receipts are insufficient in a given fiscal year to make the approved Distribution for the Development, an Owner may distribute all available Surplus Cash and/or Residual Receipts and cumulate the right to make the remainder of the Distribution in future years when and if Surplus Cash and/or Residual Receipts are available.
- d) Timing of Distributions. No Distribution shall be made until after the Final Closing Date. Even if Surplus Cash and/or Residual Receipts are available, the initial and all subsequent Distributions, including Cumulative Distributions, may be made only after: the Authority has approved the Development's annual financial report (pursuant to Section 365.505 of this Part); the Development has an approved Development budget for the next fiscal year; the Owner has complied with all outstanding notices of requirements for proper maintenance and operation of the Development; the Owner has cured any defaults or breaches of applicable Authority Rules, contracts and agreements; and the Authority has issued its written authorization of such Distribution.
- e) Amount of Equity. As required by the Act, the Authority shall establish Equity in a Development at the time of making the final Loan advance. In no event shall the amount of such Equity be calculated to include any grants or other funds not originating with the Owner. Any Equity in a Development arising out of the sale or purchase of Low-Income Housing tax credits (including bona fide notes which are not in default executed by tax credit purchasers in favor of an Owner) shall be deemed to constitute funds originating with the Owner. Once established by the Authority, the amount of an Owner's Equity shall remain constant so long as the Mortgage Note and Mortgage are outstanding on the Development; provided however, the Authority shall reduce the Equity amount by any amount which is not timely invested in the Development.

### **Section 365.703 Development Funds and Property**

All Development Funds received by an Owner or its agent shall be deposited to and maintained, as the Authority directs, in appropriate accounts with the Authority, or in a Federally insured bank or savings and loan association or other financial institution located and qualified to do business in Illinois and whose deposits are insured by the Federal government. The Authority shall by contract with the Owner establish priorities for the disbursement and use of

Development Funds, including the funding of reserves and escrows, and shall require that the Owner have personal liability for Development Funds or Development property that come into its hands or the hands of its agents that by contract with the Authority the Owner is not entitled to retain or has disbursed or used in violation of Authority requirements, together with the costs and expenses of the Authority in redressing the violation. In establishing such priorities, the Owner and Authority shall take into account the purposes of the Program, the financial stability of the Development, the physical condition of the Development, the value of the Development as security for the Loan, and other relevant factors. It shall be a violation of the Rules for the Owner or its agent to disburse, use or retain Development Funds or Development property other than in accordance with the requirements or priorities established pursuant to this Section and set forth in Authority contracts with the Owner or other documents.

#### **Section 365.704 Reserve Fund for Replacements**

The Owner of a Development shall set aside out of gross Development income and shall deposit with the Authority such sums as the Authority shall specify or applicable Federal statutes, regulations, or agreements required to be deposited in an account to be titled the Reserve Fund for Replacements. No proceeds of the Reserve Fund for Replacements may be withdrawn, disbursed, or applied without written Authority approval. The sums set aside, together with any income earned thereon, shall be used to pay the costs of replacing structural elements and mechanical equipment of the Development and for such other Development expenses as the Authority in its sole discretion may approve. In determining the amounts to be set aside or deposited to the Reserve Fund for Replacements, the Authority shall consider the nature and condition of any structural elements or mechanical equipment which may have to be replaced, the estimated useful life of any such structural elements or mechanical equipment, the estimated cost of replacements, applicable Federal requirements, construction costs, and potential gross Development income. In connection with any requested disbursements from the Reserve Fund for Replacements, the Authority shall consider the benefit to the Development of the proposed disbursement, the amount to be disbursed, the amount on deposit in the Reserve Fund for Replacements, whether the Owner is delinquent in making deposits to the Reserve Fund for Replacements or is otherwise delinquent in making payments or deposits under the Loan documents, other uses for which the Reserve Fund for Replacements is likely to be needed, and any other relevant factors.

### **SUBPART H: CONSTRUCTION**

#### **Section 365.801 Design and Construction Standards**

Developments financed by Loans under the Program shall be designed and constructed or rehabilitated to conform with applicable Federal, State, and local statutes, regulations, ordinances, standards, and codes, with industry practices in Illinois, and with the requirements of applicable Authority Rules and guides.

## SUBPART I: ENERGY EFFICIENCY

### **Section 365.901 Standards**

All Developments receiving assistance from the Program for construction and rehabilitation shall comply with the provisions of 47 Ill. Adm. Code 310. Subpart I. Any waiver of such provisions shall be made in accordance with Section 310.913 of this Part.

## SUBPART J: CERTIFICATIONS

### **Section 365.1001 Environmental Assessment**

Prior to the making of a Loan under the Program, the Authority shall require the Applicant to conduct or authorize the Authority to cause to be conducted on the Applicant's behalf a Phase I environmental assessment review, certified to the Authority, of the proposed Development undertaken by an environmental consultant approved in advance by the Authority. The Authority may, at its election, commission such assessment. The environmental assessment shall, at a minimum, consist of a review of historic activities on the Real Estate and current conditions of the Real Estate which identify potential violations of applicable environmental laws. If the results of the Phase I environmental assessment disclose the presence of any hazardous substance as described at Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(14)), or any other adverse environmental conditions, as determined by the Authority, then the Authority may deny the Application or the funding of the Loan. The Authority may elect, as a condition to further review of the Application or to the making of the Loan, as the case may be, that the Applicant shall conduct or authorize the Authority to conduct on the Applicant's behalf a Phase II comprehensive environmental assessment certified to the Authority by an environmental consultant approved in advance by the Authority. This Phase II assessment may consist of sampling, lab analysis and an estimate of the magnitude of environmental problems, as well as costs involved in site cleanup. The Applicant shall pay the costs of all such assessments, and the costs may, at the sole discretion of the Authority, be payable out of Loan proceeds.

### **Section 365.1002 Other Laws**

All Developments receiving Loans from the Program for construction or rehabilitation shall comply with the provisions of the Environmental Barriers Act [410 ILCS 25], the Illinois Accessibility Code (71 Ill. Adm. Code 400), the Americans with Disabilities Act (42 USC 12101 et seq.), Executive Order for the Reduction of Earthquake Hazards (Executive Order 90-2), the Historic Preservation Act [20 ILCS 3410] and all other applicable Federal, State or local laws.



**SUBPART K: MARKETING AND MANAGEMENT****Section 365.1101 Marketing and Management**

- a) It shall be the responsibility of the Owner to provide for the marketing and management of the Development in a manner and by a party satisfactory to the Authority so as to promote the purposes of the Program and the financial stability of the Development and to preserve the value of the Authority's security interest in the Development.
- b) All marketing and management plans and management agreements shall be acceptable to the Authority. Such plans and agreements shall conform to any applicable conditions providing for Federal assistance (if any) relating to the Development.

**Section 365.1102 Marketing and Management Plans**

- a) Approval. Before the Authority makes a Loan under the Program and at such other times as may be required by the Authority, the Authority may require the Applicant to submit for the Authority's approval plans for the marketing and management of the Development. In deciding whether to approve such plans, the Authority may consider: the purposes of the Program; the provisions of the Tenant Selection Plan, as applicable; applicable Federal and State statutes and regulations; and any other matters it determines to be relevant.
- b) Contents of Marketing Plan. The marketing plan shall set forth the policies and procedures to be used in marketing and shall address: the qualifications of the marketing agent; the nature of the market to be served by the Development; the dates of availability of units by type and location; the dates of availability and locations of facilities essential to the marketing campaign, including model units, the rental office, and any community building; the provisions for compliance with all fair housing requirements; the promotion of the Development, including the use of mass media, public relations, brochures, signs, equipment and furnishings for model units and the rental office; and marketing staff. The marketing plan shall also set forth: the intended mix of family, elderly and handicapped Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix (including number of units); the method of processing the applications of prospective Tenants; the criteria upon which prospective Tenants' applications for occupancy are to be approved or disapproved; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action or natural disaster; rent schedules; and any other relevant matters.

- c) **Contents of Management Plan.** The Management Plan shall set forth the policies and procedure to be used by the managing agent in operating the Development and shall address: the qualifications of the managing agent; procedures for evaluating management personnel; physical maintenance of the Development; procedures for tenant selection; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action or natural disaster; tenant/landlord relations; eviction procedures; marketing; financial reporting; books and records of the Development; the intended mix of family, elderly and handicapped Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix (including number of units); the method of processing prospective Tenants; the criteria upon which prospective Tenants' applications for occupancy are to be approved or disapproved; the managing agent's compensation; and any other relevant matters.
- d) **Responsibility.** The Owner shall be responsible for ensuring both the marketing agent's and the managing agent's compliance with all applicable ordinances, regulations, statutes, and applicable Rules, agreements and requirements.

### **Section 365.1103 Maintenance**

The Owner shall maintain the Development, including, without limitation, the dwelling units, commercial facilities, and grounds and equipment related to the Development, in a decent, safe, and sanitary condition, in a tenantable and rentable state of repair, and in compliance with applicable leases and with Federal, State, and local statutes, regulations, ordinances, standards and codes.

### **Section 365.1104 Cost of Service**

The Owner shall not pay more for administrative, management, operating, and maintenance expenses than is reasonable given the location and size of the Development, the level of administration, operation, and maintenance required by the applicable Authority Rules and agreements, the requirements of the marketing plan, management plan and Tenant Selection Plan, the uniqueness or quality of available services or supplies, the presence of an emergency or other time constraint, the credit worthiness of suppliers and contractors, and any other relevant factors. The Owner shall solicit bids for administrative, operation and maintenance services if the Authority shall so require.

## SUBPART L: TENANTS AND OCCUPANCY

### Section 365.1201 Displacement

Owners shall not cause the permanent displacement of any Tenants in a Development that receives a Loan for rehabilitation except as provided in Section 365.1202 of this Part. Pursuant to Section 10(g) of the Affordable Housing Act, Relocation Plans must comply with Section 507 of the Federal Housing and Community Development Act of 1987.

### Section 365.1202 Relocation Plan

- a) Approval. Before the Authority makes a Loan for rehabilitation of a Development under the Program and at such other time as shall be required by the Authority, the Authority shall require the Applicant to submit, for the Authority's approval, a plan for the temporary relocation or permanent displacement of Tenants whose dwelling units will be rendered uninhabitable by any renovation. In deciding whether to approve such plans, the Authority shall consider: the purposes of the Program; the provisions of the Tenant Selection Plan; any applicable Federal and State statutes and regulations; and any other relevant matters.
- b) Benefits Provided For in the Relocation Plan. The benefits provided for under the relocation plan shall be available only to lawful residential Tenants (not owner-occupants or businesses) who are temporarily relocated or permanently displaced following submission of the Applicant's application for a Loan or the Applicant's control of the site, whichever comes later. The benefits provided for under the relocation plan shall not be available to Tenant if: the Tenant's income is eighty percent (80%) or more of the median family income, adjusted for family size; the Tenant commences occupancy after the later of Applicant's application for a Loan has been submitted to the Authority or the Applicant has obtained site control, provided such Tenant receives written notice of the impending rehabilitation and possible relocation or displacement prior to executing the lease; the Tenant has his/her tenancy terminated for violations of the terms and conditions of the lease, a violation of applicable Federal, State or local law, or other good cause; the Tenant is rejected for continued occupancy by the Applicant for reasons stated in the Tenant Selection Plan, except as provided below; the Tenant moves from the Development of his/her own accord; or other good cause exists to deny benefits as determined by the Authority. However, Tenants who are rejected by an Applicant for continued occupancy in the Development for reasons concerning family size restrictions or inability to afford rent levels charged after rehabilitation shall be eligible for permanent displacement benefits under the relocation plan.

- c) Contents of the Relocation Plan. The relocation plan shall set forth the policies and procedures to be used by the Applicant in temporarily relocating or permanently displacing Tenants including, but not limited to: provisions detailing the responsibilities of the Applicant and, if applicable, its managing agent; the basic actions to be taken in the relocation program; the acceptance and rejection criteria for determining eligibility for temporary relocation and permanent displacement benefits; the information to be provided to Tenants regarding the relocation program; provisions for determining Tenants' relocation needs; a description of relocation benefits; and provisions detailing the implementation of the relocation plan, including a timetable for activities under the plan.
- d) Enforcement of Relocation Plan. The Owner is responsible for assuring that all the relocation requirements are met. The Authority, except in those cases where another governmental agency has a regulatory requirement to do so, will monitor the relocation activities to determine compliance with the requirements of this Section. The Authority may take whatever action is available to it under this Subpart or on the occurrence of a default under the Loan documents for violation of the Relocation Plan whether expressly stated therein or not.

### **Section 365.1203 Tenant Selection Plan**

Before making a Loan under the Program, the Authority shall approve, where applicable, a Tenant Selection Plan submitted by the Applicant and setting forth the income limits for Tenants. In approving the Tenant Selection Plan, the Authority shall consider whether the selection procedures: will be equitable considering the family size and circumstances of the Tenant; promote a heterogeneous mix of income levels to the extent appropriate; maintain the financial stability of the Development; and comply with the Authority's Rules. All housing financed by and all assistance from the Program shall be available to all eligible persons regardless of race, national origin, ancestry, religion, creed, sex, age, familial or marital status, disability, or unfavorable military discharge.

### **Section 365.1204 Income and Rent Limits**

- a) A Tenant's initial occupancy of a unit held available for rental to Low-Income Households and Very Low-Income Households shall be limited to persons and families initially meeting the income limits set forth in subsection (b) below. If a Tenant meeting income requirements at the time of initial occupancy subsequently fails to continue to meet such requirements, that failure shall not constitute non-compliance by that Tenant.

b) Determination of Income Limits

- 1) For all units reserved for Low-Income Households, the income limits shall be equal to 80% of the median family income with adjustments for family size, for the area in which the Development is located, as such median income is determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437). The median income of the area of residence shall be attached to each application provided by the Authority and additionally shall be available upon request.
- 2) For all units reserved for Very Low-Income Households, the income limits shall be equal to 50% of the median family income with adjustments for family size, for the area in which the Development is located, as such median income is determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437). The median income of the area of residence shall be attached to each application provided by the Authority and additionally shall be available upon request.
- 3) The Owner shall obtain from each prospective Tenant intending to occupy a unit held available for rental to Low-Income Households and Very Low-Income Households and on an annual basis thereafter a certification of income. The Owner shall verify each such certification in a manner approved by the Authority. The Owner shall submit each certification and verification thereof to the Authority by mail.

c) Determination of Rent Limits

- 1) Subject to subsection (c)(4) below, for all units reserved for Low-Income Households, Tenants occupying such units shall not be charged, including a Utility Allowance, rent in excess of thirty percent (30%) of the maximum allowable income as set forth in subsection (b)(1) above. The amount allocated for the Utility Allowance shall be determined by the Owner and approved by the Authority.
- 2) For all units reserved for Very Low-Income Households, Tenants occupying such units shall not be charged, including a Utility Allowance, rent in excess of thirty percent (30%) of the maximum allowable income as set forth in subsection (b)(2) above. The amount allocated for the Utility Allowance shall be determined by the Owner and approved by the Authority.

- 3) The Owner shall submit to the Authority for the Authority's approval on an annual basis the rent schedule for the Development. Rents shall not be increased without the Authority's consent.
  - 4) No Tenant shall be required to vacate or move from a unit reserved for Low-Income Households or Very Low-Income Households due to an increase in income exceeding the income limitations contained in this Subpart. The Owner may increase the rent for such units, for so long as the Tenant's income exceeds such limits, to an amount not to exceed the fair market rent as approved by the Authority. The Authority shall have the right to charge and collect rental surcharges on any unit leased by a Tenant who initially qualified as a Very Low-Income Household or Low-Income Household, but whose income thereafter exceeded such income limitations.
- d) For units not reserved for Low-Income Households or Very Low - Income Households, the Owner may charge fair market rents, as determined by the Authority.

#### **Section 365.1205 Commercial Facilities**

- a) Facilities. The Owner shall rent commercial facilities, if any, only to such Commercial Tenants, at such rental and for such purposes as have been approved by the Authority. In no event shall the space occupied by Commercial Tenants in the aggregate exceed five percent (5%) of the total square footage of the improvements in the Development (excluding land). In approving commercial facilities and Commercial Tenants, the Authority shall consider the Tenant Selection Plan, the Marketing Plan, the Management Plan, the nature of the prospective business, the credit history of the prospective Commercial Tenant, the benefit of the prospective business to Tenants of the Development, the prospective Commercial Tenant's ability to comply with applicable licensing and zoning requirements, the purposes of the Program and any other relevant matters.
- b) Compliance. The Owner shall be responsible for ensuring the Commercial Tenant's compliance with all applicable ordinances, zoning codes, licensing requirements, regulations, statutes and Authority Rules and agreements.