**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

 **Assignment and Acceptance of Control form**

**NOTE: This form should be revised by the Development Owner, as needed, to reflect the actual legal structure and number of Control Parties reflected in Attachment A, organizational chart for the Development Owner. For example, if there are three Control Parties, the form should reflect in paragraph 2 the establishment of the three separate Control Parties, not only two as reflected in the template.**

Name of Development:

TDHCA No.:

Name of Development Owner:

Please find attached as Attachment A an organizational chart for the Development Owner, representing all parties with an ownership interest in the Development and their percentage of ownership interest. Only Persons listed in the original Application to TDHCA, or added through a subsequent TDHCA approved Ownership Transfer, are included on Attachment A. Multiple Persons are affiliated with the Development Owner. These Persons desire to identify for the Texas Department of Housing and Community Affairs (the "Department”) which Persons Control the Development Owner for the purposes described herein.

In consideration of the premises herein expressed and for certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed,       (“Control Party/Parties 1”) and       (“Control Party/Parties 2”)[[1]](#footnote-1), representing all parties with Control in Attachment A, each intending to be legally bound, do hereby agree as follows:

1. Capitalized terms used but not defined in this Assignment and Acceptance shall have the meanings given them in the rules of the Department.
2. Except as disclosed on the organizational chart at Attachment A hereto, which is incorporated herein by reference for all purposes, there is no other Person who exercises Control over the Development Owner.
3. Control Party 1 assigns to Control Party 2, and Control Party 2 accepts such assignment for Control Party 2 to exercise sole and unfettered authority and responsibility for ensuring that the Development Owner complies with each and all of the requirements for which the Department will monitor the Development for the purpose of determining Events of Noncompliance for a Previous Participation Review (“Compliance Matters”).
4. This Assignment and Acceptance will remain in full force and effect until such time, if any, as either Control Party 1 or Control Party 2 provides written notification to the Department, reflecting the signed agreement of all Control Parties, that it is terminated or changed.
5. Until such time as this assignment and acceptance is terminated or changed, Control Party 1 waives and relinquishes all right to receive notice from the Department of any matter relating to the compliance of the Development with any of the assigned matters and further waives and relinquishes any and all right to Control, direct, superintend, require review, or provide consent for any Compliance Matters. This does not in any manner limit the requirements, if any, under the governing documents of the Development Owner, that may be imposed on the Development Owners for any other matters not covered or subsumed hereby nor does it serve to restrict Control Party 2’s ability to provide Control Party 1 information about Compliance Matters.
6. For so long as this Assignment and Acceptance remains in effect, Compliance Matters in connection with determining Previous Participation will not be attributed to Control Party 1. This Assignment and Acceptance agreement does not limit Control Party 1’s obligations under federal or state law or regulation. In addition this Assignment and Acceptance Agreement does not negate possible accountability for other parties in the ownership structure, or Control Party 1, in relation to debarment proceedings if appropriate under 10 TAC §2.401, relating to Department’s Debarment Rule.
7. Control Party 1 and Control Party 2 acknowledge and agree that the existence of this Assignment and Acceptance has been disclosed to any investor in the Development Owner, and approved by such investor.
8. All Controlling Parties hereby represents and warrants to each other and to the Department that they are duly organized and existing entities, formed under the laws of the states under which they are filed and are duly qualified to do business in all jurisdictions in which they are required to be so qualified. All Controlling parties are in good standing with the State of Texas.
9. Control Party 1 and Control Party 2 represent and warrant to each other and the Department that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate and other actions on their behalf and all necessary consents, licenses, permits and other approvals necessary have been obtained prior to the signing of this Assignment and Acceptance.
10. Control Party 1 and Control Party 2 represent and warrant to each other and the Department that the execution, delivery, and performance of this Assignment and Acceptance will not violate any of their constitutive documents or any statute, rule, regulation, agreement, order, ordinance, policy, or other requirement to which either of them is subject or create an event of default under any such requirement.
11. When executed, this Assignment and Acceptance will represent the legal, valid, and binding obligation of Control Party 1 and Control Party 2 as set forth herein, enforceable in accordance with its terms except as the same may be altered or affected by the application of the laws of bankruptcy and general principles of equity.
12. There are no agreements not reflected in this Assignment and Acceptance, written or unwritten, express or implied, in any way relating to the subject matter of this Assignment and Acceptance.
13. Each person who is executing this Assignment and Acceptance for and on behalf of a party hereto has been duly authorized, for and on behalf of such party, to execute this Assignment and Acceptance.
14. This Agreement is subject to the laws of the State of Texas, except as federal law may otherwise require.
15. Venue for any legal proceedings to enforce or construe any aspect of this Agreement shall lie exclusively within Travis County, Texas.

1. This Assignment and Acceptance shall not become effective until and unless it is acknowledged by the Department.

**Executed this \_\_\_\_ day of \_\_\_, 20\_\_.**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Control Party 1)**

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

 Its duly authorized officer or

 representative

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Control Party 2)**

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

 Its duly authorized officer or

 representative

Executed solely for purposes of acknowledgement in accordance with paragraph 16 hereof and not as a party.

**Texas Department of Housing and Community Affairs**

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

 Its duly authorized officer or

 representative

1. Note: if there is more than one Control Party 2 (i.e. two parties seek to be identified herein as “Control Party 2”) then a second signature acknowledgement must be added to the last page, and any and all parties represented as “Control Party 2” hereby acknowledge their joint and several responsibility and liability for the obligations of Control Party 2 expressed herein. [↑](#footnote-ref-1)