ARKANSAS DEVELOPMENT FINANCE AUTHORITY
RESOLUTION REGARDING
SECOND AMENDED
RULES AND REGULATIONS, IMPLEMENTING THE LAW
ON THE ALLOCATION OF THE STATE VOLUME CAP FOR
PRIVATE ACTIVITY BONDS PURSUANT TO
ACT 1044 OF 2001

WHEREAS, Act 1044 of 2001 of the Arkansas General Assembly (the "Act") designates the Arkansas Development Finance Authority (the "Authority") as the body charged with administration of the State Ceiling for the State of Arkansas (the "State"), applicable to Affected Bonds (capitalized terms herein not otherwise defined, having the same meaning ascribed to them in the Act); and

WHEREAS, the Act requires the Authority to promulgate rules and regulations implementing the Act and setting forth the rules and procedures to be utilized by the Authority in allocating the State Ceiling among issuers and bond issues in the State; and

WHEREAS, the Act requires that such rules and regulations be promulgated pursuant to the Arkansas Administrative Procedures Act, Arkansas Code Annotated Sections 25-15-201 et seq. (the "APA"); and

WHEREAS, the Authority finds that the requirements for promulgation of regulations under the APA having been fulfilled, the regulations required by the Act are contained hereinafter and are appropriate for accomplishing the purposes of the Act;

NOW, THEREFORE, BE IT RESOLVED, that the following regulations implementing Title 15, Chapter 5, subchapter 6 of the Arkansas Code of 1987 Annotated, as amended by the Act, are hereby adopted and shall be in full force and effect from and after the date set forth in Section 5 of this resolution:

SECOND AMENDED
RULES AND REGULATIONS
REGARDING ALLOCATION OF THE STATE VOLUME CAP
FOR PRIVATE ACTIVITY BONDS

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Section 1. Application for Reservation of Volume Cap. Except as otherwise specifically stated, the regulations contained in this Section 1 shall apply to all Applications for Reservation of volume cap.

1.1. Form of Application. The form of application for reservation of volume cap shall be substantially in the form attached to these regulations as Appendix A-1 (the "Application for Reservation"). The Application for Reservation must include (i) the name of the issuer; (ii) the principal amount of bonds to be issued; (iii) the amount of volume cap allocation sought; (iv) the purpose of the bonds, including a description of any project to be funded with bond proceeds; (v) the principal users of the bond proceeds (if different than the issuer); (v) the date of adoption of the bond authorizing resolution or other official action; (vi) the Arkansas statutory authority for the issuance of the bonds; and (vii) the name and address of bond counsel. The Application for Reservation must be signed and dated by bond counsel. No Application for Reservation shall be accepted until after the issuer has declared its "official intent" to issue the bonds. For the purposes of these regulations, "official intent" must meet the requirements of Section 1.150-2(e) of the Treasury Regulations. No Application for Reservation of volume cap with respect to a given calendar year may be filed until the first business day of such calendar year.

1.2. Manner of Filing Application. All Applications for Reservation must be delivered to the Authority, and shall be addressed to:

Arkansas Development Finance Authority
Volume Cap Reservations
P.O. Box 8023
Little Rock, Arkansas 72203-8023

Applications for Reservations shall be accepted only upon delivery to the Authority, and the date of receipt (the "Filing Time") of each Application for Reservation shall be noted by the Authority on the application. All Applications for Reservation received on any given day shall be assigned the same Filing Time.

The Authority may also, according to procedures to be established, provide for the filing of applications by e-mail or other electronic means.

1.3. Review of Requests for Reservation. The President of the Authority, or his or her designee, shall review each application for compliance with the Act and these regulations, and may reject any application that is not in compliance. The President of the Authority, or his or her designee, shall notify bond counsel of any such rejection within ten (10) days of such rejection. The issuer of any such Affected Bonds may appeal, within ten (10) days, any such rejection to the Volume Cap Allocation Committee, created pursuant to Section 2.3, below. If, pursuant to such appeal, the decision to reject the application is overturned, then the Application for Reservation shall be reinstated, and the issuer shall be

granted a Reservation Date as determined by the ruling of the Volume Cap Allocation Committee.

1.4. Acknowledgment of Reservation. Within ten (10) days of receipt of the Application for Reservation, the Authority shall send an acknowledgment of reservation to the bond counsel that signed the application. Such acknowledgment shall include (i) notice that the Application for Reservation has been received, and the Filing Time; (ii) the priority number granted to such application, if one has been granted; and (iii) whether volume cap has been allocated to the issue, and, if not, a statement of explanation. If volume cap has been allocated to the issue, the acknowledgment shall constitute evidence of such allocation for purposes of compliance with the Internal Revenue Code of 1986, subject only to timely issuance of the Affected Bonds within the Reservation Period and the filing of a Notice of Issuance as described in Section 1.8.

1.5. Determination of Reservation Date. For all applications received prior to September 1 of each calendar year, and unless (i) a shortage situation is in effect as described in Section 2.2 below, or (ii) the Application for Reservation is for multifamily residential housing bonds, volume cap shall be allocated on the basis of the Filing Time, and the Filing Time shall be the "Reservation Date," for purposes of these regulations. After September 1 of each calendar year or in a shortage situation, or for multifamily residential housing bonds, the Reservation Date shall be the date on which volume cap is allocated as provided herein.

1.6. Reservation Period. No Application for Reservation may be made more than sixty (60) days prior to the expected date of issuance of the Affected Bonds. The Affected Bonds must be issued within sixty (60) days of the Reservation Date or by December 31st of the applicable calendar year if such date occurs prior to the expiration of the sixty (60) day period (such period of time from the Reservation Date to the earlier of (a) sixty (60) days thereafter or (b) December 31st of that year being the "Reservation Period"), unless the Reservation Period is extended as set forth in Section 1.7 of these regulations. Upon expiration of the Reservation Period, an applicant must file a new Application for Reservation and receive a new Reservation Date and priority number.

1.7. Extension of Reservation Period.

(a) The Reservation Period may be extended by the President of the Authority for up to an additional sixty (60) days from the Reservation Date. The extension periods shall be granted in three (3) increments as follows:

(i) The first extension period of fifteen (15) days shall be automatically granted by the President of the Authority upon receipt of a written explanatory statement in sufficient detail from the borrower. The borrower shall not be required to pay an extension fee for the first extension period.

(ii) The second extension period of fifteen (15) days shall be granted if the President of the Authority determines that granting of a second extension of the Reservation Period is warranted based on being provided with the following:

(a) an explanatory statement, in sufficient detail to the satisfaction of the Authority, of why the Affected Bonds will not be issued within the original Reservation Period;

(b) a certification by the borrower that it reasonably expects the Affected Bonds to be issued within the extended Reservation Period; and

(c) payment to the Authority of a non-refundable reservation extension fee in the amount of $5,000.00.

(iii) The third extension period of up to thirty (30) days shall be granted if the President of the Authority determines that granting of a third extension of the Reservation Period is warranted based on being provided with the following:

(a) an explanatory statement in sufficient detail explaining the extraordinary, unforeseen circumstances warranting such an extension. The circumstances must be of no fault of the borrower and could not have been anticipated at the time the first or second extension periods were requested.

(b) a certification by the borrower that it reasonably expects the Affected Bonds to be issued within the extended Reservation Period; and

(c) payment to the Authority of a non-refundable reservation fee in the amount of $10,000.00.

1.8. Notice of Issuance of Bonds. In order to notify the Authority of the actual use of volume cap for the concerned Affected Bonds, the issuer must file, prior to the expiration of the Reservation Period in the same manner as set forth for the filing of an Application for Reservation, a Notice of Issuance in substantially the form attached to these regulations as Appendix B-1. If a Notice of Issuance is not filed by the expiration of the Reservation Period, the Authority shall notify bond counsel for the issuer of the failure to file and determine whether the Affected Bonds were in fact issued. Failure to timely file the Notice of Issuance shall not affect the volume cap allocation.

2. Allocation of Volume Cap After September 1 of Each Year and in Shortage Situations. Until September 1 of each year, the statutory allocations of volume cap to the Arkansas Development Finance Authority and the Arkansas Student Loan Authority made pursuant to Arkansas Code Annotated Sections 15-5-603(a)(1) and (3) shall be preserved. Pursuant to Arkansas Code Annotated Section 15-5-603(c), such allocations, if not used or reserved by September 1, shall be subject to reservation by any issuer in the State. The regulations contained in this Section 2 shall apply to all Applications for Reservation of volume cap filed after September 1 of each calendar year and when a shortage of volume cap in the General Category (as defined in Section 2.2(a) below) has been declared, or to applications the filing of which will cause a shortage to be declared in the General Category. The provisions of Section 1 shall apply to Shortage Applications to the extent not in conflict with the provisions of this Section 2.

2.1. Determination of Priority. For all Applications for Reservation of volume cap filed after September 1 of each calendar year, or that are filed when a shortage has been declared, or that by their filing cause a shortage to be declared (in each event, a "Shortage Application"), the determination of priority of such Shortage Applications shall be made by the Volume Cap Allocation Committee pursuant to Section 2.4 of these regulations.

2.2. Declaration of Shortage.

(a) The Authority staff shall continuously monitor the filings of Applications for Reservation to determine whether the amount of volume cap requested in the category set forth in Arkansas Code Annotated Section 15-5-603(c), as amended (the "General Category"), if projected on an annualized basis, would equal or exceed one hundred ten percent (110%) of the annual volume cap for such category. If the determination of a shortage has been made, the President of the Authority shall declare a shortage of General Category volume cap in the State.

(b) In making the determination set forth in Section 2.2(a), the Authority shall use the following formula to calculate whether a shortage exists:

$$\frac{R + P}{CD} \times AD = \text{Total Projected Annual Request}$$

where

"R" equals the total amount of volume cap reserved (including reservations already utilized) in the General Category to the date of calculation;

"P" equals the total amount of cap being requested in the Application for Reservation (plus the amount of any other Applications for Reservation in the General Category received the same day);

"CD" is the total number of calendar days from January 1 to the date on which the calculation is being made; and

"AD" is the number 243, representing the number of days in the year from January 1 to September 1, (or, in leap years, 244).

2.3. Volume Cap Allocation Committee. A Volume Cap Allocation Committee is hereby established, comprised of the following members: the Director of the Arkansas Department of Economic Development; the Director of the Arkansas Department of Finance and Administration; and the President of the Arkansas Development Finance Authority, or their equivalent successors, as appropriate.

2.4. Powers and Duties of Volume Cap Allocation Committee.

(a) Whenever a shortage has been declared pursuant to Section 2.2, the Volume Cap Allocation Committee shall meet, either in person or by other means of communication. At such meetings, the Volume Cap Allocation Committee shall have the authority to (i) determine the relative priority of Applications for Reservations; (ii) to reduce the amount of volume cap to be allocated to any Application for Reservation; (iii) to deny an Application for Reservation; or (iv) to defer for a period of time an Application for Reservation. The Volume Cap Allocation Committee shall consider and decide all appeals of decisions made by the President of the Authority pursuant to these regulations.

(b) In making the determinations set forth in Section 2.4(a), the Volume Cap Allocation Committee may consider the following factors, none of which shall be, in and of itself, necessarily determinative of the decision of the Volume Cap Committee:

(i) the relative Filing Times of the Applications for Reservation;

(ii) the feasibility of closing the bond issue within the Reservation Period;

(iii) the benefits to the State from the project or activity to be financed, including but not limited to, the creation of jobs, the increased availability of capital for housing, the increased availability of educational opportunities, the economic impact of a project, and the impact of the project or activity on the health, safety and welfare of the State;

(iv) the area of the State to be most benefitted from the issuance of the bonds, including but not limited to, whether the issuance of the bonds will tend to alleviate conditions in an economically distressed area of the State;

(v) whether a project is likely be moved to another state if not timely financed;

(vi) whether the financing of the project could be delayed until the succeeding calendar year without adverse impact on the project;

(vii) the policy objectives of the State; and

(viii) such other factors as are deemed appropriate by the Volume Cap Allocation Committee.

(c) The Volume Cap Allocation Committee shall have the authority to issue letters committing volume cap for the next succeeding calendar year to a particular bond issue or bond issues for which the total amount of volume cap requested was not allocated in the year in which it was requested, and any such commitment shall take precedence over these regulations in such succeeding calendar year. The Volume Cap Allocation committee shall also have the authority to direct the President of the Authority to carry forward unused volume cap amounts for specific categories if such action is deemed necessary or desirable in accomplishing the allocation goals of the Volume Cap Allocation Committee.

3. Special Regulations Regarding Multifamily Residential Housing Bonds. The regulations contained in this Section 3 shall apply to all Applications for Reservation of volume cap applicable to multifamily residential housing bonds. The provisions of Section 1 shall apply to Applications for Reservation applicable to multifamily residential housing bonds to the extent not in conflict with the provisions of this Section 3.

3.1 Rules for Multifamily Housing Bond Applications from ADFA Category.

(a) When the Authority is to be the issuer of multifamily housing bonds, priority of Applications for Reservation within the ADFA Multifamily Category (as set forth in Arkansas Code Annotated Section 15-5-603(a)(1)) shall be determined according to the procedure set forth in this Section 3.1.

(b) At the beginning of each calendar year, the Authority shall set the amount of multifamily housing bond volume cap to be made available from the Authority's statutory allocation of volume cap. The Authority shall make a general public announcement of the availability of such ADFA multifamily housing bond volume cap and shall also announce a competitive funding round (the "First Funding Round") along with applicable deadlines for such First Funding Round.

(c) On or prior to the deadline for the First Funding Round, applicants for ADFA multifamily housing bonds shall file an application with the Authority (the

"ADFA Multifamily Application"). Each ADFA Multifamily Application shall comply with the Guidelines for Allocating Tax Exempt Private Activity Multifamily Volume Cap (the "Guidelines") available on the Authority's web site. Applications shall include (i) the Low Income Housing Tax Credit Application (the "Housing Application"); (ii) all threshold items required by the Guidelines; (iii) all other pertinent documentation; and (iv) be accompanied by the application fee set forth in the Guidelines.

(d) The Authority staff will review the ADFA Multifamily Applications for completeness, inclusion of threshold items, site plan, unit layout (floor) plans and project specifications. Applicants will also be required to make a formal presentation to the Authority's Housing Review Committee. Based on staff review and the formal presentations, the Housing Review Committee will make recommendations of applications to be selected for volume cap and tax credit allocation to the full Board. The Board will make the final selection of ADFA Multifamily Applications at a regular Board meeting.

(e) Commitments of volume cap and tax credits to applicants will be valid only with respect to a specific development at a specific site. The applicant shall notify the Authority of any material change in the information provided to the Authority during the application process. Any change in the project site, the applicant entity, the ownership entity, or the size, nature, or other characteristics of the project may, in the Authority's sole discretion, invalidate the commitment.

(f) Additional funding rounds may be conducted depending on the availability of multifamily volume cap from the ADFA Multifamily Category or as may be transferred from ADFA's other allocation categories pursuant to Arkansas Code Annotated Section 15-5-603(a)(2). Notice of any additional funding rounds shall be given to bond counsel, underwriters, developers and other concerned entities, and such rounds shall be conducted in the same manner as described in this Section 3.1.

(g) When volume cap has been allocated from the ADFA Multifamily Category, the Affected Bonds must be issued within time deadlines established in the allocation process. Such deadlines shall not be shorter than the Reservation Period set forth in Section 1.6, but such deadlines will take priority over the Reservation Period provisions of these Regulations.

3.2. Rules for Multifamily Housing Bond Applications from General Category.

(a) All Applications for Reservation from the General Category relating to multifamily residential housing bonds ("General Category Multifamily Applications") shall include a market study of the rental housing market in the area

in which the project to be financed will be located, which market study must show sufficient demand for the proposed project, in the discretion of the Authority.

(b) Before the Authority assigns a priority number to any General Category Multifamily Application, the Authority must determine:

(i) that, based on the market study and other information available to the Authority, there is sufficient need for the multifamily project in the area in which it is proposed to be located;

(ii) that the proposed project will be constructed with such quality in workmanship, materials, energy efficiency, and design as is, at a minimum, standard for projects of a similar nature in the area in which it is to be located; and

(iii) that the developer of the project to be financed with the proceeds of the bonds, based on past performance, general reputation, demonstrated resources, community support, and proposed third-party alliances, has the ability to close the proposed bond transaction and construct and operate the proposed project.

(c) The Authority may publish guidelines for applications that, as the Authority deems appropriate, clarify and quantify the standards set forth in Section 3.2(b), above.

3.3. Multifamily Housing Bond Applications When No Shortage Exists. When no shortage has been declared with respect to state allocation of volume cap in the General Category, assuming a General Category Multifamily Application meets the threshold requirements set forth in Section 3.2(b), above, the President of the Authority shall set the priority number for each project based on the Filing Time of the General Category Multifamily Application.

3.4. Multifamily Housing Bond Application When Shortage Has Been Declared. When a shortage has been declared in the General Category (as defined in Section 2.2(a) above), the Volume Cap Allocation Committee may either (i) determine the priority and amount of volume cap to be allocated to each project based on the factors set forth in Section 3.2(b), or (ii) refer all of the General Category Multifamily Applications back to the Authority for the Authority to conduct competitive rounds in a manner similar to that set forth in Section 3.1 for ADFA Multifamily Bonds..

4. Miscellaneous

4.1 Amendment of Regulations. These regulations may be amended from time to time by Resolution of the Board of the Authority in accordance with the requirements of the APA.

4.2 Count of Days. Unless otherwise specifically provided herein, when a number of days is provided herein for action to be taken, it shall be counted as calendar days.

5. Emergency. It is hereby found and determined by the Authority that a procedure is immediately necessary for allocating the State Ceiling among issuers and for reviewing Applications for Reservation and determining the priority of such Applications for Reservation in the current calendar year, and that an effective date of January 1, 2003 is necessary in order to preserve for the residents of the State the benefits of bonds to be issued subject to the State Ceiling. Therefore, an emergency is hereby declared to exist, and this regulation, being necessary for the preservation of the public health, safety, and welfare, shall be in full force and effect from and after January 1, 2003.

ADOPTED, this ___ day of December, 2002.

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By:_____
Chair

ATTEST:

_____
President

APPENDIX A-1
APPLICATION FOR RESERVATION OF VOLUME CAP

Name of Issuer:

Principal Amount of Bonds to be Issued:

Amount of Volume Cap Requested:

Date Bond Resolution Adopted:

Name of Principal User:

Arkansas Statutory Authorization for and Type of Bond:

Purpose of Bonds; including a description of project (i.e., proposed job creation, location and type of project, etc.)

Bond Counsel Name and Address:

By: _____
Bond Counsel

Request for Reservation received by Arkansas Development Finance Authority this _____ day of _____, 2006, _____ o'clock ____.m. Under penalty of perjury, I certify that this reservation was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to a political campaign.

Reservation No. _____

_____
Arkansas Development Finance Authority

Filing No.: _____
(S E A L)

APPENDIX B-1
NOTICE OF ISSUANCE OF BONDS PURSUANT TO RESERVATION OF PORTION OF STATE CEILING

Reservation No.:

Date and Time Reservation Filed:

Principal Amount of Bonds Issued:

Date of Issuance:

_____
Issuer

By:_____
(Bond Counsel)

Authorized by:

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: _____
Mac Dodson, President

Date: _____