STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND COMMERCE CORPORATION
NOTICE OF RULE-MAKING

Pursuant to the provisions of R.I. Gen. Laws § 42-35-3, as amended, the Rhode Island Commerce Corporation (the "Corporation") hereby gives notice of its intent to adopt rules and regulations, entitled **Rules and Regulations for the Rebuild Rhode Island Tax Credit Program** (the "Rules").

The Rules implement the newly-enacted Rebuild Rhode Island Tax Credit, R.I. Gen. Laws § 42-64.20-1 *et seq.,* and can provide up to $15 million in tax credits, to be allocated over five years, to a real estate development project. The statute also permits the Board of the Rhode Island Commerce Corporation to approve a sales tax exemption for personal property utilized directly in a project that is eligible for a tax credit. To qualify, a project must be at least $5 million in total size and the developer must have 20% equity in the project. If it is a commercial project, it must be at least 25,000 square feet and have at least 25 full-time jobs upon completion. If it is residential, it must be at least 20,000 square feet and have 20 units. The Corporation can relax the $5 million project cost threshold for projects in communities with the highest poverty rates (today, those "Hope Communities" are Providence, Pawtucket, Central Falls, Woonsocket, and West Warwick) or certain designated redevelopment areas. In all cases, the amount of the credit can never exceed 30% of the project cost and can never exceed the project's financing gap. A financing gap is the amount of the total project cost that the developer cannot raise through normally available channels or the amount of money necessary to gain a competitive advantage over a viable out-of-state location for the project.

The Rules are available for public inspection at www.sos.ri.gov/ProposedRules/, www.commerceri.com, in person at the Rhode Island Commerce Corporation, 315 Iron Horse Way, Suite 101, Providence, Rhode Island 02908, or by request by e-mail to sherri.carrera@commerceri.com, or by calling Sherri Carrera at (401) 278-9100.

In development of the proposed Rules consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) economic impact on small businesses. Based upon available information, RI Commerce Corporation has determined that there is no alternative approach that would be as effective and less burdensome nor any overlap or duplication with any other state regulation.

All interested parties are invited to submit written or oral comments concerning the proposed regulation from August 26, 2015 through no later than 4:00pm on September 25, 2015 to Sherri Carrera, Rules Coordinator, RI Commerce Corporation 315 Iron Horse Way Ste. 101 Providence, RI 02908, 401-278-9174 or sherri.carrera@commerceri.com.

In accordance with R.I. Gen. Laws §42-35-3 an oral hearing will be granted if requested by twenty five (25) persons, or by an agency, or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice. Requests made must be made through Sherri Carrera, Rules Coordinator, RI Commerce Corporation 315 Iron Horse Way Ste. 101 Providence, RI 02908, 401-278-9174 or sherri.carrera@commerceri.com.

Date of Notice August 26, 2015

Rhode Island Commerce Corporation
in conjunction with the Rhode Island Division of Taxation

Rules and Regulations for the Rebuild Rhode Island Tax Credit Program

Rhode Island Commerce Corporation
Rhode Island Division of Taxation
Rules and Regulations for the Rebuild Rhode Island Tax Credit Program

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Rule 1. Purpose.

These rules and regulations (the "Rules") are promulgated to set forth the principles, policies and practices of the Rhode Island Commerce Corporation and the Rhode Island Division of Taxation in implementing and administering Chapter 64.20 of Title 42 of the Rhode Island General Laws, the Rebuild Rhode Island Tax Credit Act (the "Act").

Rule 2. Authority.

These Rules are promulgated pursuant to Chapter 64.20 of Title 42 of the General Laws. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, Chapter 35 of Title 42 of the General Laws.

Rule 3. Scope.

These Rules shall apply to any application for an incentive under the Act. Notwithstanding anything contained in these Rules to the contrary, the Rhode Island Commerce Corporation and the Rhode Island Division of Taxation shall, respectively, have and may exercise all general powers set forth in the Act that are necessary or convenient to effect its purposes and these Rules shall be liberally construed so as to permit the Rhode Island Commerce Corporation and the Rhode Island Division of Taxation to effectuate the purposes of the Act and other applicable state laws and regulations. The Rhode Island Commerce Corporation, acting by and through its board of directors, may provide exemption from the application of such portion of these Rules as may be warranted by extenuating circumstances arising from such application.

Rule 4. Severability.

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

Rule 5. Definitions.

The following words and terms, when used in these Rules, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **"Act"** means Chapter 64.20 of Title 42 of the General Laws known as the Rebuild Rhode Island Tax Credit Act.

(2) **"Adaptive Reuse"** means the conversion of an existing structure from the use for which it was constructed to a new use by maintaining elements of the structure and adapting such elements to a new use.

(3) **"Affiliate"** means an entity that directly or indirectly controls, is under common control with, or is controlled by an Applicant that is a Business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the Corporation, that control exists in situations involving lesser percentages of ownership than required by those statutes. An Affiliate of an Applicant that is a Business may contribute to meeting either the Capital Investment or Full-time Employee requirements of a Business that applies for a Tax Credit under the Act and

these Rules.

(4) **"Affordable Housing"** means housing for sale or rent with combined rental costs or combined mortgage loan debt service, property taxes, and required insurance that do not exceed thirty percent (30%) of the gross annual income of a household earning up to eighty percent (80%) of the area median income, as defined annually by the United States Department of Housing and Urban Development.

(5) **"Allocation Agreement"** means an executed agreement among all Participants of a Pass-Through Entity, or among all Owners of a Project, setting forth the method for allocation of the Tax Credit agreed upon among the Participants or Co-owners. An Allocation Agreement may include, without limitation, a partnership agreement, an operating agreement of a limited liability company, a shareholders agreement, or any other instrument executed by all Participants or Co-owners.

(6) **"Applicant"** means a Developer applying for a Tax Credit under the Act and these Rules.

(7) **"Application"** means the application, promulgated by the Corporation, which must be completed and submitted by an Applicant pursuant to the requirements of the Act and these Rules.

(8) **"Assignee"** means a Person to whom a Tax Credit Certificate is assigned pursuant to this regulation.

(9) **"Assignor"** means a holder of a Tax Credit Certificate who assigns such Tax Credit Certificate to an Assignee.

(10) **"Board"** means the board of directors of the Corporation.

(11) **"Business"** means a corporation as defined in Section 44-11-1(4) of the General

Laws, or a partnership, an S corporation, a non-profit corporation, a sole proprietorship, or a limited liability corporation. A Business shall include an Affiliate of the Business if that Business applies for a Tax Credit based upon any Capital Investment made by an Affiliate.

(12) **"Capital Investment"** in a Project shall mean expenses by a Developer, after submission of an Application, for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, including reasonable associated soft costs and the reasonable costs of relocating any former tenants; obtaining and installing furnishings and machinery, apparatus, or equipment, including as permitted in the sole discretion of the Corporation, but not limited to, material goods for the operation of a business on real property or in a building, structure, facility, or improvement to real property; site-related utility and transportation infrastructure improvements including on- and off-site utility, road, pier, wharf, bulkhead or sidewalk construction or repair; plantings or other environmental components required to attain the level of silver rating or above in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System; and environmental remediation of the Project site.

In addition to the foregoing, if a Developer acquires or leases a Qualified Development Project, the capital investment made or acquired by the seller or owner, as the case may be, if pertaining primarily to the premises of the Qualified Development Project, shall be considered a capital investment by the Developer and, if pertaining generally to the Qualified Development Project being acquired or leased, shall be allocated to the premises of the Qualified Development Project on the basis of the gross leasable area of the premises occupied by the Developer in relation to the total gross leasable area in the Qualified Development Project.

(13) **"Certification"** means the document issued to an Applicant by the Corporation

certifying to the Tax Division the amount of the Tax Credit and taxable year in which such Tax Credit may be claimed, and such other information deemed appropriate by the Corporation.

(14) **"Certified Historic Structure"** means a property which is located in the State and is either (i) listed individually on the national register of historic places; (ii) listed individually in the state register of historic places; or (iii) located in a registered historic district and certified by either the Rhode Island Historical and Heritage Commission created pursuant to Section 42-45-2 of the General Laws or the Secretary of the Interior as being of historic significance to the district.

(15) **"Corporation"** means the Rhode Island Commerce Corporation established pursuant to Chapter 64 of Title 42 of the General Laws.

(16) **"Commercial"** shall mean non-residential development.

(17) **"Developer"** means a person, firm, business, partnership, association, political subdivision, or other entity that proposes to divide, divides, or causes to be divided real property into a subdivision or proposes to build, or builds a building or buildings or otherwise improves land or existing structures, which division, building, or improvement qualifies for benefits under these Rules.

(18) **"Eligibility Period"** means the period in which a Developer may claim a tax credit under the Act, beginning with the tax period in which the Corporation accepts certification from the Developer that it has met the requirements of the Act and extending thereafter for a term of five (5) years.

(19) **"Equity"** means cash and Capital Investment, and can include, at the sole discretion of the Corporation, any other investment in the Project, including, but not limited to, federal or local grants, or federal tax credits; property value less encumbrances; or costs for

Project feasibility incurred within a reasonable time period prior to Application. Property value within the meaning of this definition shall be the purchase price for property purchased in an arm's length transaction within a reasonable time period prior to the date of Application or the value as determined by a current appraisal acceptable to the Corporation.

(20) **"Full-time Employee"** means a natural person who is employed by a Business for consideration for a minimum of at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for a minimum of 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding.

(21) **"Gross Leasable Area"** means the rentable area of a Qualified Project as calculated pursuant to the measuring standards of the Project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

(22) **"Hope Community"** means a municipality for which the five (5) year average percentage of families with income below the federal poverty level exceeds the state five (5) year average percentage, both as most recently reported by the U.S. Department of Commerce, Bureau of the Census.

(23) **"Incentive Agreement"** means an agreement between the Corporation and an

Applicant for an approved Qualified Development Project setting forth the terms and conditions of the award of incentives.

(24) **"Initial Certificate Holder"** means an Owner or Participant named by the Owner to receive the Tax Credit Certificate.

(25) **"Letter of Good Standing"** means a letter from the Division of Taxation certifying that the taxpayer is in good standing for purposes of these Rules; a taxpayer shall be entitled to a letter of good standing so long as (1) the taxpayer is current on all outstanding filings and declared tax liabilities subject to audit; (2) the taxpayer and the Division of Taxation have a workout payment agreement or other settlement with respect to any known delinquent tax liability and the taxpayer is current on that workout payment agreement or settlement; or (3) the taxpayer has timely commenced or is engaged in an administrative or judicial proceeding concerning a tax liability the status of which would otherwise preclude the issuance of a letter of good standing.

(26) **"Mixed Use"** means a development comprising both Commercial and Residential components.

(27) **"Notification of Assignment"** means the notification filed with the Tax Division of the assignment of all or a portion of the Tax Credit.

(28) **"Owner"** means a Person or Persons who qualifies for a Tax Credit in relation to a Project approved by the Commerce Corporation pursuant to the Act.

(29) **"Participant"** means a partner in a partnership, member of limited liability company, shareholder of an S-corporation, beneficial owner of a trust, or any other Person having an interest in a Pass-through Entity.

(30) **"Partnership"** means an entity classified as a partnership for federal income tax

purposes.

(31) **"Pass-Through Entity"** means a partnership, limited liability company, S-corporation, association, nominee trust, or any other entity, the tax attributes of which are passed through to the Participants in such entity.

(32) **"Percentage Interest"** means the percentage interest in the Tax Credit allocated to an Owner, a Participant, a co-Owner of a multiple-Owner building or identifiable portion thereof, or another Person pursuant to the terms of the applicable Allocation Agreement.

(33) **"Person"** means any natural person, partnership, firm, corporation, (including both business and non-profit corporations), limited liability company, trust, estate, association, or other business entity.

(34) **"Placed in Service"** means the earlier of i) substantial construction or rehabilitation work has been completed which would allow for occupancy of an entire structure or some identifiable portion of a structure, as established by the Board, or ii) receipt by the Developer of a certificate, permit or other authorization allowing for occupancy of the Qualified Development Project or some identifiable portion of the Qualified Development Project by the municipal or state authority having jurisdiction.

(35) **"Project"** means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, leased, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a Developer, owner or tenant, or both, within a Project Area as set forth in an Application to be made to the Corporation.

(36) **"Project Area"** means land or lands under common ownership or control in

which a Qualified Development Project is located.

(37) **"Project Cost"** means costs incurred in connection with the Qualified Development Project by the Applicant until the issuance of a permanent certificate of occupancy, or until such other time specified by the Corporation, including, but not limited to, lands, buildings, improvements, real and personal property or any interest therein, including the site, space or air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, and any environmental remediation costs, plus reasonable soft costs as determined by the Corporation, and ancillary infrastructure projects and infrastructure improvements, as permitted in the sole discretion of the Corporation.

(38) **"Project Financing Gap"** means

(i) The part of the total Project Cost that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, Applicant's Equity, a reasonable assumption of debt on the Project, and any other capital source that is reasonably available given the nature of the Project; or

(ii) The amount of funds that the State may invest in a Qualified Development Project to gain a competitive advantage over a viable comparable location in another state by means described in the Act and Rules.

(39) **"Qualified Development Project"** shall mean any Project meeting the requirements of the Act and these Rules.

(40) **"Rebuild Rhode Island Tax Credit Fund"** means the fund established pursuant to Section 42-64.20-7 of the General Laws.

(41) **"Recognized Historical Structure"** means a property which is located in the State and is commonly considered to be of historic or cultural significance as determined by the Corporation in consultation with the State Historic Preservation Officer.

(42) **"Residential"** means a development of residential dwelling units.

(43) **"State"** means the State of Rhode Island and Providence Plantations.

(44) **"Targeted Industry"** means any advanced, promising or otherwise prioritized industry identified in the economic development vision and policy promulgated pursuant section 42-64.17-1 of the General Laws or, until such time as any such economic development vision and policy is promulgated, as identified by the Corporation from time to time and published on the Corporation's website.

(45) **"Tax Credit"** means the tax credit permitted under the Act.

(46) **"Tax Credit Certificate"** or **"Certificate"** means a certificate issued by the Tax Division to the Owner of a Project who has received a Certification from the Commerce Corporation substantiating compliance with an Incentive Agreement and entitlement to the issuance of Tax Credits under the Act. If the Owner is a Pass-Through Entity, a Tax Credit Certificate may be issued to each Participant in the Pass-Through Entity. The Certificate shall specify the amount of the Tax Credit allocable to such Participant, determined pursuant to these Rules.

(47) **"Tax Division"** means the Rhode Island Division of Taxation.

(48) **"Transit-Oriented Development Area"** means either of:

(i) an area that the Corporation, after consultation with the Rhode Island Department of Transportation and the Rhode Island Public Transit Authority, designates as a Transit Oriented Development Area because it supports, or has the potential to support, development that is in

close proximity to, compatible with, and supportive of public transit; such discretionary designation can occur in response to an Application for an incentive under the Act or in a request submitted by a municipality to the Corporation in a form prescribed by the Corporation on its website; or

(ii) an area with ready access to freight rail, air, and/or marine transportation where manufacturing, warehousing, distribution, and freight forwarding operations are or could be located.

(49) **"Workforce Housing"** means housing for sale or rent with combined annual rental costs or combined annual mortgage loan debt service, property taxes, and required insurance that do not exceed thirty percent (30%) of the gross annual income of a household earning between eighty percent (80%) and one hundred and forty percent (140%) of the area median income, as defined annually by the United States Department of Housing and Urban Development.

Rule 6. Eligibility

(a) In order for a Commercial Project to be eligible to be considered for a Tax Credit:

(1) The total Project Cost must be $5,000,000 or more, unless the Project is located in a Hope Community or a redevelopment area designated as such in accordance with Section 45-32-4 of the General Laws, in which event the Corporation shall have the discretion to permit the total Project Cost to be less than $5,000,000;

(2) The Project consists of at least 25,000 square feet;

(3) The Project, after being Placed In Service, is occupied by one or multiple Businesses employing at least 25 Full-Time Employees;

(4) The Applicant's Equity in the Project is not less than twenty percent (20%) of the total Project Cost.

(5) There is a Project Financing Gap such that the Project is not likely to be accomplished by private enterprise.

(b) In order for a Residential Project to be eligible to be considered for a Rebuild Rhode Island Tax Credit:

(1) The Project must be in a structure that is new, an Adaptive Reuse, Certified Historic Structure or Recognized Historic Structure located in a Hope Community;

(2) The total Project Cost must be $5,000,000 or more, unless the Corporation in its discretion permits the total Project Cost to be less than $5,000,000;

(3) The Project must consist of at least 20,000 square feet and contain at least 20 residential units;

(4) The combined total of the Applicant's Equity in the Project is not less than twenty percent (20%) of the total Project Cost; and

(5) There is a Project Financing Gap such that the Project is not likely to be accomplished by private enterprise.

(c) In order for a Mixed Use Project to be eligible to be considered for a Tax Credit:

(1) The total Project Cost must be $5,000,000 or more, unless the Project is located in a Hope Community or a redevelopment area designated as such in accordance with Section 45-32-4 of the General Laws, in which event the Corporation shall have the discretion to permit the total Project Cost to be less than $5,000,000;

(2) The Project consists of at least 25,000 square feet and contains at least one Business;

(3) The Applicant's Equity in the Project is not less than twenty percent (20%) of the total Project Cost; and

(4) There is a Project Financing Gap such that the Project is not likely to be accomplished by private enterprise.

(d) Notwithstanding any of the requirements set forth in Subsections (a) through (c) of this Section, in order for a development project that qualifies for a tax credit pursuant to Chapter 33.6 of Title 44 of the General Laws to be eligible to be considered for a Tax Credit:

(1) The combined total of the Applicant's Equity in the Project and Capital Investment in the Project made, acquired, or leased by the Applicant is not less than twenty percent (20%) of the total Project Cost; and

(2) There is a Project Financing Gap such that, after taking into account all available private and public funding sources, the Project is not likely to be accomplished by private enterprise.

(e) Prior to awarding any incentive under the Act, the Corporation may, in its discretion, require any Applicant to obtain a tax stabilization agreement from the municipality in which the Project is located on such terms as the Corporation deems acceptable.

Rule 7. Tax Credit Amount

(a) A Tax Credit allowed pursuant to the Act and these Rules shall not exceed Fifteen Million Dollars ($15,000,000) for any Qualified Development Project. No building or Qualified Development Project to be completed in phases or in multiple projects shall exceed the maximum project credit of Fifteen Million Dollars ($15,000,000) for all phases or projects involved in the rehabilitation of such building.

(b) Tax Credits available under the Act and these Rules shall not exceed twenty percent (20%) of the Project Cost, provided, however, that the Applicant shall be eligible for additional Tax Credits of not more than ten percent (10%) of the Project Cost if the Qualified Development Project meets any of the following criteria:

(1) The Project includes Adaptive Reuse or development of a Recognized Historical Structure;

(2) The Project is undertaken by or for a Targeted Industry;

(3) The Project is located in a Transit Oriented Development Area;

(4) The Project includes Residential development of which at least twenty percent (20%) of the Residential units are designated as Affordable Housing or Workforce Housing;

(5) The Project includes the Adaptive Reuse of property subject to the requirements of the industrial property remediation and reuse act, sections 23-19.14-1, et seq. of the General Laws;

(6) The Project includes Commercial facilities constructed in accordance with the minimum environmental and sustainability standards, as certified by the Corporation pursuant to LEED or other equivalent standards; or

(7) Such other additional criteria determined by the Corporation from time to time in response to evolving economic or market conditions, which additional criteria shall be published not less than annually on the Corporation's website commencing not later than December 31, 2015.

(c) The amount of a Tax Credit allowed shall be allowable to the Applicant in up to five annual increments; no more than thirty percent (30%) and no less than fifteen percent (15%) of the total credits allowed to an Applicant may be allowable for any taxable year.

(d) Not more than fifteen percent (15%) of the annual amount appropriated in any fiscal year may be awarded to Applicants seeking Tax Credits pursuant to Rule 6(d).

(e) A Qualified Development Project eligible to receive a Tax Credit under the Act and these Rules may, at the discretion of the Corporation, be exempt from sales and use taxes imposed on the purchase of the following classes of personal property only to the extent utilized directly and exclusively in such Qualified Development Project: (1) furniture, fixtures and equipment, except automobiles, trucks or other motor vehicles; or (2) such other materials, including construction materials and supplies, that are depreciable and have a useful life of one year or more and are essential to the Qualified Development Project.

Rule 8. Application.

(a) Each Application made by an Applicant shall include the following information in an application format prescribed by the Corporation:

(1) The name, address and principal contact for the Applicant;

(2) State and Federal tax identification numbers;

(3) The location of the Project;

(4) A description of the experience developing and/or operating projects similar to the proposed Project of the Applicant and of the personnel primarily responsible for the Project;

(5) A business plan and market study for the Project detailing major risks, business drivers and financial opportunity, unless determined by the Corporation to be unnecessary given the nature of the Project;

(6) A description and assessment of the Project's catalytic impact;

(7) For a Commercial or Mixed Use Project, identification of prospective businesses that will occupy the Project, type of businesses and principal products and services (if applicable or known);

(8) For a Residential or Mixed Use Project, a description of unit sizes/layouts, projected sales/lease pricing and affordability mix;

(9) The status of control of the entire Project Area shown for each block and lot as indicated on the municipal assessor's tax map(s);

(10) A construction schedule for the Project or each phase of the Project;

(11) A detailed itemization of the estimated Project Costs;

(12) A detailed description of the financing for the Project including all sources and amounts of funding, projected internal rate of return, net margin, return on investment and cash on cash yield;

(13) The total dollar amount of the Tax Credits requested, as well as a schedule of the allocation of that total over the five-year Eligibility Period.

(14) A pro forma demonstrating that the Project is likely to be realized with the provision of the Tax Credits requested but is not likely to be accomplished in this State by private enterprise without the Tax Credits;

(15) A list and status of all required Federal, State and/or municipal approvals and/or permits required for the Project;

(16) A delineation of any other federal, State or local incentives, grants, tax credits or other aid that will or may be received or requested by the Applicant or an Affiliate of the Applicant in relation to the Project;

(17) Whether the Applicant has obtained a tax stabilization agreement from the municipality in which the Project is located or, if applicable, the unavailability of a tax stabilization agreement despite commercially reasonable efforts by the Applicant to obtain such an agreement and a description of such efforts;

(18) If the Applicant seeks a Tax Credit in excess of 20% of the total Project Cost, documentation sufficient to demonstrate that the Project satisfies one or more of the criteria set forth in Rule 7(b) of these Rules; and

(19) Such other information as the Corporation deems appropriate or necessary in connection with a particular Project; and

(b) The Application shall also require a certification from the Applicant's chief executive officer or equivalent officer as to the following:

(1) The Applicant has committed Equity in not less than twenty percent (20%) of the total Project Cost;

(2) A Project Financing Gap exists on the Project; and

(3) The Project meets the eligibility criteria set forth in Rule 6 of these Rules for approval by the Board as a Qualified Development Project.

Rule 9. Fees.

(a) An Applicant may be charged a one-time, non-refundable application fee by the Corporation and fees for ongoing administration in relation to the Project if approved by the Board. The Corporation shall annually publish a fee schedule on its website commencing on or before December 31, 2015.

(b) An Applicant may be required to pay to the Corporation the full amount of direct fees and costs paid to third-parties by the Corporation in relation to the consideration and/or approval of the Applicant's Project.

Rule 10. Review Process.

(a) Each Application shall be reviewed to confirm compliance with the Act and these Rules, and the Corporation may reject any incomplete or deficient Application.

(b) The Corporation may require the submission of additional information in connection with any Application or the revision of an Application, and may permit the resubmission of an Application rejected as being incomplete or deficient.

(c) Prior to recommending a Project to the Board for receipt of an incentive, the Corporation shall review each Project to determine if a Project Financing Gap exists. This review shall include testing the validity of the Applicant's financial information and assumptions through the use of financial models and, to the extent necessary, seeking input from third-party consultants.

(d) After submission of a complete Application and review by the Corporation in accordance with the requirements of the Act and these Rules, the Corporation will determine whether to recommend to the Board that it approve a Tax Credit for the Applicant and the amount of the Tax Credit. In developing a recommendation, the Corporation may take into account, in consideration with other factors deemed relevant by the Corporation:

(1) The evaluation of the Applicant's pro forma;

(2) The catalytic impact of the Project;

(3) The Project's relationship to other Projects awarded or anticipated to be awarded incentives under these Rules and the Act;

(4) Whether the Project furthers State or municipal planning and development objectives, or both;

(5) Whether the Project maximizes the value of vacant, dilapidated, outmoded, or underutilized property; and

(6) Whether there exists an opportunity for the State or the Corporation to recoup or receive a return on all or portion of the sales tax exemption or Tax Credits to be issued to Applicant by virtue of a receipt of an equity stake or other interest in or return from the Project.

(e) If the Corporation determines that it will not recommend a complete Application to the Board for approval of an incentive, it shall notify the Applicant in writing of such decision.

(f) The Corporation may set periodic Application deadlines that will be published on the Corporation's web site from time to time.

Rule 11. Discretion and Judicial Review.

(a) The Corporation shall not have any obligation to make any award or grant any benefits under the Act or these Rules.

(b) A review of an Application shall not constitute a "contested case" under the Administrative Procedures Act, section 42-35-9 of the General Laws, and no opportunity to object to an Application shall be afforded, nor shall judicial review be available from a decision rendered by the Corporation or the Board in connection with any Application.

Rule 12. Board Approval.

(a) Prior to Board consideration for approval of any Qualified Development Project the following conditions shall be satisfied:

(1) The Chief Executive Officer of the Corporation has provided written confirmation to the Board (i) that the Corporation has reviewed the Application and of any determination regarding the potential impact on the proposed Qualified Development Project's ability to stimulate business development, retain and attract new business and industry to the State; create jobs, including good-paying jobs, for its residents; assist with business, commercial and industrial real estate development and generate revenues for necessary state and local government services; and (ii) indicating the total Tax Credits to be awarded to the Applicant;

(2) The Secretary of Commerce has provided written confirmation to the Board that the recommendation provided to the Chief Executive Officer of the Corporation is consistent with the purposes of the Act; and

(3) The Director of the Office of Management and Budget has provided (i) written confirmation to the Board that the total Tax Credits recommended by the Corporation do not exceed the existing and anticipated revenue capacity of the State and its funding commitment described in section 42-64.20-7 of the General Laws; and (ii) an analysis of the fiscal impact, if any, in the year of Application and any subsequent year.

(b) Within thirty (30) days after satisfaction of the requirements of Rule 12(a) of these Rules, or such later date as the next meeting of the Board is convened, the Board shall undertake review and consideration of the approval of the award of incentives for the Qualified Development Project.

(c) In addition to those findings required under section 42-64-10 of the General Laws, the Board shall make the following findings in connection with approval of any award of incentives under the Act and these Rules:

(1) The Applicant's Equity is not less than twenty percent (20%) of the total Project Cost and otherwise meets the total Project Cost criteria of the Act;

(2) That there is a Project Financing Gap for the Project such that after taking into account all available private and public funding sources, the Qualified Development Project is not likely to be accomplished by private enterprise without the incentives described in the Act and these Rules;

(3) That for Tax Credit awards the total amount of Tax Credits is the lesser of thirty (30%) of the total Project Cost or the amount needed to close the Project Financing Gap;

(4) That for any Tax Credit awarded in excess of twenty percent (20%) of the Project Cost, the Qualified Development Project meets the criteria established by the Act, these Rules and/or the Board for such additional Tax Credits together with a delineation of the amount of additional Tax Credits awarded broken down by each qualifying criteria as may be applicable to the Qualified Development Project;

(5) That the Chief Executive Officer of the Corporation has provided written confirmation required by the Act;

(6) That the Secretary of Commerce has provided written confirmation required by the Act; and

(7) That the Office of Management and Budget has provided the written confirmation required under the Act.

Rule 13. Incentive Agreement.

Upon approval of a Tax Credit for an Applicant by the Board, the Corporation and the Applicant will enter into an Incentive Agreement prior to the issuance of any Tax Credit to the Applicant. In order to safeguard the expenditure of public funds and ensure that the disbursement of funds further the objectives of the Act, the Incentive Agreement shall include, among others, the following terms:

(a) The maximum amount and type of incentives awarded including any sales/use tax exemptions;

(b) The incentives shall not be issued prior to the Qualified Development Project being Placed in Service

(c) Evidence that the Applicant is in good standing with the Secretary of State and Division of Taxation at the time of execution of the Incentive Agreement; a Letter of Good Standing from the Division of Taxation shall be evidence of good standing;

(d) A provision that the incentives shall be allowed in five annual increments and setting forth the annual increments in which they will be delivered;

(e) If applicable, a provision requiring that the receipt of Tax Credits for any given year be subject to the Applicant meeting any job creation or retention requirements or any other conditions that the Corporation, in its sole discretion, shall set as a condition of its approval of Tax Credits for the Applicant;

(f) Default and remedies including events, if any, that would trigger forfeiture, revocation and/or repayment of the awarded incentives;

(g) Indemnification, insurance and other customary protective requirements;

(h) Reporting requirements including, but not limited to, any requirements under the Act;

(i) The imposition of such restrictions or covenants upon the Qualified Development Project as may be necessary to ensure continued compliance with the Act and the Rules;

(j) At the Corporation's discretion, a provision requiring the Applicant to pay the Corporation's reasonable attorneys' fees incurred in connection with the negotiation, execution and enforcement of the Incentive Agreement;

(k) A certification procedure, which shall include, but not be limited to, the following:

(1) Representations that the Qualified Development Project complies with all applicable laws and regulations;

(2) Evidence that the Applicant is in good standing with the Secretary of State and Division of Taxation at the time Applicant files its certification for issuance of incentives; a Letter of Good Standing from the Division of Taxation shall be evidence of good standing;

(3) A requirement that the Applicant submit, prior to issuance of any incentive, satisfactory evidence of actual Project Costs, as certified by a certified public accountant licensed in the State. If the actual Project Costs are less than the estimated Project Costs forming the basis for the approval of the awarded incentives, then the awarded incentives shall be reduced based upon the actual Project Costs;

(4) Evidence that the Qualified Development Project has been Placed in Service and/or meets such other criteria as imposed by the Board in its approving resolution; and

(5) If applicable, evidence that the Applicant has met any additional job creation or retention requirements or any other conditions that the Corporation, in its sole discretion, set as a condition of its approval of Tax Credits for the Applicant

Rule 14. Certification.

(a) Upon the Project being Placed In Service, the Applicant shall submit a certification of a certified public accountant licensed in the State, which shall be made pursuant to procedures set forth in the Incentive Agreement, evidencing that the Applicant has satisfied the conditions relating to the Project Costs, Applicant's Equity contribution, and any other requirements of the Incentive Agreement.

(b) The Corporation may seek reasonable additional information from the Applicant to support the Certification.

(c) Once the Corporation accepts the certification of the Applicant that it has satisfied the Project Costs, Applicant's Equity contribution, and any other applicable requirements of the Incentive Agreement, the Corporation shall issue a Certification to the Applicant providing that the Applicant is entitled to a Tax Credit for a specified year or years in an amount determined pursuant to the Incentive Agreement.

(d) The Applicant shall then submit the Certification to the Division of Taxation and shall than receive a Tax Credit for the amount and tax year specified in the Certification subject to Subsection (e) of this Rule 14.

(e) To the extent required in the Incentive Agreement, the Applicant shall, for each tax year in the Eligibility Period following the year of initial Certification, submit documentation to the Corporation, in a form prescribed in the Incentive Agreement, indicating that it has met

any applicable requirements specified in the Incentive Agreement for that year.

(f) In accordance with a procedure set forth in the Incentive Agreement, the amount of the annual Tax Credit otherwise available shall be reduced, or the Tax Credit for the given year be entirely forfeited, if the Applicant fails to meet any applicable requirements set forth in the Incentive Agreement for the given year.

Rule 15. Issuance of Tax Credit Certificates

(a) Upon the presentation to the Tax Division of a Certification from the Corporation substantiating compliance with the terms of an Incentive Agreement and delineating the amount of Tax Credit assigned to each Participant, the Tax Division shall issue Tax Credit Certificates to the Owner or any eligible Initial Certificates' Holder in the amounts and for the years as agreed to by the Corporation under the requirements of Section 42-64.20-5(g). If the Owner or the Participant is a Pass-Through Entity, or if there are multiple Owners, the Tax Division may issue a Tax Credit Certificate to each Participant in such Pass-Through Entity or each Owner, indicating on the face of such Certificate(s) the amount of the Tax Credit allocable to such Participant. The amount assigned to each Participant will be the amount represented in the Certification for issuance of Tax Credit Certificates presented to the Tax Division.

(b) The amount allocated to each Participant on the Tax Credit Certificate issued to such Participant must be either (i) in proportion to the number of Participants in the Owner or (ii) determined in accordance with any allocation method set forth in an executed Allocation Agreement, which may be without regarding to their sharing of other tax or economic attributes of such entity. The Tax Division shall have no obligation to confirm the amount stated for each Participant in the Allocation Agreement.

Rule 16. Assignment of Tax Credits.

(a) A Tax Credit Certificate may be assigned to any Person, provided that no Credit has been claimed based on the Tax Credit Certificate being assigned. The Tax Credit Certificate may be assigned by endorsing the assignment clause set forth on the Certificate and delivery of the original Certificate to the Assignee.

(b) The Assignee may use the Tax Credit only to offset the actual tax imposed and those taxes permitted to be offset under the Act as delineated in the Incentive Agreement, for the taxable year in which the Tax Credit is issued or for taxable years to which the Tax Credit is permitted to be carried forward.

(c) The original executed Tax Credit Certificate shall be attached to the tax return of the Owner, Participant or Assignee who desires to claim the Tax Credit. A Participant of a Pass-Through Entity who transfers its interest in the entity must also endorse and deliver the Tax Credit Certificate to the transferee if the transferee desires to claim the Tax Credit.

(d) An Assignor of all or any portion of the Tax Credit shall notify the Tax Division in writing within thirty (30) calendar days following the effective date of such assignment. Attached to such written notification (the Notification of Assignment) shall be:

(1) A copy of the Tax Credit Certificate, endorsed to the Assignee. The original Certificate shall not be included with the Notification of Assignment, which must be retained by the Assignee and attached to the Assignee's tax return for the year with respect to which the Tax Credit is claimed.

(2) The name, address and telephone number of the Assignor and of the Assignee.

(3) The taxpayer identification number or social security number of the Assignor and the Assignee.

(4) For non-resident corporations, partnerships, limited liability companies, or other entities, the name and address of such entity's registered agent in the State and evidence of qualification to do business in the State.

(e) If the holder of a Tax Credit Certificate desires to assign its interest in the Tax Credit to more than one Assignee, the holder must, prior to utilizing any portion of the Tax Credit, request the Tax Division to reissue the original Certificate in such number of Certificates as the holder requires. The request must be made in writing, must specify the number of new Certificates required and the amount to be specified on each Certificate, and must attach the original Certificate for cancellation by the Tax Division.

(f) The Assignor of all or a portion of the Tax Credit shall not recognize any state income tax under the provisions of Title 44 of the Rhode Island General Laws with respect to the proceeds of such assignment. The Assignor of any Credit shall attach a copy of the Tax Credit Certificate to its tax return to evidence that such proceeds are not subject to state income tax. If the Tax Credit is subsequently recaptured, revoked or adjusted, the Assignor's tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total amount of the sales proceeds, if any, without proration, as a modification under Title 44, Chapter 30 of the Rhode Island General Laws. In the event that the Assignor is not a natural person, the Assignor's tax calculation under Chapters 11, 12, 13 (other than with respect to the tax imposed under section 44-13-13), 14, 17, or 30 of Title 44 of the General Laws, as applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the total amount of the sales proceeds, if any, without proration.

(g) The Tax Division may charge an administrative fee for issuing multiple Tax Credit Certificates or for reissuing Certificates.

Rule 17. Redemption of Tax Credits.

(a) Upon request of a taxpayer holding a valid Tax Credit Certificate, the Tax Division shall redeem such credit in whole or in part for ninety percent (90%) of the value of the Tax Credit to the extent of available funds in the Rebuild Rhode Island Tax Credit Fund; provided that the taxpayer must qualify for a Letter of Good Standing in order to be eligible to redeem any portion of a credit.

(b) A taxpayer seeking redemption of a Tax Credit Certificate shall file an application on the form prescribed by the Tax Division together with the original Tax Credit Certificate. The Tax Division shall pay the redemption amount within thirty (30) days of submission of a complete application by the taxpayer to the extent of available funds in the Rebuild Rhode Island Tax Credit Fund as certified by the Corporation. To the extent of any insufficiency of funds in the Rebuild Rhode Island Tax Credit Fund, the Tax Division shall either return the original Tax Credit Certificate to the taxpayer or issue a new Tax Credit Certificate for such partial amounts that are not redeemed by the Tax Division.

Rule 18. Revocation.

(a) In the event that any certification or information provided by the Applicant or Applicant's chief executive officer, or equivalent officer, required under these Rules is found to be willfully false the Corporation shall deny the issuance of any incentives or revoke any award of incentives in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the Applicant and/or the officer may be subject to under applicable law.

(b) The Corporation shall deny the issuance of or revoke any award of incentives if an Applicant or its successor-in-interest is convicted of bribery, fraud, theft, embezzlement,

misappropriation, and/or extortion involving the State, any state agency or political subdivision of the state.

(c) Upon breach of an Incentive Agreement, the Corporation may deny the issuance of or revoke the Tax Credit Certificate and any fees paid shall be forfeited.

(d) The Corporation shall notify the Applicant or its successor-in-interest in writing of the revocation of Tax Credits and/or that its right to receive Tax Credits has been terminated.

(e) The Corporation shall notify the Tax Division of any revocation of Tax Credits.

(f) If any Tax Credits have been claimed by any taxpayer based upon a Tax Credit Certificate that has been revoked, the Applicant or its successor-in-interest shall pay to the Corporation an amount equal to the Tax Credit claimed. There shall be no adjustment to the Tax Credit claimed by the taxpayer if a taxpayer acquired the Tax Credit Certificate, directly or indirectly, from the Applicant or a Participant in the Applicant in an arms-length transaction, for value, and without notice of violation, fraud or misrepresentation.

(g) The Corporation may provide for additional rights and remedies in any Incentive Agreement, which will be in addition to the rights of revocation and termination provided under this Rule.

Rule 19. Administration and Examination of Records.

(a) The Tax Division and its agents, for the purpose of ascertaining the correctness of any Tax Credit claimed under the Act, may examine any books, paper, records or memoranda bearing upon the matters required to be included in the return, report or other statement, and may require the attendance of the Person executing the return, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other Person, and may examine the

Person under oath respecting any matter which the Tax Division or its agents deems pertinent or material in determining eligibility for Tax Credits claimed, and may request information from the Corporation, and the Corporation shall provide such information in all cases, to the extent not otherwise prohibited by statute.

(b) The Corporation may examine any books, paper, records or memoranda bearing upon the approval of incentives awarded under the Act, and may require the attendance of any person executing any Application, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine such person under oath respecting any matter which the Corporation deems pertinent or material in determining eligibility for incentives claimed under the Act.

Rule 20. Inspection Rights.

The Corporation and Tax Division shall have the right at reasonable times to make an inspection and to enter upon any property that is the subject of an Application during the term of an Incentive Agreement to verify compliance with the Act, the Rules and such other conditions imposed by the Corporation.