LOUISIANA HOUSING CORPORATION

POLICY NO. 5

SUBJECT: SUBSTANCE ABUSE AND DRUG FREE WORKPLACE

PHILOSOPHY

Employees are our most valuable resource and their health and safety are serious concerns. The LHC will not tolerate any substance use or abuse which imperils the health and well-being of our employees or threatens our service to the public. The use, possession, or presence in the body of illegal drugs, on or off duty, is inconsistent with law-abiding behavior expected of all citizens. Employees who use illegal drugs or abuse alcohol or other controlled dangerous substances, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism, resulting in potential increased cost, delay and risk in providing services. Ultimately, illicit drug use threatens the LHC's ability to serve the public.

Furthermore, employees have the right to work in a drug and alcohol free environment and to work with persons free from the effects of drug or alcohol use. Employees who unlawfully use drugs or alcohol are a danger to themselves and other employees. In addition, substance abuse inflicts a significant toll on the LHC's productive resources and the health and well-being of our employees and their families.

The LHC is committed to maintaining a safe and healthy workforce free from the influence of substance abuse. To accomplish this, the LHC hereby adopts this Substance Abuse and Drug-Free Workplace Policy which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety and reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of the LHC and its employees.

The LHC's philosophy is consistent with the State of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of employee drug testing programs for state employees. Further, the Governor of the State of Louisiana issued Executive Order 08-69 providing for the promulgation of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with Louisiana Revised Statute 49:1001, et seq. The LHC fully supports these actions and is committed to a drug-free workplace as provided by state law and the federal Drug Free Workplace Act of 1988.

APPLICABILITY

This policy applies to all employees of the LHC, as well as potential employees, individuals providing service to the LHC through a contract with a third party employer (i.e. temporary Corporation employees), and all other persons having an employment relationships with the LHC, whether classified, unclassified, student employees, student interns, full-time, part-time, or temporary.

Following a job offer, potential employees will be required to submit to pre-employment drug testing. All employees are subject to post-accident/ incident, reasonable suspicion and return-to-duty/ rehabilitation monitoring drug and alcohol testing. Employees who encumber safety-sensitive positions and supplicants who apply for safety-sensitive positions are subject to both random and pre-selection drug alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within the LHC is attached to Appendix A.

REQUIREMENTS

1) To maintain a safe and productive work environment, all LHC employees are required to:

    a) Report for duty in the physical and mental condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;

    b) Promptly and cooperatively submit to drug/ alcohol testing when required by a supervisor or appointing authority;

    c) Notify a supervisor, prior to or immediately upon reporting for duty, when he/she has reason to believe that prescribed or over-the-counter medication may impair his/her ability to perform customary job duties or otherwise create a safety hazard. While the duration the medication will be taken should be disclosed, employees should know that it is not necessary to disclose to the supervisor the medication being taken nor the condition for which it was prescribed. Such information may be required to be disclosed to the LHC's Medical Review Officer should circumstances or the nature of the employee's job duties warrant, as determined by the Appointing Authority/Appointing Authority; and

    d) Notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense, whether such occurs on or off duty.

2) The LHC strictly prohibits the use, possession, dispensation, distribution, manufacture, sale, and presence of alcohol, controlled dangerous substances or other prohibited drugs in the bodies of LHC employees while on duty or engaged in LHC business, on or off LHC premises. The presence of alcohol, controlled dangerous substances or other prohibited drugs in a LHC vehicle while on or off duty is also prohibited.

    a) For purposes of this Policy, a controlled dangerous substance is any drug, substance, or immediate precursor in Schedules I through V of La. R.S. 40:964 or Section 202 of the Controlled Substances Act (21 U.S.C. 812).

    b) For purposes of this Policy, a prohibited drug includes any drug which is not legally obtainable; any drug which is legally obtainable but has been illegally obtained; and prescription drugs not being used as prescribed.

c) The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

DRUG/ALCOHOL TESTING

All employees may be required to submit to drug and alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances:

1) **Pre-Employment**: Drug tests are required of all prospective employees of LHC. Each prospective employee shall be required to submit to drug and alcohol screening at the designated time and place following a job offer. Pursuant to La. R.S. 49:1008, a prospective employee testing positive for the presence of prohibited drugs or alcohol shall be eliminated from consideration of employment.

   Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive drug test result and may not reapply for employment with the LHC for a period of one year from the date of notification.

2) **Post-Accident/Incident**: Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:
   a) The accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;

   b) The accident meets the criteria of paragraph (a) <u>and</u> results in or causes the release of hazardous waste as defined by La. R.S. 30:2173(2) or hazardous materials as defined by La. R.S. 32:1502(5); or

   c) The accident results in a fatality or serious bodily injury

   "Reasonable suspicion" is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use.

   Only the Appointing Authority/Appointing Authority or other designated representative shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/ incident. The supervisor will fully document the facts upon which the recommendation for testing is made.

NOTE: When post-accident/incident testing is ordered, a LHC representative shall transport the individual being tested to and from the testing site. Under no circumstances should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3) **Random:** Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in appendix A. Such testing shall be periodic and unannounced, and employee selection therefore shall be by a random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4) **Promotion/Reassignment to a Safety Sensitive Position:** Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in Appendix A. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test is reported, and employees are further subject to disciplinary action as specified in this policy.

5) **Reasonable Suspicion:** An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by the Appointing Authority/Appointing Authority or other designated representative based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor, or physical manifestations. The observation must be made by supervisory personnel or reported to supervisory personnel by a reliable and credible source. The supervisory personnel shall record, in writing, the specific facts, symptoms, or observations leading to the recommendation for testing. Such observations include, but are not limited to:

   a) Direct observation of drug or alcohol use;

   b) A pattern of abnormal or erratic behavior and mood changes

   c) Presence of physical symptoms of drug or alcohol use (i.e. glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/ or reflexes);

   d) Arrest involving the possession, use or sale of alcohol or controlled dangerous substances or prohibited drugs during working hours;

   e) Decreased productivity, lack of participation and desire to work alone;

   f) Unusual absenteeism and tardiness; and

g) Frequent or prolonged absences from the work area.

6) **Return to Duty/Rehabilitation Monitoring:** Any employee who retains his/her job following a violation of this policy shall be required, at his/her expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing.

   Further, any employee who voluntarily, or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

DRUG TESTING PROCEDURES

Employee drug testing pursuant to this policy shall be for the presence of:

a) THC (Marijuana)
b) Cocaine
c) Amphetamines/Methamphetamines
d) Phencyclidine (PCP)
e) Opiates
f) Alcohol

At a minimum, the testing procedure shall assure:

1) That all specimens for drug testing are collected, stored, transported, and testing in compliance with DHHA guidelines (and applicable federal and state regulations) to ensure integrity of the testing process.

2) Urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will only be allowed under the following conditions

   a) When there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

   b) When the individual has provided a urine specimen which falls outside the acceptable temperature range;

   c) When the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or

d) When collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process.

NOTE: In all instances in which direct observation is deemed appropriate, the Appointing Authority/Appointing Authority or other designated representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. The Appointing Authority/Appointing Authority or other designated representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the Appointing Authority/Appointing Authority or other designated representative. All direct observations shall be conducted by same gender collection site personnel.

3) The split sample collection methodology must be used in accordance with La. R.S. 49:1006(D), with both the primary and secondary split specimens properly stored and transported to the testing laboratory.

4) Appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage, and transportation form point of collection to final disposition.

5) Testing shall be performed by laboratories verified for forensic urine drug testing by the U.S. District of Health and Human Services and in strict compliance with DHHS Guidelines.

6) The dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry).

7) All positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to the LHC's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluation test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody, and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or those medications, medical history, or any other condition caused the positive test result.

8) If the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be

tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense.

9) Once a positive test is confirmed and reported to the LHC by the MRO, an employee in a safety sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10) If testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

ALCOHOL TESTING PROCEDURES

1) Evident Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

2) The employee will be advised of the results of the breath-screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed. If the confirmatory test indicates a blood alcohol concentration of 0.04 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to the LHC's designated representative.

3) An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

4) Positive test results will also be reported to the Appointing Authority/Appointing Authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

ENFORCEMENT

The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public, and is inconsistent with the LHC's mission. While the LHC's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results.

Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided predeprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

1) **Penalty for a first positive alcohol test**:

   A first positive alcohol test will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance, and the existence of prior disciplinary action. At a minimum, the offender will remain off work for at least thirty calendar days. For any such period, the first ten workdays will be a suspension without pay. For the remaining twenty days, the employee will be permitted to use annual, sick, or compensatory leave, if available. During this thirty-day period, the employee shall obtain a substance abuse evaluation and commence any rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense will result in termination.

2) **Termination is the recommended penalty for the following violations:**

   a) Positive drug test results, or a second confirmed blood alcohol level above the applicable thresholds

   b) Refusal to submit to a drug or alcohol test;

   c) Failure to cooperate in any way which prevents the completion of a drug or alcohol test, including any attempt to invalidate the chain of custody;

   d) Submission of an unadulterated or substitute sample for testing;

   e) Buying, selling, dispensing, distributing, or possessing alcohol or any controlled dangerous substance or prohibited drug while on duty, in a LHC vehicle or on LHC premises; and

   f) Operating a LHC vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of this policy.

3) **Suspension will be the recommended penalty for the following violations:**

   a) Failure to notify supervisor of the use of prescribed medication when the employee has reason to believe that the medication being used may impair the employee's ability to perform his/her customary duties and responsibilities or otherwise create a safety hazard; and

   b) Failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

CONFIDENTIALITY/EMPLOYEE RIGHTS

All drug and alcohol testing results and records (including all information, interviews, reports, and statements) are considered confidential communications, pursuant to La. R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation, or administrative proceedings arising from a positive drug test; and as otherwise required by law.

In compliance with La. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

Employees should know that statistical records and reports of drug testing are maintained by the LHC, contract physicians, and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

The LHC has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in this policy will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this Policy, discovered in/on LHC property, or upon the person of a LHC employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution, or transfer of illegal drugs or controlled substances while on duty or on LHC property shall be referred to appropriate law enforcement authorities.

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the LHC's administrative personnel. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs. The LHC will assist employees in utilizing any available state-supported services. Unless other cause exists, no disciplinary action will betaken against an employee who voluntarily indentifies himself/herself as a drug or alcohol abuser, obtains counseling and rehabilitation through substance assistance programs, and thereafter refrains from violating the LHC's Substance Abuse and Drug-Free Workplace Policy. Such employees will be given the opportunity for rehabilitation through a thirty-day leave for which vacation and/or sick leave, to the extent available, can be used. Upon return to duty, such employees are subject to the Return-to-Duty/Rehabilitation Monitoring portion of this Policy.

GENERAL PROVISIONS

The LHC reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the

employee's performance or increase the risk of injury to the employee or others. In such case, the LHC will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

Although the substance abuse testing defined in this policy is restricted to specified drugs and alcohol, the LHC reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

Approved by:

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Date

ATTACHMENT A

SAFETY-SENSITIVE POSITION LIST