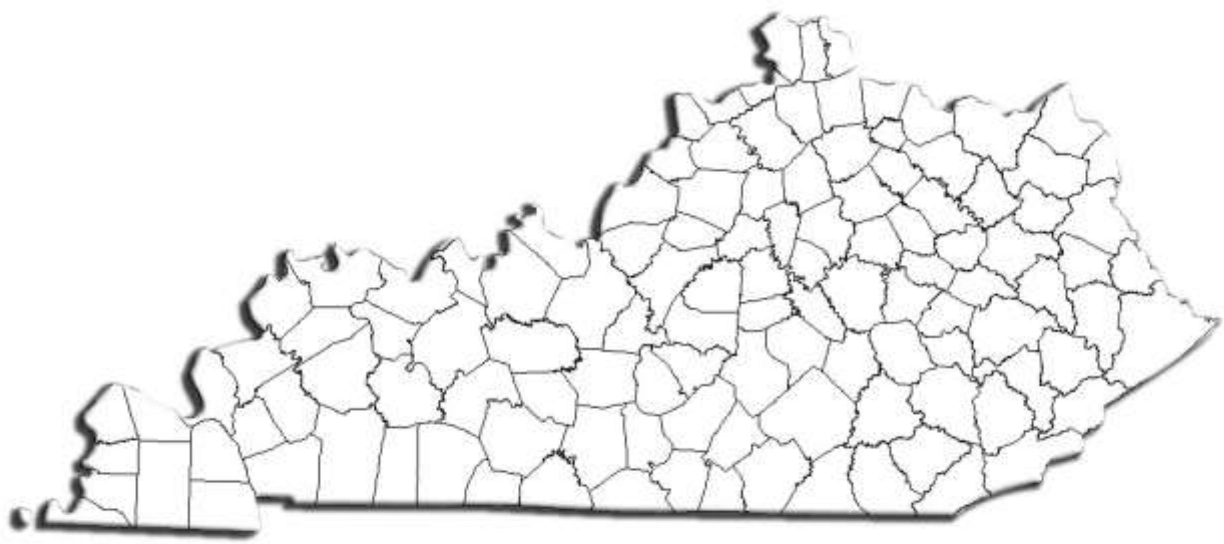
# 2010 QUALIFIED ALLOCATION PLAN

**Revised 15 January 2010 and supercedes all previously issued copies**



**Effective for allocations made after December 31, 2009,**
**until December 31, 2010, unless amended.**

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# INTRODUCTION

Kentucky Housing Corporation (KHC) is the designated administrator of the federal Low Income Housing Tax Credit ("Housing Credits") for the State of Kentucky under Section ("§") 42 of the Internal Revenue Code (IRC) of 1986, as amended ("Code"), and all regulations promulgated there under.

The Housing Credit program was created by the Tax Reform Act of 1986. This program is one of the few remaining tax incentives for the construction, rehabilitation and preservation of low-cost rental housing. Investors in low-cost housing can claim Housing Credit against their federal income tax liability for ten years. The property must remain affordable for a minimum of thirty-three years.

The federal laws establishing the Housing Credit program are subject to change. Final interpretations of certain rules and regulations governing various facets of the program have not yet been issued by the U.S. Department of Treasury. Therefore, it is strongly suggested that applicants interested in utilizing the program in their financing package contact their tax accountant and/or attorney prior to submitting an application. While KHC may respond to requests for technical assistance in applying for Housing Credits, applicants may not rely on KHC for tax advice.

**NOTE: KHC may choose to modify or waive, on a case-by-case basis, any provision of this QAP that is not mandated by law, to effectuate the full implementation and utilization of the Housing Credit resource and for overall efficiency in the administration of the Low Income Housing Tax Credit program. All modifications or waivers of the QAP will be subject to written approval by the chief executive officer of Kentucky Housing Corporation.**

In anticipation of Congress extending the Section 1602 Exchange Program and to allow ample time to determine the provisions of such a program, KHC has postponed the due date forprojects requesting housing credits and/or Exchange funds until April 1, 2010. In the event Congress does extend the Section 1602 Exchange Program, KHC reserves the right to make additional changes to the 2010 QAP, as needed, and may use any unallocated credit or any recaptured or returned credit and exchange these credits for cash assistance up to the maximum amount allowed by the Section 1602 Exchange Program. KHC will provide additional updates as to the status of the extension of the Section 1602 Exchange Program via its corporate e-gram system.

Projects that are unable to meet all of the requirements outlined in this QAP; close their transaction with an equity investor and/or other funders; fill any gap in funding as a result of reduced equity pricing, loss of equity or the result of not providing commitment letters for all sources of funds, will have their conditional commitment of funding for all KHC funds rescinded.

Proceeds from any potential Section 1602 Exchange funds may be used to replace other KHC funding in a project. Additionally, KHC may allocate these resources to non-credit projects. The determination on the use of potential Section 1602 funds lies solely with KHC.

**Availability of Subsidy Dollars (HOME and Affordable Housing Trust Fund)**

**For the 2010 Open Window, KHC has a total of $7,000,000 of** Home Investment Partnership Program **(HOME) and Affordable Housing Trust Fund (AHTF) to be used as subsidy for housing credit projects. Please see the Rental Guidelines for specifics as to requirements of these funds, including eligible applicants.**

In order to best deliver the Low Income Housing Tax Credit program, KHC will, in its sole discretion, determine the amount of HOME and AHTF monies, for the 2010 funding round, KHC will limit the combined maximum amount of HOME and AHTF monies to the lesser of $35,000 per unit with a maximum per project of $850,000. The maximum amount of AHTF for any single project will be limited to $300,000.

## Qualified Allocation Plan

Each year the state allocating agency for the Housing Credit program is required to publish a plan describing the process for the allocation of Housing Credits. This plan is called the Qualified Allocation Plan (QAP). The QAP establishes the administrative process governing the allocation of federal Housing Credits to qualifying developments that address low-income housing priorities throughout the state. This plan is intended to provide a fair means of utilizing the credits to the fullest extent possible each year for the creation and preservation of rental housing for lower-income households. The requirement that states develop a plan was established in the Omnibus Reconciliation Act of 1989.

### Requirements of the Qualified Allocation Plan

Section 42 (m) of the Internal Revenue Code requires each state-allocating agency to adopt an allocation plan that sets forth certain selection criteria to be used in determining priorities, that include the following:

- Serving the lowest-income tenants;
- Serving qualified tenants for the longest periods; and
- Contributing to a concerted community revitalization development plan.

The Code under Section 42(m) also states that the selection criteria must take into consideration the following:

- Project location
- Housing needs characteristics
- Project characteristics
- Sponsor characteristics
- Tenant populations with special housing needs
- Tenant populations of individuals with children
- Projects intended for tenant ownership
- Public housing waiting lists
- Energy efficiency
- Historical properties

In addition to the above selection criteria and preferences, KHC, at its sole discretion, shall establish selection criteria and preferences that reflect the housing needs and trends as identified within the Commonwealth.

**<u>Public Hearing Requirements</u>**

The draft QAP is subject to a minimum seven-day public comment period. KHC will host a public hearing to receive comments or will accept written comments either by a formal letter or e-mail to the attention of Tammy Stansbury at tstansbury@kyhousing.org or Shawn Dyer at sdyer@kyhousing.org.

The announcement for the public hearing will be published through KHC's eGram system, posted to KHC's Web site, and published in the Louisville *Courier-Journal* and the Lexington *Herald-Leader*.

**<u>Approval Process</u>**

After public comment, the QAP must receive final approval by KHC's Board of Directors and the governor of the Commonwealth of Kentucky.

**Note**: The Public Hearing was conducted on August 25th, 2009. The KHC Board of Directors approved the QAP on August 27, 2009 and Governor Beshear gave final approval of the QAP on September 23, 2009. A revised version of the QAP was published on December 30, 2009 and allowed for a one week comment period. Such comments were considered and included, as appropriate, in this final version dated January 15, 2010.

## Annual Credit Available

The total amount of Credit ***<u>available for Kentucky for 2010 is approximately $9.0 million</u>*****.** The total is determined from the following:

- $2.10 plus the cost of living adjustment specified in Section 42(h)(3)(H) x Kentucky's population;
- Any unallocated credit from previous year;
- Any returned credit from previous years; and
- Any amount allocated to Kentucky by the IRS from the National Pool.

**<u>Types of Credit</u>**

- 9 Percent credit
  Reflect 70 percent of the present value of the qualified basis for new construction or substantial rehabilitation of qualified low-income buildings.

- 4 Percent credit
  Reflect approximately 30 percent of the present value of the qualified basis of acquired buildings that are substantially rehabilitated.

The cost of acquiring, rehabilitating and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication and marketing. The applicable percentage (that is the 9 percent and 4 percent approximations) of the qualified basis may be claimed annually for ten years as the Low-Income Housing Tax Credit. The amount of credit that may be awarded to a building is based upon the depreciable cost of the building and the portion of the project that low-income households will occupy and can be no more than needed to make the project financially feasible.

**Overview of Available Credit—Approximately $9,000,000 available**

| Competitive Pools and Set-Asides | Approximate Amount |
|---|---|
| A. Urban Pool | $1,925,000 |
| B. Rural Pool | $1,925,000 |
| C. Nonprofit Pool Set-Aside | $1,350,000 |
| D. Rural Development Set-Aside | $500,000 |
| E. Special Needs Set-Aside | $300,000 |
| F. 2010 Forwarded Committed Projects from 2009 (estimated) | $3,000,000 |
| | |

**NOTE: KHC reserves the right to redistribute Housing Credit into other pools or set-asides as it deems necessary. KHC also reserves the right to allocate Housing Credit to non-specified projects if the credit amount can preserve the long-term viability of a project. Additionally, KHC reserves the right to reduce eligible basis and the amount of Housing Credit if costs appear excessive. Likewise, KHC may increase basis (not to exceed 130 percent) on any project for financial feasibility reasons as determined solely by KHC.**

**Nonprofit Participants**

The IRC requires that a minimum of 10 percent of the total Housing Credit ceiling amount be available only to projects with qualified nonprofit participants and owners. In addition to the requirements of IRC Section 42(h)(5), a nonprofit must be the developer and general partner of the project. Applicants must indicate that they are applying for Housing Credit from the nonprofit set-aside. A nonprofit applicant may submit an application to be considered in the nonprofit set-aside and/or in their respective urban/rural pool. Two application fees must be submitted if applying in two pools.

A qualified nonprofit organization is one which:

- Is described in §501(c)(3) or (4) of the Code and is exempt from tax under §501(a) of the Code;

- Is not controlled by a for-profit;
- Has as one of its exempt purposes the fostering of low-income housing;
- Has been in existence for at least one year; and
- Owns 51 percent of the general partnership interest of the ownership entity of the development.

A project that is qualified as a nonprofit organization will own an interest and materially participates in the development, ownership and management of the project. Please refer to the Policy section for a full description of nonprofit participation.

## Pools and Set-Asides

Any qualifying project can apply for Housing Credit through our open window process and compete through any of the pools or set-asides. Allocation and compliance monitoring fees apply to all Housing Credit projects. Complete and accurate applications must be submitted for all pools and set-asides. All applications must meet all threshold requirements and must meet a minimum score based on the application submission package.

### A. Urban Pool

The urban pool of approximately $1,925,000 is 50 percent of the remaining Housing Credit after set-asides and other pools are deducted. Projects must meet a minimum score as outlined in the scoring guidelines in order to be considered for funding. For the Housing Credit program, the following counties are considered urban based upon 2007 area median incomes above $48,800 and 2007 populations of 20,000 or more:

| | | | | |
|---|---|---|---|---|
| Anderson | Clark | Henderson | McCracken | Warren |
| Boone | Daviess | Jefferson | Mercer | Woodford |
| Boyle | Fayette | Jessamine | Nelson | |
| Bullitt | Franklin | Kenton | Oldham | |
| Campbell | Grant | Madison | Scott | |
| Christian | Hardin | Marshall | Shelby | |

### B. Rural Pool

The rural pool of approximately $1,925,000 is 50 percent of the remaining Housing Credit after set-asides and pools are deducted. Kentucky's remaining 94 counties are classified as rural. Projects must meet a minimum score as outlined in the scoring guidelines in order to be considered for funding.

### C. Nonprofit Pool Set-Aside

Approximately $1,350,000 will be available for qualified nonprofits who meet the requirements of IRC Section 42(h)(5) and are the developer and general partner in the project. Projects must meet a minimum score as outlined in the scoring guidelines in order to be considered for funding.

### D. Rural Development (RD) Set-Aside

Housing Credit in the amount of approximately $500,000 at the 30 percent present value rate (4 percent) for acquisition and at the 70 percent value rate (9 percent) for rehabilitation is reserved for projects that have a pending application submitted to RD to receive funds. This set-aside is for projects financed by RD in need of rehabilitation in order to preserve affordable rental units. Projects must meet a minimum score as outlined in the scoring guidelines to be considered for funding. Final award of credit can be contingent upon receiving an obligation of United States Department of Agriculture Rural Development funds.

**E. Special Needs Set-Aside**

Housing Credit in the amount of $300,000 will be set aside for applicants who proposed projects for special needs households exclusively, or set aside at least 20 percent of the units for individuals with special needs. However, special needs projects are encouraged to be either integrated and non-stigmatizing smaller special needs-only projects or larger mixed-populations projects. Projects awarded through this set aside must submit documentation that shows they have an appropriate source of referral and that services are available for every special needs population the project serves.

## 2010 Forwarded Committed Projects from 2009

Due to the continued issues facing the current market with investors, KHC has decided to forward commit credit from the 2010 allocation to projects that submitted a 2009 application and were deemed financially feasible and would have been funded if credit had been available and that still have an investor. Approximately $3,000,000 of Housing Credit will be set aside for these projects. Awards will be made to projects that have not deviated from the original application submission, (same site, same targeted population, same physical structure, same income and rent levels, etc.) and that have a firm commitment of equity and other funding. Projects must demonstrate their ability to close on all funding sources and close on their transactions by August 10, 2010

## Tax-Exempt Bond Financing and 4 Percent Housing Credits

Credit for buildings financed by tax-exempt bonds subject to volume cap will be determined per Section 42(h)(4). If 50 percent or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the state's annual credit authority. Applicants wanting to finance projects with tax-exempt bonds must complete a separate application and will be scored separately. Applicants must also meet all non-competitive requirements outlined in the QAP with the exception of the maximum credit cap.

# Applicable Program Fees

**Application Fee:** Fee amounts are $750 for exclusively nonprofit applicants and $1,250 for all other applicants. This nonrefundable fee must accompany each project application submitted for Housing Credit. If applying for two different pools with the same application, two fees will be required. Application fees will not be returned for incomplete applications or applications that do not meet minimum threshold requirements.

**Housing Credit Reservation Fee:** A nonrefundable reservation fee of seven percent of the amount of Housing Credit reserved for a project will be charged. Payment of the seven percent reservation fee is due within two weeks from notification of funding; this fee is not contingent upon a successful market study.

**Exchange Credit Fee:** If an exchange of credit is requested by the applicant for any reservation made after January 1, 2010, the applicant will be required to pay an Exchange of Credit fee of $5,000 in addition to a new reservation fee equal to the reservation fee listed in the Qualified Allocation Plan for the year the exchange is requested.

**Pre-8609 Inspection Fee:** Prior to issuing an 8609, an inspection must be conducted to ensure the owner adheres to Section 42 requirements and to all pledges and restrictions that were pledged in the application. This will be a one time fee of $100.

**Compliance Annual Report Fee:** An annual fee will be assessed for compliance monitoring. Applicable fees must be submitted with the compliance monitoring annual report. The annual fee for projects to be examined by KHC is determined by KHC's Compliance Monitoring Department. The schedule of compliance monitoring fees is contained on KHC's compliance Web site.

Compliance monitoring fees are subject to periodic adjustment. Such adjustments will apply to all projects participating in the Housing Credit program.

## Housing Credit Requirements

In addition to the Open Window application requirements, the following guidelines must be adhered to for all Housing Credit applicants when applying for and receiving Housing Credit. Projects requesting Housing Credit associated with multifamily tax-exempt bonds must meet these additional requirements as well. For additional programmatic and design guidelines, please refer to Rental Production Guidelines.

**Letter of Support**

All projects must have a signed letter of support from the mayor or the county judge-executive (or the equivalent) of the jurisdiction where the project is located, on the mayor's or county judge-executive's letterhead. This letter must be a letter of support, not just a letter recognizing the project. It must be submitted as an attachment with the application. If a letter of support is not submitted, regardless of final score, the application will be rejected.

## Housing Credit Limit

**Urban Counties** (As listed on page 7 of the QAP)
The Housing Credit subsidy allocated will be limited to $15,000 per Housing Credit unit for all projects located in an urban county. Projects may be allowed an additional allocation of Housing Credit and exceed this limit as determined solely by KHC.

**Rural Counties** (Any county not listed on page 7 of the QAP is considered rural). The Housing Credit subsidy allocated will be limited to $16,500 per Housing Credit unit for projects located in a rural county. Projects may be allowed an additional allocation of Housing Credit and exceed this limit as determined solely by KHC.

***Example:*** Subsidy limit:
$15,000
40 total units
40 × $15,000 = $600,000

The maximum annual Housing Credit allocation can not exceed this amount.

**Modifications to Definition of Eligible Basis (130 Percent Rule) (Qualified Census Tract (QCT), Difficult Development Area (DDA) and Areas Defined by KHC)**

The IRS stipulates certain areas as QCTs and DDAs. These areas are designated as areas that are difficult to develop or are defined as census tracts in which 50 percent or more of the households are at or below 60 percent of the area median income, as well as census tracts with a poverty rate of 25 percent or higher. The U.S. Department of Housing and Urban Development (HUD) annually publishes a list of QCTs and DDAs. Please refer to KHC's Web site for the current list. Generally, buildings located in these areas are eligible for an enhanced credit.

The Housing and Economic Recovery Act of 2008, H.R. 3221 (HERA), provides state housing credit agencies the ability to enhance the credit to any project needing the enhanced credit in order to be financially feasible

Due to the economic impact of the current market and the decline in equity pricing, projects are now seeking substantial amounts of soft money to be considered financially feasible. Because the supply of soft money is limited, few projects will be completed without other financial assistance. The additional equity provided by the enhanced credit reduces the amount of soft funding required by each project. Without the enhanced credit, projects would not be financially feasible. As a result, KHC has determined that all projects located in all areas of the state are eligible to receive the enhanced credit.

Under the enhanced credit, the eligible basis of a building is increased from 100 to 130 percent. This allows developers to request 130 percent bonus of credits derived from the basis calculation. The award of the bonus will be made based upon the amount of credits required to make the project financially feasible. Eligible basis costs for new construction and rehabilitation only qualifies for this basis increase. Acquisition costs are specifically excluded by Code from the 130 percent bonus.

**Community Service Facility**

A "Community Service Facility" (CSF) is a space that can be used for purposes including, but not limited to, child daycare, senior programs and job training. It is defined as facilities that are designed to primarily serve low-income individuals whose income is 60 percent or less of area median income.

Housing Credit projects utilizing a CSF described under IRS Revenue Ruling 2003-77 may be entitled to an additional allocation of Housing Credit. House Resolution 3221 – The Housing and Economic Recovery Act of 2008 (HERA), expands the size of the CSF with respect to which the low-income Housing Credit may be claimed Under the HERA provision, the size of the CSF may not exceed the sum of 25 percent of the eligible basis and total project cost not exceeding $15 million. However, the additional increase will be prorated based upon the square footage of the CSF as a percentage of the residential space per project. Projects with costs exceeding $15 million have additional limitations.

***Example:*** The residential building(s) "only" is 32,100 sq. ft.
The CSF sq. ft. is 4,500

CSF space to residential space: 4,500 ÷ 32,100 = 14.0 percent.

This is the amount of additional credit that can be requested for a CSF.

This provision is limited to buildings located in Qualified Census Tracts (QCTs) only.

**Acquisition of Existing Buildings**

Projects eligible for Housing Credit based on the acquisition of existing buildings must provide an appraisal supporting the building basis for purposes of determining the proper amount of Housing Credit reserved. The appraisal must provide, at a minimum, the "as-is" market value of the building and a separate site value for the underlying land. Eligible basis will be limited to the basis determined by the required final cost certification. The appraisal must be submitted at the technical submission stage. Applicants must choose an appraisal firm or individual that is listed on the approved appraisal list located at www.kyhousing.org under Housing Production, Rental Production Programs.

Projects requesting credit and other sources of KHC funds in the form of a loan are required to meet KHC's appraisal guidelines and must also choose an appraisal firm or individual from the approved list.

Applicants/developers will enter into a contract for services directly with the appraiser and, with the exception of questions about KHC standards and/or requirements, the applicant/developer shall be responsible for handling all issues related to the appraisal. Applicants/developers contracting with appraisers for the benefit of KHC shall be responsible for negotiating the price of the contracted work.

Although the applicant/developer is responsible for engaging the appraiser, the report shall identify KHC as the intended user for the purpose of providing KHC a basis for investment and loan underwriting decisions.

## **Maximum Credit Cap Requirements**

All users/organizations are initially restricted to a maximum of **$1,250,000** in annual Housing Credit based on the determination made by KHC in the Capacity of Development Team review. However, since KHC is allocating credit through an "Open Window Process," it is important to ensure the credit is allocated in a timely manner. If after September 1, 2010 credit is still available, the cap will be removed and developers who were previously limited by that cap will be allowed to apply for additional credit.

Developers that receive an award of credit under the 2010 Forward Committed set aside will fall within the $1,250,000 cap and can apply for additional credit after September 1, 2010 if credit is available.

If any credit remains unallocated as a result of this imposed maximum cap, KHC reserves the right to allocate such remaining credit in a manner as deemed appropriate. This may include accepting applications from developers in need of additional credit that were restricted by this cap.

Tax-Exempt Bond projects are not restricted to this cap.

- "Users" to which the credit cap applies are actual general partners and parent organizations of general partner entities or affiliates of the general partner or managing members of entities to which Housing Credits have been awarded. "Affiliate" is any entity that directly or indirectly owns another entity.

- Organizations acting as users and developers are limited to a maximum in annual Housing Credits based on the determination made by KHC in the Experience & Capacity Review. An "organization" to which this cap applies is defined as the actual entity indicated in the application and any parent organizations or affiliates of such entity (see the preceding paragraph for definitions of affiliate and other applicable terms). This restriction includes any applications in which such organization is indicated as a general partner. If a developer enters any additional projects after reservation agreements are issued, these will count against their cap for the following year. Full disclosure of identity of interest between all development team members must be included in the application. At the time of reservation and allocation, each general partner and developer must execute a certification that their participation in Housing Credit projects is limited to the maximum credit cap amounts. If an entity does not fully disclose all participation, then such entity and all affiliated organizations will be banned from participating in the Housing Credit program for one year from the date of discovery by KHC.

## **Maximum Fees**

Applications utilizing Housing Credit and any combination of Risk-Sharing, HOME and Project-Based Section 8 will require a subsidy layering/financial analysis and will be limited to the following fee structure, regardless of the total project costs.

| | |
|---|---|
| General Requirements | up to 6% |
| Overhead | up to 2% |
| Profit | up to 6% |

**Developer Fee**

The allowable fees for developers are based on the total development cost (TDC) of the project. The developer fee on any Housing Credit project may not exceed 15 percent. Risk-Sharing projects are limited to 10 percent developer's fee unless otherwise approved by KHC's Board of Directors. At KHC's sole discretion, tax-exempt bond financed projects may be allowed an increase in developer's fee.

The developer fee (as a percentage) is calculated as follows:

$$\frac{\text{(Developer Fee + Consulting Fees + anything resembling consulting or developer fees)}}{\text{(Total Project Costs – Developer Fee – Consulting Fees – anything resembling consulting or developer fees)}}$$

**Minimum Set-Asides**

For a project to qualify for a credit award, it must meet a minimum low income set-aside requirement. The minimum set-aside requirement must be met no later than the close of the first year of the credit period for each building.

The owner of the project must irrevocably elect either the 20/50 or 40/60 minimum set-aside.

- **20 percent** of the rental residential units in the project will be rent restricted and are to be occupied by individuals whose incomes are **50 percent** or less of the area median income.

- **40 percent** of the rental residential units are rent-restricted and are to be occupied by individuals whose incomes are **60 percent** or less of the area median income.

The minimum set-aside is the election that commits the building owner to a specific income level that will serve to define low income for that building. Under a 20/50 election, an owner who claims 100 percent of the units eligible for credit must rent all units to households at or below 50 percent area median income as adjusted for family size in order to claim 100 percent of the credit.

**Cost Containment**

While maintaining aesthetic and livable standards, it is KHC's objective to fund as many proposals as possible. Because funds are limited, costs per type of unit and construction costs per square foot are important factors in analyzing applications. KHC has adopted cost containment guidelines to evaluate the total development cost for all projects.

In the underwriting model, you will be requested to enter the cost containment limit for your project. KHC's Cost Containment Guidelines are on the Rental Production Programs page under Housing Production on KHC's Web site. See *Reference Materials.* For additional information as it pertains to cost containment, refer to the Rental Production Guidelines.

KHC cost containment guidelines apply solely to KHC resources. KHC resources include **HOME, SMAL and AHTF funds. KHC will also consider Exchange funds as a KHC resource, if the program is extended into 2010. At no time will KHC fund a project if these cost containment limits are exceeded.**

When considering **all** funding sources in a project, please note that these cost containment guidelines are provided as a resource tool and KHC will not make funding decisions solely upon the total development costs of each proposed project. Projects which score high enough to receive an allocation of credits yet exceed these published limits may be asked by KHC to revisit the design of the project to determine if costs can be lowered. Such a request by KHC may cause the closing of KHC financing to be delayed. KHC reserves the right to compare the costs of a proposed project to the costs of previously funded projects similar in scope and location when making a request to revisit a projects proposed design.

## Building Requirements

All buildings must comply with all state and local building codes including accessibility standards, applicable federal accessibility laws (including Fair Housing Accessibility Guidelines) and the Americans with Disabilities Act Accessibility Guidelines.

All new construction projects must implement KHC's Universal and Minimum Design Standards to ensure that energy-efficient design and construction practices are utilized. Rehabilitation projects are encouraged to incorporate KHC's Universal Design Standards when it is feasible. In addition to KHC's Universal and Minimum Design Standards, all projects must incorporate Energy Star features and green construction techniques. For additional information as it pertains to building code requirements, etc., please refer to the Rental Production Guidelines.

KHC will review project plans and specifications for compliance with applicable laws and guidelines. During the application stage, construction plans that incorporate details of Energy Star Design features and green construction techniques into the project, final building plans, final floor plans and elevations must be submitted as outlined in the threshold criteria list. Failure to comply with KHC's review shall be cause for project rejection. KHC also reserves the right to note such failure to cooperate in future applications.

A complete set of construction plans will be required during the technical submission stage. KHC reserves the right to require changes to final plans submitted during the application stage.

## Capital/Physical Needs Assessment

All selected projects involving substantial rehabilitation of existing buildings must provide a capital/physical needs assessment at application stage. The capital/physical needs assessment must be performed by an independent qualified architectural or engineering firm to determine whether the existing building(s) and rehabilitation activities are sufficient to ensure that the building(s) and improvements have a useful life of at least 30 years. All Capital/Physical Needs Assessments must contain a Capital Reserve Replacement Schedule which details scheduled maintenance, improvements and corresponding expenditures necessary to extend the life of the facility, a minimum of thirty (30) years. Applicants are responsible for fees for such assessments. In the event the analysis does not support the proposed project, KHC reserves the right to reject or seek modification of the proposal. Variances in the work documented in the capital/physical needs assessment will require the approval of KHC staff. Please refer to Rental Production Guidelines for additional information.

## Minimum Square Footage

The minimum square footage is outlined below, however, refer to Rental Production Guidelines for additional guidance.

The minimum heated and cooled net square footage for new construction projects are:

- Single Room Occupancy (SRO) unit – 150 net square feet
- Efficiency Apartment – 400 net square feet
- One-bedroom unit – 600 net square feet
- Two-bedroom unit – 800 net square feet
- Three-bedroom unit – 1,000 net square feet
- Four-bedroom unit – 1,100 net square feet

Rehabilitation projects are encouraged to meet the minimum heated and cooled net square footage if appropriate.

## Eligible Uses of Housing Credit

Eligible properties include:

- One or more rent-restricted dwelling units available for long-term continuous rental use.

- Newly constructed buildings.

- Substantial building rehabilitation of at least $6,000 per low-income unit or 20 percent of adjusted basis, whichever is greater.

- Projects that include acquisition and substantial rehabilitation of existing buildings that were last placed in service or underwent a substantial rehabilitation (equals or exceeds 25 percent of basis) no less than ten years prior to acquisition.

- Projects may consist of buildings on scattered sites within the same county or several counties if considered a special set-aside.

**<u>Financial Requirements</u>** <u>(not all-inclusive)</u>

- Rents charged to low-income tenants cannot exceed 30 percent of the income limit applicable to the unit size less an allowance for tenant-paid utilities, if applicable. (Section 8 subsidy payments are not included in the tenant rent computation.)

- The construction contingency should not exceed 10 percent of total construction hard costs. Acquisition of the property should not be included as hard costs.

- The required debt coverage ratio (DCR) in year one, for projects containing 12 units or more must be at least 1.25 and should remain at or above 1.0 through year 15. For elderly projects with services and projects containing 11 units or less, the required DCR must be at least 1.25 in year one and remain at or above a 1.0 through year 15. Projects requesting Housing Credit only must meet the DCR requirements established by the investor. All projects must have positive cash flow through year 15.

- If an applicant is proposing the rehabilitation of an existing rental project and can document that the project should utilize underwriting criteria contradictory to that of KHC, i.e., a lower vacancy rate, such documentation should be included. Likewise, if the applicant can document their ability to operate a project at a lesser per unit operating expense (based upon historical data of other similar projects owned by the applicant), such documentation should be included.

- All applicants will be required prior to closing to sign a certification stating that a separate account has been set up for an operating deficit reserve (ODR). The purpose of the reserve is to fund the day-to-day operating expenses and debt service until the project reaches stabilized occupancy.

  KHC calculates the minimum requirement as follows:

  Six months of projected operating expenses
  \+ Six months of debt service payments
  = Minimum Operation Deficit Reserve Required

- If the equity provider requires a different amount than KHC's minimum, KHC will negotiate a new ODR amount with the equity provider.

- If the project is receiving other KHC funding, the full amount is required to be drawn on the final draw.

- For purposes of KHC underwriting, the ODR is a total reserve which may include rent up reserves, lease up reserves, etc.

- If services are a requirement to live in the housing units, generally these service fees must be included in gross rent.

- The low-income occupancy and rent restrictions apply for a minimum of 30 years plus 3 year vacancy de-control period. Noncompliance with the requirements can lead to credit recapture and substantial penalties from the Internal Revenue Service.

- Projects utilizing a tax-exempt bond financed source of debt financing are automatically eligible for 30 percent present value credit (4 percent credit) outside the credit ceiling.

- KHC will award the lesser of the Housing Credit amount determined by KHC or the amount requested by the applicant.

Please refer to the Housing Credit rent and income chart for the maximum rent and income limits for this program. This can be found on KHC's Web site on the Housing Production page under Rental Production Programs. *See reference materials.*

## Application Submission Requirements

Applicants are encouraged to attend the application training that is tentatively scheduled for October 14, 2009.

The individual(s) who will be responsible for the day-to-day activities of the project, including application submission, construction, closing and ensuring the project remains in compliance after completion must attend this additional training. Attendance at the training does not guarantee the project will be awarded funding. ***Applicant training occurred on October 14, 2009*****.**

For the 2010 funding round, KHC will review applications through an Open Window Process. Applicants will be allowed to submit applications beginning April 1, 2010, at 8:30 a.m. EST, and may continue submitting applications until credit is no longer available. All attachments must be received by close of business at 5:00 p.m. EST on the business day following submission. **If all attachments and the underwriting model are not received by the close of business on the following day, the application will not have met the threshold requirements and will not be reviewed.**

Once the application is submitted, KHC will review it for completeness and to ensure that all required attachments and threshold requirements have been submitted (met). An application package is complete when all applicable attachments and all threshold items (as demonstrated in attached Exhibit A) have been submitted, the electronic application has been submitted, and the electronic underwriting model has been received. The applicant should ensure that the underwriting model is current, complete and meets all KHC underwriting requirements (and was submitted within the timeframe explained above).

Staff will then review the application packet to ensure a minimum threshold score of 680 can be achieved. Applications will be reviewed and scored (as demonstrated in attached Exhibit B) based on the date they were received. Applications will be funded in descending order based on the score they receive, beginning with those submitted on April 1, 2010. If credit and other KHC resources remain available after all eligible projects submitted on April 1, 2010 are funded, KHC will then move to those projects submitted the next business day and follow the process outlined above. This will continue until all available resources are awarded.

**Example**:

- Both John Doe and Mary Smith submitted their electronic applications and underwriting models on April 1, 2010.
- Bill Johnson and Sally Jones submitted their electronic applications and underwriting models on April 2, 2010.
- The attachments for all projects were received within the appropriate timeframe.
- The applications were reviewed for and adequately met threshold requirements.
- Each was reviewed and scored as follows:

| **Applicant** | **Score** | **Date Submitted** | **Meet Requirements** |
|---|---|---|---|
| John Doe | 710 | April 1 | Yes |
| Mary Smith | 800 | April 1 | Yes |
| Bill Johnson | 690 | April 2 | Yes |
| Sally Jones | 820 | April 2 | Yes |

Result**:** John Doe and Mary Smith's applications were received first, so they will be funded before Bill Johnson and Sally Jones. Mary Smith will receive an award of funding before John Doe because her score was higher. Next, depending on the amount of funds remaining, Bill Johnson and Sally Jones' projects will be funded. In this instance, Sally Jones will receive funding first since her score is the higher of the two received the second day.

KHC will make an effort to distribute funds geographically across the state. KHC has the discretion to move funding between pools and set asides.

Staff will review the application packet to ensure all applicable attachments are included and **all** threshold items are met. If attachments are missing and/or thresholds not met, are found to be inadequate, or do not contain the correct information as outlined in the guidelines, the application will be rejected. If an application is rejected, the applicant will **not** have any opportunities to resubmit or correct documentation.

All applicable attachments must be submitted. Likewise, if the application does not meet any one (or more) of the threshold requirements, scoring requirements, financially feasibility requirements, and/or market study requirements, the applicant will not be permitted to submit documentation or correct discrepancies and the application will be *rejected*. **KHC will remain firm on all these requirements**.

Due to availability of funds, KHC reserves the right to close the window at any time. KHC will notify our partners of the closing of the window via our e-gram system. If credit is recaptured due to applicants not meeting the established deadlines or if credit becomes available at any time after the window closes, KHC may reopen the window and those applications that were previously rejected will be permitted to reapply (with corrected documentation) along with any new applications.

**NOTE:** **KHC will reject all applications that do not submit all required attachments. Likewise, KHC will reject any application that does not meet threshold and scoring requirements; that KHC does not consider financially feasible; and/or have an inadequate market study. It is the applicant's responsibility to ensure all documentation is submitted in accordance with the threshold and scoring requirements explained in the rental guidelines. Incomplete applications will be returned to the applicant.**

| **Electronic Submission** | **Attachment Submission** | **Award Notification** |
|---|---|---|
| 8:30 a.m. EST April 1, 2010 | By 5:00 p.m. EST the next business day after application submission | Within 60 days of submission |

All applicants must submit applications for funding electronically. The application is located at www.kyhousing.org. Applicants must also submit an underwriting model in KHC's format to the following e-mail address rentaluw@kyhousing.org. The underwriting model and attachments must be submitted by 5:00 p.m. EST the next business day after the electronic application submission.

An original and three (3) copies of all attachments (only), as outlined on the checklist and threshold requirements in the application, with the exception of one set of plans and specifications, must be submitted to:

**Housing Finance and Construction**
**Rental Team**
**Kentucky Housing Corporation**
**1231 Louisville Rd.**
**Frankfort, KY 40601**

All applications must obtain a minimum score of **680** as outlined in the Scoring Criteria to be considered for funding. The core scoring components are Capacity of the Development Team and Financial Design.
All applications for Housing Credits will need to complete the Rental Housing application on the Web and supply all required information and documentation in accordance with the guidelines. Please refer to the Rental Production Guidelines for additional information as it pertains to programmatic requirements and architectural and construction guidelines. All applicants will be required to submit the electronic application and attachments.

## Application Threshold Requirements

**All threshold items must be submitted before application will be reviewed. If items are not submitted, application will not be reviewed.**

1. Application and underwriting model must be submitted in the current version.
2. Applications must be submitted electronically and in paper form.
3. Application fee must be submitted, if applicable.
4. If a first-time applicant, certification from KHC staff of technical assistance.
5. Preliminary specifications/work write-up that includes a list of Energy Star features and green construction techniques that will be incorporated into the project.
6. Properly scaled construction plans.
7. Official letter of support from Mayor or Judge-Executive for projects requesting Credit or with 12 or more units.
8. Evidence of site control.
9. Documention that the site is properly zoned.
10. Letter of interest from equity investor to purchase the amount of Housing Credits applied for.
11. Award letter(s) from all non-KHC funding sources and/or a narrative providing details of funding to be requested.
12. Market Study or Needs Analysis.

Please refer to Exhibit A and the rental underwriting guidelines for details of the threshold requirements.

## Documentation of Equity and other non-KHC Funding Sources

### Submission of Letters of Interest from Equity Investor and Other Sources of Funds

Each application package must include a letter of interest from the equity investor for the purchase of Housing Credit for the project.

Each letter of interest **must** attest that the investor has conducted a preliminary review of the proposed project which includes the following:

1. Is aware of any special populations the project anticipates serving;
2. Has performed at least a cursory review of the initial underwriting including proposed rents, expenses and number of units;
3. Has determined the estimated amount of equity investment for the project based on the proposed Credit in the application;
4. Acknowledgement of other resources in the application; and
5. Has developed a proposed pay-in schedule with milestones.

- Investors may make their letter contingent upon and subject to normal due diligence and final underwriting once an award of Credit is made.

Projects meeting the above criteria will satisfy the threshold requirements of the QAP. Projects providing a firm commitment of funding that meets or exceeds the Sample Commitment Letter attached to the QAP as Exhibit C will receive points for firm commitment of equity.

**Commitment Letters**

All non-KHC sources that will provide financing for the project should include commitment letters that provide:

1. Amount and form of funding being requested;
2. Rate, term or other conditions of funding; and
3. Expiration of offer, if applicable.

**Sources of Funds Without Commitment Letters**

Projects proposing funding that have not received commitment letters must describe the resources that they intend to apply for and must detail the following:

1. Entity to which an application will be made (source of funds being requested);
2. Type of funds being requested (grant/loans with anticipated terms);
3. Application submission date and anticipated funding announcement date; and
4. Description of contingency plan if project does not receive an award of non-KHC financing.

## Technical Assistance

In order to submit an application, a member of the development team must have developed, operated or completed a project that is now in the affordability stage with compliance and has developed at least ten rental units with KHC. However, if no member of the development team meets this qualification, then a member can request technical assistance through one of the rental program representatives/specialists. The applicant or member must request this technical assistance *at least* one month prior to submitting the application. Certain guidelines associated with this type of technical assistance must be met before the program representative/specialist will approve the member(s) to move forward with the application process.

## Application Review Process

KHC will make an effort to distribute funds geographically across the state. KHC has the discretion to move funding between pools and set asides.

**Projects that do not comply with all of the requirements and policies listed may receive lower scores on future applications due to noncompliance.**

## Review Process

Funding is based upon a three-phase process. Applications must pass all three phases before funding can be determined. Failure to successfully meet the requirements of any phase will result in the rejection of the application.

*Phase I, Threshold Criteria & Minimum Score* – Applications must meet all threshold requirements and receive a *minimum score of 680* in order to move to Phase II. Projects will be reviewed on the documentation contained within the application and supporting documentation. If threshold requirements are not met, the application will be rejected.

Ties in scoring will be broken using the priorities listed below in the following order:

1. Lower amount of resources from KHC per unit.
2. Smaller projects.
3. County of lower-median income.
4. Capacity of the development team.

*Phase II, Financial Feasibility* –This is the second phase of the application review process. A project's financial feasibility is when **all** (including federal, state, local and/or KHC) programmatic guidelines are met and the project is still viable. Rents and expenses should be reasonable, the sources and uses must balance and the debt coverage ratio (DCR) must be appropriate for the size of the project. A review of the submitted underwriting model, along with information in the overall application, will be reviewed. **If a contradiction exists between the underwriting model and the application, the information in the underwriting model will be used to determine the financial feasibility.**

If a project is requesting Housing Credits only, financial documentation is not required to be submitted to determine if the entity is financially sound. However, if an applicant is requesting other KHC funds, then the applicant must submit documentation as outlined in the Rental Production Guidelines to determine this review.

For additional information pertaining to creditworthiness, please see Rental Production Guidelines.

During the application review, if corrections are made to the underwriting model by KHC staff and these corrections cause the project to no longer cash flow, the project will not be considered financially feasible. The application will be rejected and the applicant will be notified of any discrepancies but will not be allowed to make any changes unless the window reopens.

*Phase III, Market Need* – Market studies must be submitted at time of application and will be reviewed in accordance with KHC's guidelines. Upon review of the market study, if it is found to have an acceptable market, then the project will continue to move forward. However, if the study is not acceptable, **funds will not be allocated and the application will be denied**. Market studies will only be accepted by firms that are on

KHC's approved list. Please refer to technical submission stage of the QAP for additional information pertaining to market studies.

**Conditional Approval Process**

Funding recommendations are made by the application review team, which consists of KHC's Housing Finance and Construction staff, underwriters and Design and Construction staff.

Staff recommendations will be presented to the credit review committee for conditional project approval.

Once conditional approval is received, staff will notify the applicant by letter. Approved projects will be posted on KHC's Web page under Housing Production. Approved projects will receive a conditional commitment letter based upon receiving final construction and closing requirements. **KHC reserves the right to terminate its obligations regarding any commitment or award if the terms of the application or any part of the transaction are changed in any material respect, if any material information submitted to KHC proves to have been inaccurate or incomplete in any material respect, or if any material adverse change occurs, or any additional information is disclosed to or discovered by KHC which KHC deems materially adverse in respect of the condition, financial or otherwise, business, operations, assets, nature of assets, liabilities or prospects of applicant or the proposed project.**

## Technical Submission Stage

**Reservation Notice**

KHC will send each successful applicant a conditional award/commitment letter for an initial reservation of Housing Credits. In determining the initial amount of credit to be reserved, KHC will use costs, incomes and expenses submitted in the application as determined by KHC to be reasonable. The amount of credit allocated to each successful applicant may be less than, but may not be more than, the amount requested in the application, the amount specified in the conditional commitment letter or the amount reflected in a carryover allocation.

**Deadlines**

If a conditional award has been made, the Applicant must provide to KHC, no later than August 25, 2010, firm commitment(s) of funding for non-KHC and non-housing credit funding sources which provide (i) the dollar amount of the funding to be provided to the project; (ii) the interest rate and term, if loan proceeds are involved; (iii) the collateral for the project, if a loan is involved; and (iv) the anticipated pay-in schedule for the funding sources. The commitment letters may contain normal and customary contingencies for equity and loan commitments, including, without limitation, approval of appraisal, closing of other sources of financing, environmental and title review and financial condition of the developer and satisfactory negotiation of partnership and/or loan documents. If the commitment letters have not been submitted by August 25, 2010, the conditional award of credit and other KHC funding awarded to the project will automatically expire and KHC will recapture the credit and all associated funding. **No extensions to this date will be granted.** Time is of the essence with respect to the conditional commitment and the award of credits to be made, and all time limitations therein or thereunder. KHC will strictly enforce requirements imposed upon applicants. Applicants must agree to proceed diligently to closing.

Similarly, once a conditional award has been made, applicants will have until December 9, 2010 to submit all final construction, fair housing and other closing documents to KHC and close with their equity investor and other funders. The applicant will receive a checklist that will outline all outstanding or additional documentation needed. If the project does not close by the December 9, 2010 deadline, KHC's conditional commitment to the project shall expire and be null and void and of no further force and effect. If a project does not close by December 9, 2010, the conditional award will automatically expire and KHC **will** recapture the credit and all associated soft funding.

If extenuating circumstances prevents the project from closing by the noted December deadline and a closing is eminent, KHC may in its sole discretion allow for one extension as approved by KHC management.

Please note that the initial and final reservations of credit are tentative and may differ in amount from the formal credit allocation to be made either upon placement in service of the project or request for a carryover allocation certificate.

## Market Study

KHC will compile an approved Market Analyst List from which developers may select an appropriate firm or individual.  This list will be valid for at least one year.  However, KHC reserves the right to remove individuals/firms from this list for any reason. Market analysts submitting a report that materially fails to comply with KHC's requirements or is otherwise unacceptable may, at the sole discretion of KHC, be removed from the list. If reports are received that are not acceptable, the applicant/developer will be informed by KHC if such report is unacceptable.

Applicants/developers will enter into a contract for services directly with the market analyst and, with the exception of questions about KHC standards and/or requirements, the applicant/developer shall be responsible for handling all issues related to the market analysis. Applicants/developers contracting with market analysts for the benefit of KHC shall be responsible for negotiating the price of the contracted work.

Although the applicant/developer is responsible for engaging the market analyst, the report shall identify KHC as the intended user for the purpose of providing KHC a basis for investment and loan underwriting decisions.

**Carryover Allocation Requirement**

Carryover allocation requirement is for qualified projects that have not been placed in service within the year in which they received a Housing Credit reservation but have met certain minimum requirements set forth by IRC §42. Projects receiving carryover allocations must be placed in service not later than the close of the second calendar year following the calendar year in which the carryover allocation is issued.

A carryover allocation is issued for a specific amount of credit. The applicant is required to meet the 10 percent carryover allocation requirement, which means at least 10 percent of the total project cost must be incurred and a cost certification must be submitted by November 18, 2011.

Costs may include 10 percent of the expected basis amount of the project owner's adjusted basis in land or depreciable real property that is reasonably expected to be part of the project. Also, direct and indirect costs of acquiring, constructing and/or rehabilitating the project may be included.

Application and compliance monitoring fees are not included in the 10 percent of expected cost basis amount. An amount is included in basis if it is treated as paid or incurred under the method of accounting used by the project owner.

**Cost Certification**

The Code requires KHC to verify a project meeting the 10 percent requirement by obtaining a written certification from the project owner, under penalty of perjury, that the project owner has incurred more than 10 percent of the reasonably expected basis in the project.

The project owner's 10 percent cost certification must be accompanied by a written certification and must be prepared by a Certified Public Accountant (CPA) who has examined all eligible costs incurred with respect to the project and that, based on this examination; it is the CPA's belief that the project owner has met this test.

**Recapture of Carryover Allocation**

KHC retains the right to recapture a carryover allocation of credit to a development prior to the end of the two-year carryover allocation period allowed under the Code. Should the development or owner fail to comply with all such terms and conditions, KHC may in its discretion rescind the carryover allocation and make the recaptured credit available to other developments.

## Placed In Service Stage

All projects are required to submit final close out documentation to include Certificates of Occupancy, etc. Applicants will receive a placed in service checklist that will outline additional documentation that is required at this stage.

## Final Cost Certification

The final allocation amount will be influenced by such factors as certified project costs, credit market value, receipt of federal financial assistance and applicable credit percentages. To receive an IRS Form 8609, owners are required to submit a Final Cost Certification within thirty (30) days after the last building in a project receives its Certificate of Occupancy or before December 1st of the current year, whichever is earlier.

## Land Use Restriction Agreement (LURA)

Federal regulations state that no credit shall be allowed with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year. This commitment is an agreement between the taxpayer and the agency responsible for the program.

A Land Use Restriction Agreement (LURA) is to be executed by the project owner and KHC and recorded at the county recorder's office against the project's property committing the project to operate in accordance with the agreements (rent and income limits, special uses of units and extended use restrictions, etc.) made by the applicant and KHC as inducements for the Housing Credit allocation. The LURA is to be recorded at the time the project owner obtains an ownership interest or at the time of permanent closing and is superior to other items.

The LURA will incorporate all project characteristics and attributes represented and pledged in the application and considered in the scoring criteria. The LURA must contain a prohibition against evicting a tenant for other than good cause during the entire 33-year extended use period (this includes the three-year vacancy decontrol period). Additionally, rents cannot be increased during the three-year vacancy decontrol period for existing tenants.

To facilitate documentation preparation, the project owner will give KHC 30 days' notice before the project's closing takes place. A LURA is required for all projects receiving Housing Credit including bond projects.  KHC will prepare the LURA.

## IRS Form(s) 8609

A final allocation of Housing Credits will be made (by issuing Form 8609) based on the date that an eligible building or project is placed in service (i.e., available for rental occupancy) as evidenced by a Certificate of Occupancy.

Prior to the issuance of the IRS Form(s) 8609, owners must submit a signed Form 8821, Tax Information Authorization, to the IRS with a copy to KHC, a completed Application for Issuance of Certification of Allocation (Form 8609) and the completed Final Cost Certification. Upon receipt, KHC will determine the best method by which to conduct a pre-8609 inspection. The purpose of this inspection is to review the various programmatic restrictions with the owner and/or property manager, as well as ensure that all amenities and provisions as pledged in the application are in place.  KHC reserves the right to review these pledges and restrictions with the owner/manager by phone, email or by conducting an actual on-site inspection. If KHC determines that all such pledges are not in place, issuance of the Form 8609(s) may be denied.

If a project owner finds it necessary to change the project design during development (i.e., pledged amenities, number of affordable units, etc.), KHC must be notified in writing and request approval prior to making any changes. This includes the substitution of one pledged amenity for another.

## Policies

### Inspections

All projects will be required to participate in a pre-construction conference *before any construction activities begin*. This includes projects that are not requesting construction financing from KHC. The purpose of the pre-construction conference is to outline basic responsibilities and duties of the various parties throughout the construction and warranty periods. The pre-construction conference will be conducted by KHC's construction specialist and program representative/specialist assigned to the project.

Once the pre-construction conference has been conducted and all construction documents have been received, a Notification of Construction Start-up form must be submitted to KHC prior to the start of any construction. During construction, KHC's construction specialist will inspect the work progress and conduct monthly inspections. For Housing Credit "only" projects, the construction specialist may choose to only inspect the project at three different stages. The first stage is when footers are poured. The second stage will occur mid way through construction and the final stage at construction completion. The number of inspections conducted will be left to the discretion of KHC's Design and Construction Department. The construction specialist will also inspect for pledged amenities made at application submission.

If projects request other KHC funding during the monthly inspection, the construction specialist will approve the draw requests for construction costs. All other costs will be approved by the program representative/specialist and a multifamily underwriter. KHC will not pay for materials stored off-site. KHC will disburse funds for materials stored on-site if they are properly stored and secure. Draws are limited to one draw per month.

**All change orders to the approved plans and specifications must be submitted to KHC for review and approval at the time the change is needed.**

In addition, there could be a pre-8609 inspection that will be conducted by compliance monitoring staff to determine if pledged amenities and/or other non-construction related attributes pledged during the application process have been provided.

## Subsidy Layering Review

A subsidy layering/financial review will be required on all projects which receive, either directly or indirectly, financial assistance from the U.S. Department of Agriculture Rural Department (RD) or the U.S. Department of Housing and Urban Development (HUD). A Subsidy Layering Review is required where there is a combination of Risk-Sharing and Housing Credit.

KHC is required to follow guidelines established by RD and HUD with respect to the review of the financial assistance provided to the project.

The subsidy layering review will include a review in the amount of equity capital contributed to a project by investors and a review of project costs including developer's fees, consultant fees, contractor's profit, syndication costs and rates, etc.

## Identity of Interest

For projects that are seeking a mortgage through the Risk-Sharing program, where there is an identity of interest or the appearance of an identity of interest between the developer and contractor/builder, the maximum developer fee will be limited to 10 percent of total development costs.

> **Note:** Identity of interest exists where there is a financial, familial or business relationship that permits less than arm's length transactions. This includes, but is not limited to, the existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors or stockholders.

KHC will evaluate the cumulative profit received in identity of interest cases and, based on industry standards and comparable projects may reduce profits considered excessive.

## Material Participation by Nonprofit Organizations

For partnerships, turnkey or joint ventures that have as a general partner or co-general partner a local tax-exempt nonprofit organization, KHC expects material participation by the said local tax-exempt nonprofit organization to include, but not be limited to:

- Nonprofit participates in the activity for more than 500 hours during the tax year.
- Nonprofit's participation constitutes substantially all of the participation in the activityof all individuals (including non-owners) for the tax year.
- Nonprofit participates in the activity for more than 100 hours during the tax year, and its participation is not less than the participation of any other taxpayer for such year.

- Nonprofit activity is a significant participation activity for the tax year, and the taxpayer's participation in all significant participation activities during the year exceeds 500 hours. A significant participation activity is one in which the taxpayer has more than 100 hours of participation during the tax year but fails to satisfy any other test for material participation.

- The nonprofit materially participated in the activity for any five of the ten tax years immediately preceding the year in question.

Based on all facts and circumstances, the nonprofit participates in the activity on a regular, continuous and substantial basis during the tax year. To satisfy the facts-and-circumstances test, a nonprofit must participate in an activity for more than 100 hours. The nonprofit's management services are not taken into account unless no other individual is compensated for management services and no other individual performs management services exceeding the hourly total of such services.

**Recapture of Housing Credit under Reservation**

To ensure the efficient use of the Housing Credit in Kentucky, KHC will require all projects that receive Housing Credit reservations, including set-aside projects, to confirm that the Housing Credit will be eligible for allocation to the project (more than 10 percent of costs incurred) by the end of the calendar year or request an extension to November 18, 2011.

Credit returned or unallocated before September 30, 2009, will be allocated to other pools or set-asides as determined by KHC. Credit returned after September 30, 2009, may be allocated to partial projects or carried into the next calendar year. Credit returned from two or more projects by the same entity will be subject to penalty.

**Qualified Contract Process**

The Omnibus Budget Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credit after December 31, 1989 are subject to an "extended use period," which lengthened the time Housing Credit properties were required to maintain affordability from 15 to 30 years.  In efforts to ease concerns of program participants about the economic viability of maintaining affordability without additional subsidy, the 1989 Act also provided an option for owners to exit the program at the end of the initial 15-year compliance period by requesting that the state agency either purchase the property or assist in finding a buyer at a determined " Qualified Contract Price" (QCP).

Owners are encouraged to review their copies of applications submitted to the agency when applying for an allocation of credits, as well as deed restrictions (LURA), to determine if and when they are eligible to pursue the opt-out provision. Eligible owners must notify Kentucky Housing Corporation (KHC) of their desire to sell the property using the process outlined in this document. Once complete and proper notice has been received, KHC has one year to find a buyer for the project at a pre-determined price, not to exceed the QCP. The qualified purchaser can be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the extended use agreement.

The project and owners should be in compliance with all programmatic requirements to be eligible to apply for the opt-out provision. The Qualified Contract may be suspended or terminated due to any mortgage defaults or encumbrances on the property or IRS audit or investigation that may adversely affect the sale of the property.

Owners will be allowed only one opportunity to request the Qualified Contract process per property. If KHC is unable to find a buyer pursuant to a Qualified Contract, the property may be converted to other uses.

**Other Resources**

If other local, state and/or federal resources were used in the development or operation of the Housing Credit property, the termination of the extended use agreement will only be valid for the Housing Credits. The current and/or future owner of the property will still be required to uphold the income, rent or restrictions that are required for the other funding sources for the remainder of the mortgage, note or deed restriction covering those funds.

If the owner does not get a qualified contract and the property has project-based Section 8 assistance, the project-based Section 8 assistance contract will be terminated.

**Fees and Conditions for Qualified Contract Termination**

There will be a $3,500 nonrefundable administration fee for processing a qualified contract request. In the event that additional third-party reports are required by a potential buyer or KHC, the qualified contract process will be suspended during the time needed to prepare the reports. The cost of the additional reports will be at the expense of the property owner. All payments for service must be made within a timely manner. Non-cooperation by the property owner in the participation of third-party reports will lead to the termination of the qualified contract process. Non-cooperation by the property owner on any issues of the qualified contract will also result in the termination of the process and will result in the owner being required to comply with the property low-income usage requirement for the remaining extended use period.

Owners who elect to exercise their option year must complete and submit all required documentation within 120 days of requesting a qualified contract. The application fee can be submitted at initial request or with the required documentation, but no later than the 120 days past the initial request. The initial request time period starts at the beginning of each calendar year in the 14th year of the compliance period. For example, if the property owner's 15th year compliance period ends on March 1, 2009, the property may request a qualified contract starting in January of 2008 through December 31, 2008. From the point that KHC and the property owner agree upon the contract sale price, the one-year time period starts to find a qualified contract. Please note: The owner may only request a qualified contract from KHC one time. The required information that must be submitted by the property owner to notify KHC of intent to request qualified contract information is listed below and located on KHC's Web site through the following links:

- Qualified Contract Notification Letter
- Calculation of Qualified Contract Price Worksheets

The Housing Credit property should be in compliance with all regulatory agreement requirements. The qualified contract may be suspended or terminated due to any defaults, liens or encumbrances on the property or IRS audit or investigation that may adversely affect sale of the property.

KHC will review the owner's packet of materials. This will require staff and the owner to work closely together to ensure that all required information has been submitted and a QCP has been set. The one-year period begins once this step is complete. KHC will complete this initial review within 90 days after receipt of all required documentation.

For additional information pertaining to the qualified contract process and documentation, please refer to our Web page www.kyhousing.org under Housing Credit Program.

## Compliance Monitoring Procedure

KHC has adopted a compliance monitoring procedure in accordance with IRC Section 42(m)(1)(B)(iii). The compliance monitoring procedures include the following:

- The record keeping and record retention provisions of IRS Final Regulation Section 1.42-5(b).

- The owner’s annual certification requirement of Regulation Section 1.42-5(c)(1).

- The on-site review of certifications and support documentation for at least 20 percent of the low-income units in each property at least once every three years in accordance with Regulation Section 1.42-5(c).

- The on-site inspection provision of Regulation Section 1.42-5(d).

- The notification of noncompliance provisions of Regulation Section 1.42-5(e), whereby notice is made to owners and the IRS regarding events of noncompliance.

- The established programs of the projects serving special needs populations will be monitored on an ongoing basis to determine compliance in accordance with the original proposal.

The compliance monitoring procedure applies to all projects that receive or have received an allocation of Housing Credit and will continue throughout the 15-year compliance period. During the extended use period, the Compliance Monitoring Department has established procedures with reduced fees for monitoring payments.

Due to the complexities of the Housing Credit program in regard to long-term compliance, KHC strongly encourages the management company of each project to attend on-going training. KHC will periodically provide such training which may/may not have an associated fee. It is the responsibility of the owner to ensure that the selected management company remains adequately versed in the Housing Credit program.

## Effective Date

This Qualified Allocation Plan is effective for allocations of Housing Credit made after December 31, 2009, and will remain in effect until December 31, 2010, unless amended. Amendments to the Internal Revenue Code and Treasury Regulations may necessitate conforming amendments to this plan.

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# NOTICE TO APPLICANTS

**Incomplete applications will be returned to the applicant.**

It is the applicant's responsibility to submit adequate documentation to support their score. An applicant's consistent failure to provide complete and/or accurate information during the application process, failure to pay compliance fees, failure to live up to attributes pledged on the original applications or any other KHC programs may impact scoring or result in rejection of application and being barred from further participation in the Housing Credit program. Failure to follow all required procedures throughout the allocation process could jeopardize the final allocation or result in Housing Credit being recaptured. As a condition of receiving a Housing Credit allocation, an applicant agrees to furnish to KHC a copy of Form 8609 with Part II completed at the end of the first period for which Housing Credit is claimed for each building in the Housing Credit program. Additionally, any new applicant must receive compliance monitoring training by KHC staff prior to receiving Form 8609.

## DISCLAIMER

**As the state Housing Credit agency, KHC will evaluate and select projects to receive an allocation of Housing Credit pursuant to this Qualified Allocation Plan. KHC will determine the appropriate amount of Housing Credit required by each project through an underwriting process.**

**These decisions in no way warrant or represent to any sponsor, investor, lender or other that a project is, in fact, viable. KHC makes no representations to the owner or anyone else regarding adherence to the Internal Revenue Code, Treasury Regulations or any other laws or regulations governing the Housing Credit program.**

**No member, officer, agent or employee of KHC shall be held personally liable concerning any matters arising out of, or in relation to, the allocation of Housing Credit.**

On this, the 15th day of January, 2010, I, Richard L. McQuady, chief executive officer of Kentucky Housing Corporation, acknowledge that I have reviewed and approved the recent changes to the 2010 Qualified Allocation Plan.

KENTUCKY HOUSING CORPORATION

BY:
Richard L. McQuady
Chief Executive Officer

## Exhibit A

## Threshold and Scoring Requirements

**Please refer to Rental Guidelines for detailed information pertaining to items listed below.**

**All threshold items must be submitted before application will be reviewed. If items are not submitted, application will not be reviewed.**

| Threshold Requirements | Yes | No |
|---|---|---|
| **General** | | |
| 1. Application was submitted in the current application version and current underwriting model. | | |
| 2. Application and underwriting model submitted electronically and in paper form. | | |
| 3. A copy of the Utility Allowance Chart from KHC or local Public Housing Authority. | | |
| 4. Required application fee was submitted (if applicable). | | |
| 5. Certification from KHC staff that applicant (if new) has received the required technical assistance. | | |
| **Project Design** | | |
| 6. Preliminary Specifications/Work write-up that list specific Energy Star and green construction techniques that will be used in the project. | | |
| 7. Construction Plans are to proper scale and include: (Energy Star Design features, green construction techniques), final building plan at 1/8" scale and final floor plan to include Typical Unit Plans at ¼" scale. The plans must include site plan, building floor plan as well as corresponding preliminary elevation drawings compiled by an architect licensed in the Commonwealth of Kentucky. | | |
| **Ready to Proceed** | | |
| 8. Signed letter of support from mayor or county judge executive on city or county letterhead (12 units or more or requesting credit). | | |
| 9. Evidence of Site Control (scattered site projects must have all sites identified). | | |
| 10. Zoning Letter that project site is zoned properly. | | |
| 11. A letter of interest from the equity investor for the purchase of Housing Credit for the Project . | | |
| 12. Award letter(s) from all non-KHC funding sources and/or a narrative providing details of funding that will be requested for the Project.. | | |
| 13. Market Study/Needs Analysis submitted in accordance with KHC guidelines. | | |

## Exhibit B

## Minimum Scoring Criteria

**Applications must meet a minimum score of 680 in order to move forward with financial and market study review.**

| Criteria | Points | Awarded |
|---|---|---|
| **Financial Design** | | |
| 1. Project is requesting less than 15% of total development costs in the form of a KHC grant or deferred loan. | 100 points | |
| 2. Project meets KHC guidelines for DCR requirements without adjustments. | 50 points | |
| 3. Project meets the construction-related maximum allowable fees with the correct limits without adjustments. | 50 points | |
| 4. Project is within KHC's cost containment limits without adjustments. Points awarded if total of KHC resources per unit do not exceed published limitation. | 50 points | |
| 5. Operating, management fees, reserve for replacement, vacancy rates and operating deficient reserves fall within KHC's requirements without adjustments. | 50 points | |
| 6. Commitment Letters demonstrating firm intent from the Equity Investor. The Letters should meet or exceed those of the sample commitment letter attached to the QAP | 100 points | |
| 7. Rent Restrictions: Rent Restrictions are based upon the published housing credit rents. As applicable, check on selection in each category. (100 points maximum) | | |
| <u>I. 60% Rent Restrictions</u><br>a. 100% of the units are rent restricted to the 60% level<br>b. 75% of the units are rent restricted to the 60% level<br>c. 50% of the units are rent restricted to the 60% level<br>d. 25% of the units are rent restricted to the 60% level | <br>20 points<br>15 points<br>10 points<br>5 points | |
| <u>II. 50% Rent Restrictions</u><br>a. 100% of the units are rent restricted to the 50% level<br>b. 75% of the units are rent restricted to the 50% level<br>c. 50% of the units are rent restricted to the 50% level<br>d. 25% of the units are rent restricted to the 50% level | <br>55 points<br>35 points<br>20 points<br>10 points | |
| <u>III. 30% Rent Restrictions</u><br>a. 100% of the units are rent restricted to the 30% level<br>b. 75% of the units are rent restricted to the 30% level<br>c. 50% of the units are rent restricted to the 30% level<br>d. 25% of the units are rent restricted to the 30% level | <br>100 points<br>75 points<br>50 points<br>25 points | |

| Capacity of Development Team | | |
|---|---|---|
| 8. No member of the development team in the past three years has had uncorrected noncompliance issues for more than six months from the close of the correction period. Noncompliance for issues considered acts of GOD or for reasons beyond the owners control may be excluded, as determined by KHC. | 50 points | |
| 9. No member of the development has properties that do not pass the Uniform Physical Condition Standards (UPCS), Housing Quality Standards (HQS) or REAC standards. | 50 points | |
| 10. No member of the development team has had projects that requested extensions for debt service and/or forbearance but are not in default. | 50 points | |
| 11. No member of the development team has had any projects that have been in or are in foreclosure. | 50 points | |
| 12. No member of the development team has had outstanding/unresolved audit or asset management findings. This includes maintaining appropriate balances in reserves for replacement accounts as indicated in approved funding documents and submission of financial/occupancy data as requested. | 50 points | |
| 13. No member of the development team has been involved with a project awarded funding prior to December 31, 2007 for which the project has not been placed in service or all closed out documentation has not been received. | 50 points | |
| 14. No member of the development team in the development process in the last three years has had funds recaptured by KHC. | 50 points | |
| **Total Amount of Points** | **850** | |

Exhibit C

# SAMPLE COMMITMENT LETTER

XYZ EQUITY FUND FOR HOUSING LIMITED PARTNERSHIP XIX-A
Address
City, State Zip Code

EQUITY COMMITMENT LETTER

_________, 2009

NAME
ADDRESS

Subject: PROJECT NAME

Salutation:

I am pleased to inform you that the XYZ Equity Fund for Housing Limited Partnership XIX-A, a limited partnership (the “Fund”), has agreed to purchase, subject to the terms and conditions set forth herein, a 99.9% limited partner interest in PROJECT (“Partnership”). This letter and the exhibits attached hereto, in addition to an Amended and Limited Partnership Agreement (“Agreement”), to be mutually agreed to by the partners, set forth the terms and conditions upon which the Fund will purchase the limited partner interest.

This commitment letter is based on assumptions and information, including estimates of Project costs and debt financing provided by the Developer (defined below), which financial information is summarized in Exhibit A attached hereto. The amount and timing of the Fund's capital contributions are subject to change as the assumptions and information changes.

**1. PROJECT DESCRIPTION:**

Project: A_-unit project consisting of the new construction of a [single, three-story elevator] building located in CITY, COUNTY, STATE (“Project”). All____of the units (____%) will be dedicated to [population served] and qualified for the low income housing tax credit (“Credit”) as provided for in Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") and the 40%/60% Minimum Set-Aside Election was made to the Kentucky Housing Corporation (KHC). In addition, the Partnership has committed to execute restrictive covenants that rents for 10% of the units will remain affordable to households with incomes at or below 35% of the area median income (AMI) and that 60% of the units will remain affordable to households with incomes at or below 50% of the AMI and that 40% of the units will remain affordable to households with incomes at or below 60% of the AMI through the compliance period (estimated to be 16 years from the Placed in Service date). In addition, the Partnership will operate the project in accordance with any applicable HUD or other federal regulations.

The development team consists of the following members:

Sponsor:

Managing General Partner:

Co-General Partner [for Profit Corporation owned by Sponsor and other non-profit]:

Limited Partner: The Fund will be admitted as 99.9% Limited Partner in the Partnership. Subject to applicable securities laws, the Fund reserves the right to sell or otherwise transfer up to 100% of the Limited Partner interest to another investor or investors upon such terms as the Fund deems appropriate, including sharing all necessary due diligence required for that investor's underwriting and approval process. The Sponsor and Partners agree to execute such documents as are necessary to admit additional investor member(s) into the Partnership and to otherwise cooperate in such admission.

Developer:

Accountant:

Architects:

Review/Inspecting Architect: To be determined by, contracted with, and compensated by the Fund.

General Contractor: The General Contractor who will oversee the building of the project is____________________. The construction contract must be a fixed price contract, acceptable to the Limited Partner(s). A bond or letter of credit is not required unless required by the construction lender.

Management of Project:

Guarantors:

The financing consists of:

Permanent Loan: The first mortgage in the amount of $_______________will be provided by ______. This will be loaned to the Partnership at_____% for 30 years.

The second mortgage in the amount of $____________is to be provided by the _________________. This will be loaned to the Partnership at ___% [the Applicable Federal Rate in the month of closing (currently 4.26% for August 2009)] for the latter of 35 years, or such longer term as necessary to satisfy the residual analysis done by the Fund. Repayment of this loan will be contingent upon available cash flow only.

The third mortgage in the amount of $____________ will be provided by HOME funds from KHC. This will be loaned to the Partnership at_____% [the Applicable Federal Rate in the month of closing (currently 4.26% for August 2009)] for the latter of 35 years, or such term as necessary to satisfy the residual analysis done by the fund. Repayment of this loan will be contingent upon available cash flow.

Construction Loan: A construction loan in the approximate amount of $_______________ to be provided by______________ or another lender acceptable to the Fund for a term of up to_____ months and an interest rate of %.

Equity Bridge Loan / Construction Deposit Loan: the project applied for and received an Equity Bridge Loan and a Construction Deposit Loan from___________. The Bridge Loan will be in the amount of $_________ dollars with an interest rate of______% per annum with a term of ________ years (payment based on a_____ year mortgage loan amortization schedule). _________ ( ) equal payments of $__________ will be made annually for__________ ( ) years. The Construction Deposit loan will also be in the amount of $________ dollars.

Other sources of funding include a deferred developer fee of $________.

## 2. PAYMENT AND PURCHASE PRICE:

As more fully provided hereinafter and in the Agreement to be executed, the Purchase Price is subject to reduction in certain circumstances, including without limitation, if the Credits actually allocated to the Partnership are less than the Projected Credits, or if the Schedule of Events set forth below is not satisfied.

Schedule of Events: This commitment letter, including the amount of the Purchase Price, is based upon the following schedule of events:

Partnership Closing:

Construction Start-up:

Issuance of Certificate of Occupancy
(or equivalent) for all Buildings

100% Qualified Occupancy after Rehab

If the Partnership fails to complete any of the foregoing by the applicable date, the Fund may, at its sole option and discretion, revoke or modify this commitment letter, including, in the event the Fund elects to modify this commitment letter, reduce and/or change in timing of payments of the Purchase Price.

Purchase Price: The Limited Partner(s) will purchase a 99.9% interest in the Partnership for a total purchase price not to exceed $__________________ ("Purchase Price"). The Purchase Price is based upon a projected annual Low-Income Housing Tax Credit of no less than $_____________ (the "Projected Credit"). Further, the Purchase Price is based upon the accuracy of the information and assumptions set forth in Exhibit A, the Developer obtaining adequate funding sources to ensure the successful construction and permanent phases of the Project, consistent with the sources and uses schedule and cash flow schedule attached in Exhibit A, and the assumption that all permanent financing for the Project will be non-recourse with respect to the Partnership.

Payment: The Purchase Price will be paid by the Limited Partner(s) at the following times and subject to the conditions set forth below and elsewhere in this commitment letter and the exhibits hereto:

A. 1st PAYMENT of $__________from the Fund (all toward the Developers Fee) upon the latter of (a) XXXX, 2009; (b) closing; (c) receipt by the Investor Member of documentation satisfactory to the Investor Member that the project has satisfied the 10% test; (d) receipt of the Funding Agreement from_______for; (e) satisfaction of all items contained in Section 11, “Other Conditions to Closing”; and (f) commencement of construction.

B. 2nd PAYMENT of $__________from the Fund (including $ toward operating reserves and $ toward the Developers Fee) upon the latter of xxx, 2010 and: (a) receipt by the Partnership of certificates of occupancy (or equivalent) for each building in the Project; (b) receipt by the Fund of a certification from the Fund’s Review/Inspecting Architect that all buildings and the sites have been completed according to the plans and specifications and are ready for occupancy; (c) readiness for closing/conversion of the permanent loan in the opinion of the Fund; (d) receipt by the Limited Partner(s) of the Partnership’s 2008 (if applicable) and 2009 tax returns; (e) a certification by the Managing General Partner that its representations and warranties identified in the Agreement remain true and correct, (f) the Managing General Partner shall have certified to the Limited Partner(s) that it has fully complied with all of the covenants and obligations set forth in the Agreement; (g) receipt of evidence of the release of all mechanics liens; (h) receipt of a cost certification stating the expected eligible basis has been achieved and is adequate to deliver the tax credits allocated to the Project; [(i) receipt of Part III approvals from the State Office of Historic Preservation;] and (j) satisfaction of the conditions for the previous installment.

C. 3rd PAYMENT of $_________from the Fund (all toward the Developers Fee) on the latter of: (a) XXXX, 2010; (b) receipt by the Fund of copies of the Project’s tenant certifications evidencing that the Project has been fully leased to qualified tenants; (c) an estimate of any first year full year Tax Credit adjuster; (d) receipt of final approved IRS form 8609; and (e) satisfaction of the conditions for the previous installments.

D. 4th PAYMENT of $_______from the Fund ($ toward the Operating Reserve and $ to the Developers Fee) on the latter of xxxxx, xx, 2011 and receipt by the Fund of the Partnership’s 2009 and 2010 tax return, and satisfaction of the conditions for the previous installments.

E. 5th PAYMENT of $________from the Fund (all toward the Operating Reserve) upon the latter of xxxxx, xx, 2012, and receipt by the Fund of the Partnership's 2011 tax return, and satisfaction of the conditions for the previous installments.

**3. CREDIT ADJUSTER:**

A. As stated above, the Fund's capital contribution to the Partnership shall be decreased if, upon completion of the Project construction and receipt of the cost certification by the Accountant, the maximum available Tax Credits are less than 100% of the Projected Tax Credits. In such an event, the Fund's capital contribution shall be reduced by, or the Developer shall be obligated to pay the Fund, $0.XX cents [factor $0.xx in adjuster] for each dollar by which the actual Tax Credit falls short of the Projected Tax Credit. In addition, the Developer shall pay to the Fund the amount recaptured, and penalties and interest payable to the IRS, as a result of any recapture of Tax Credits.

B. In addition to the foregoing, in the event that Projected Tax Credits are not available to the Fund for the anticipated first credit year (2010) in the amount of $XXXX (as such amount may be adjusted to reflect any adjuster pursuant to the preceding paragraph), the Fund's capital contribution shall be reduced by, or the Developer shall be obligated to pay the Fund, $0.XX cents [factor $0.XX in adjuster] for each dollar that the Projected Credits are not available in such year(s).

C. If at any time after the third Tax Credit year, the actual Tax Credit is less than the Projected Tax Credit or if there is recapture (as defined in Section 42 of the Code) of Tax Credit at any time, then the Limited Partner's capital contribution will be reduced by or the Managing General Partner shall pay to the Fund 100% of the reduction or recapture of Tax Credits (the "Tax Credit Adjuster Amount").

D. The adjusters referenced in paragraphs A, B, and C above shall be payable as follows:

1. The Fund may offset the Credit Adjuster Amount against anyunpaid installments of Purchase Price;

2. The Developer and the General Partners will be obligated, jointly and severally, to pay, within 30 days of demand therefore, an amount not in excess (DEVELOPERS FEE);

3. Any remaining installments of Developer Fee will be paid to the Fund;

4. Anyremaining Credit Adjuster Amount shall be payable as a priority distribution to the Fund out of Distributable Cash Flow or Sale and Refinancing Proceeds.

E. The Developer and Sponsor shall be required, jointly and severally, to repurchase the Fund's interest for an amount equal to the Purchase Price if certain significant benchmarks are not met. Such benchmarks include, but shall not be limited to: (1) the issuance of a Certificate of Occupancy on all buildings, no later than DATE; (2) a certification by an acceptable accounting firm verifying the amount of construction and/or rehabilitation expenditures qualifying for the Tax Credit no later than April 15th, YEAR; (3) the Partnership fails to comply with the requirements of §42 of the Code or the Restrictive Covenant; or (4) the project does not meet its Minimum Set-Aside.

**4. RIGHTS OF LIMITED PARTNER(S):**

The Fund as Limited Partner in the Partnership, will have numerous rights with respect to the Partnership as set forth in the Limited Partnership Agreement. These rights shall include the right to remove the Developer or General Partner for just cause, including, but will not be limited to, the failure to provide the Projected Tax Credit or any fraud, gross negligence or intentional misconduct on the part of the General Partner or Developer; any transaction outside of the ordinary course of the Partnership's business; failure to comply any restrictive covenant that is to be placed on the project, and failure to provide monthly and quarterly reporting in a timely manner.

**5. DEVELOPER, MANAGING GENERAL PARTNER & GENERAL CONTRACTOR GUARANTEES:**

Each General Partner and the___________, [and its principals] will provide the following joint and several guarantees:

A. A guarantee of the completion of construction of the Project in accordance with plans and specifications approved by the Fund and an acceptable construction lender and the Fund, and a guarantee of all amounts necessary to achieve construction completion and to pay any operating deficits prior to 100% qualified occupancy of the Project. Any payments made under this guarantee shall not constitute loans or capital contributions to the Partnership, but shall be considered guaranteed income to the project.

B. A guarantee of any tax credit adjusters as provided in the "Tax Credit Adjuster" section above.

C. A guarantee to fund any permanent loan or other financing as follows: if any source of financing is less than expected, the Developer and the General Partners shall be obligated, jointly and severally, to loan an amount equal to such shortfall to the Partnership upon the terms and conditions no less favorable to the Partnership than the Permanent Loan. Such sources shall be acceptable to the Fund, shall include a source of fixed rate financing for a period of at least 18 years and shall be agreeable to the conditions contained within this commitment letter.

D. An Operating Deficit Guarantee commencing on the date of 100% qualified occupancy of the Project, in an amount of $_________to fund or pay operating deficits incurred by the Partnership and current liabilities and required reserves of the Partnership in excess of the Operating Reserve Account (defined below). The Operating Guarantee shall remain in place until the Operating Reserve is 100% funded and the latter of 10 years or when, for a period of 24 consecutive months, the Project has averaged a debt service coverage ratio (DCR) **[or income/expense ratio]** of at least 1.20:1. DCR is defined in paragraph 11. Funds from the Operating Reserve Account will be used first, at a value up to 50% of the required reserve amount, with the next 50% being funded from the Operating Deficit Guaranty. Any deficit funding requirement after the Guaranty amount will then revert to the remaining balance of the Operating Reserve Account. Continuing operating deficits shall be funded from the Guaranty. Any payments made under this guarantee shall not constitute loans or capital contributions to the Partnership, but shall be considered guaranteed income to the Partnership.

E. A guarantee that the Managing General Partner has and will maintain sufficient net worth to meet the requirements of the Fund. It is anticipated that this amount will be equal to $25,000.

**6. PARTNERSHIP RESERVES:**

The Partnership shall establish the following reserves:

A. A Replacement Reserve funded monthly at an annualized rate of $400 per unit per year, increasing annually at a rate of 3% per year.

B. An Operating Reserve Account, funded initially in the amount of $XXXX from the second capital contribution), and an additional $XXXX in each of the _______ and_______capital contributions and increased as permitted by interest income and cash flow. Use of cash flow is dictated by paragraph 7 herein.

C. A Lease-up/Marketing Reserve of $XXXX shall be established out of construction sources of funds. Any amount of the lease-up reserve not used upon reaching 100% qualified occupancy will be applied to first to any outstanding deferred developer fees and then to the operating reserve.

D. Other reserves as may be required by investor would be listed here.

These reserves shall be held in segregated interest bearing accounts (i.e., at least two accounts per company) and will be used as necessary to pay for operating deficits or capital improvements. These accounts will be controlled by the Fund. Withdrawals from these reserves shall be made only for the benefit of the Partnership and shall require the signature of the Fund (failure to obtain the required signature or provide notice will constitute an event of default). All interest earned on these accounts shall serve as additional Project income.

## 7. ALLOCATION OF PROFITS/LOSSES AND CREDITS:

Profits, losses and Credits generated by the Partnership in the ordinary course of its business shall be allocated generally 99.9% to the Limited Partner(s) and 0.1% to the General Partners.

Cash Flow: Distributable Cash Flow for any fiscal year of the Partnership following closing/conversion of the permanent loan shall be allocated and distributed as follows:

A. To the Fund in payment of any amounts due because of any unpaid Credit Adjuster amount;

B. To the Limited Partner to repay any loan from the Fund to the Partnership;

C. To repay any deferred Asset Management fees;

D. To the Replacement Reserve and Operating Reserve Accounts, as necessary to replenish these reserves to their respective appropriate levels

E. To the Developer in payment of any deferred or pledged developer fee;

F. To repay any interest due or accrued and principal on the secondary loan(s);

G. To repay any loans made by the Partners pursuant to §2.6 of the Partnership Agreement;

H. 75% to the Managing General Partner as an incentive management fee; and

I. 0.1% to the General Partners and 99.9% to the Limited Partner(s).

**Distributable Cash Flow** shall be defined as the gross cash receipts of the Partnership received during a fiscal year reduced by the sum of the following; (i) all principal and interest payments and other sums paid on or with respect to the Construction Loan, the Permanent Loan, or other loans to the Partnership other than the secondary loan or loans to the Partnership from the Managing General Partner and other non-amortizing loans of the Partnership directly from a governmental or municipal agency; (ii) all cash expenditures incurred incident to the operation of the Partnership's business (including, without limitation, operating expenses and capital expenditures and the Fund’s Asset Management Fee); and (iii) such cash as is necessary to fund the Replacement Reserve, it being understood that to the extent there is insufficient cash to fund the Fund’s Asset Management Fee and/or the Replacement Reserve, the obligation to fund the same shall accrue and be paid from future cash flow to the extent available, and such insufficiency shall not require a withdrawal from the Operating Reserve Account and/or an advancement pursuant to the Developer’s Operating Deficit Guarantee. Any Distributable Cash Flow attributable to the construction period shall be available to the Developer to cover unfunded development costs, with any balance to be distributed to the Managing General Partner.

Sale and Refinancing Proceeds: Net proceeds from the sale or refinancing of the Project or from the liquidation of the Partnership will be allocated (subject to certain priority allocations required by the Code and regulations promulgated there under) and distributed as follows:

A. To the Limited Partner(s) in payment of any amounts due because of any unpaid Credit Adjuster amount;

B. To repay any deferred Asset Management fees;

C. To pay any exit taxes due;

D. To the Developer in payment of any deferred developer fee;

E. To repay the Secondary Loan(s);

F. To the Partners to repay loans made to the Partnership pursuant to §2.6 of the Partnership Agreement; and

G. The remainder 0.1% to the General Partners and 99.9% to the Limited Partner(s).

**8. DISPOSITION OF THE PROJECT PROPERTY:**

It is the express objective of the Fund to identify and implement strategies to maintain projects permanently as low and moderate income housing. If the Managing General Partner agrees to maintain the property for low-income use, as defined in Section 42 of the Code, for at least a 30 year period, the property may be disposed of as follows:

1. Purchase of the Limited Partner's Interest

At the end of the Tax Credit Compliance Period, the Managing General Partner will have the option to purchase the Fund's interest in the Partnership for a price equal to the greater of (i) the appraised value of the Fund's interest, assuming that the Project remains available for continued low-income use for an additional 15 years, and (ii) for a price equal to the sum of: a) any taxes owed by the Fund that result from the sale and b) the amount, if any, which when added to benefits previously received by the Fund, will provide the Fund with its projected total benefits.

2. __________ will be compensated with a 3% disposition fee for winding up the affairs of the Partnership.

**9. PROJECT FEES:**

Developer Fee: ____________________________ will be paid a developer fee totaling $XXXXX from the sources and as provided in Exhibit A. Currently, there is projected to be deferred developers fee in the amount of $XXXXX. Therefore, the net developers' fee is projected to be $XXXX. The amount of the deferred fee shall come out of the Developer's portion of the fee. The Partnership will pay the developer fee based on the schedule provided in Section 2 of this letter. If any Development Fee remains unpaid ten (10) years following the date the Project is placed in service, the General Partners shall make a capital contribution to the Partnership in an amount sufficient to pay the deferred Development Fee.

An accounting fee of $XXXX should be paid to__________________for construction period accounting and the preparation of the cost certification.

Limited Partner Asset Management Fees: An Asset Management Fee of $XXXXX shall be paid to__________________- by the Company upon the latter of (a) XXXXXXXX; (b) closing;

Asset Management Fees: An_______Asset Management Fee of $XXXX shall be fully funded / paid into deposit accounts prior to KHC issuing either an 8609 or upon 100% construction completion.

Legal Fees: The identified Limited Partner(s) shall pay all legal fees of the Fund and legal fees of other Limited Partners to whom the Fund may sell a portion of its interest, incurred in connection with document preparation, due diligence and other tasks and matters necessary for the admission of the Limited Partner(s) to the Partnership. The Partnership shall pay all legal fees Managing General Partner up to the amount specified in Exhibit A; any excess shall be paid by the Managing General Partner to the extent that funds in the development budget are inadequate.

Disposition Fee: A disposition fee of 3% of any amounts payable upon the sale of the Project Property or any portion thereof shall be paid to NAME OF ENTITY on behalf of the Fund.

**10. OPINION OF COUNSEL:**

The Limited Partners will require an opinion of the General Partner's counsel satisfactory to the Limited Partners on certain matters including formation of the Limited Partnership, enforceability of any promissory notes for the General Partner's net worth, limited liability of the Limited Partners, no conflict between the Partnership Agreement and other binding contracts, no litigation, etc. Tax and other legal opinions required by the Limited Partners will be provided by their counsel.

**11. OTHER CONDITIONS TO CLOSING:**

In addition to the other conditions contained in this commitment letter, the Fund's acquisition of a limited partner interest in the Partnership is contingent upon the following:

A. The execution of an Agreement in a form mutually agreeable to the parties.

B. Approval of an executed Management Agreement between the Partnership and an acceptable property management firm.

C. The execution of an acceptable Development Agreement, Pledge Agreement and Guaranty Agreement.

D. The execution of an acceptable Deferred Development Fee Promissory Note, if applicable.

E. An opinion of counsel acceptable to the Fund from the Managing General Partner's attorneys, who shall also be acceptable to the Fund.

F. Approval of the final Project pro forma which will demonstrate compliance with the Fund's required investment parameters, including without limitation the development and operating budgets and a satisfactory debt service coverage ratio of not less than 1.20:1 upon stabilization.

**Debt Service Coverage Ratio** shall be defined as the gross cash receipts of the Partnership received during a fiscal year reduced by the sum of the following: (i) all cash expenditures incurred incident to the operation of the Partnership's business (including, without limitation, operating and capital expenses); and (ii) such cash as is necessary to fund the Replacement Reserve but not the Asset Management Fee or the Managing General Partner Asset Management Fee; divided by all principal and interest payments with respect to the Construction Loan, the Permanent Loan, and/or other loans to the Partnership including secondary loans with required monthly or yearly minimum payments, but excluding loans to the Partnership from the Managing General Partner or Developer. [Income/Expense Ratio shall mean the ratio of gross cash receipts to all operating costs and expenses of the Company].

G. The Fund's review and approval of commitment letters and available loan documentation from all anticipated financing sources, including bridge financing, demonstrating to the Partners that all funds necessary to meet the Partnership's financial needs are available to the Partnership through a combination of equity, grants and non-recourse loans.

H. HAP contracts documenting Section 8 rent subsidy for all units must be provided. The length of the contracts must exceed the term of the initial compliance period.

I. The Partnership having received a valid Carryover Allocation of low-income housing tax credits from KHC.

J. The Fund's review and approval of a general construction contract with a fixed price or maximum upset price acceptable to the Limited Partner(s).

K. The Fund's review and approval of the plans and specifications for the Project and approval of the Project sites.

L. The Fund's review and approval of all due diligence items deemed necessary or advisable by the Fund in the reasonable exercise of their discretion including, without limitation: environmental reports, title insurance (in an amount not less than the total Project cost), liability insurance, and ALTA surveys. All due diligence items will be obtained at Partnership expense.

M. The Fund's determination that the Project Budget attached hereto as Exhibit A can be met by the Partnership.

N. The Fund's review and approval of all Partnership insurance policies (including flood insurance if applicable and available).

O. The review and approval of the resumes, current financial statements and tax returns (most recent 3 fiscal years) and the real estate portfolio, including cash flows, of the Developer and its principals, including the detail thereof.

P. The Fund's review and approval of the Partnership's bookkeeping process to be used during the construction period and during Project operation.

Q. The Fund's review and approval of documents listed on the Closing Checklist, or other documents or items reasonably requested by the Partners. Receipt of documents not less than 10 days prior to the closing date is recommended.

R. The Fund's right to review any items deemed necessary by the Fund as it pertains to the Project including, without limitation: the environmental reports, title insurance policy (in an amount not less than the total Project cost), the site surveys, any documentation/correspondence with KHC, any other legal documents, etc.

S. No changes having been made to any tax laws, treasury regulations or pronouncements, or judicial decisions or treasury interpretations of any existing tax laws, treasury regulations or pronouncements, which, in the sole and absolute discretion of the Fund would materially adversely affect the Fund's investment in the Partnership.

T. The Guarantor(s) shall provide annual financial statements in a form acceptable to the Fund within 120 days of the guarantor's fiscal year end. This requirement shall remain in effect for the duration of the operating deficit guaranty period.

U. Final approval by________________________Board of Directors.

**12. COMMITMENT LETTER:**

**This commitment letter is subject to all provisions imposed upon the Fund by regulatory authorities and in the event such regulatory provisions prevent this commitment from closing as contemplated, this commitment shall become null and void. This letter is**

**delivered to you with the understanding that neither it nor its substance shall be disclosed to any third party except those who are in a confidential relationship with you, or where the same is required by law.**

This commitment letter sets forth the entire agreement between you and the Fund and supersedes all previous statements; agreements and representations, verbal or written provided or made by the Fund and may not be amended, modified, or modified without the Fund's prior written consent. This commitment letter may not be assigned. In the event that this transaction does not close for any reason other than a default by the Fund or the parties' inability to agree upon terms of the Agreement, then the Developer and all Guarantors will be jointly and severally responsible for the Fund’s costs including, but not limited to, all legal fees incurred and all due diligence costs incurred.

If the terms and conditions of this commitment letter, including all exhibits hereto, are acceptable, please countersign this letter and return it to______________________________, 1121 Lexington Road, Anywhere, KY, KY 40601 before 5:00 p.m. Eastern Standard Time, **XXXXX**. This commitment letter will be null and void if not countersigned and received by the Fund by such time. If the conditions described herein with respect to the Fund’s purchase of the Limited Partner interest are not satisfied within 60 days of the date of this commitment letter, (i) the Fund's commitment will, at its option, become null and void, and (ii) the Fund shall have the right to accelerate the repayment of all loans by it or the_______________________then outstanding to the Partnership.

We look forward to working with you on this project to provide affordable housing in LOCATION.

Sincerely,

XYZ EQUITY FUND FOR HOUSING
LIMITED PARTNERSHIP XIX-A

By: XYZ Equity Fund GP I, LLC,
General Partner

By: ______________________________

Its: ______________________________

Date: ___________________

Agreed and Accepted:

By:_ Developer/Guarantor

By: ______________________________

Its: ______________________________

Date: ___________________________

By:_ Managing General Partner

By: ___________________________

Distribution:

_________________________,_ Name
Title

Attachments:

Exhibit A: Sources and Uses and Cash flow Schedules