BEFORE THE
FLORIDA HOUSING FINANCE CORPORATION

JACKSONVILLE WATERSTONE LLC,

Petitioner,

vs. **FHFC Case No. _____**

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS

Petitioner JACKSONVILLE WATERSTONE LLC ("Petitioner"), pursuant to Section 120.57(1), Fla. Stat., hereby requests formal administrative proceedings on the proposed determination of Respondent Florida Housing Finance Corporation that Petitioner is not entitled to a release from low income housing tax credit ("LIHTC") restrictions on the Deer Meadow Apartments, a multifamily development in Duval County, Florida, that is owned and operated by Petitioner. Petitioner reserves the right to seek a stay of these proceedings while it pursues remedies in circuit court, and is filing this Petition to avoid the potential waiver of rights to administrative proceedings, if that is determined to be the appropriate forum for the dispute. In support of this Petition, Petitioner states as follows:

Parties

1. Petitioner is Jacksonville Waterstone LLC, a Delaware limited liability company, whose business address is 380 Union Street, Suite 300, West Springfield, MA 01089. The housing development owned and operated by Petitioner is known as Deer Meadow, and it is located at 8859 Old Kings Road South, Jacksonville, in Duval County, Florida. For purposes of this proceeding, Petitioner's address is that of its undersigned counsel, M. Christopher Bryant, Oertel,

Fernandez, Bryant & Atkinson, P.A., (Mailing address) P.O. Box 1110, Tallahassee, Florida 32302 and (Physical address) 2060 Delta Way, Tallahassee, Florida 32303.

2. Respondent is Florida Housing Finance Corporation, a "public corporation and a public body corporate and politic," created by Section 420.504, Fla. Stat. Respondent is designated as an agency for certain purposes, including for purposes of Chapter 120, Florida Statutes, the Administrative Procedure Act. It is designated by Section 420.5099(1) as the "housing credit agency" within the meaning of Section 42(h)(7)(A) of the U.S. Internal Revenue Code for administrating and allocating low income housing tax credits ("LIHTC").

Notice

3. Petitioner initially received notice of Respondent's intended agency action by letter dated October 19, 2017, copy attached as Exhibit A. However, this letter did not advise Petitioner of any rights to seek administrative or judicial review of that decision, and was thus insufficient to trigger the administrative process. *Wahlquist v. School Board of Liberty County*, 423 So. 2d 471 (Fla. 1st DCA 1982); *Sterman v. Florida State University Board of Regents*, 414 So. 2d 1102 (Fla. 1st DCA 1982). Petitioner and Respondent, through their respective counsel, communicated in writing and by telephone for several months in an attempt to resolve the matter. The communications culminated in a letter from Respondent's general counsel, Hugh R. Brown, the counsel for Respondent, dated April 13, 2018 and provided a "Notice of Rights." A copy of the April 13 letter and attachment is attached as Exhibit B.

4. The Notice of Rights provided Petitioner a period of 21 days from the date of the April 13 letter (or until May 4, 2018) within which to request an administrative hearing. Petitioner subsequently requested and was granted two extensions of time, until July 2, 2018, within which to request an administrative hearing. A copy of email exchanges between counsel for the parties

agreeing to such extensions are attached as Exhibit C.

Substantial Interests Affected

5. As the owner and operator of Deer Meadow Apartments, Petitioner is substantially affected by a determination that it is not entitled to a release of LIHTC-based rent restrictions on the property. As will be explained more fully in this petition, the Deer Meadow development was originally constructed in or about 2000 and 2001, and the last completed building was opened for occupancy by tenants in the year 2001. Respondent provided financial assistance with construction and development costs in several forms, including Florida Housing-issued tax exempt bonds and LIHTC. The receipt of LIHTC encumbers the property with a recorded Extended Low Income Housing Agreement ("ELIHA"). The ELIHA restricts the household income of LIHTC tenants, and also restricts the rents that can be charged for the units for up to 30 years. However, this 30 year period is subject to early termination after its first 15 years, if certain conditions are met.

6. Petitioner contends that it has met those conditions and is entitled to release of the LIHTC-based restrictions, and thus can charge market rate rents for units in the development that are not otherwise restricted to low-income tenants. Respondent contends that Petitioner is not entitled to a release of the LIHTC-based restrictions, and all units within the Development must remain both income-restricted and rent-restricted.

7. If the LIHTC-based restrictions are removed from Deer Meadow, then 30 of the 200 units in the development would become immediately available to lease to tenants regardless of income (subject to the rights of current low-income tenants), and the rents Petitioner could charge would not be restricted. Petitioner estimates the additional rental revenue this would generate is $200 per unit per month, for total additional monthly income of $6,000. Additionally,

the remaining 170 units, although restricted to tenant households at or below certain income levels due to the tax exempt bond financing, would not be "rent restricted" (subject to the rights of current low-income tenants) which would generate additional revenue which Petitioner estimates to be $100 per unit per month, for total additional monthly income of $17,000. Together, the annual rental loss attributable to the continued LIHTC restrictions is estimated to be $276,000 until the end of the income restrictions attributable to the tax-exempt bonds. On September 1, 2026, the total financial impact on Petitioner through that date is $2,484,000, without considering adjustments for inflation.

8. If Petitioner remains subject to the LIHTC-based income and rent restrictions for the full thirty (30) year Extended Use Period (as explained more fully in this Petition), those restrictions would not terminate until December 31, 2030. The continued rent restrictions from the end of the tax-exempt bond based income restrictions on September 1, 2026, until the end of the LIHTC-based income and rent restrictions on December 31, 2030, is estimated to be $480,000 per year, or over $2.0 million for the 4 year, 4 month period, without considering inflation adjustments.

9. In summary, the total loss of rents over the period from Respondent's denial of release from the LIHTC rent restrictions through the end of the Extended Use Period is estimated to be in excess of $4.5 million. In addition, the immediate loss in value of the property due to the continuing rent restrictions is estimated at 4.6 million.

History of Deer Meadow Apartments

10. Deer Meadow is a 200 unit development, the construction of which was financed in part with tax exempt bond financing ("bonds") and non-competitive (4%) low income housing tax credits. ("LIHTC") Petitioner was not the original owner and developer of Deer Meadow; the

original owner was Deer Meadow Associates, Ltd., a Florida limited partnership. Deer Meadow was originally constructed in or about 2000 and 2001; Petitioner acquired Deer Meadow in 2016.

11. At the time of the original financing and construction of Deer Meadow, a Land Use Restriction Agreement ("LURA") was entered into and recorded in conjunction with the bond financing. The LURA required at least 50% (100) of the units to be rented to households whose income did not exceed 60% of Area Median Income ("AMI"); and that LURA is in effect through September 1, 2026. The original owner subsequently refinanced the bonds in 2012, and in so doing agreed that at least 85% (170) of the units would be rented to persons whose incomes do not exceed 60% AMI. The refinancing resulted in an Amended and Restated LURA being executed and recorded. The bond financing does not impose restrictions on the rents that can be charged to tenants.

12. A separate document known as an Extended Low Income Housing Agreement ("ELIHA") was entered into and recorded regarding the tax credits in 2001. A copy of the ELIHA is attached hereto as Exhibit D. The ELIHA required all 200 units in the development to be set aside for households whose income does not exceed 60% of AMI, and required that the Gross Rent charged on each of the units not exceed 30% of the imputed income for the 60% AMI tenants.

13. The ELIHA income and rent restrictions apply for an "Extended Use Period." The Extended Use Period means, generally, 30 years from the issuance of tax credits to the development. However, under federal law, the Extended Use Period is subject to termination after its initial 15 years if certain conditions are met, as explained more fully below.

The Housing Tax Credit Program

14. Section 42 of the IRC, first enacted in 1986, created the LIHTC program. The purpose of the program was to assist private sector developers in the development of affordable

rental housing for low-income persons. Under federal law, each state must designate a single state agency to serve as the state housing credit agency responsible for administering the federal housing credit program in that state. A copy of Section 42 of the Code is attached hereto as Exhibit E

15. The LIHTC program works by a designated state agency awarding tax credits to the owner of a particular proposed development. The Owner of the development raises capital for the initial construction of the development by seeking investors to acquire limited partner interests in the Owner entity. The limited partners receive a pro-rata share of the tax credits based on the percentage of their ownership interest.

16. The Owner is usually a limited partnership or limited liability company created specifically for the purpose of owning that particular housing development.

17. Once awarded, the tax credits are received by the Owner each year for a 10 year period, within the initial 15 year affordability restriction. As contemplated by the IRC, the recipient of a housing credit award, which is typically organized as a limited partnership or limited liability company (LLC), sells the right to receive that future stream of housing credits by the sale of the majority of its limited partner interest or LLC member ownership interest to institutional investors or other sophisticated investors. The limited partner or LLC member can then use those tax credits to offset federal income tax liability attributable to other sources of income. The limited partner or LLC member ownership interests in entities that receive housing credits are typically 99.9% or more, and the income tax credits the limited partner or LLC member receives are in the same proportion as their ownership interest percentage.

Right to Terminate Housing Credit Restrictions

18. In exchange for the award of housing credits, and as required by the Section 42 of the IRC, 26 U.S.C. Section 42, the development owner (i.e., the limited partnership or LLC),

referred to in the Code as the "taxpayer," commits to operate the development as affordable rental housing for a period of at least 15 years. This initial 15 year period is referred to in the federal scheme as the "Compliance Period." Generally, operating the development as "affordable housing" means renting at least 20% of the units to persons whose income does not exceed 50% of the Area Median Income ("AMI") for the geographic area in which the development is located, or renting at least 40% of the units to persons whose income does not exceed 60% of AMI. (The original applicant for financing for Deer Meadow committed to operating 100% of the units as affordable housing for the Compliance Period for tax credit purposes.) This commitment is contained in the Extended Low Income Housing Agreement ("ELIHA"), which is recorded in the Official Records of the County in which the Development is located.

19. Under the federal statute, the 15 year "Compliance Period" is followed by another 15 year period during which the owner must continue to operate the development as affordable housing; together, the 15 year Compliance Period and the additional 15 years are referred to as the "Extended Use Period." However, under Section 42(h)(6)(E) [page 12 of Exhibit E], the Extended Use Period contained in the ELIHA may be terminated in either of two situations. The first such situation is foreclosure of the financed development; there was no foreclosure action commenced or contemplated as to Deer Meadow, so that potential basis for termination is irrelevant to this dispute.

20. Under the federal statutes and regulations governing the housing credit program, the second situation under which an Extended Use Period may be terminated arises when a specific set of conditions have been met. First, after at least the initial fourteen (14) years of operating the affordable housing development, during the Compliance Period, the development owner files an application for a "Qualified Contract" with the state low-income housing credit agency (here,

Respondent), notifying the agency of its desire to discontinue operating the property as low-income rental housing. The state's low-income housing credit agency then has within one year of receiving a completed application to present to the Owner a "Qualified Contract" for the acquisition of the development by a person or entity who will continue to operate it as low-income housing. Notably, if the state agency presents the owner with a "Qualified Contract" and the owner rejects or fails to act on that contract, the conditions for termination will not be deemed to have been met, and the owner must continue to operate the development as affordable housing. See, 26 CFR Section 1.42-18, at subparagraph (a)(iii) [copy attached as Exhibit F]; and Respondent's Rule 67-21.031(9) Fla. Admin. Code (2016 and 2017), recently renumbered as 67-21.031(11)(2018).

21. In short, if the state's housing credit agency wants the Development to continue to operate as affordable housing, it has one year to find a buyer willing to purchase the Development from the owner and continue to operate it as such. If no such buyer can be found to present a bona fide contract, the current owner is entitled to be relieved of the obligation to operate it as affordable housing after the initial Compliance Period. But if the current owner is presented with a Qualified Contract offer, Respondent takes the position that the current owner is required to continue to operate the development as affordable rental housing for the Extended Use Period.

22. Further, under Respondent's Rule 67-21.031(10), Fla. Admin. Code (2016 and 2017) [recently renumbered as 67-21.031(12)(2018)], an owner is only allowed one Qualified Contract request. So if an offer deemed by Respondent to be a Qualified Contract offer is not accepted or acted upon by the owner, the owner loses the ability to seek a new Qualified Contract. The development must continue to operate as affordable rental housing for the entire Extended Use Period.

23. IRC Section 42(h)(6)(F) defines the term "qualified contract" as a "bona fide

contract" to acquire the development (within a reasonable period of time after the contract is entered into) for a price designated as the "Qualified Contract Price" (or "QC Price"). See Exhibit E at pages 12-13. The QC Price is arrived at by a formula set out in federal regulations. The QC Price is not intended to reflect the actual market value of the proposed development, either with or without the affordability restrictions.

24. The term "bona fide contract" is not defined in the Internal Revenue Code, or in regulations adopted by the IRS to implement the LIHTC program. The IRS has expressly declined to adopt a definition of "bona fide contract," and expressly chose to leave that to the states. Respondent did not have a definition in its rules of a "bona fide contract" at the time Petitioner submitted its Qualified Contract request, has only recently adopted a definition of "bona fide contract" for the Qualified Contract process, and it reads as follows:

> Bona fide contract means a certain and unambiguous offer to purchase the Development for an amount which equals or exceeds the qualified contract amount (the qualified contract purchase price) made by a purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract to purchase. The bona fide contract shall be in the form of a contract for sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Corporation, and must provide for an initial non-refundable earnest money deposit (the initial deposit) from the purchaser in the minimum amount of $50,000 and obligate the purchaser to make a second non-refundable earnest money deposit (the second deposit) equal to three (3) percent of the qualified contract price as follows: The initial deposit must be deposited with an escrow agent designated by the owner at the time of submission of the qualified contract request, or if no such escrow agent is designated, with a nationally recognized title insurance company offering escrow services, contemporaneously with the submission of the contract to the owner; and, by its terms, the contract must obligate the purchaser to deposit the second deposit with the escrow agent within 15 business days following the end of the due diligence period (subject to any rights reserved by the purchaser to cancel or terminate the contract during such period) which period shall end no later than 90 Calendar Days following execution of the contract by the owner.

See, Exhibit G, Rule 67-21.031 (2018).

25. If in response to marketing efforts a potential purchaser presents a bona fide contract at (or exceeding) the QC Price to acquire the Development, the current owner of the Development may decline to sell, but doing so means the owner must continue to operate the Development as affordable housing for the entire 30 year Extended Use Period. If no potential purchaser presents a bona fide contract to pay the QC Price, the current owner is entitled to be relieved of the commitment to continue to operate the Development as affordable rental housing, subject to a transition period for the Development's current low-income tenants. Respondent then executes a termination of the ELIHA, which is recorded in the Official Records of the County in the same manner as the ELIHA. The owner could then operate the Development as market rate rental housing, or sell the Development to some other purchaser for that purpose, or may otherwise dispose of the Development (again, subject to a transition period for existing low-income tenants).

26. Applicants who develop affordable rental housing with the financial assistance of the housing credit program do so with the understanding that they must operate the housing as affordable rental housing for a period of at least fifteen (15) years. However, such applicants also enter into the housing credit program with the understanding and agreement that they will have the right to be relieved of that affordability restriction at the end of the initial 15 year Compliance Period unless a potential purchaser presents a "bona fide contract" to acquire the development at a particular price. If the state agency administering the housing credit program deems something less than a "bona fide contract" as sufficient to satisfy the Code provisions, then applicants have been denied the benefit of their initial bargain under commercially reasonable and customary terms.

27. Likewise, entities such as Petitioner who acquire existing affordable housing

developers that are subject to an ELIHA do so with the understanding that the Extended Use Period is subject to termination under applicable law. The ability to seek termination of the Extended Use Period is a significant consideration in both the decision to acquire a tax credit-financed development, and the price paid for the development.

Petitioner's Qualified Contract Request

28. On or about November 23, 2016, Petitioner submitted to Respondent an application for a qualified contract ("QC"). The request was deemed complete and the one-year period within which Respondent then had to produce a QC commenced on November 23, 2016, and by operation of law and a price agreement letter from Respondent to Petitioner, would close on November 22, 2017.

29. On or about October 16, 2017, Petitioner received a document entitled "Real Estate Purchase and Sale Agreement with Escrow Instructions." A copy of this document is attached hereto as Exhibit H. This document does not satisfy basic requirements of a valid real estate contract under Florida law, and cannot be considered a bona fide contract offer.

30. The document purported to be from an entity named "Tralee Deer Meadow, LLC", a Florida Limited Liability Company. To the best of Petitioner's knowledge and according to the searchable database on the website of the Florida Secretary of State's Division of Corporations at Sunbiz.org, no such entity as Tralee Deer Meadow, LLC existed on October 16, 2017; or as of the close at the one year period on November 23, 2017; or as of the date of filing this Petition.

31. The "Agreement" was signed by an individual purporting to sign for Tralee Deer Meadow, LLC. But since the entity did not and does not exist, the signature does not bind that entity, and is meaningless, so the "Agreement" is not truly signed. Notably, under Florida Housing's own procedures for the competitive award of housing credits, Florida Housing requires

that an Applicant for housing credits be a formed entity in good standing in the State of Florida as of the date it submits its application, as established by a Certificate of Good Standing from the Florida Department of State.

32. The "Agreement" defined the term "Real Property" as "certain real estate, located in the County and State, and further described on Exhibit A attached hereto." There was no Exhibit A included with the "Agreement." The "Agreement" also defined "County" as "the County in which the Real Property is located" and "State" as "the State in which the Real Property is located" without naming either a County or State. There was no legal description or other adequate locational description provided anywhere in the Agreement or attachments.

33. The draft "Agreement" purported to require an Initial Deposit of $115,000, and an "Additional Deposit" of an unstated amount on the "Financing Contingency Expiration Date," unless the Agreement was terminated earlier. See Section 4(a) and (b) of Agreement. Paragraph 8(e) purports to grant Buyer a certain period of time to terminate the Contract (i.e., by the "Financing Contingency Expiration Date," 60 days after the date of the Agreement as per Paragraph 1 of the Agreement). However, the definition in Paragraph 1 of "Financing Contingency Expiration Date" concludes with the notation "(Not Applicable)", which places into question whether there is any limit on the period within which financing can be arranged under the Agreement. Without certainty of any obligation of the offeror's part as to when or even whether to satisfy a financing contingency, there has been no "meeting of the minds" between the offeror and the owner.

34. The "Agreement" is missing several elements that would be required for it to represent a binding, enforceable real estate contract, and to satisfy the statute of fraud, Section 725.01, Fla. Stat., even if signed by Petitioner. No dates by which duties and obligations would

be performed are included. It did not possess a description of the property such that a surveyor in the ordinary course could reasonably determine the property to be sold. It did not represent a "meeting of the minds" of Petitioner and the purported buyer, Tralee Deer Meadow, LLC. At most, the "Agreement" was a proposed option to purchase real estate, and was not a binding contract or even a binding offer.

35. Petitioner informed the agent purporting to represent Tralee Deer Meadow, LLC that the "Agreement" failed to constitute an offer or contract under Florida law. However, Tralee Dear Meadows, LLC failed to revise the offer such that the "Agreement," if executed by Petitioner, would constitute a Qualified Contract or a real estate contract under Florida law at any point in time. The "Agreement" document was not a bonda fide offer because, even if the Petitioner had accepted and executed it, it would not have met the requirements set forth in Florida's statute of frauds, and, further, would not be a qualified contract under Section 42(h)(6)(F) of the Internal Revenue Code.

36. The provisions of Section 42(h) of the IRC require a qualified contract that is a bona fide contract; the "Agreement" presented here fails as even an offer of bona fide contract that Petitioner could accept and enforce. The "Agreement" is not a Qualified Contract, a "bona fide contract," and not a valid real estate contract under Florida law. It is at most a proposed option to purchase real estate; the offeror would have the right to examine the real estate during the due diligence period and walk away without monetary loss if it deemed the property unsuited to its investment needs.

37. The "Agreement" also does not meet the elements of a "bona fide contract" as set forth in Respondent's newly adapted definition. For example, it did not provide for an initial non-refundable deposit of at least $50,000 at the time of submitting the contract offer. It did not

obligate the purchaser to make a second non-refundable earnest money deposit equal to three (3) percent of the qualified contract price.

Disputed Issues of Material Fact

38. Petitioner has initially identified the following disputed issues of material fact, which it preserves the right to supplement as additional facts become known to it:

(a) Whether the "Real Estate Purchase and Sale Agreement" constituted a bona fide contract offer to acquire the Deer Meadow development under Florida law. Petitioner contends that it did not.

(b) Whether the "Real Estate Purchase and Sale Agreement" contained a sufficient description of the real estate which was the purported subject of the Agreement under Florida law. Petitioner contends that it did not.

(c) Whether the "Real Estate Purchase and Sale Agreement" adequately demonstrated a "meeting of the minds" between the Buyer and Seller. Petitioner contends that it did not.

(d) Whether the "Real Estate Purchase and Sale Agreement" provided good and adequate consideration for the property to be purchased. Petitioner contends that it did not.

(e) Whether, as a non-existent entity as of the date of extending the "Real Estate Purchase and Sale Agreement," the purported purchaser was in existence such that, if accepted, the Agreement could be enforced against it. Petitioner contends that it was not.

(f) Whether the one-year period from November 23, 2016, elapsed without Respondent presenting Petitioner with a bona fide Qualified Contract offer.

Petitioner contends that the period did lapse.

(g) Whether Petitioner is entitled to a release of the Extended Low Income Housing Agreement encumbering the property because no bona fide contract offer was received by the Petitioner within the one-year period. Petitioner contends that it is.

Concise Statement of Ultimate Fact

39. As its Concise Statement of Ultimate Fact, Petitioner asserts that Respondent failed to present Petitioner with a bona fide Qualified Contract offer for the purchase of Deer Meadow within the one-year period following Petitioner's submission of a complete Qualified Contract application. As a result, Petitioner is relieved of the housing-credit based affordability restrictions on the property, and Petitioner is entitled to execution of a Release from the Extended Low Incoming Housing Agreement.

Rules and Statutes Entitling Petitioner to Relief

40. Petitioner is entitled to the relief it seeks by Section 42 of the Internal Revenue Code, including but not limited to 26 U.S.C. Section 42(h)(6)(E) by regulations adopted by the Internal Revenue Service at 26 CFR 1.42-18; by Section 420.5099, Fla. Stat.; and by FHFC Rule 67-21.031, Fla. Admin. Code.

Intent to Request Stay and Abeyance

41. This dispute will determine Petitioner's rights in the use of its real property, and its rights under an Extended Low Income Housing Agreement, which constituted a contract between Petitioner and Respondent, and whether Florida law regarding real estate contracts has been satisfied. Petitioner believes that Respondent lacks authority to adjudicate such rights and issues, and that, instead, such authority is vested in the circuit courts of this state. Petitioner therefore will

promptly file with Respondent an appropriate motion asking that this matter be stayed and held in abeyance while Petitioner pursues such appropriate judicial remedies.

FILED AND SERVED this 2nd day of July, 2018.

M. CHRISTOPHER BRYANT
Florida Bar No. 434450
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Attorney for Jacksonville Waterstone LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Formal Written Protest and Petition for Administrative Proceedings has been filed by hand delivery and e-mail with the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 (CorporationClerk@floridahousing.org) , and a copy via hand delivery and e-mail to the following this 2nd day of July, 2018:

Hugh R. Brown, General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Hugh.Brown@floridahousing.org

ATTORNEY

EXHIBITS TO JACKSONVILLE WATERSTONE PETITION

A. October 19, 2017 letter from Florida Housing Finance Corporation (Laura Cox, Director of Asset Management) to Jacksonville Waterstone LLC

B. April 13, 2018 letter from Florida Housing Finance Corporation (Hugh Brown, General Counsel) to Orlando J. Cabrera, Esq., counsel for Jacksonville Waterstone LLC

C. Email thread (April 24, 2018 through May 24, 2018) between Florida Housing Finance Corporation General Counsel Hugh Brown and M. Christopher Bryant, counsel for Jacksonville Waterstone LLC, agreeing to extensions of time to petition to Monday, July 2, 2018

D. Extended Low Income Housing Agreement for Deer Meadow Apartments, executed September 18, 2001, recorded October 17, 2001

E. 26 U.S.C. Section 42, Low-income housing credits

F. 26 CFR 1.42-18, Qualified Contracts

G. Florida Housing Finance Corporation Rule 67-21.031 (2018)

H. Real Estate Purchase and Sale Agreement from Tralee Deer Meadow, LLC

we make housing affordable™
Florida Housing
Finance Corporation

227 North Bronough Street, Suite 5000 • Tallahassee, Florida 32301
850.488.4197 • Fax: 850.488.9809 • www.floridahousing.org

October 19, 2017

Jacksonville Waterstone LLC
ATTN: Fred Anthony
21 Ramah Circle
Agawam, MA 10001

RE: Jacksonville Waterstone LLC (2001-506C)
Qualified Contract Offer

Dear Mr. Anthony:

Per Section 42 of the Internal Revenue Code and Rule 67-48 F.A.C., Florida Housing Finance Corporation, as "housing credit agency" for the state of Florida, has one year from the date (November 23, 2016) that we received your Qualified Contract Package (QCP) for Deer Meadow Apartments (Development) to present Jacksonville Waterstone LLC (Seller) with a qualified contract for the sale of the Development to a qualified buyer who is willing to keep the set-aside restrictions intact for the remainder of the Extended Use Period.

As such, the attached Real Estate Purchase and Sale Agreement With Escrow Instructions between Jacksonville Waterstone LLC and executed by Tralee Dear Meadow LLC (Purchaser) satisfies this requirement.

As acknowledged by your execution of the Qualified Contract Package application ("Application") dated November 21, 2016, in the event that Florida Housing finds a prospective purchaser willing to present an offer to purchase the Development for an amount equal to or greater than the "qualified contract" price, you agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the Development which will allow the prospective purchaser a reasonable period of time to undertake additional, customary due diligence prior to closing the purchase. Your execution of the Application further acknowledged that if you fail to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the Development, you irrevocably waive any right to further request that Florida Housing present a "qualified contract" for the purchase of the Development and the Development will remain subject to the requirements of the Extended Use Agreement for the full extended use period.

We thank you for your commitment to affordable housing and the preservation of affordable units in the state of Florida.

Sincerely,

Laura J. Cox
Director of Asset Management and Guarantee Program

we make housing affordable™
Florida Housing
Finance Corporation

227 North Bronough Street, Suite 5000 • Tallahassee, Florida 32301
850.488.4197 • Fax: 850.488.9809 • www.floridahousing.org

April 13, 2018

VIA ELECTRONIC MAIL

Orlando J. Cabrera, Esq.
Arnall Golden Gregory, LLP
1775 Pennsylvania Avenue NW
Suite 1000
Washington, DC 20006

Dear Orlando:

Florida Housing has reviewed and considered the arguments regarding the validity of the Tralee Qualified Contract. For the reasons set forth below, we continue to believe the contract presented to your client meets the legal requirements that apply – namely §42(h)(6)(F) of the Internal Revenue Code (IRC), the implementing regulations at 26 CFR 1.42-18, and R. 67-48.031, Fla. Admin. Code.

The standards set forth in the IRC, CFR and Rule above delineate Florida Housing's responsibilities regarding the presentation of a Qualified Contract. While you are correct in stating that state agencies responsible for administering the tax credit program may require more stringent requirements than those set forth in the IRC, Florida Housing has not done so, except to the extent already done in R. 67-48.031, Fla. Admin. Code. 26 CFR 1.42-18 grants Florida Housing administrative discretion in the matter of qualified contracts, particularly with regard to determining what is a *bona fide* offer. The arguments and concerns you have expressed regarding the Tralee Qualified Contract do not relate to these standards, but rather rely on misapplied interpretations of general Florida contract law.

Firstly, the term "qualified contract" is something of a misnomer. You have stated in your letter of December 21, 2017, that a qualified contract is "...not a mere offer." On the contrary, a qualified contract cannot be anything more than an offer, as Florida Housing is not a party and does not present an executed agreement. In fact, 26 CFR 1.42-18(d) (2), the required offer is defined as such:

> *Actual Offer*. Upon receipt of a written request from the owner to find a person to acquire the building, the Agency must offer the building for sale to the general public, based on reasonable efforts, at the determined qualified contract amount in order for the qualified contract to satisfy the requirements of this section unless the Agency has already identified a willing buyer who submitted a qualified contract to purchase the project.

Accordingly, a qualified contract is an offer to buy the property which meets the requirements of the IRC, CFR and Rule cited above, is approved by Florida Housing, and does not become an actual contract unless and until executed by the parties. Given the above, none of the arguments presented regarding Florida contract law apply, nor would they necessarily present a problem for a willing Seller in any transaction.

You have alleged there was no (or at least insufficient) due diligence by the putative Buyer. We fail to see how that is a concern to either the Seller, or to Florida Housing, or how it may affect the validity of the offer. A Buyer willing to take the property for the appropriate sum may do so subject to *caveat emptor*. In short, while this could be a problem for the Buyer, we do not agree that it presents a problem for an otherwise willing Seller or otherwise invalidates the offer. Likewise, the alleged failure to present financials to the Seller falls outside of the contract itself, and thus outside Florida Housing's authority and responsibility.

Secondly, you argue that the qualified contract is not *bona fide* because the Buyer entity did not legally exist at the time it was presented. Again, this would not be a problem with a willing Seller, and the creation of entities for the purposes of a single land purchase is standard practice in the affordable housing industry, particularly in the case of tax credit properties. It is reasonable for a Buyer entity to propose the formation of a legal entity to take possession of the property, and to decline to form such entity if the contract is never executed – and even less of an issue when the parties have previously contracted business together.

Regarding the allegedly missing legal description, once again, we do not see this as a bar to a successful closing with a willing Seller. In fact, we have located the legal description, in the form of a street address, in Exhibit F of the Tralee Qualified Contract (see attached). We consider this more than sufficient information for a willing Seller - assuming they know where their own property is. Any risk created by an incorrect or incomplete legal description can easily be worked out between the parties, and if not, presents a risk to the Buyer, not the Seller. Regardless, Florida Housing has successfully brokered qualified contract closings without a complete legal description. Please see the attached documents regarding Logan Heights and Dunwoodie Place – in both cases, no legal description was provided in the qualified contract, yet both developments were successfully sold. Even if the standards applicable to an executed contract applied here, it is a simple matter to resolve, with parol evidence if necessary, sufficient to satisfy the Statute of Frauds. *De Vaux v. Westwood Baptist Church*, 953 So.2d 677 (Fla. 1st DCA 2007). Accordingly we do not agree that a merely misplaced (let alone missing) legal description, would prevent a qualified contract (offer) from closing – as long as the parties are willing.

Regarding the demonstration of a "meeting of the minds," it is unreasonable to argue there would be no such meeting on the basis that the Seller does not know the property is the subject of the Buyer's offer. This is particularly so in the context of a qualified contract, where the Seller

(through Florida Housing) presents a specific property on which the Buyer makes an offer. Moreover, this argument ultimately fails as irrelevant, as any argument regarding a "meeting of the minds" does not apply to a contract not yet executed, but rather applies in cases where the validity of an extant contract is in question. "Meeting of the minds" is the mutual agreement and assent to the contract terms, which cannot occur unless and until the parties agree. *Perkins v. Simmons*, 15 So.2d 289 (Fla. 1943); *Pena v. Fox*, 198 So.3d 61 (Fla. 2d. DCA 2015). If the Seller is unwilling, no meeting of the minds would ever occur, and so this argument clearly cannot apply to any qualified contract scenario.

Based on the above, Florida Housing has met its obligation to present a qualified contract to your client, who has apparently determined not to execute it or otherwise participate as a willing party to the transaction. As a result, the restrictions on the property remain. In spite of this, your client has chosen, based on no advice, consent nor representation by Florida Housing, to take the subject property out of compliance by raising rents, denying utility allowances, etc. The development will remain in noncompliance until these actions are reversed and remedied to the satisfaction of Florida Housing, who has a duty under Treas. Reg. §1.42-5(e)(2) to provide prompt written notice to the owner when it discovers that the development is not in compliance with the provisions of section 42 of the Internal Revenue Code.

I hope that this letter has further clarified Florida Housing's position on this matter. If you require further assistance or wish to discuss next steps, please do contact me at hugh.brown@floridahousing.org or at the telephone number listed below.

Sincerely,

Hugh R. Brown
General Counsel

Attachments:
Notice of Rights
Dunwoodie QC package (electronic)
Logan Heights QC package (electronic)

Copies to: Trey Price, Executive Director
Laura Cox, Director of Asset Management
Christopher Hirst, Inspector General

NOTICE OF RIGHTS

The Corporation's proposed agency action shall become final unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, Florida Statutes, before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Corporation's proposed agency action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) pursuant to R. 67-52, Fla. Admin. Code by the Corporation Clerk at 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301. Petitions may also be filed electronically at CorporationClerk@floridahousing.org. Petitions filed by the petitioner or any of the parties listed below must be filed within 21 days of receipt of this written notice.

The petitioner shall mail or e-mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will only be at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Fla. Admin. Code.

Chris Bryant

From: Hugh Brown <Hugh.Brown@floridahousing.org>
Sent: Thursday, May 24, 2018 2:37 PM
To: Chris Bryant
Cc: Laura Cox
Subject: RE: Deer Meadow Apartments Qualified Contract Issue

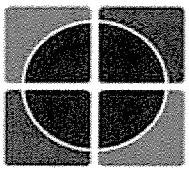
Chris – we are fine with the extension. Sorry for the delay, it's been rather hectic.

From: Chris Bryant [mailto:cbryant@ohfc.com]
Sent: Thursday, May 24, 2018 10:29 AM
To: Hugh Brown <Hugh.Brown@floridahousing.org>
Cc: Laura Cox <Laura.Cox@floridahousing.org>
Subject: RE: Deer Meadow Apartments Qualified Contract Issue

Hugh-

I'm just following up on this e-mail, requesting an additional extension to petition for hearing on the Deer Meadows matter. Also, we would like to resolve the remaining questions over "interim compliance" and see how we can address the four market rate units.

Please contact me at your earliest convenience, either by return e-mail or phone. Thanks.



M. Christopher Bryant, Attorney at Law
Oertel, Fernandez, Bryant & Atkinson, P.A.
2060 Delta Way | P.O. Box 1110 | Tallahassee, Florida 32302-1110
Telephone: (850) 521-0700 | Fax: (850) 521-0720 | Mobile: (850) 544-5302

From: Chris Bryant
Sent: Tuesday, May 22, 2018 11:21 AM
To: 'Hugh Brown' <Hugh.Brown@floridahousing.org>
Cc: 'Laura Cox' <Laura.Cox@floridahousing.org>
Subject: RE: Deer Meadow Apartments Qualified Contract Issue

Hugh-

May I ask your indulgence for an additional extension of time to request an administrative hearing on the Deer Meadows Qualified Contract matter? As you know (or as Betty Zachem and Chris McGuire could tell you), we have all be extremely busy in litigation over RFA cases the past couple of months and are now entering the expedited PRO phases of those cases.

If possible, I would like to get another 4 weeks from our Monday June 4 deadline, until Monday, July 2.

Even though we have not finalized all of the interim terms of compliance "under protest" for Deer Meadows, Deer Meadows has been and will continue to operate the units under LIHTC restrictions while this dispute remains unresolved (except for the four market rate units we have been discussing by e-mail). So, Florida Housing and its public policy concerns are still adequately protected, and we do not think Florida Housing is prejudiced by an additional extension to petition for hearing.

I believe we are still waiting on an opportunity to further address with you and Laura the issue with the four market rate units under lease in Deer Meadows, as discussed in our e-mails of last week.

Thank you for your prompt consideration of this request.

OERTEL, FERNANDEZ, BRYANT & ATKINSON, P.A.

M. Christopher Bryant, Attorney at Law
Oertel, Fernandez, Bryant & Atkinson, P.A.
2060 Delta Way | P.O. Box 1110 | Tallahassee, Florida 32302-1110
Telephone: (850) 521-0700 | Fax: (850) 521-0720 | Mobile: (850) 544-5302

From: Hugh Brown [mailto:Hugh.Brown@floridahousing.org]
Sent: Wednesday, April 25, 2018 12:36 PM
To: Chris Bryant <cbryant@ohfc.com>
Cc: 'Cabrera, Orlando J.' <Orlando.Cabrera@AGG.com>
Subject: RE: Deer Meadow Apartments Qualified Contract Issue

I believe that is correct, thanks Chris.

From: Chris Bryant [mailto:cbryant@ohfc.com]
Sent: Tuesday, April 24, 2018 6:09 PM
To: Hugh Brown <Hugh.Brown@floridahousing.org>
Cc: 'Cabrera, Orlando J.' <Orlando.Cabrera@AGG.com>
Subject: Deer Meadow Apartments Qualified Contract Issue

Hugh-

Thank you for your professional courtesy in granting me and my client, Jacksonville Waterstone LLC, the Owner of Deer Meadow Apartments in Duval County, a 30 day extension of time to request administrative proceedings in response to your April 13, 2018 letter to Orlando Cabrera regarding the Qualified Contract application and response or offer from Tralee Deer Meadow, LLC.

By my calculation our petition would have been due Friday, May 4. With the extension our petition will instead be due Monday, June 4. If your understanding of our agreement is any different from this, please let me know immediately.

Thanks again.

M. Christopher Bryant, Attorney at Law
Oertel, Fernandez, Bryant & Atkinson, P.A.
2060 Delta Way | P.O. Box 1110 | Tallahassee, Florida 32302-1110
Telephone: (850) 521-0700 | Fax: (850) 521-0720 | Mobile: (850) 544-5302

FHFC # 2001-506C

EXTENDED LOW-INCOME HOUSING AGREEMENT

THIS EXTENDED LOW-INCOME HOUSING AGREEMENT (this "Agreement") is made and entered into by the FLORIDA HOUSING FINANCE CORPORATION (the "Corporation"), a public corporation, the successor in interest to the Florida Housing Finance Agency and DEER MEADOW ASSOCIATES, LTD., a Florida limited partnership (the "Owner").

PREAMBLE

WHEREAS, the Corporation has been created and organized pursuant to and in accordance with the provisions of the Florida Housing Finance Corporation Act, Sections 420.501-420.516, Florida Statutes, as amended (the "Act"), and pursuant to Section 420.5099 of said Act, the Corporation is the housing credit agency for the State of Florida (the "State") specifically authorized by statute to allocate low-income housing credit dollar amounts ("Tax Credits") under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Corporation has agreed, under certain conditions, to allocate Tax Credits to the Owner in connection with the construction of a multi-family residential rental housing project (the "Project"), known as DEER MEADOW APARTMENTS, located within Duval County, Florida (the "County"), the legal description for which is set forth in Exhibit "A" hereto, to be occupied partially (at least forty percent (40%) by individuals whose income is sixty percent (60%) or less of area median gross income), within the meaning of Section 42(g) of the Code; and

WHEREAS, The Owner has made a knowing, voluntary and intelligent election not to waive any additional years following the last day of the Compliance Period any prerogative it would have to collect rents on the Low-Income Units at rates determined by the rental market except as provided herein in accordance with the requirements pursuant to the Code in return for 2001 Tax Credits; and

THIS INSTRUMENT PREPARED BY:
Lisa Lorbeck
FLORIDA HOUSING FINANCE CORPORATION
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
RECORD & RETURN TO:
Elizabeth G. Arthur
FLORIDA HOUSING FINANCE CORPORATION
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Doc# 2001264469
Book: 10191
Pages: 1765 - 1785
Filed & Recorded
10/17/2001 07:15:55 AM
JIM FULLER
CLERK CIRCUIT COURT
DUVAL COUNTY
TRUST FUND $ 11.00
RECORDING $ 85.00

WHEREAS, Section 42 of the Code provides that no Tax Credits shall be allowed with respect to any building unless an extended low-income housing commitment is in effect for such building at the end of such taxable year; and

WHEREAS, in order to assure Owner compliance with the provisions of, and to evidence the Owner's extended low-income housing commitment as required by, Section 42 of the Code, the Corporation and the Owner have determined to enter into this Agreement in which they set forth certain terms and conditions relating to the Owner's operation of the Development;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Corporation and the Owner do hereby contract and agree as follows:

AGREEMENT

Section 1. Definitions and Interpretation.

(a) Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Agreement.

"**Act**" shall mean the Florida Housing Finance Corporation Act, Chapter 420, Part V, Florida Statutes (1997) as now and hereafter amended.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, and any successor statute as it applies to the Tax Credits described herein, together with all applicable final, temporary or proposed Treasury Regulations and Revenue Rulings thereunder. Reference in this Agreement to any specific provision of the Code shall be deemed to include any applicable successor provision of such provision of the Code that may apply to the Tax Credits described herein.

"**Compliance Period**" shall mean, with respect to any building that is included in the Development, a period of fifteen (15) years beginning on the first day of the first taxable year of the Credit Period with respect thereto.

"**Corporation**" shall mean the FLORIDA HOUSING FINANCE CORPORATION, a public corporation, the successor in interest to the Florida Housing Finance Agency, and any agency or other entity of the State of Florida that shall hereafter succeed to the powers, duties and functions of the Corporation.

"**County**" shall mean Duval County, Florida.

"**Credit Period**" shall mean, with respect to any building that is included in the Development, the period of ten (10) years beginning with (x) the taxable year in which the building is placed in service, or (y) at the election of the Owner, the succeeding taxable year.

"**Extended Low-Income Housing Agreement**" or "**Agreement**" shall mean this Extended Low-Income Housing Agreement, as amended or supplemented from time to time.

"**Extended Use Period**" shall mean, with respect to any building that is included in the Development, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) thirty (30) years after the issuance of the final tax credit allocation with respect to such building (which date is the date specified by the Corporation as provided in Section 42(h)(6)(D)(ii)(I) of the Code), or (ii) that number of years after the last day of the Compliance Period for which the Owner shall have set aside a specified number of units in the Development for Low-Income tenants. Notwithstanding anything to the contrary elsewhere in this Agreement, if the Owner has set aside one or more units in the Development for Low-Income Tenants in perpetuity, i.e., fifty (50) years, the Extended Use Period shall continue in perpetuity, i.e., fifty (50) years.

"**Gross Rent**" shall mean any amount paid by a tenant in connection with the occupancy of a Residential Rental Unit, plus the cost of any services that are required to be paid by a tenant as a condition for occupancy, plus the cost of any utilities, other than telephone, for such unit. If any utilities (other than telephone) are paid directly by the tenant, "gross rent," also includes a utility allowance determined as set forth in this paragraph. "Gross Rent" does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program with respect to such Residential Rental Unit or to the occupants thereof, or any fee for supportive service that is paid to the owner of the unit on the basis of the low income status of the tenant of such Residential Rental Unit by any governmental program of assistance or by any tax-exempt organization if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services within the meaning of Section 42(g)(2)(B) of the Code. For purposes of the foregoing, the allowable utility allowance is: (i) the United States Department of Housing and Urban Development ("HUD") utility allowances (except as provided in clause (iv) hereof) in the case of a building whose rents and utility allowances are reviewed by HUD on an annual basis; (ii) the applicable Public Housing Authority ("PHA") utility allowances established for the Section 8 Existing Housing Program (except as provided in clause (iv) hereof) in the case of a building occupied by one or more tenants receiving HUD rental assistance payments ("HUD Tenant Assistance"); (iii) in the case of a building for which there is neither HUD Tenant Assistance, nor an applicable HUD or RD utility allowance, the applicable PHA utility allowance; however, utility allowances based on estimates from local utility providers certifying the estimated costs of all covered utilities for units of comparable size and construction in the county where the building is located, determined in accordance with Internal Revenue Service Notice 89-6, may be obtained, in which case those estimates shall apply to all units of similar size and construction in the building; or (iv) the applicable RD utility allowance in the case of any Rent-Restricted Unit in a building where either the building receives RD housing assistance (including a building that is HUD-regulated) or any tenant receives RD housing assistance (including any Low-Income Tenant receiving HUD Tenant Assistance who resides in a building where the building or any other tenant receives RD housing assistance).

"**Low-Income Tenants**" shall mean individuals whose income is sixty percent (60%) or less of area median gross income (adjusted for family size) within the meaning of Section 42(g)(1) of the Code, as the same may be amended from time to time (but only to the extent such amendments apply to the Development). In no event, however, shall occupants of a unit be considered to be of low income if all the occupants are students (as defined in Section 151(c)(4) of the Code, but excluding from such definition the following: (x) single parents who are students with all children also being students and the household receives AFDC payments, (y) if the students are enrolled in certain federal, state or local job training programs and are considered lower income, or (z) for developments receiving credit allocations after June 30, 1992, a housing unit occupied exclusively by full-time students may qualify as lower income if the students are a single parent and his/her minor children and none of the tenants are a dependent of a third party.

"**Low-Income Unit**" shall mean any unit in a building if: (i) the unit is a Rent-Restricted Unit satisfying the requirements of Section 2 hereof, and (ii) the individuals occupying the unit are Low-Income Tenants (or the unit is held available for rental to Low-Income Tenants if previously rented to and occupied by Low-Income Tenants) as set forth in Section 3(a) hereof.

"**Monitoring Agent**" shall mean any monitoring agent appointed by the Corporation.

"**Owner**" shall mean DEER MEADOW ASSOCIATES, LTD., a Florida limited partnership and its successors and assigns as permitted under Section 4 of this Agreement.

"**Related Person**" to a person shall mean a relationship such that the "related person" bears a relationship to such person specified in Section 267(b) or Section 707(b)(1) of the Code, or the related person and such person are engaged in trades or businesses under common control within the meaning of Section 52(a)-(b) of the Code, except that for purposes hereof, the phrase "10 percent" shall be substituted for the phrase "50 percent" in applying Section 267(b) and Section 707(b)(1).

"**Rent-Restricted Unit**" shall mean a Residential Rental Unit where the Gross Rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit (or such higher limitation as provided by Section 42(g)(2)(E) of the Code). For purposes of the foregoing, the imputed income limitation applicable to a Residential Rental Unit is the income limitation set forth for Low-Income Tenants occupying the unit if the number of individuals occupying the unit are (x) one (1) individual, in the case of a unit that does not have a separate bedroom, and (y) one and one-half (1.5) individuals for each separate bedroom, in the case of a unit that has one or more separate bedrooms.

"**Residential Rental Units**" shall mean dwelling units made available for rental, and not ownership, by Low-Income Tenants and members of the general public, each of which units shall contain complete living facilities that are to be used other than on a transient basis together with facilities that are functionally related or subordinate to the living facilities. The units shall at all times be constructed and maintained in substantial accordance with the applicable building code standards of the County. For purposes of the foregoing, a unit that contains sleeping accommodations and kitchen and bathroom facilities and that is located in a building used exclusively to facilitate the transition of homeless individuals to independent living and in which

a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing shall not be deemed to be a unit occupied on a transient basis within the meaning hereof.

(b) All capitalized words and terms herein which are not otherwise defined herein shall have the same meanings ascribed to them in Section 42 of the Code or in Treasury Regulations thereunder.

(c) The terms and phrases used in the Recitals of this Agreement have been included for convenience of reference only, in the meaning, construction and interpretation of all such terms and phrases shall be determined by reference to this Section 1. The titles and headings in this Agreement have been inserted for convenience of reference only and shall be deemed to modify and restrict any other provisions of this Agreement.

(d) Unless the context clearly requires otherwise, words of masculine, feminine or neuter gender, as the case may be, shall be construed as including the other genders, and words of the singular number shall be construed to include the plural number, and vice versa. This Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Agreement and to sustain the validity hereof.

Section 2. Qualified Low-Income Housing Development. The Corporation and the Owner hereby declare their understanding and intent that, during the Extended Use Period, the Development is to be owned, managed, and operated as a qualified low-income housing development as such phrase is defined in Section 42(g) of the Code. To that end, the Owner hereby represents, covenants and agrees as follows:

(a) That the Project is being constructed for purposes of providing a qualified low-income housing project, and the Owner shall own, manage and operate the Project as a qualified low-income housing project all in accordance with Section 42 of the Code; and

(b) That all of the Residential Rental Units in the Development shall be similarly constructed and each such unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation for at least a single individual or a family; *provided, however,* that a unit that contains sleeping accommodations and kitchen and bathroom facilities and that is located in a building used exclusively to facilitate the transition of homeless individuals to independent living and in which a governmental entity or a qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing shall not be deemed to be a unit occupied on a transient basis within the meaning of this Section 2(b); and

(c) That, during the Extended Use Period, none of the Residential Rental Units in the Project shall at any time be utilized on a transient basis; except as provided in this Section 2(c), none of the Residential Rental Units in the Project shall ever be leased or rented for an initial period of less than one hundred eighty (180) days; and neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house,

hospital, sanitarium, nursing home, rest home, trailer court or trailer park, or health club or recreational facility (other than recreational facilities that are available only to tenants and their guests without charge for their use and that are customarily found in multi-family rental housing projects); *provided, however,* that a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-to-month basis; and *provided, further,* that a unit that contains sleeping accommodations and kitchen and bathroom facilities and that is located in a building used exclusively to facilitate the transition of homeless individuals to independent living and in which a governmental entity or a qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing shall not be deemed to be a unit occupied on a transient basis within the meaning of this Section 2(c); and

(d) That, during the Extended Use Period, the Residential Rental Units in the Development shall be leased and rented, or made available for rental on a continuous basis, to members of the general public; and the Owner shall not give preference in renting Residential Rental Units in the Development to any particular class or group of persons, other than Low-Income Tenants as provided in this Agreement; and

(e) That the Project shall consist of one (1) or more discrete edifices or other man-made construction, each consisting of an independent foundation, outer walls and roof, and containing four (4) or more Residential Rental Units and functionally-related facilities, all of which shall be: (x) owned by the same person for federal tax purposes; (y) located on a common tract of land or two (2) or more contiguous tracts of land; *provided, however,* that separate tracts of land that are separated only by a road, street, stream or similar property shall for purposes hereof be deemed to be contiguous; and (z) financed pursuant to a common plan of financing, and which shall consist entirely of:

(1) Nine (9) residential buildings; two hundred (200) units consisting of: sixteen (16) one-bedroom, one-bath units comprising 709 square feet each, one hundred (100) two-bedroom, two-bath units comprising 962 square feet each, eighty-four (84) three-bedroom, two-bath units comprising 1,081 square feet each; and

(2) Residential Rental Units which are similar in quality and type of construction and which will include the following amenities: air conditioning units, dishwashers, garbage disposals, cable or satellite TV hook-ups, two-full bathrooms in all three bedroom or larger units, at least one and one-half bathrooms (1 full bath and one with at least a toilet and a sink) in all two-bedroom units, laundry hook-ups and space for washer/dryer, pantry in kitchen area (must be approximately 6'8"H x 24"W x 18"D), wall insulation of R-13 (or better) for frame-built construction or R-7 (or better) for masonry/concrete block construction, attic insulation of R-30 or better, single-pane windows with shading coefficient of .67 or better; and

(3) Facilities functionally related and subordinate in purpose and size to the property described in Section 2(e)(2) above, which will include: exercise room with appropriate equipment, community center or clubhouse, swimming pool, playground/tot lot (Must be sized in proportion to Development size and expected tenant population with age-appropriate equipment), two or more parking spaces per total number of units (none of which may be unavailable to any person because such person is a Low-Income Tenant) and other facilities that are reasonably required for the Project.

(f) That, during the Extended Use Period, the Owner shall provide the following tenant programs: welfare to work or self-sufficiency programs (the Applicant commits to implement marketing strategies that actively seek tenants who are participating in or who have successfully completed the training provided by these types of programs); and

(g) That, during the Extended Use Period, the Development shall not include a unit in a building where all Residential Rental Units in such building are not also included in the Development; and

(h) That, during the Compliance Period, the Owner shall not convert the Development to condominium ownership; and

(i) That, during the Compliance Period, no part of the Development shall at any time be owned or used by a cooperative housing corporation; and

(j) That, during the Extended Use Period, no unit in the Development shall be occupied by the Owner or a Related Person to the Owner at any time (x) unless such person resides in a unit in a building or structure which contains at least five (5) Residential Rental Units, or (y) except as provided in Section 42(i)(3)(E) of the Code; and

(k) That, during the Extended Use Period, Owner shall not refuse to lease a unit to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

(l) That the Owner shall not discriminate on the basis of age, race, creed, religion, color, sex, marital status, family status, handicap or national origin in the lease, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and management of the Development; *provided, however,* that nothing herein shall be deemed to preclude the Owner from discrimination based on income in renting Residential Rental Units set aside for Low-Income Tenants in compliance with the requirements of the Code; and

(m) That the Owner shall submit the certificate with respect to the first year of the Credit Period and such annual reports to the Secretary of the Treasury as required by Sections 42(l)(1) and (l)(2) of the Code and deliver a copy thereof to the Corporation and to the Monitoring Agent,

and shall submit such information to the Corporation as the Corporation may request in order for the Corporation to comply with Section 42(l)(3) of the Code and for the Corporation to monitor the Owner's compliance with Section 42 of the Code, the Corporation's rules and regulations codified at Florida Administrative Code, Chapter 67-48, and the provisions of the Agreement; and

(n) That, during the Extended Use Period, the Owner shall comply with the following commitments that were the basis of the Corporation's competitive scoring and ranking of the Owner's application for Tax Credits in satisfaction of the Corporation's responsibilities under Section 42(m) of the Code, and as required by the Corporation's rules and regulations implementing such responsibilities, Florida Administrative Code, Rule 67-48:

(i) Notwithstanding Section 3(a) below to the contrary, commencing with the issuance of the first certificate of occupancy for any building included in the Development, at least one hundred percent (100%) of the occupied and completed Residential Rental Units included in the Development shall be occupied by and rented to Low-Income Tenants or held available for rental to Low-Income Tenants.

(ii) For purposes of complying with the requirements set forth in Section 2(n)(i) above, if the income of an individual or family resident in a Residential Rental Unit did not exceed the applicable income limit (adjusted for family size) at the commencement of such resident's occupancy, the income of such individual or family shall be treated as continuing to not exceed the applicable income limit as long as such Residential Rental Unit remains a Rent-Restricted Unit. The preceding sentence shall cease to apply to any individual or family whose income, as of the most recent determination, exceeds one hundred forty percent (140%) of the applicable income limit (adjusted for family size), if after such determination, but before the next income determination, any Residential Rental Unit of comparable or smaller size in the building is occupied by a new individual or family resident whose income exceeds the applicable income limit (adjusted for family size) for Low-Income Tenants.

(iii) The Owner shall obtain from each Low-Income Tenant and maintain on file an Income Certification pursuant to the requirements and procedures found in the Low-Income Rental Housing Tax Credit Compliance Manual immediately prior to the initial occupancy of a Residential Rental Unit in the Development by such tenant. The Owner shall also obtain, at least annually thereafter, and maintain on file an Income Certification from each Low-Income Tenant (and from each tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(n)(i) above) to determine whether the then current income of such tenants (or such tenants whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(n)(i) above) residing in the Development exceed the applicable income limits, adjusted for family size. In addition, the Owner shall require each Low-Income Tenant (or tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(n)(i) above) to notify the Owner of any material change of information in his, her or their, as the case may be, most recent Income Certification. The Income Certification shall be in the form and contain such information as may be required by the policies of the Corporation, as the same may be, from time to time, amended by the Corporation on the advice of Counsel. For all developments receiving Tax Credit allocations

since January 1, 1987, the Owner shall submit Program Reports, Recap of Tenant Income Certification Information and Annual Owner Compliance Certification annually throughout the Compliance Period. The initial reports shall be submitted to the Corporation not later than thirty (30) days after final allocation is made. Subsequent reports shall be submitted to the Corporation annually on a date assigned by the Corporation. In addition, the Owner shall submit the Program Report, Recap of Tenant Income Certification Information and copies of Tenant Income Certification for at least ten percent (10%) of the lower-income units in the development to the monitoring agent annually. Additional reports and information shall be submitted to the Corporation at such other times as the Corporation may, in its sole discretion, request.

(iv) The Owner shall maintain complete and accurate records pertaining to the Residential Rental Units occupied by and rented to (or held available for rental to) Low-Income Tenants for at least six (6) years following the indicated date of each such record and shall permit any duly authorized representative of the Corporation or the Monitoring Agent, to inspect the books and records of the Owner pertaining to the Income Certifications and income substantiation materials of Low-Income Tenants (and such tenants whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(n)(i) above) residing in the Development upon reasonable notice and at reasonable times.

(v) The Owner shall immediately notify the Corporation and the Monitoring Agent if at any time the Residential Rental Units in the Development are not occupied or available for occupancy as provided in Section 2(n)(i) above.

Section 3. Low-Income Tenants; Low-Income Units. In order to satisfy the requirements of the Code, the Owner hereby represents, covenants and agrees that, during the Extended Use Period:

(a) Not later than the close of the first (1st) year of the Credit Period for each building included in the Development, at least forty percent (40%) of the occupied and completed Residential Rental Units included in the Development shall be both Rent-Restricted Units and rented to and occupied by Low-Income Tenants, and after the initial rental occupancy of such Residential Rental Units by Low-Income Tenants, at least forty percent (40%) of the completed Residential Rental Units in the Development at all times shall be both Rent-Restricted Units and rented to and occupied by (or held available for rental to, if previously rented to and occupied by a Low-Income Tenant) Low-Income Tenants as required by Section 42(g)(1) of the Code. At least one hundred percent (100%) of the dwelling units must be occupied and rented to Low-Income persons. Not less than one hundred percent (100%) of the units in the development shall be leased, rented or made available on a continuous basis to persons or households whose incomes are sixty percent (60%) or less of the area median income (adjusted for family size), as determined by HUD. The gross monthly rents for all units shall not exceed thirty percent (30%) of the imputed income limitation applicable to such unit as defined in Section 1(a).

For purposes of complying with the foregoing requirements, if (x) the income of an individual or family resident in a Rent-Restricted Unit did not exceed the applicable income limit (adjusted for family size) at the commencement of such resident's occupancy, and (y) such unit continues to be a Rent-Restricted Unit, the income of such individual or family shall be treated as

continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any individual or family whose income, as of the most recent determination, exceeds one hundred forty percent (140%) of the applicable income limit (adjusted for family size) if, after such determination, but before the next income determination, any Residential Rental Unit of comparable or smaller size in the building is occupied by a new individual or family resident whose income exceeds the applicable income limit (adjusted for family size).

(b) During each taxable year in the Extended Use Period, the applicable fraction (as such term is defined in Section 42(c)(B) and is used in Section 42(h)(6) of Code) shall not be less than the smaller of: (i) the unit fraction or (ii) the floor space fraction (as such terms are defined in Sections 42(c) of the Code).

(c) The Owner shall not evict or terminate the tenancy of any tenant (including any tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) of any Low-Income Unit in the Development, other than for good cause, or increase the Gross Rent with respect to such Low-Income Units in excess of the amount allowable as Rent-Restricted Units.

(d) The Owner shall obtain from each Low-Income Tenant and maintain on file an Income Certification pursuant to the requirements and procedures found in the Low-Income Rental Housing Tax Credit Compliance Manual immediately prior to the initial occupancy of a dwelling unit in the Development by such Low-Income Tenant. The Owner shall also obtain, at least annually thereafter, and maintain on file an Income Certification from each Low-Income Tenant (and from each tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) to determine whether the then current income of such Low-Income Tenant (or such tenants whose incomes are treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) residing in the Development exceed the applicable income limits, adjusted for family size. In addition, the Owner shall require each Low-Income Tenant (or tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) to notify the Owner of any material change of information in his, her or their, as the case may be, most recent Income Certification. The Income Certification shall be in the form and contain such information as may be required by the Code and the policies of the Corporation, as the same may be from time to time amended by the Corporation on the advice of Counsel, or in such other form and manner as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or hereafter promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to Tax Credits. For all developments receiving Tax Credit allocations since January 1, 1987, the Owner shall submit Program Reports, Recap of Tenant Income Certification Information and Annual Owner Compliance Certification annually throughout the Compliance Period. The initial reports shall be submitted to the Corporation not later than thirty (30) days after final allocation is made. Subsequent reports shall be submitted to the Corporation annually on a date assigned by the Corporation. In addition, the Owner shall submit the Program Report, Recap of Tenant Income Certification Information and copies of Tenant Income Certification for at least ten percent (10%) of the lower-income units in the development to the monitoring agent annually. Additional reports and information shall be submitted to the Corporation at such other times as the Corporation may, in its sole discretion,

request.

(e) The Owner shall maintain complete and accurate records pertaining to the Low-Income Units for at least six (6) years following the indicated date of each such record and shall permit any duly authorized representative of the Corporation, the Monitoring Agent, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner pertaining to the Income Certifications and income substantiation materials of Low-Income Tenants (and such tenants whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) residing in the Development upon reasonable notice and at reasonable times.

(f) The Owner shall immediately notify the Corporation and the Monitoring Agent if at any time the Residential Rental Units in the Development are not occupied or available for occupancy as provided in Section 3(a) above.

Section 4. Sale, Lease or Transfer of the Development or any Building.

(a) The Owner shall not enter into a sale, lease, exchange, assignment, conveyance, transfer or other disposition (collectively, a "Disposition") of the Development or any building in the Development: (i) unless such Disposition is of all of a building in the Development, and (ii) without prior written notice to the Secretary of the Treasury and to the Corporation, and the compliance with all rules and regulations of the Department of the Treasury and the Corporation applicable to such Disposition. The Owner shall notify the Corporation in writing of the name and address of the person to whom any Disposition has been made within fourteen (14) days after the date thereof. It is hereby expressly stipulated and agreed that any Disposition of the Development or of any building in the Development by the Owner in violation of this Section 4 shall be null, void and without effect, shall cause a reversion of title to the transferor Owner, and shall be ineffective to relieve the Owner of its obligations under this Agreement. The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Development or in any building in the Development to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee.

(b) The restrictions contained in Section 4(a) shall not be applicable to any of the following: (1) any transfer pursuant to or in lieu of a foreclosure or any exercise of remedies (including, without limitation, foreclosure) under any mortgage on the Development; *provided, however,* that neither the Owner nor any Related Person to the Owner shall acquire any interest in the Development during the remainder of the Extended Use Period; (2) any sale, transfer, assignment, encumbrance or addition of limited partnership interests in the Owner; (3) grants of utility-related easements and governmental easements, shown on the title policy approved by the Corporation and any other easement and use agreements which may be consented to by the Corporation and service-related leases or easements, such as laundry service leases or television cable easements, over portions of the Development; *provided, however,* the same are granted in the ordinary course of business in connection with the operation of the Development as contemplated by this Agreement; (4) leases of apartment units to tenants, including Low-Income

Tenants, in accordance with this Agreement; (5) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof; (6) the placing of a subordinate mortgage lien, assignment of leases and rents or security interests on or pertaining to the Development if made expressly subject and subordinate to this Agreement; or (7) any change in allocations or preferred return of capital, depreciation or losses or any final adjustment in capital accounts (all of which may be freely transferred or adjusted by Owner pursuant to Owner's partnership agreement).

Section 5. Development Within Corporation's Jurisdiction. The Owner hereby represents and warrants that each building in the Development shall be located entirely within the limits of the County.

Section 6. Term of this Agreement.

(a) This Agreement shall become effective upon the date the Corporation executes this Agreement, and shall remain in full force and effect until the expiration of the Extended Use Period or as otherwise provided in this Section 6. Upon the termination of this Agreement, upon request of any party hereto, the Corporation and the Owner or any successor party hereto shall execute a recordable document prepared by the Corporation or its Counsel further evidencing such termination.

(b) The restrictions contained in Section 2 and Section 3 of this Agreement regarding the use and operation of the Development and of each building in the Development shall automatically terminate in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure to an entity other than the Owner or a Related Person of the Owner (except as may otherwise be determined by the Secretary of the Treasury), change in a federal law or an action of a federal authority after the date hereof which prevents compliance with the covenants expressed herein, or condemnation or similar event (as determined by the Corporation upon the advice of Counsel). In such event, upon the request and at the expense of the Owner, the parties hereto shall execute an appropriate document in recordable form prepared by the Corporation or its Counsel to evidence such automatic termination. This Section 6(b) shall not apply (and the restrictions contained in Sections 2 and 3 shall thereafter apply) to the Development in the event that, subsequent to any involuntary noncompliance as described in this Section 6(b) but prior to the expiration of the Extended Use Period, (x) a Related Person to the Owner obtains an ownership interest in the Development for tax purposes, or (y) the Secretary of the Treasury determines that such foreclosure or transfer of title by deed in lieu of foreclosure is part of an arrangement to terminate this Agreement.

(c) The restrictions contained in Section 2 and Section 3 of this Agreement regarding the use and operation of the Project and of each building in the Project shall terminate on the date that is the earlier of (x) fifteen (15) years after the last day of the Compliance Period applicable to the Project or such building(s) or (y) the last day of the one (1) year period beginning on the date that the Owner submits a written request to the Corporation to find a purchaser of the Owner's interest in the Project or such building(s) pursuant to the Corporation's rules and regulations, Florida Administrative Code, Rule 67-48.031, if during such one (1) year period, the

Corporation is unable to present to the Owner a qualified contract (within the meaning of Section 42(h)(6) of the Code) for the purchase of the Project or such building(s) by a person who will continue to operate the Project or such building(s) as a qualified low-income housing project or qualified low-income building(s), as the case may be.

(d) Notwithstanding the termination of the restrictions contained in Section 2 and Section 3 prior to the expiration of the Extended Use Period, the Owner (including any successor or assignee of the Owner) shall not, prior to the end of the three (3) year period following such termination: (i) evict or terminate the tenancy of any existing tenant (including any tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) of any Low-Income Unit, other than for good cause, or (ii) increase the Gross Rent with respect to such Low-Income Units in excess of the amounts allowable as Rent-Restricted Units.

(e) Notwithstanding any other provisions of this Agreement, this entire Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Corporation and the Owner if there shall have been received an opinion of Counsel to the Corporation that such termination is permitted under Section 42 of the Code.

Section 7. Indemnification. The Owner hereby covenants and agrees to indemnify and hold the State, the Corporation and the Monitoring Agent, and their respective members, directors, officers, employees, attorneys, agents and representatives (any or all of the foregoing collectively referred to as the "Indemnified Persons") harmless from and against any and all losses, damages, judgments (including specifically punitive damage awards), arbitration awards, amounts paid in settlements, costs and expenses and liabilities of whatsoever nature or kind (including, but not limited to, reasonable attorneys' fees, whether or not suit is brought and whether incurred in connection with settlement negotiations, investigations of claims, at trial, on appeal, in bankruptcy or other creditors' proceedings or otherwise, expert witness fees and expenses and court costs) directly or indirectly resulting from, arising out of or in connection with any act or omission to act by the Owner or any of its partners, directors, officers, employees, attorneys or agents or other persons under direct contract to the Owner or acting on its behalf, resulting from, arising out of or relating to: (i) the granting of (or failure to grant) any low-income housing tax credits, (ii) the interpretation or enforcement of any provision of this Agreement (including but not limited to any action by any tenant to enforce the provisions hereof), (iii) any written statements or representations made or given by the Owner or by any partner, director, officer, employee, attorney or agent of the Owner or by any person under direct contract to the Owner or acting on the Owner's behalf to any person to whom the Owner sells or offers to sell any interest in low-income housing tax credits, or (iv) the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Development.

Each Indemnified Person will promptly, and after notice to such Indemnified Person (notice to the Indemnified Persons being serviced with respect to the filing of an illegal action, receipt of any claim in writing or similar form of actual notice) of any claim as to which he asserts a right to indemnification, notify the Owner of such claim. Each Indemnified Person will provide notice to the Owner promptly, but in no event later than seven (7) days following his receipts of a filing relating to a legal action or thirty (30) days following his receipt of any such

other claim.

If any claim for indemnification by one or more Indemnified Persons arises out of a claim for monetary damages by a person other than the Indemnified Persons, the Owner shall undertake to conduct any proceedings or negotiations in connection therewith which are necessary to defend the Indemnified Persons and shall take all such steps or proceedings as the Owner in good faith deems necessary to settle or defeat any such claims, and to employ counsel to contest any such claims; *provided, however,* that the Owner shall reasonably consider the advice of the Indemnified Persons as to the defense of such claims, and the Indemnified Persons shall have the right to participate, at their own expense, in such defense, but control of such litigation and settlement shall remain with the Owner. The Indemnified Persons shall provide all reasonable cooperation in connection with any such defense by the Owner. Counsel (except as provided above) and auditor fees, filing fees and court fees of all proceedings, contests or lawsuits with respect to any such claim or asserted liability shall be borne by the Owner. If any such claim is made hereunder and the Owner does not undertake the defense thereof, the Indemnified Persons shall be entitled to control such litigation and settlement and shall be entitled to indemnity for all costs and expenses incurred in connection therewith pursuant to the terms of this Section 7. To the extent that the Owner undertakes the defense of such claim, the Indemnified Persons shall be entitled to indemnity hereunder only to the extent that such defense is unsuccessful as determined by a final judgment of a court of competent jurisdiction, or by written acknowledgment of the parties. The Owner reserves the right to appeal any judgment rendered.

Section 8. Reliance. The Corporation and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Owner's use of the Tax Credits. In performing their duties and obligations hereunder, the Corporation may rely upon statements and certificates of the Owner and Low-Income Tenants believed in good faith to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Owner pertaining to occupancy of the Development. No interlineation or manual alteration to the typed version of this Agreement shall be permitted unless initialed by all parties to the Agreement. In addition, the Corporation may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Corporation hereunder in good faith and in conformity with the opinion of such counsel. The Owner shall reimburse the Corporation for reasonable attorneys' fees and expenses incurred in obtaining the opinion of such counsel. In performing its duties and obligations hereunder, the Owner may rely upon certificates of Low-Income Tenants reasonably believed to be genuine and to have been executed by the proper person or persons. The Owner may rely on the rules, regulations, guidelines and policies of the Corporation, the Department of the Treasury, and upon reasonable interpretations of the same.

Section 9. Enforcement by the Corporation and by Tenants. If the Owner defaults in the performance of its obligations under this Agreement or breaches any covenant, agreement or warranty of the Owner set forth in this Agreement, and if such default or breach remains uncured for a period of sixty (60) days (or ninety (90) days for any default not caused by a violation of Section 2 or 3 hereof) after written notice thereof shall have been given by the Corporation to the Owner (or for an extended period approved in writing by Corporation Counsel

(x) if such default or breach stated in such notice can be corrected, but not within such sixty (60) day (or ninety (90) day) period, and (y) if the Owner commences such correction within such sixty (60) day (or ninety (90) day) period and thereafter diligently pursues the same to completion within such extended period), then the Corporation shall give notice of such default or breach to the Internal Revenue Service and may terminate all rights of the Owner under this Agreement, and the Corporation may take whatever other action at law or in equity or otherwise, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effectual by the Corporation to enforce the obligations of the Owner under this Agreement.

Notwithstanding any of the foregoing, the Corporation shall have the right to seek specific performance of any of the covenants, agreements and requirements of this Agreement concerning the construction and operation of the Development and any person who satisfies the income limitations applicable to Low-Income Tenants hereunder (whether prospective, present or former occupants of any Residential Rental Unit in any building included in the Development, including any tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) shall separately have the right to seek specific performance and otherwise enforce the requirements of Section 3(b) and Section 3(c) with respect to such building that is part of the Development.

The owner must obtain the Corporation's approval of the management company selected to manage the development. The Corporation must be advised of any change in the owner's selection of a management company, and the company must be approved by the Corporation prior to the firm assuming responsibility for the development.

The Corporation shall have the right to require the Owner to remove any Manager or Managing Agent who does not require compliance with this Agreement upon such Manager's or Managing Agent's being given thirty (30) days' written notice of a violation, and such right shall be expressly acknowledged in any contract between the Owner and any Manager or Managing Agent.

The Corporation shall have the right to enforce this Agreement and require curing of defaults in shorter periods than specified above if Corporation Counsel makes a reasonable determination that such shorter periods are necessary to comply with Section 42 of the Code.

Section 10. Recording and Filing; Covenants to Run with the Land.

(a) Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of the County in such manner and in such other places as the Corporation may reasonably request and shall pay all fees and charges incurred in connection therewith.

(b) This Agreement and the covenants herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and the Corporation and their respective successors and assigns during the term of this Agreement.

(c) Upon reasonable notice, if there has been no event of default under this Agreement, the Corporation shall furnish to the Owner a statement in writing certifying that the Agreement is not in default.

Section 11. Amendments Required by the Code. To the extent that Section 42 of the Code or any amendments thereto and any final or temporary Treasury Regulations or Revenue Rulings thereunder shall impose requirements upon the ownership or operation of the Development more or less restrictive than those imposed by this Agreement, the Owner and the Corporation agree that this Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements or to impose less restrictive requirements, as appropriate; *provided, however,* this Section 11 shall not affect requirements of this Agreement imposed by State law or agreed to by the Owner that were the basis of the Corporation's competitively scoring and ranking the Owner's application (including any modifications or supplements thereto) for Tax Credits. The Owner and the Corporation shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary in the reasonable opinion of Counsel to the Corporation to be in compliance with the provisions of Section 42 and all other provisions of the Code and Florida law relating to Tax Credits.

Section 12. Coordination with Bond-Financed Program Documents. The Owner shall comply with all provisions of that certain Land Use Restriction Agreement, date as of September 28, 1999, among the Corporation, Bank of New York, a national banking association as trustee (the "Trustee") under that certain Trust Indenture relating to the Corporation's "$8,640,000.00 Housing Revenue Bonds, 1999 Series R Bonds (DEER MEADOW APARTMENTS Development)" (the "Bonds"), the Owner and Bank of New York, and with all provisions of this Agreement in the use and occupancy of the Development. In the event of a conflict between such Agreements, the Land Use Restriction Agreement shall control as to matters affecting the exclusion from gross income of interest paid on the Bonds and this Agreement shall control as to matters affecting Tax Credits.

Section 13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 14. Notice. Any notice required to be given hereunder shall be given by personal delivery, by registered or certified U.S. Mail or by expedited delivery service at the address as specified below or at such other addresses as may be specified by notice to the other parties hereto, and any such notice shall be deemed received on the date of delivery, if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered or certified U.S. Mail:

Corporation: FLORIDA HOUSING FINANCE CORPORATION
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Attn: Kerey Carpenter
Deputy Development Officer

Owner: DEER MEADOW ASSOCIATES, LTD.
701 Brickell Avenue, Suite 1400
Miami, Florida 33131
Attn: Elias Vassilaros

Section 15. Severability. If any provision of this Agreement shall be held by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed omitted from this Agreement and the validity, legality and enforceability of the remaining portions of this Agreement shall remain in full force and effect, but such holding shall not affect the validity, legality or enforceability of such provision under other, dissimilar facts or circumstances.

Section 16. Multiple Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

Section 17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and their successors and assigns, but this provision shall not be construed to permit assignment by the Owner without the written consent of the Corporation.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

SIGNATURE PAGE FOR OWNER
EXTENDED LOW-INCOME HOUSING AGREEMENT

IN WITNESS WHEREOF, the Corporation and the Owner have executed this Agreement as of the date of execution by the Corporation.

WITNESSES:

Deer Meadow Associates, Ltd.
, a
Florida limited partnership.

By: Deer Meadow, Inc., a Florida corporation, its ~~sole~~ general partners ~~of~~

Charles F Rogers

By: Elias Vassilaros
Executive Vice President
Title

Victor L. Stosik

By: _____,
one of _____ general partners of

_____

_____

By: _____

_____
Title

_____

STATE OF Florida
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 5th day of September, 2001 by Elias Vassilaros, * ~~individually as one of~~ general partners of Deer Meadow Assoc, Ltd., a Florida limited partnership, on behalf of said partnership. He/~~She~~ is personally known to me or has produced _____ as identification.

* EVP of Deer Meadow, Inc., a Florida corporation, the

Victor L. Stosik
Notary Public, State of _____

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
VICTOR L STOSIK
COMMISSION NUMBER
CC707824
MY COMMISSION EXPIRES
FEB. 3,2002

SIGNATURE PAGE FOR FLORIDA HOUSING FINANCE CORPORATION
EXTENDED LOW-INCOME HOUSING AGREEMENT

IN WITNESS WHEREOF, the Corporation and the Owner have executed this Agreement as of the date of execution by the Corporation.

WITNESSES:

FLORIDA HOUSING FINANCE CORPORATION, a public corporation

By: _____
Kerey Carpenter
Deputy Development Officer

(SEAL)

STATE OF FLORIDA

COUNTY OF LEON

The foregoing instrument was acknowledged before me this 18th day of September, 2001 by Kerey Carpenter as Deputy Development Officer of the FLORIDA HOUSING FINANCE CORPORATION, a public corporation, on behalf of said Corporation. She is personally known to me.

_____
Notary Public, State of Florida

ROSHANDRA L. JONES
MY COMMISSION # DD 033833
EXPIRES: June 14, 2005
Bonded Thru Notary Public Underwriters

EXHIBIT "A"

LEGAL DESCRIPTION

MAP SHOWING BOUNDARY SURVEY OF

PARCEL A

A portion of Section 27, Township 3 South, Range 27 East, Duval County, Florida, being more particularly described as follows: COMMENCE at the intersection of the Southerly right-of-way line of Baymeadows Road (a 100 foot right-of-way as now established) with the Easterly right-of-way line of Old Kings Road South (a 100 foot right-of-way as per Official Records Volume 3441, Pages 6, et. seq.); thence Northeasterly and Southeasterly along the said Southerly right-of-way line of Baymeadows Road run the following three (3) courses and distances: COURSE NO. 1: North 89°27'10" East, 493.28 feet; COURSE NO. 2: South 86°32'40" East, 358.01 feet; COURSE NO. 3: South 89°06'50" East, 297.24 feet to an intersection with the Westerly right-of-way line of the Florida East Coast Railroad (a 100 foot right-of-way as now established); thence South 31°09'20" East along said right-of-way line, 470.00 feet to the POINT OF BEGINNING; thence continue South 31°09'20" East along said Westerly right-of-way line of Florida East Coast Railroad, a distance of 908.36 feet to an intersection with the Easterly line of Government Lot 2, said Section 27 (also being a Westerly line of Section 56, Richard Hill Grant); thence South 21°31'40" East along last said line, 428.21 feet to an intersection with the arc of a curve leading Northwesterly; thence along and around the arc of a curve concave Southerly, having a radius of 1186.99 feet, an arc distance of 418.88 feet, said arc being subtended by a chord bearing and distance of North 55°22'55" West, 416.71 feet to the point of tangency of said curve, said tangency point also being an Easterly prolongation of the Northerly right-of-way line of said Old Kings Road South; thence North 65°29'30" West along last said line, and then along said Northerly right-of-way line of said Old Kings Road South, a distance of 1144.00 feet; thence North 24°30'30" East, 175.00 feet; thence North 03°05'50" East, 110.00 feet; thence South 86°54'10" East, 160.00 feet; thence North 60°31'35" East, 557.15 feet to the POINT OF BEGINNING.

Containing 14.63 acres, more or less.

''(3) EXPEDITED REFUNDS.—

''(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

''(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to an application filed before the date which is 1 year after the close of the suspension period to which the application relates.

''(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

''(i) review the application;

''(ii) determine the amount of the overpayment; and

''(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of such Code.

''(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

''(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

''(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

''(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

''(5) SECRETARY.—For purposes of this subsection, the term 'Secretary' means the Secretary of the Treasury (or such Secretary's delegate).''

SPECIAL RULES FOR TAXABLE YEARS BEGINNING BEFORE OCT. 1, 1990, AND ENDING AFTER SEPT. 30, 1990

Section 7110(a)(2) of Pub. L. 101–239, which set forth the method of determining the amount treated as qualified research expenses for taxable years beginning before Oct. 1, 1990, and ending after Sept. 30, 1990, was repealed by Pub. L. 101–508, title XI, § 11402(b)(1), Nov. 5, 1990, 104 Stat. 1388–473.

[Section 1702(d)(1) of Pub. L. 104–188 provided that: ''Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out as a note under section 45C of this title], the amendment made by section 11402(b)(1) of such Act [repealing section 7110(a)(2) of Pub. L. 101–239, formerly set out as a note above] shall apply to taxable years ending after December 31, 1989.'']

STUDY AND REPORT ON CREDIT PROVIDED BY THIS SECTION

Section 4007(b) of Pub. L. 100–647 directed Comptroller General of United States to conduct a study of credit provided by 26 U.S.C. 41 and submit a report of the study not later than Dec. 31, 1989, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

NEW SECTION 41 TREATED AS CONTINUATION OF OLD SECTION 44F

Section 474(i)(2) of Pub. L. 98–369 provided that: ''For purposes of determining—

''(A) whether any excess credit under old section 44F [now 41] for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30 [now 41], and

''(B) the period during which new section 30 [now 41] is in effect,

new section 30 [now 41] shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied).''

§ 42. Low-income housing credit

(a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

(1) Determination of applicable percentage

For purposes of this section, the term ''applicable percentage'' means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) [1] Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i).

(C) Method of discounting

The present value under subparagraph (B) shall be determined—

[1] So in original. No subpar. (A) has been enacted.

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A)[1] and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(2) Temporary minimum credit rate for nonfederally subsidized new buildings

In the case of any new building—

(A) which is placed in service by the taxpayer after the date of the enactment of this paragraph and before December 31, 2013, and

(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.

(3) Cross references

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c) Qualified basis; qualified low-income building

For purposes of this section—

(1) Qualified basis

(A) Determination

The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction

For purposes of subparagraph (A), the term ''applicable fraction'' means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction

For purposes of subparagraph (B), the term ''unit fraction'' means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction

For purposes of subparagraph (B), the term ''floor space fraction'' means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building

The term ''qualified low-income building'' means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

(d) Eligible basis

For purposes of this section—

(1) New buildings

The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings

(A) In general

The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements

A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis

For purposes of subparagraph (A), the adjusted basis of any building shall not include

so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B)

(i) Special rules for certain transfers

For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the ''related person'') is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) Eligible basis reduced where disproportionate standards for units

(A) In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs

(i) In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess

The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis

For purposes of this subsection—

(A) In general

Except as provided in subparagraphs (B) and (C), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain nontenants

(i) In general

The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation

The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility

For purposes of this subparagraph, the term ''community service facility'' means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

(5) Special rules for determining eligible basis

(A) Federal grants not taken into account in determining eligible basis

The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

(B) Increase in credit for buildings in high cost areas

(i) In general

In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph—

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(ii) Qualified census tract

(I) In general

The term ''qualified census tract'' means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated

The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas

(I) In general

The term ''difficult development areas'' means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions

For purposes of this subparagraph—

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4),

(III) the term ''metropolitan statistical area'' has the same meaning as when used in section 143(k)(2)(B), and

(IV) the term ''nonmetropolitan area'' means any county (or portion thereof) which is not within a metropolitan statistical area.

(v) Buildings designated by State housing credit agency

Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii)

(A) In general

Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

(B) Buildings acquired from insured depository institutions in default

On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with

respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(C) Federally- or State-assisted building

For purposes of this paragraph—

(i) Federally-assisted building

The term ''federally-assisted building'' means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

(ii) State-assisted building

The term ''State-assisted building'' means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i).

(7) Acquisition of building before end of prior compliance period

(A) In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building

A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building

(1) In general

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures

For purposes of paragraph (1)—

(A) In general

The term ''rehabilitation expenditures'' means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc,[2] not included

Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3) Minimum expenditures to qualify

(A) In general

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $6,000 or more.

(B) Exception from 10 percent rehabilitation

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C) Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(D) Inflation adjustment

In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2008'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(4) Special rules

For purposes of applying this section with respect to expenditures which are treated as a

[2] So in original. Probably should be ''etc.,''.

separate building by reason of this subsection—

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5) No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period

(1) Credit period defined

For purposes of this section, the term ''credit period'' means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2) Special rule for 1st year of credit period

(A) In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A) In general

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to ⅔ of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed

(A) In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i) In general

In the case of a building described in clause (ii)—

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii) Building described

A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(g) Qualified low-income housing project

For purposes of this section—

(1) In general

The term ''qualified low-income housing project'' means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent

For purposes of subparagraph (A), gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term ''supportive service'' means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit

(i) In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit

If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting ''170 percent'' for ''140 percent'' and by substituting ''any low-income unit in the building is occupied by a new resi-

dent whose income exceeds 40 percent of area median gross income'' for ''any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation''.

(E) Units where Federal rental assistance is reduced as tenant's income increases

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements

(A) In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification

(i) In general

In determining whether a building (hereinafter in this subparagraph referred to as the ''prior building'') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule

A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term ''gross rent'' shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5) Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compli-

ance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(9) Clarification of general public use requirement

A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

(h) Limitation on aggregate credit allowable with respect to projects located in a State

(1) Credit may not exceed credit amount allocated to building

(A) In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building

For purposes of clause (i), the term ''qualified building'' means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis

(i) In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period

For purposes of clause (i), the term ''project period'' means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies

(A) In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) $1.75 ($1.50 for 2001) multiplied by the State population, or

(II) $2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain States

(i) In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State

For purposes of this subparagraph, the term ''qualified State'' means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E) Special rule for States with constitutional home rule cities

For purposes of this subsection—

(i) In general

The aggregate housing credit dollar amount for any constitutional home rule

city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city

For purposes of this paragraph, the term ''constitutional home rule city'' has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation

Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population

For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(H) Cost-of-living adjustment

(i) In general

In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Rounding

(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(I) Increase in State housing credit ceiling for 2008 and 2009

In the case of calendar years 2008 and 2009—

(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A) In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded as described in section 146(i)(6).

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A) In general

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization

For purposes of this paragraph, the term ''qualified nonprofit organization'' means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization;[3] and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries

(i) In general

For purposes of this paragraph, a qualified nonprofit organization shall be treat-

[3] So in original. The semicolon probably should be a comma.

ed as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term ''qualified corporation'' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section 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.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term ''extended low-income housing commitment'' means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term ''extended use period'' means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F) Qualified contract

For purposes of subparagraph (E), the term ''qualified contract'' means a bona fide con-

tract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity

(i) In general

For purposes of subparagraph (E), the term ''adjusted investor equity'' means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for ''calendar year 1987''.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii) Base calendar year

For purposes of this subparagraph, the term ''base calendar year'' means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules

(A) Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the

credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II) subsection (f)(3)(A) were applied without regard to ''the percentage equal to ⅔ of''.

(D) Housing credit agency to specify applicable percentage and maximum qualified basis

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(8) Other definitions

For purposes of this subsection—

(A) Housing credit agency

The term ''housing credit agency'' means any agency authorized to carry out this subsection.

(B) Possessions treated as States

The term ''State'' includes a possession of the United States.

(i) Definitions and special rules

For purposes of this section—

(1) Compliance period

The term ''compliance period'' means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized

(A) In general

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which[4] are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by proceeds of obligations

A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

(C) Special rule for subsidized construction financing

Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

(ii) such obligation is redeemed before such building is placed in service.

(3) Low-income unit

(A) In general

The term ''low-income unit'' means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions

(i) In general

A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy

For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless

For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units

For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied—

[4] So in original. See 2008 Amendment note below.

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act,

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

(III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

(I) single parents and their children and such parents are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or.[5]

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i) In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building

The term ''new building'' means a building the original use of which begins with the taxpayer.

(5) Existing building

The term ''existing building'' means any building which is not a new building.

(6) Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property

(A) In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(8) Treatment of rural projects

For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

(9) Coordination with low-income housing grants

(A) Reduction in State housing credit ceiling for low-income housing grants received in 2009

For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

(B) Special rule for basis

Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).

(j) Recapture of credit

(1) In general

If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

[5] So in original. The period probably should not appear.

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3)

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer

(A) In general

For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules

(i) Husband and wife treated as 1 partner

For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable

Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building which continues in qualified use

(A) In general

The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations

If a building (or an interest therein) is disposed of during any taxable year and there is

any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Application of at-risk rules

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person

For purposes of paragraph (1)—

(A) In general

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building..[6]

(C) Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay

(A) In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621.

(B) Applicable portion

For purposes of subparagraph (A), the term ''applicable portion'' means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years

[6] So in original.

which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(*l*) Certifications and other reports to Secretary

(1) Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan

For purposes of this paragraph, the term ''qualified allocation plan'' means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompli-

ance with habitability standards through regular site visits.

(C) Certain selection criteria must be used

The selection criteria set forth in a qualified allocation plan must include

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

(vii) tenant populations of individuals with children,

(viii) projects intended for eventual tenant ownership,

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility

(A) In general

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation

In making the determination under subparagraph (A), the housing credit agency shall consider—

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made when credit amount applied for and when building placed in service

(i) In general

A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies

Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

(Added Pub. L. 99–514, title II, § 252(a), Oct. 22, 1986, 100 Stat. 2189; amended Pub. L. 99–509, title VIII, § 8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §§ 1002(*l*)(1)–(25), (32), 1007(g)(3)(B), title IV, §§ 4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373–3381, 3435, 3643, 3644; Pub. L. 101–239, title VII, §§ 7108(a)(1), (b)–(e)(2), (f)–(m), (n)(2)–(q), 7811(a), 7831(c), 7841(d)(13)–(15), Dec. 19, 1989, 103 Stat. 2306–2321, 2406, 2426, 2429; Pub. L. 101–508, title XI, §§ 11407(a)(1), (b)(1)–(9), 11701(a)(1)–(3)(A), (4), (5)(A), (6)–(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388–474, 1388–475, 1388–505 to 1388–507, 1388–535, 1388–551; Pub. L. 102–227, title I, § 107(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, § 13142(a)(1), (b)(1)–(5), Aug. 10, 1993, 107 Stat. 437–439; Pub. L. 104–188, title I, § 1704(t)(53), (64), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–206, title VI, § 6004(g)(5), July 22, 1998, 112 Stat. 796; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–554, § 1(a)(7) [title I, §§ 131(a)–(c), 132–136], Dec. 21, 2000, 114 Stat. 2763, 2763A–610 to 2763A–613; Pub. L. 107–147, title IV, § 417(2), (3), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, § 207(8), title IV, § 408(a)(3), Oct. 4, 2004, 118 Stat. 1177, 1191; Pub. L. 110–142, § 6(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L.

110–289, div. C, title I, §§ 3001–3002(b), 3003(a)–(g), 3004(a)–(g), 3007(b), July 30, 2008, 122 Stat. 2878–2884, 2886; Pub. L. 111–5, div. B, title I, § 1404, Feb. 17, 2009, 123 Stat. 352.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99–514, which amended section 168 of this title generally.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(B), is classified to section 1813 of Title 12, Banks and Banking.

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B), and (h)(6)(B)(iv), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

Sections 221(d)(3), (4) and 236 of the National Housing Act, referred to in subsec. (d)(6)(C)(i), are classified to sections 1715*l*(d)(3), (4) and 1715z–1, respectively, of Title 12, Banks and Banking.

Sections 515, 502(c), and 520 of the Housing Act of 1949, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B)(iv), and (i)(8), are classified to sections 1485, 1472(c), and 1490, respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101–239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i)(I), (II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title IV of the Act is classified generally to subchapter IV (§ 601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(i)(III), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which was classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor, and was repealed by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Job Training Partnership Act to the Code, see Tables. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (i)(9)(A), is section 1602 of Pub. L. 111–5, which is set out as a note below.

PRIOR PROVISIONS

A prior section 42, added Pub. L. 94–12, title II, § 203(a), Mar. 29, 1975, 89 Stat. 29; amended Pub. L. 94–164, § 3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94–455, title IV, § 401(a)(2)(A), (B), title V, § 503(b)(4), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95–30, title I, § 101(c), May 23, 1977, 91 Stat. 132, which related to general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding $9,000 or (2) $35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978, pursuant to the terms of: (1) Pub. L. 94–12, § 209(a) as amended by Pub. L. 94–164, § 2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94–164, § 3(b), as amended by Pub. L. 94–455, § 401(a)(1) and Pub. L. 95–30, § 103(a); and (3) Pub. L. 94–455, § 401(e), as amended by Pub. L. 95–30, § 103(c) and Pub. L. 95–600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

Another prior section 42 was renumbered section 37 of this title.

AMENDMENTS

2009—Subsec. (i). Pub. L. 111–5 added par. (9).

2008—Subsec. (b). Pub. L. 110–289, § 3002(a), redesignated par. (2) as (1), in heading, substituted ''Determination of applicable percentage'' for ''Buildings placed in service after 1987'', in text, substituted ''For purposes of this section, the term 'applicable percentage' means, with respect to any building, the appropriate percentage'' for ''(A) IN GENERAL.—In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage'', ''a new building which is not federally subsidized for the taxable year'' for ''a building described in paragraph (1)(A)'', and ''a building not described in clause (i)'' for ''a building described in paragraph (1)(B)'', added par. (2), and struck out ''For purposes of this section—'' after subsec. heading and former par. (1) which related to buildings placed in service during 1987.

Subsec. (c)(2). Pub. L. 110–289, § 3004(a), struck out concluding provisions which read as follows: ''Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).''

Subsec. (d)(2)(B)(ii). Pub. L. 110–289, § 3003(g)(1), substituted ''the date the building was last placed in service,'' for ''the later of—

''(I) the date the building was last placed in service, or

''(II) the date of the most recent nonqualified substantial improvement of the building,''.

Subsec. (d)(2)(D). Pub. L. 110–289, § 3003(e), (g)(2), redesignated cls. (ii) and (iii)(II) as (i) and (ii), respectively, in cl. (ii) struck out at end ''For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.'', and struck out former cls. (i) and (iii)(I) which related to the term ''nonqualified substantial improvement'' and application of section 179 for purposes of subpar. (B)(i).

Subsec. (d)(4)(C)(ii). Pub. L. 110–289, § 3003(c), substituted ''shall not exceed the sum of—'' for ''shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part.'' and added subcls. (I) and (II).

Subsec. (d)(5)(A). Pub. L. 110–289, § 3003(d), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.''

Subsec. (d)(5)(B), (C). Pub. L. 110–289, § 3003(g)(3), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).''

Subsec. (d)(5)(C)(v). Pub. L. 110–289, § 3003(a), added cl. (v).

Subsec. (d)(6). Pub. L. 110–289, § 3003(f), amended par. (6) generally. Prior to amendment, par. (6) consisted of subpars. (A) to (E) relating to general rule for waiver of par. (2)(B)(ii) with respect to any federally-assisted building, definition of ''federally-assisted building'', waiver for buildings with low-income occupancy, waiver for buildings acquired from insured depository institutions in default, and definition of ''appropriate Federal official''.

Subsec. (e)(3)(A)(ii)(I). Pub. L. 110–289, § 3003(b)(1)(A), substituted ''20 percent'' for ''10 percent''.

Subsec. (e)(3)(A)(ii)(II). Pub. L. 110–289, § 3003(b)(1)(B), substituted ''$6,000'' for ''$3,000''.

Subsec. (e)(3)(D). Pub. L. 110–289, § 3003(b)(2), added subpar. (D).

Subsec. (f)(5)(B)(ii)(II). Pub. L. 110–289, § 3003(b)(3), substituted ''if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.'' for ''if subsection (e)(3)(A)(ii)(II) were applied by substituting '$2,000' for '$3,000'.''

Subsec. (g)(9). Pub. L. 110–289, § 3004(g), added par. (9).

Subsec. (h)(1)(E)(ii). Pub. L. 110–289, § 3004(b), substituted ''(as of the date which is 1 year after the date that the allocation was made)'' for ''(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)''.

Subsec. (h)(3)(I). Pub. L. 110–289, § 3001, added subpar. (I).

Subsec. (h)(4)(A)(ii). Pub. L. 110–289, § 3007(b), inserted ''or such financing is refunded as described in section 146(i)(6)'' before period at end.

Subsec. (i)(2)(A). Pub. L. 110–289, § 3002(b)(1), struck out '', or any below market Federal loan,'' before ''the proceeds of which''.

Subsec. (i)(2)(B). Pub. L. 110–289, § 3002(b)(2)(A), in heading, struck out ''balance of loan or'' before ''proceeds'' and in text, struck out ''loan or'' before ''tax-exempt obligation'' and substituted ''for purposes of subsection (d) the proceeds of such obligation.'' for ''for purposes of subsection (d)—

''(i) in the case of a loan, the principal amount of such loan, and

''(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.''

Subsec. (i)(2)(C). Pub. L. 110–289, § 3002(b)(2)(B)(i), struck out ''or below market Federal loan'' after ''tax-exempt obligation'' in introductory provisions.

Subsec. (i)(2)(C)(i). Pub. L. 110–289, § 3002(b)(2)(B)(ii), substituted ''(when issued)'' for ''or loan (when issued or made)'' and ''the proceeds of such obligation'' for ''the proceeds of such obligation or loan''.

Subsec. (i)(2)(C)(ii). Pub. L. 110–289, § 3002(b)(2)(B)(iii), struck out '', and such loan is repaid,'' after ''redeemed''.

Subsec. (i)(2)(D), (E). Pub. L. 110–289, § 3002(b)(2)(C), struck out subpars. (D) and (E) which related to below market Federal loan and buildings receiving HOME assistance or Native American housing assistance, respectively.

Subsec. (i)(3)(D)(i)(II), (III). Pub. L. 110–289, § 3004(e), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (i)(8). Pub. L. 110–289, § 3004(f), added par. (8).

Subsec. (j)(6). Pub. L. 110–289, § 3004(c), amended par. (6) generally. Prior to amendment, text read as follows: ''In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if—

''(A) the taxpayer furnishes to the Secretary a bond in an amount satifactory to the Secretary and for the period required by the Secretary, and

''(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.''

Subsec. (m)(1)(C)(ix), (x). Pub. L. 110–289, § 3004(d), added cls. (ix) and (x).

2007—Subsec. (i)(3)(D)(ii)(I). Pub. L. 110–142 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''single parents and their children and such parents and children are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual, or''.

2004—Subsec. (d)(2)(D)(iii)(I). Pub. L. 108–311, § 408(a)(3), substituted ''section 179(d)(7)'' for ''section 179(b)(7)''.

Subsec. (i)(3)(D)(ii)(I). Pub. L. 108–311, § 207(8), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

2002—Subsec. (h)(3)(C). Pub. L. 107–147, § 417(2), substituted ''the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year'' for ''the amounts described in clauses (ii) and (iii) over the aggregate housing credit dollar amount allocated for such year'' in concluding provisions.

Subsec. (m)(1)(B)(ii)(II), (III). Pub. L. 107–147, § 417(3), struck out second ''and'' at end of subcl. (II) and inserted ''and'' at end of subcl. (III).

2000—Subsec. (c)(2). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act'' in concluding provisions.

Subsec. (d)(4)(A). Pub. L. 106–554, § 1(a)(7) [title I, § 134(a)(1)], substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (d)(4)(C), (D). Pub. L. 106–554, § 1(a)(7) [title I, § 134(a)(2), (3)], added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(5)(C)(ii)(I). Pub. L. 106–554, § 1(a)(7) [title I, § 135(b)], in first sentence, inserted ''either'' before ''in which 50 percent'' and ''or which has a poverty rate of at least 25 percent'' before period at end.

Subsec. (h)(1)(E)(ii). Pub. L. 106–554, § 1(a)(7) [title I, § 135(a)(1)], in first sentence, substituted ''(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation'' for ''(as of the close of the calendar year in which the allocation''.

Subsec. (h)(3)(C). Pub. L. 106–554, § 1(a)(7) [title I, § 136(b)], which directed the substitution of ''clauses (i) through (iv)'' for ''clauses (i) and (iii)'' in the first sentence of concluding provisions, could not be executed because the words ''clauses (i) and (iii)'' did not appear subsequent to the amendment by Pub. L. 106–554, § 1(a)(7) [title I, § 131(c)(1)(B)]. See below.

Pub. L. 106–554, § 1(a)(7) [title I, § 135(a)(2)], in last sentence of concluding provisions, substituted ''project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which'' for ''project which''.

Pub. L. 106–554, § 1(a)(7) [title I, § 131(c)(1)], in first sentence of concluding provisions, substituted ''clause (i)'' for ''clause (ii)'' and ''clauses (ii)'' for ''clauses (i)''.

Subsec. (h)(3)(C)(i), (ii). Pub. L. 106–554, § 1(a)(7) [title I, § 131(a)], amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) $1.25 multiplied by the State population,

''(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,''.

Subsec. (h)(3)(D)(ii). Pub. L. 106–554, § 1(a)(7) [title I, § 136(a)], substituted ''the excess (if any) of—'' for ''the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(i)) over the excess (if any) of—'' in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

''(I) the aggregate housing credit dollar amount allocated for such year, over

''(II) the sum of the amounts described in clauses (ii) and (iii) of subparagraph (C).''

Pub. L. 106–554, §1(a)(7) [title I, §131(c)(2)], substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(ii)'' in introductory provisions and ''clauses (ii)'' for ''clauses (i)'' in subcl. (II).

Subsec. (h)(3)(H). Pub. L. 106–554, §1(a)(7) [title I, §131(b)], added subpar. (H).

Subsec. (i)(2)(E). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(2)], inserted ''or Native American housing assistance'' after ''HOME assistance'' in heading.

Subsec. (i)(2)(E)(i). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(1)], inserted ''or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997)'' after ''this subparagraph)''.

Subsec. (i)(3)(B)(iii)(I). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

Subsec. (m)(1)(A)(iii), (iv). Pub. L. 106–554, §1(a)(7) [title I, §133(a)], added cls. (iii) and (iv).

Subsec. (m)(1)(B)(ii)(III). Pub. L. 106–554, §1(a)(7) [title I, §132(b)], added subcl. (III).

Subsec. (m)(1)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §133(b)], inserted ''and in monitoring for noncompliance with habitability standards through regular site visits'' before period at end.

Subsec. (m)(1)(C)(iii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(1)], inserted '', including whether the project includes the use of existing housing as part of a community revitalization plan'' before comma at end.

Subsec. (m)(1)(C)(v) to (viii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(2)], added cls. (v) to (viii) and struck out former cls. (v) to (vii) which read as follows:

''(v) participation of local tax-exempt organizations,

''(vi) tenant populations with special housing needs, and

''(vii) public housing waiting lists.''

1998—Subsec. (j)(4)(D). Pub. L. 105–206 substituted ''this chapter'' for ''subpart A, B, D, or G of this part''.

1996—Subsec. (c)(2). Pub. L. 104–188, §1704(t)(64), struck out ''of 1988'' after ''Homeless Assistance Act''.

Subsec. (d)(5)(B). Pub. L. 104–188, §1704(t)(53), provided that section 11812(b)(3) of Pub. L. 101–508 shall be applied by not executing the amendment therein to the heading of subsec. (d)(5)(B) of this section. See 1990 Amendment note below.

1993—Subsec. (g)(8). Pub. L. 103–66, §13142(b)(3), added par. (8).

Subsec. (h)(6)(B)(iv) to (vi). Pub. L. 103–66, §13142(b)(4), added cl. (iv) and redesignated former cls. (iv) and (v) as (v) and (vi), respectively.

Subsec. (i)(2)(E). Pub. L. 103–66, §13142(b)(5), added subpar. (E).

Subsec. (i)(3)(D). Pub. L. 103–66, §13142(b)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is—

''(i) a student and receiving assistance under title IV of the Social Security Act, or

''(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.''

Subsec. (m)(2)(B)(iv). Pub. L. 103–66, §13142(b)(1), added cl. (iv).

Subsec. (*o*). Pub. L. 103–66, §13142(a)(1), struck out subsec. (*o*) which provided that subsec. (h)(3)(C)(i) would not apply to any amount allocated after June 30, 1992, and that subsec. (h)(4) would not apply to any building placed in service after June 30, 1992, with an exception for bond-financed buildings in progress.

1991—Subsec. (*o*)(1). Pub. L. 102–227, §107(a)(1), struck out '', for any calendar year after 1991'' after ''paragraph (2)'' in introductory provisions, inserted ''to any amount allocated after June 30, 1992'' before comma at end of subpar. (A), and substituted ''June 30, 1992'' for ''1991'' in subpar. (B).

Subsec. (*o*)(2). Pub. L. 102–227, §107(a)(2), substituted ''July 1, 1992'' for ''1992'' in introductory provisions and subpar. (A), ''June 30, 1992'' for ''December 31, 1991'' and ''June 30, 1994'' for ''December 31, 1993'' in subpar. (B), and ''July 1, 1994'' for ''January 1, 1994'' in subpar. (C).

1990—Subsec. (b)(1). Pub. L. 101–508, §11701(a)(1)(B), struck out at end ''A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.''

Subsec. (c)(2). Pub. L. 101–508, §11701(a)(1)(A), inserted at end ''Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937.''

Pub. L. 101–508, §11407(b)(5)(A), inserted before period at end of last sentence ''(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))''.

Subsec. (d)(2)(D)(i)(I). Pub. L. 101–508, §11812(b)(3), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 167(k).''

Subsec. (d)(2)(D)(ii)(V). Pub. L. 101–508, §11407(b)(8), added subcl. (V).

Subsec. (d)(5)(B). Pub. L. 101–508, §11812(b)(3), which directed the insertion of ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 167(k)'', was executed to the text, and not the heading, of subpar. (B). See 1996 Amendment note above.

Subsec. (d)(5)(C)(ii)(I). Pub. L. 101–508, §11407(b)(4), inserted at end ''If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.''

Pub. L. 101–508, §11701(a)(2)(B), inserted before period at end ''for such year''.

Pub. L. 101–508, §11701(a)(2)(A), which directed the insertion of ''which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract,'' after ''census tract'', was executed by making the insertion after ''any census tract'' to reflect the probable intent of Congress.

Subsec. (g)(2)(B)(iv). Pub. L. 101–508, §11407(b)(3), added cl. (iv).

Subsec. (g)(2)(D)(i). Pub. L. 101–508, §11701(a)(3)(A), inserted before period at end ''and such unit continues to be rent-restricted''.

Subsec. (g)(2)(D)(ii). Pub. L. 101–508, §11701(a)(4), inserted at end ''In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.''

Subsec. (g)(3)(A). Pub. L. 101–508, §11701(a)(5)(A), substituted ''the 1st year of the credit period for such building'' for ''the 12-month period beginning on the date the building is placed in service''.

Subsec. (h)(3)(C). Pub. L. 101–508, §11701(a)(6)(A), substituted ''the sum of the amounts described in clauses (i) and (iii)'' for ''the amount described in clause (i)'' in second sentence.

Subsec. (h)(3)(D)(ii)(II). Pub. L. 101–508, §11701(a)(6)(B), substituted ''the sum of the amounts described in clauses (i) and (iii)'' for ''the amount described in clause (i)''.

Subsec. (h)(5)(B). Pub. L. 101–508, §11407(b)(9)(A), inserted ''own an interest in the project (directly or through a partnership) and'' after ''nonprofit organization is to''.

Subsec. (h)(5)(C)(i) to (iii). Pub. L. 101–508, §11407(b)(9)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (h)(5)(D)(i). Pub. L. 101–508, §11407(b)(9)(C), inserted ''ownership and'' before ''material participation''.

Subsec. (h)(6)(B)(i). Pub. L. 101–508, §11701(a)(7)(A), inserted before comma at end ''and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)''.

Subsec. (h)(6)(B)(ii). Pub. L. 101–508, §11701(a)(7)(B), substituted ''requirement and prohibitions'' for ''requirement''.

Subsec. (h)(6)(B)(iii) to (v). Pub. L. 101–508, §11701(a)(8)(A), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (h)(6)(E)(i)(I). Pub. L. 101–508, §11701(a)(9), inserted before comma ''unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period''.

Subsec. (h)(6)(E)(ii)(II). Pub. L. 101–508, §11701(a)(8)(C), inserted before period at end ''not otherwise permitted under this section''.

Subsec. (h)(6)(F). Pub. L. 101–508, §11701(a)(8)(D), inserted ''the nonlow-income portion of the building for fair market value and'' before ''the low-income portion'' in introductory provisions.

Subsec. (h)(6)(J) to (L). Pub. L. 101–508, §11701(a)(8)(B), redesignated subpars. (K) and (L) as (J) and (K), respectively, and struck out former subpar. (J) which related to sales of less than the low-income portions of a building.

Subsec. (i)(3)(D). Pub. L. 101–508, §11407(b)(6), substituted ''Certain students'' for ''Students in government-supported job training programs'' in heading and amended text generally. Prior to amendment, text read as follows: ''A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.''

Subsec. (i)(7). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (i)(7)(A). Pub. L. 101–508, §11407(b)(1), substituted ''the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency'' for ''the tenants of such building''.

Subsec. (i)(8). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (k)(1). Pub. L. 101–508, §11813(b)(3)(A), substituted ''49(a)(1)'' for ''46(c)(8)'', ''49(a)(2)'' for ''46(c)(9)'', and ''49(b)(1)'' for ''47(d)(1)''.

Subsec. (k)(2)(A)(ii), (D). Pub. L. 101–508, §11813(b)(3)(B), substituted ''49(a)(1)(D)(iv)(II)'' for ''46(c)(8)(D)(iv)(II)''.

Subsec. (m)(1)(B)(ii) to (iv). Pub. L. 101–508, §11407(b)(7)(B), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,''.

Pub. L. 101–508, §11407(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''which provides a procedure that the agency will follow in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of.''

Subsec. (m)(2)(B). Pub. L. 101–508, §11407(b)(7)(A), added cl. (iii) and inserted provision that cl. (iii) not be applied so as to impede the development of projects in hard-to-develop areas.

Subsec. (*o*)(1). Pub. L. 101–508, §11407(a)(1)(A), substituted ''1991'' for ''1990'' wherever appearing.

Subsec. (*o*)(2). Pub. L. 101–508, §11407(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: ''For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if—

''(A) the bonds with respect to such building are issued before 1990,

''(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

''(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

''(D) such building is placed in service before January 1, 1992.''

1989—Subsec. (b)(1). Pub. L. 101–239, §7108(h)(5), inserted at end ''A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.''

Subsec. (b)(3)(C). Pub. L. 101–239, §7108(c)(2), which directed amendment of subpar. (C) by substituting ''subsection (h)(7)'' for ''subsection (h)(6))'', was executed by substituting ''subsection (h)(7)'' for ''subsection (h)(6)'', as the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 101–239, §7108(i)(2), added subpar. (E).

Subsec. (d)(1). Pub. L. 101–239, §7108(*l*)(1), inserted ''as of the close of the 1st taxable year of the credit period'' before period at end.

Subsec. (d)(2)(A). Pub. L. 101–239, §7108(*l*)(2), substituted ''subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and'' for ''subparagraph (B), the sum of—

''(I) the portion of its adjusted basis attributable to its acquisition cost, plus

''(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and''.

Subsec. (d)(2)(B)(iv). Pub. L. 101–239, §7108(d)(1), added cl. (iv).

Subsec. (d)(2)(C). Pub. L. 101–239, §7108(*l*)(3)(A), substituted ''Adjusted basis'' for ''Acquisition cost'' in heading and ''adjusted basis'' for ''cost'' in text.

Subsec. (d)(5). Pub. L. 101–239, §7108(*l*)(3)(B), substituted ''Special rules for determining eligible basis'' for ''Eligible basis determined when building placed in service'' in heading.

Subsec. (d)(5)(A). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''Except as provided in subparagraphs (B) and (C), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service (increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II)).''

Subsec. (d)(5)(B). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(5)(C). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 101–239, §7811(a)(1), inserted ''section'' before ''167(k)'' in heading.

Subsec. (d)(5)(D). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (D) as (C).

Pub. L. 101–239, §7108(g), added subpar. (D).

Subsec. (d)(6)(A)(i). Pub. L. 101–239, §7841(d)(13), substituted ''Farmers Home Administration'' for ''Farmers' Home Administration''.

Subsec. (d)(6)(C) to (E). Pub. L. 101–239, §7108(f), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (d)(7)(A). Pub. L. 101–239, §7831(c)(6), inserted ''(or interest therein)'' after ''subparagraph (B)'' in introductory provisions.

Subsec. (d)(7)(A)(ii). Pub. L. 101–239, §7841(d)(14), substituted ''under subsection (a)'' for ''under sebsection (a)''.

Subsec. (e)(2)(A). Pub. L. 101–239, §7841(d)(15), substituted ''to capital account'' for ''to captial account''.

Subsec. (e)(3). Pub. L. 101–239, §7108(d)(3), substituted ''Minimum expenditures to qualify'' for ''Average of rehabilitation expenditures must be $2,000 or more'' in heading, added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is $2,000 or more.''

Subsec. (e)(5). Pub. L. 101–239, §7108(*l*)(3)(C), substituted ''subsection (d)(2)(A)(i)'' for ''subsection (d)(2)(A)(i)(II)''.

Subsec. (f)(4). Pub. L. 101–239, §7831(c)(4), added par. (4).

Subsec. (f)(5). Pub. L. 101–239, §7108(d)(2), added par. (5).

Subsec. (g)(2)(A). Pub. L. 101–239, §7108(e)(2), inserted at end ''For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.''

Pub. L. 101–239, §7108(e)(1)(B), substituted ''the imputed income limitation applicable to such unit'' for ''the income limitation under paragraph (1) applicable to individuals occupying such unit''.

Subsec. (g)(2)(B). Pub. L. 101–239, §7108(h)(2), added cl. (iii) and concluding provisions which defined ''supportive service''.

Subsec. (g)(2)(C) to (E). Pub. L. 101–239, §7108(e)(1)(A), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (g)(3)(D). Pub. L. 101–239, §7108(m)(3), added subpar. (D).

Subsec. (g)(4). Pub. L. 101–239, §7108(n)(2), struck out ''(other than section 142(d)(4)(B)(iii))'' after ''in applying such provisions''.

Subsec. (g)(7). Pub. L. 101–239, §7108(h)(3), added par. (7).

Subsec. (h)(1)(B). Pub. L. 101–239, §7108(m)(2), substituted ''(E), or (F)'' for ''or (E)''.

Subsec. (h)(1)(F). Pub. L. 101–239, §7108(m)(1), added subpar. (F).

Subsec. (h)(3)(C) to (G). Pub. L. 101–239, §7108(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) to (F) as (E) to (G), respectively, and struck out former subpar. (C) which read as follows: ''The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to $1.25 multiplied by the State population.''

Subsec. (h)(4)(B). Pub. L. 101–239, §7108(j), substituted ''50 percent'' for ''70 percent'' in heading and in text.

Subsec. (h)(5)(D)(ii). Pub. L. 101–239, §7811(a)(2), substituted ''clause (i)'' for ''clause (ii)''.

Subsec. (h)(5)(E). Pub. L. 101–239, §7108(b)(2)(A), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (h)(6). Pub. L. 101–239, §7108(c)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (h)(6)(B) to (E). Pub. L. 101–239, §7108(b)(2)(B), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that the housing credit dollar amount could not be carried over to any other calendar year.

Subsec. (h)(7), (8). Pub. L. 101–239, §7108(c)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (i)(2)(D). Pub. L. 101–239, §7108(k), inserted at end ''Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).''

Subsec. (i)(3)(B). Pub. L. 101–239, §7108(i)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis. For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.''

Pub. L. 101–239, §7831(c)(1), inserted ''(as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes)'' after ''suitable for occupancy''.

Pub. L. 101–239, §7108(h)(1), inserted at end ''For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.''

Subsec. (i)(3)(D). Pub. L. 101–239, §7831(c)(2), added subpar. (D).

Subsec. (i)(3)(E). Pub. L. 101–239, §7108(h)(4), added subpar. (E).

Subsec. (i)(6). Pub. L. 101–239, §7831(c)(3), added par. (6).

Subsec. (i)(8). Pub. L. 101–239, §7108(q), added par. (8).

Subsec. (k)(2)(D). Pub. L. 101–239, §7108(*o*), added provision at end relating to the applicability of cl. (ii) to qualified nonprofit organizations not described in section 46(c)(8)(D)(iv)(II) with respect to a building.

Subsec. (*l*)(1). Pub. L. 101–239, §7108(p), in introductory provisions, substituted ''Following'' for ''Not later than the 90th day following'' and inserted ''at such time and'' before ''in such form''.

Subsec. (m). Pub. L. 101–239, §7108(*o*), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (m)(4). Pub. L. 101–239, §7831(c)(5), added par. (4).

Subsec. (n). Pub. L. 101–239, §7108(*o*), redesignated subsec. (m) as (n). Former subsec. (n) redesignated (*o*).

Pub. L. 101–239, §7108(a)(1), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: ''The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989.''

Subsec. (*o*). Pub. L. 101–239, §7108(*o*), redesignated subsec. (n) as (*o*).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §1002(*l*)(1)(A), substituted ''for the earlier of—'' for ''for the month in which such building is placed in service'' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 100–647, §1002(*l*)(1)(B), substituted ''the month applicable under clause (i) or (ii) of subparagraph (A)'' for ''the month in which the building was placed in service''.

Subsec. (b)(3). Pub. L. 100–647, §1002(*l*)(9)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).''

Subsec. (c)(2)(A). Pub. L. 100–647, §1002(*l*)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and''.

Subsec. (d)(2)(D)(ii). Pub. L. 100–647, §1002(*l*)(3), substituted ''Special rules for certain transfers'' for ''Special rule for nontaxable exchanges'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom aquired [sic].''

Subsec. (d)(3). Pub. L. 100–647, §1002(*l*)(4), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.''

Subsec. (d)(5)(A). Pub. L. 100–647, §1002(*l*)(6)(B), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Pub. L. 100–647, §1002(*l*)(5), inserted ''(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))'' before period at end.

Subsec. (d)(5)(C). Pub. L. 100–647, §1002(*l*)(6)(A), added subpar. (C).

Subsec. (d)(6)(A)(iii). Pub. L. 100–647, §1002(*l*)(7), struck out cl. (iii) which related to other circumstances of financial distress.

Subsec. (d)(6)(B)(ii). Pub. L. 100–647, §1002(*l*)(8), struck out ''of 1934'' after ''Act''.

Subsec. (f)(1). Pub. L. 100–647, §1002(*l*)(2)(B), substituted ''beginning with—'' for ''beginning with'' and subpars. (A) and (B) and concluding provisions for ''the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable.''

Subsec. (f)(3). Pub. L. 100–647, §1002(*l*)(9)(A), amended par. (3) generally. Prior to amendment, par. (3) ''Special rule where increase in qualified basis after 1st year of credit period'' read as follows:

''(A) CREDIT INCREASED.—If—

''(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of any building exceeds

''(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to ⅔ of the applicable percentage for such building.

''(B) 1ST YEAR COMPUTATION APPLIES.—A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable.''

Subsec. (g)(2)(B)(i). Pub. L. 100–647, §1002(*l*)(10), struck out ''Federal'' after ''comparable''.

Subsec. (g)(2)(C). Pub. L. 100–647, §1002(*l*)(11), added subpar. (C).

Subsec. (g)(3). Pub. L. 100–647, §1002(*l*)(12), amended par. (3) generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

Subsec. (g)(4). Pub. L. 100–647, §1002(*l*)(13), inserted ''; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection'' before period at end.

Subsec. (g)(6). Pub. L. 100–647, §1002(*l*)(32), added par. (6).

Subsec. (h)(1). Pub. L. 100–647, §1002(*l*)(14)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of—

''(A) the 60th day after the close of the taxable year, or

''(B) the close of the calendar year in which such taxable year ends.''

Subsec. (h)(1)(B). Pub. L. 100–647, §4003(b)(1), substituted ''(C), (D), or (E)'' for ''(C) or (D)''.

Subsec. (h)(1)(E). Pub. L. 100–647, §4003(a), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 100–647, §1002(*l*)(15), substituted ''if—'' for ''and which is taken into account under section 146'' and added cls. (i) and (ii).

Subsec. (h)(5)(D), (E). Pub. L. 100–647, §1002(*l*)(16), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(6)(B)(ii). Pub. L. 100–647, §1002(*l*)(14)(B), struck out cl. (ii) which read as follows:

''(ii) ALLOCATION MAY NOT BE EARLIER THAN YEAR IN WHICH BUILDING PLACED IN SERVICE.—A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year.''

Subsec. (h)(6)(D). Pub. L. 100–647, §1002(*l*)(17), amended subpar. (D) generally. Prior to amendment, subpar. (D) ''Credit allowable determined without regard to averaging convention, etc.'' read as follows: ''For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined—

''(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

''(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to ⅔ of'.''

Subsec. (h)(6)(E). Pub. L. 100–647, §1002(*l*)(18), added subpar. (E).

Subsec. (i)(2)(A). Pub. L. 100–647, §1002(*l*)(19)(A), inserted ''or any prior taxable year'' after ''such taxable year'' and substituted ''is or was outstanding'' for ''is outstanding'' and ''are or were used'' for ''are used''.

Subsec. (i)(2)(B). Pub. L. 100–647, §1002(*l*)(19)(B), substituted ''balance of loan or proceeds of obligations'' for ''outstanding balance of loan'' in heading and amended text generally. Prior to amendment, text read as follows: ''A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d).''

Subsec. (i)(2)(C). Pub. L. 100–647, §1002(*l*)(19)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (i)(2)(D). Pub. L. 100–647, §1002(*l*)(19)(C), (D), redesignated former subpar. (C) as (D) and substituted ''this paragraph'' for ''subparagraph (A)''.

Subsec. (j)(4)(D). Pub. L. 100–647, §1007(g)(3)(B), substituted ''D, or G'' for ''or D''.

Subsec. (j)(4)(F). Pub. L. 100–647, §1002(*l*)(20), added subpar. (F).

Subsec. (j)(5)(B). Pub. L. 100–647, §4004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''This paragraph shall apply to any partnership—

''(i) more than ½ the capital interests, and more than ½ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and

''(ii) which elects the application of this paragraph.''

Subsec. (j)(5)(B)(i). Pub. L. 100–647, §1002(*l*)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''which has 35 or more partners each of whom is a natural person or an estate, and''.

Subsec. (j)(6). Pub. L. 100–647, §1002(*l*)(22), inserted ''(or interest therein)'' after ''disposition of building'' in heading, and in text inserted ''or an interest therein'' after ''of a building''.

Subsec. (k)(2)(B). Pub. L. 100–647, §1002(*l*)(23), inserted before period at end '', except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—'' and cls. (i) and (ii).

Subsec. (*l*). Pub. L. 100–647, §1002(*l*)(24)(B), substituted ''Certifications and other reports to Secretary'' for ''Certifications to Secretary'' in heading.

Subsec. (*l*)(2), (3). Pub. L. 100–647, §1002(*l*)(24)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (n). Pub. L. 100–647, §4003(b)(3), amended subsec. (n) generally, substituting a single par. for former pars. (1) and (2).

Subsec. (n)(1). Pub. L. 100–647, §1002(*l*)(25), inserted '', and, except for any building described in paragraph

(2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989'' after ''year after 1989''.

1986—Subsec. (k)(1). Pub. L. 99–509 substituted ''subparagraphs (D)(ii)(II) and (D)(iv)(I)'' for ''subparagraph (D)(iv)(I)''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3002(c), July 30, 2008, 122 Stat. 2880, provided that: ''The amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3003(h), July 30, 2008, 122 Stat. 2882, provided that:

''(1) IN GENERAL.—Except as otherwise provided in paragraph (2), the amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

''(2) REHABILITATION REQUIREMENTS.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to buildings with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008].

''(B) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—To the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, the amendments made by subsection (b) [amending this section] shall apply [to] buildings financed with bonds issued pursuant to allocations made after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3004(i), July 30, 2008, 122 Stat. 2884, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

''(2) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—The amendment made by subsection (c) [amending this section] shall apply to—

''(A) interests in buildings disposed [of] after the date of the enactment of this Act [July 30, 2008], and

''(B) interests in buildings disposed of on or before such date if—

''(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

''(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

''(3) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—The amendments made by subsection (d) [amending this section] shall apply to allocations made after December 31, 2008.

''(4) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—The amendments made by subsection (e) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

''(5) TREATMENT OF RURAL PROJECTS.—The amendment made by subsection (f) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

''(6) CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT.—The amendment made by subsection (g) [amending this section] shall apply to buildings placed in service before, on, or after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3007(c), July 30, 2008, 122 Stat. 2886, provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to repayments of loans received after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §6(b), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendment made by this section [amending this section] shall apply to—

''(1) housing credit amounts allocated before, on, or after the date of the enactment of this Act [Dec. 20, 2007], and

''(2) buildings placed in service before, on, or after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(8) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, subtitle D, §131(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–611, provided that: ''The amendments made by this section [amending this section] shall apply to calendar years after 2000.''

Pub. L. 106–554, §1(a)(7) [title I, subtitle D, §137], Dec. 21, 2000, 114 Stat. 2763, 2763A–613, provided that: ''Except as otherwise provided in this subtitle [amending this section and enacting provisions set out above], the amendments made by this subtitle shall apply to—

''(1) housing credit dollar amounts allocated after December 31, 2000; and

''(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13142(a)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to periods ending after June 30, 1992.''

Section 13142(b)(6) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(b), Aug. 20, 1996, 110 Stat. 1875, provided that:

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the amendments made by this subsection [amending this section] shall apply to—

''(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

''(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

''(B) FULL-TIME STUDENTS, WAIVER AUTHORITY, AND PROHIBITED DISCRIMINATION.—The amendments made by paragraphs (2), (3), and (4) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].

''(C) HOME ASSISTANCE.—The amendment made by paragraph (5) [amending this section] shall apply to periods after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 107(b) of Pub. L. 102–227 provided that: ''The amendments made by this section [amending this section] shall apply to calendar years after 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11407(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending

this section and repealing provisions set out below] shall apply to calendar years after 1989.''

Section 11407(b)(10) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section] shall apply to—

''(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

''(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

''(B) TENANT RIGHTS, ETC.—The amendments made by paragraphs (1), (6), (8), and (9) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].

''(C) MONITORING.—The amendment made by paragraph (2) [amending this section] shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

''(D) STUDY.—The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) [amending this section] in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

Section 11701(a)(3)(B) of Pub. L. 101–508 provided that: ''In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) [amending this section] does not apply, such amendment shall apply to—

''(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act [Nov. 5, 1990], and

''(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.''

Section 11701(n) of Pub. L. 101–508 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section and sections 148, 163, 172, 403, 1031, 1253, 2056, 4682, 4975, 4978B and 6038 of this title, and provisions set out as notes under this section and section 2040 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, title VII] to which such amendment relates.''

Section 11812(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 167, 168, 312, 381, 404, 460, 642, 1016, 1250, and 7701 of this title] shall apply to property placed in service after the date of the enactment of this Act [Nov. 5, 1990].

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

''(3) EXCEPTION FOR PREVIOUSLY GRANDFATHER EXPENDITURES.—The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514] (as added by section 1002(*l*)(31) of the Technical and Miscellaneous Revenue Act of 1988 [see Transitional Rules note below]).''

Amendment by section 11813(b)(3) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7108(r) of Pub. L. 101–239, as amended by Pub. L. 101–508, title XI, § 11701(a)(11), (12), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 104–188, title I, § 1702(g)(5)(A), Aug. 20, 1996, 110 Stat. 1873, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 142 of this title] shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

''(2) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989.

''(3) ONE-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY, ETC.—The amendments made by subsection (b) [amending this section] shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section 42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

''(4) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR RULE.—The amendments made by subsection (f) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

''(5) CERTIFICATIONS WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—The amendment made by subsection (p) [amending this section] shall apply to taxable years ending on or after December 31, 1989.

''(6) CERTAIN RULES WHICH APPLY TO BONDS.—Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued after December 31, 1989.

''(7) CLARIFICATIONS.—The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986 [Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title]:

''(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis) [amending this section].

''(B) Subsection (*l*) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period) [amending this section].

''(8) GUIDANCE ON DIFFICULT DEVELOPMENT AREAS AND POSTING OF BOND TO AVOID RECAPTURE.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 1989]—

''(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

''(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).''

[Pub. L. 104–188, title I, § 1702(g)(5), Aug. 20, 1996, 110 Stat. 1873, provided that:

[''(A) Paragraph (11) of section 11701(a) of the Revenue Reconciliation Act of 1990 (and the amendment made by such paragraph) [Pub. L. 101–508, which amended section 7108(r)(2) of Pub. L. 101–239, set out above, by inserting ''but only with respect to bonds issued after such date'' before the period at the end of such section 7108(r)(2)] are hereby repealed, and section 7108(r)(2) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239] shall be applied as if such paragraph (and amendment) had never been enacted.

[''(B) Subparagraph (A) shall not apply to any building if the owner of such building establishes to the satisfaction of the Secretary of the Treasury or his dele-

gate that such owner reasonably relied on the amendment made by such paragraph (11).'']

Amendment by section 7811(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(c) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(*l*)(1)–(25), (32) and 1007(g)(3)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4003(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 469 of this title] shall apply to amounts allocated in calendar years after 1987.''

Section 4004(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 252 of the Reform Act [section 252 of Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title].

''(2) PERIOD FOR ELECTION.—The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 8072(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986 [enacting this section].''

EFFECTIVE DATE

Section 252(e) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

''(2) SPECIAL RULE FOR REHABILITATION EXPENDITURES.—Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1).''

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11812(b)(3) and 11813(b)(3) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009

Pub. L. 111–5, div. B, title I, §1602, Feb. 17, 2009, 123 Stat. 362, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

''(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term 'low-income housing grant election amount' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

''(1) the sum of—

''(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

''(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by

''(2) 10.

''(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

''(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

''(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCATIONS.—Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section [section 42(h)(3) has no subpar. (J)]), the State housing credit ceiling applicable to such agency.

''(3) COMPLIANCE AND ASSET MANAGEMENT.—The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

''(4) RECAPTURE.—The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

''(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

''(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes

of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

''(f) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.''

ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING

Section 13142(c) of Pub. L. 103–66 provided that:

''(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, amending this section] did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

''(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

''(3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

''(4) An election under this subsection may be made only during the 180-day period beginning on the date of the enactment of this Act [Aug. 10, 1993] and, once made, shall be irrevocable.''

ELECTION TO ACCELERATE CREDIT INTO 1990

Section 11407(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

''(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.—The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

''(3) ELECTION.—The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.''

EXCEPTION TO TIME PERIOD FOR MEETING PROJECT REQUIREMENTS IN ORDER TO QUALIFY AS LOW-INCOME HOUSING

Section 11701(a)(5)(B) of Pub. L. 101–508 provided that: ''In the case of a building to which the amendment made by subparagraph (A) [amending this section] does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.''

STATE HOUSING CREDIT CEILING FOR CALENDAR YEAR 1990

Section 7108(a)(2) of Pub. L. 101–239 provided that in the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 be applied by substituting ''$.9375'' for ''$1.25'', prior to repeal by Pub. L. 101–508, title XI, § 11407(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388–474, applicable to calendar years after 1989.

TRANSITIONAL RULES

Section 252(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1002(*l*)(28)–(31), Nov. 10, 1988, 102 Stat. 3381, provided that:

''(1) LIMITATION TO NON-ACRS BUILDINGS NOT TO APPLY TO CERTAIN BUILDINGS, ETC.—

''(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

''(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply,

''(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code,

''(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

''(iv) the amendments made by section 803 [enacting section 263A of this title, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall not apply.

''(B) PROJECT DESCRIBED.—A project is described in this subparagraph if—

''(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

''(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

''(iii) the number assigned to such project by the Federal Housing Administration is 023–36602.

''(C) ADDITIONAL UNITS ELIGIBLE FOR CREDIT.—In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

''(D) PROJECT DESCRIBED.—A project is described in this subparagraph if—

''(i) rents charged for units in such project are restricted by State regulations,

''(ii) the annual cash flow of such project is restricted by State law,

''(iii) the project is located on land owned by or ground leased from a public housing authority,

''(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

''(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

''(E) MAXIMUM ADDITIONAL CREDIT.—The maximum present value of additional credits allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

''(2) ADDITIONAL ALLOCATION OF HOUSING CREDIT CEILING.—

''(A) IN GENERAL.—There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

"For calendar year:	**The additional allocation is:**
1987	$3,900,000
1988	$7,600,000
1989	$1,300,000.

''(B) HOUSING CREDIT AGENCIES DESCRIBED.—The housing credit agencies described in this subparagraph are:

''(i) A corporate governmental agency constituted as a public benefit corporation and established in

1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

''(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

''(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

''(C) PROJECT DESCRIBED.—A project is described in this subparagraph if such project is a qualified low-income housing project which—

''(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

''(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

''(D) SPECIAL RULES.—

''(i) Any building—

''(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

''(II) which is placed in service after June 30, 1986, and before January 1, 1987,

shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

''(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

''(E) ALL UNITS TREATED AS LOW INCOME UNITS IN CERTAIN CASES.—In the case of any building—

''(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

''(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year,

such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1. The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.

''(3) CERTAIN PROJECTS PLACED IN SERVICE BEFORE 1987.—

''(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

''(i) section 42(c)(2)(B) of such Code shall not apply,

''(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the application of clause (i)), and

''(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

''(B) PROJECT DESCRIBED.—A project is described in this subparagraph if the code number assigned to such project by the Farmers' Home Administration appears in the following table:

"The code number is:	The housing credit dollar amount is:
(i) 49284553664	$16,000
(ii) 4927742022446	$22,000
(iii) 49270742276087	$64,000
(iv) 490270742387293	$48,000
(v) 4927074218234	$32,000
(vi) 49270742274019	$36,000
(vii) 51460742345074	$53,000.

''(C) DETERMINATION OF ADJUSTED BASIS.—The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the close of the taxable year ending before the first taxable year of the credit period for such building.

''(D) CERTAIN RULES TO APPLY.—Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

''(4) DEFINITIONS.—For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

''(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

''(A) the amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall not apply, and

''(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150.''

§ 43. Enhanced oil recovery credit

(a) General rule

For purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

(b) Phase-out of credit as crude oil prices increase

(1) In general

The amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds $28, bears to

(B) $6.

(2) Reference price

For purposes of this subsection, the term ''reference price'' means, with respect to any calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(3) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1991, there shall be substituted for the $28 amount under paragraph (1)(A) an amount equal to the product of—

(i) $28, multiplied by

(ii) the inflation adjustment factor for such calendar year.

(B) Inflation adjustment factor

The term ''inflation adjustment factor'' means, with respect to any calendar year, a

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§ 1.42-18 Qualified contracts.

(a) ***Extended low-income housing commitment*** **-**

(1) ***In general.*** No credit under section 42(a) is allowed by reason of section 42 with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of such taxable year. A commitment must be in effect for the extended use period (as defined in paragraph (a)(1)(i) of this section).

(i) ***Extended use period.*** The term *extended use period* means the period beginning on the first day in the compliance period (as defined in section 42(i)(1)) on which the building is part of a qualified low-income housing project (as defined in section 42(g)(1)) and ending on the later of -

(A) The date specified by the low-income housing credit agency (Agency) in the commitment; or

(B) The date that is 15 years after the close of the compliance period.

(ii) ***Termination of extended use period.*** The extended use period for any building will terminate -

(A) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Commissioner determines that such acquisition is part of an arrangement with the taxpayer ("the owner") a purpose of which is to terminate such period; or

(B) On the last day of the one-year period beginning on the date (after the 14th year of the compliance period) on which the owner submits a written request to the Agency to find a person to acquire the owner's interest in the low-income portion of the building if the Agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building (as defined in section 42(c)(2)).

(iii) ***Owner non-acceptance.*** If the Agency provides a qualified contract within the one-year period and the owner rejects or fails to act upon the contract, the building remains subject to the existing commitment.

(iv) ***Eviction, gross rent increase concerning existing low-income tenants not permitted.*** Prior to the close of the three year period following the termination of a commitment, no owner shall be permitted to evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit, or increase the gross rent for such unit in a manner or amount not otherwise permitted by section 42.

(2) ***Exception.*** Paragraph (a)(1)(ii)(B) of this section shall not apply to the extent more stringent requirements are provided in the commitment or under State law.

(b) ***Definitions.*** For purposes of this section, the following terms are defined:

(1) As provided by section 42(h)(6)(G)(iii), ***base calendar year*** means the calendar year with or within which the first taxable year of the credit period ends.

(2) The ***low-income portion*** of a building is the portion of the building equal to the applicable fraction (as defined in section 42(c)(1)(B)) specified in the commitment for the building.

(3) The ***fair market value of the non-low-income portion*** of the building is determined at the time of the Agency's offer of sale of the building to the general public. The fair market value of the non-low-income portion also includes the fair market value of the land underlying the entire building (both the non-low-income portion and the low-income portion). This valuation must take into account the existing and continuing requirements contained in the commitment for the building. The fair market value of the non-low-income portion also includes the fair market value of items of personal property not included in eligible basis under section 42(d) that convey under the contract with the building.

(4) ***Qualifying building costs include*** -

(i) Costs that are included in eligible basis of a low-income housing building under section 42(d) and that are included in the adjusted basis of depreciable property that is subject to section 168 and that is residential rental property for purposes of section 142(d) and § 1.103-8(b);

(ii) Costs that are included in eligible basis of a low-income housing building under section 42(d) and that are included in the adjusted basis of depreciable property that is subject to section 168 and that is used in a common area or is provided as a comparable amenity to all residential rental units in the building; and

(iii) Costs of the type described in paragraph (b)(4)(i) and (ii) of this section incurred after the first year of the low-income housing building's credit period under section 42(f).

(5) The ***qualified contract amount*** is the sum of the fair market value of the non-low-income portion of the building (within the meaning of section 42(h)(6)(F) and paragraph (b)(3) of this section) and the price for the low-income portion of the building (within the meaning of section 42(h)(6)(F) and paragraph (b)(2) of this section) as calculated in paragraph (c)(2) of this section. If this sum is not a multiple of $1,000, then when the Agency offers the building for sale to the general public, the Agency may round up the offering price to the next highest multiple of $1,000.

(c) ***Qualified contract purchase price formula*** -

(1) ***In general.*** For purposes of this section, *qualified contract* means a bona fide contract to acquire the building (within a reasonable period after the contract is entered into) for the qualified contract amount.

(i) ***Initial determination.*** The qualified contract amount is determined at the time of the Agency's offer of sale of the building to the general public.

(ii) ***Mandatory adjustment by the buyer and owner.*** The buyer and owner under a qualified contract must adjust the amount of the low-income portion of the qualified contract formula to reflect changes in the components of the qualified contract formula such as mortgage payments that reduce outstanding indebtedness between the time of the Agency's offer of sale to the general public and the building's actual sale closing date.

(iii) ***Optional adjustment by the Agency and owner.*** The Agency and owner may agree to adjust the fair market value of the non low-income portion of the building after the Agency's offer of sale of the building to the general public and before the close of the one-year period described in paragraph (a)(1)(ii)(B) of this section. If no agreement between the Agency and owner is reached, the fair market value of the non-low-income portion of the building determined at the time of the Agency's offer of sale of the building to the general public remains unchanged.

(2) ***Low-income portion amount.*** The low-income portion amount is an amount not less than the applicable fraction specified in the commitment, as defined in section 42(h)(6)(B)(i), multiplied by the total of -

(i) The outstanding indebtedness for the building (as defined in paragraph (c)(3) of this section); plus

(ii) The adjusted investor equity in the building for the calendar year (as defined in paragraph (c)(4) of this section); plus

(iii) Other capital contributions (as defined in paragraph (c)(5) of this section), not including any amounts described in paragraphs (c)(2)(i) and (ii) of this section; minus

(iv) Cash distributions from (or available for distribution from) the building (as defined in paragraph (c)(6) of this section).

(3) ***Outstanding indebtedness.*** For purposes of paragraph (c)(2)(i) of this section, *outstanding indebtedness* means the remaining stated principal balance (which is initially determined at the time of the Agency's offer of sale of the building to the general public) of any indebtedness secured by, or with respect to, the building that does not exceed the amount of qualifying building costs described in paragraph (b)(4) of this section. Thus, any refinancing indebtedness or additional mortgages in excess of such qualifying building costs are not outstanding indebtedness for purposes of section 42(h)(6)(F) and this section. Examples of outstanding indebtedness include certain mortgages and developer fee notes (excluding developer service costs not included in eligible basis). Outstanding indebtedness does not include debt used to finance nondepreciable land costs, syndication costs, legal and accounting costs, and operating deficit payments. Outstanding

indebtedness includes only obligations that are indebtedness under general principles of Federal income tax law and that are actually paid to the lender upon the sale of the building or are assumed by the buyer as part of the sale of the building.

(4) ***Adjusted investor equity*** -

(i) ***Application of cost-of-living factor.*** For purposes of paragraph (c)(2)(ii) of this section, the *adjusted investor equity* for any calendar year equals the unadjusted investor equity, as described in paragraph (c)(4)(ii) of this section, multiplied by the qualified-contract cost-of-living adjustment for that year, as defined in paragraph (c)(4)(iii) of this section.

(ii) ***Unadjusted investor equity.*** For purposes of this paragraph (c)(4), *unadjusted investor equity* means the aggregate amount of cash invested by owners for qualifying building costs described in paragraph (b)(4)(i) and (ii) of this section. Thus, equity paid for land, credit adjuster payments, Agency low-income housing credit application and allocation fees, operating deficit contributions, and legal, syndication, and accounting costs all are examples of cost payments that do not qualify as unadjusted investor equity. Unadjusted investor equity takes an amount into account only to the extent that, as of the beginning of the low-income building's credit period (as defined in section 42(f)(1)), there existed an obligation to invest the amount. Unadjusted investor equity does not include amounts included in the calculation of outstanding indebtedness as defined in paragraph (c)(3) of this section.

(iii) ***Qualified-contract cost-of-living adjustment.*** For purposes of this paragraph (c)(4), the *qualified-contract cost-of-living adjustment for a calendar year* is the number that is computed under the general rule in paragraph (c)(4)(iv) of this section or a number that may be provided by the Commissioner as described in paragraph (c)(4)(v) of this section.

(iv) ***General rule.*** Except as provided in paragraph (c)(4)(v) of this section, the *qualified-contract cost-of-living adjustment* is the quotient of -

(A) The sum of the 12 monthly Consumer Price Index (CPI) values whose average is the CPI for the calendar year that precedes the calendar year in which the Agency offers the building for sale to the general public (The term "CPI for a calendar year" has the meaning given to it by section 1(f)(4) for purposes of computing annual inflation adjustments to the rate brackets.); divided by

(B) The sum of the 12 monthly CPI values whose average is the CPI for the base calendar year (within the meaning of section 1(f)(4)), unless that sum has been increased under paragraph (c)(4)(iii)(D) of this section.

(v) ***Provision by the Commissioner of the qualified-contract cost-of-living adjustment.*** The Commissioner may publish in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) a process pursuant to which the Internal Revenue Service will compute the qualified-contract cost-of-living adjustment for a calendar year and make available the results of that computation.

(vi) ***Methodology.*** The calculations in paragraph (c)(4)(iv) of this section are to be made in the following manner:

(A) The CPI data to be used for purposes of this paragraph (c)(4) are the not seasonally adjusted values of the CPI for all urban consumers. (The U.S. Department of Labor's Bureau of Labor Statistics (BLS) sometimes refers to these values as "CPI-U.") The BLS publishes the CPI data on-line (including a History Table that contains monthly CPI-U values for all years back to 1913). See *www.BLS.gov/data.*

(B) The quotient is to be carried out to 10 decimal places.

(C) The Agency may round adjusted investor equity to the nearest dollar.

(D) If the CPI for any calendar year (within the meaning of section 1(f)(4)) during the extended use period after the base calendar year exceeds by more than 5 percent the CPI for the preceding calendar year (within the meaning of section 1(f)(4)), then the sum described in paragraph (c)(4)(i)(B) is to be increased so that the excess is never taken into account under this paragraph (c)(4).

(vii) ***Example.*** The following example illustrates the calculations described in this paragraph (c)(4):

EXAMPLE.

(i) ***Facts.*** Owner contributed $20,000,000 in equity to a building in 1997, which was the first year of the credit period for the building. In 2011, Owner requested Agency to find a buyer to purchase the building, and Agency offered the building for sale to the general public during 2011. The CPI for 1997 (within the meaning of section 1(f)(4)) is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31, 1997. The sum of the CPI values for the twelve months from September 1996 through August 1997 is 1913.9. The CPI for 2010 (within the meaning of section 1(f)(4)) is the average of the Consumer Price Index as of the close of the 12-month period ending August 31, 2010. The sum of the CPI values for the twelve months from September 2009 through August 2010 is 2605.959. At no time during this period (after the base calendar year) did the CPI for any calendar year exceed the CPI for the preceding calendar year by more than 5 percent.

(ii) ***Determination of adjusted investor equity.*** The qualified-contract cost-of-living adjustment is 1.3615962171 (the quotient of 2605.959, divided by 1913.9). Owner's adjusted investor equity, therefore, is $27,231,924, which is $20,000,000, multiplied by 1.3615962171, rounded to the nearest dollar.

(5) ***Other capital contributions.*** For purposes of paragraph (c)(2)(iii) of this section, other capital contributions to a low-income building are qualifying building costs described in paragraph (b)(4)(ii) of this section paid or incurred by the owner of the low-income building other than amounts included in the calculation of outstanding indebtedness or adjusted investor equity as defined in this section. For example, other capital contributions may include amounts incurred to replace a furnace after the first year of a low-income housing credit building's credit period under section 42(f), provided any loan used to finance the replacement of the furnace is not secured by the furnace or the building. Other capital contributions do not include expenditures for land costs, operating deficit payments, credit adjuster payments, and payments for legal, syndication, and accounting costs.

(6) ***Cash distributions*** -

(i) ***In general.*** For purposes of paragraph (c)(2)(iv) of this section, the term *cash distributions from (or available for distribution from)* the building include -

(A) All distributions from the building to the owners or to persons whose relationship to the owner is described in section 267(b) or section 707(b)(1)), including distributions under section 301 (relating to distributions by a corporation), section 731 (relating to distributions by a partnership), or section 1368 (relating to distributions by an S corporation); and

(B) All cash and cash equivalents available for distribution at, or before, the time of sale, including, for example, reserve funds whether operating or replacement reserves, unless the reserve funds are legally required by mortgage restrictions, regulatory agreements, or third party contractual agreements to remain with the building following the sale.

(ii) ***Excess proceeds.*** For purposes of paragraph (c)(6)(i) of this section, proceeds from the refinancing of indebtedness or additional mortgages that are in excess of qualifying building costs are not considered cash available for distribution.

(iii) ***Anti-abuse rule.*** The Commissioner will interpret and apply the rules in this paragraph (c)(6) as necessary and appropriate to prevent manipulation of the qualified contract amount. For example, cash distributions include payments to owners or persons whose relation to owners is described in section 267(b) or section 707(b) for any operating expenses in excess of amounts reasonable under the circumstances.

(d) ***Administrative discretion and responsibilities of the Agency*** -

(1) ***In general.*** An Agency may exercise administrative discretion in evaluating and acting upon an owner's request to find a buyer to acquire the building. An Agency may establish reasonable requirements for written requests and may determine whether failure to follow one or more applicable requirements automatically prevents a purported written request from beginning the one-year period described in section 42(h)(6)(I). If the one-year-period has already begun, the Agency may determine whether failure to follow one or more requirements suspends the running of that period. Examples of Agency administrative discretion include, but are not limited to, the following:

(i) Concluding that the owner's request lacks essential information and denying the request until such information is provided.

(ii) Refusing to consider an owner's representations without substantiating documentation verified with the Agency's records.

(iii) Determining how many, if any, subsequent requests to find a buyer may be submitted if the owner has previously submitted a request for a qualified contract and then rejected or failed to act upon a qualified contract presented by the Agency.

(iv) Assessing and charging the owner certain administrative fees for the performance of services in obtaining a qualified contract (for example, real estate appraiser costs).

(v) Requiring all appraisers involved in the qualified contract process to be State certified general appraisers that are acceptable to the Agency.

(vi) Specifying other conditions applicable to the qualified contract consistent with section 42 and this section.

(2) ***Actual offer.*** Upon receipt of a written request from the owner to find a person to acquire the building, the Agency must offer the building for sale to the general public, based on reasonable efforts, at the determined qualified contract amount in order for the qualified contract to satisfy the requirements of this section unless the Agency has already identified a willing buyer who submitted a qualified contract to purchase the project.

(3) ***Debarment of certain appraisers.*** Agencies shall not utilize any individual or organization as an appraiser if that individual or organization is currently on any list for active suspension or revocation for performing appraisals in any State or is listed on the Excluded Parties Lists System (EPLS) maintained by the General Services Administration for the United States Government found at *www.epls.gov.*

(e) ***Effective date/applicability date.*** These regulations are applicable to owner requests to housing credit agencies on or after May 3, 2012 to obtain a qualified contract for the acquisition of a low-income housing credit building.

[T.D. 9587, 77 FR 26178, May 3, 2012]

67-21.031 Qualified Contracts.

(1) An owner's written request to the Corporation for a qualified contract (a "qualified contract request") shall be governed by 26 CFR 1.42-18 (the "qualified contract regulations"), Section 42 of the IRC, as applicable, and this rule section in effect at the time of the qualified contract request.

(2) In submitting a qualified contract request, and in keeping with the intent of this rule and the governing law, the owner of the Development is presumed to do so with good faith intent to sell the Development when presented with a qualified contract. While the qualified contract request may ultimately result in the termination of the Extended Use Agreement should the Corporation fail to present the owner with a qualified contract during the one-year period (as same may be suspended from time to time), that is the default position and not the intended purpose of a qualified contract request. To that end, for purposes of this rule and processing a qualified contract request, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract by presenting the owner with a contract that meets the requirements of subsection (3), below. It shall be the owner's responsibility to negotiate with the purchaser, in good faith and with the intent to sell the development, the specific terms of the contract, and the owner's rejection of the contract or failure to act on the contract because of terms other than those required in subsection (3), below, shall in no way affect the status of the contract as a qualified contract. The Corporation shall have no duty and is not responsible to either the owner or the purchaser for negotiating the details of the contract following its submission to the owner.

(3) Qualified contract means a bona fide contract (as defined herein) to acquire the development (within a reasonable period after the contract is entered into) for the qualified contract amount (also referred to as the qualified contract price). Bona fide contract means a certain and unambiguous offer to purchase the Development for an amount which equals or exceeds the qualified contract amount (the qualified contract purchase price) made by a purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract to purchase. The bona fide contract shall be in the form of a contract for sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Corporation, and must provide for an initial non-refundable earnest money deposit (the initial deposit) from the purchaser in the minimum amount of $50,000 and obligate the purchaser to make a second non-refundable earnest money deposit (the second deposit) equal to three (3) percent of the qualified contract price as follows: The initial deposit must be deposited with an escrow agent designated by the owner at the time of submission of the qualified contract request, or if no such escrow agent is designated, with a nationally recognized title insurance company offering escrow services, contemporaneously with the submission of the contract to the owner; and, by its terms, the contract must obligate the purchaser to deposit the second deposit with the escrow agent within 15 business days following the end of the due diligence period (subject to any rights reserved by the purchaser to cancel or terminate the contract during such period) which period shall end no later than 90 Calendar Days following execution of the contract by the owner. A contract submitted to the owner which otherwise meets the requirements of this subsection (3), including the deposit of the initial deposit with the escrow agent, which is accepted by owner within 15 business days after its submission, shall be deemed a qualified contract for purposes of this rule and the qualified contract regulations at such time as the second deposit is deposited with the escrow agent in accordance with the terms of the contract, as same may be amended from time to time, unless waived in writing by the owner. And, in such event, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract. A contract submitted to the owner which otherwise meets the requirements of this subsection (3), including the deposit of the initial deposit with the escrow agent, which is not accepted by owner within 15 business days after its submission, shall be deemed a qualified contract for purposes of this rule and the qualified contract regulations at such time as the 15-day period expires. And, in such event, the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract.

(4) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, or a Land Use Restriction Agreement under another Corporation program, and provided the right to request a qualified contract for the Development was not waived in exchange for or in connection with the award of Housing Credits, the owner of a Development may submit a qualified contract request to the Corporation. When submitting a qualified contract request, the owner shall utilize the Qualified Contract Package in effect at the time of the request and shall remit payment of the required Qualified Contract Package fee as provided therein. The Qualified Contract Package consists of the forms and instructions, obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-09570, which shall be completed and submitted to the Corporation in order to request a qualified contract. The Qualified Contract Package, (Rev. 05-2018), is adopted and incorporated herein by reference.

(5) All information contained in a Qualified Contract Package is subject to independent review, analysis and verification by the Corporation or its agents. The Corporation may request additional information to document the qualified contract amount calculated by the owner. The Corporation may also engage the services of its own certified public accountant (CPA) and real estate appraiser to assist in the review of a Qualified Contract Package. Real estate appraisers involved in the qualified contract process must be licensed by the state of Florida, be an MAI-designated general appraiser, and be otherwise acceptable to the Corporation.

(6) The qualified contract regulations provide that the fair market value of the non-low-income portion of the building includes the fair market value of the underlying land and that the valuation of the underlying land must take into account the existing and continuing requirements contained in the Extended Use Agreement. Pursuant to section 193.017, F.S., and the statutes cited therein, the Extended Use Agreement recorded in connection with a Housing Credit property is a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement that must be considered by the county property appraiser in assessing the value of the property. Unless the owner elects otherwise as provided below, for purposes of a qualified contract request, the fair market value of the underlying land shall be the value attributed to the underlying land by the county property appraiser in the most recent year's assessed value of the Development provided that the county property appraiser's valuation of the land takes into account the existing and continuing requirements contained in the Extended Use Agreement. The county property appraiser's valuation methodology shall be verified upon submission of a qualified contract request in order to determine if the valuation of the land has taken into account the existing and continuing requirements contained in the Extended Use Agreement. If the owner is of the opinion that the county property appraiser's valuation does not represent the fair market value of the underlying land within the contemplation of the qualified contract regulations at the time of the qualified contract request, the owner may elect to submit with its qualified contract request a value (the "owner's appraised value") for the underlying land at the fair market value determined by a real estate appraiser (the "owner's appraiser") engaged by the owner for that purpose in lieu of the county property appraiser's valuation. A copy of the real estate appraisal (the "owner's appraisal report") upon which the owner's appraised value is based shall be included with the owner's qualified contract request. If the owner elects to rely on the county property appraiser's valuation of the land and the Corporation determines that the county property appraiser's valuation did not take into account the existing and continuing requirements contained in the Extended Use Agreement, the county property appraiser's valuation shall be disregarded, and instead, the owner must obtain and submit to the Corporation an owner's appraisal report together with the owner's appraised value as provided above. The owner's appraiser must certify in the appraisal report that the valuation represents the fair market value of the underlying land taking into account the existing and continuing requirements contained in the Extended Use Agreement for the property. The owner's appraisal report must also include a narrative describing the methodology or manner in which the requirements contained in the Extended Use Agreement were considered by the owner's appraiser in arriving at the owner's appraised value of the underlying land, and, for comparison and evaluation purposes, the opinion of the owner's appraiser as to what the fair market value of the underlying land would be if unencumbered by the requirements of the Extended Use Agreement. The lower of the restricted and unrestricted appraised values should be included in the qualified contract price if the owner's appraised value is submitted. The owner's appraised value of the underlying land and the owner's appraisal report shall be subject to review and approval by the Corporation. The Corporation may engage the services of one or more real estate appraisers, or other professionals, to assist in the review and evaluation of the owner's appraised value and the owner's appraisal report.

(7) In addition to the Qualified Contract Package fee, the owner shall be responsible for all third party fees in connection with the owner's qualified contract request. Third party fees include, but are not limited to, the costs of the services provided by CPAs and real estate appraisers or other real estate professionals engaged by the Corporation to assist it in the review of a qualified contract request, and the fees and commissions of any real estate broker in connection with the marketing and sale of the development to a buyer under a qualified contract.

(8) When offering a development for sale to the general public pursuant to a qualified contract request, the Corporation may, but shall not be required to, utilize the services of a real estate broker under contract with or designated by the Corporation to market and sell the development. The owner of the development shall be responsible for the fees and commissions due any such real estate broker in connection with the marketing and sale of the development, and, upon request of the Corporation or the real estate broker, the owner shall enter into a written agreement with the real estate broker pursuant to which the owner agrees to pay to the real estate broker such fees and commissions in connection with the marketing and sale of the development.

(9) The running of the one-year period described in Section 42(h)(6)(I) of the IRC shall be suspended by the Corporation at any time upon written notice to the owner if:

(a) The Corporation concludes that the owner's request lacks information required in the Qualified Contract Package or other

essential information;

(b) The owner fails to pay the Qualified Contract Package fee or, thereafter, fails to timely pay any other fees or costs for which the owner is responsible hereunder;

(c) The owner and the Corporation are unable to reach mutual agreement on the qualified contract amount;

(d) The Development that is the subject of the qualified contract request is not in compliance with the applicable program requirements or if any fees related to the Development are delinquent;

(e) The owner fails to allow the Corporation, its agents or prospective buyers access to the Development for purposes of verification, inspection or due diligence;

(f) The Applicant or Developer, or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the Corporation;

(g) Following request, the owner fails to enter into the written agreement with the real estate broker designated by the Corporation to market and sell the development, or

(h) The owner otherwise fails to comply with the requirements of this rule section or the qualified contract regulations.

The term of any such suspension shall begin on the date of the written notice provided by the Corporation to the owner, and shall continue unabated until such date as the deficiency, non-payment or disagreement giving rise to the suspension is cured or otherwise resolved. The Corporation shall acknowledge the cure or resolution by written notice to the owner within 10 days thereafter. The owner's election to value the underlying land based on the owner's appraised value as provided in subsection (6), above, shall automatically prevent the owner's purported qualified contract request from beginning the one-year period described in Section 42(h)(6)(I) of the IRC until such time as the Corporation and the owner shall mutually agree on the value of the underlying land for purposes of the owner's qualified contract request.

(10) Upon mutual agreement of the owner and the Corporation, the qualified contract amount shall be documented in writing signed by the Corporation and the owner.

(11) The owner shall cooperate with the Corporation and its agents, real estate brokers and prospective buyers in connection with the processing of the owner's qualified contract request and the marketing of the Development to prospective buyers. The owner shall exercise good faith in acting upon a qualified contract as may be presented within the one-year period. If the Corporation provides a qualified contract within the one-year period (it being understood that the Corporation shall be deemed to have fulfilled its responsibility to present the owner with a qualified contract by presenting the owner with a contract that meets the requirements of subsection (3), above) regardless of whether the owner accepts, rejects or fails to act upon the contract, the Development shall remain subject to the Extended Use Agreement, and the owner shall be deemed to have waived any right or option to submit another qualified contract request for the Development.

(12) An owner shall be allowed only one qualified contract request per Development.

(13) Section 42(h)(6)(E)(ii) of the IRC provides that the termination of an extended low-income housing commitment under Section 42(h)(6)(E)(i) will not be construed to permit before the close of the 3-year period following the termination (a) the eviction or termination of tenancy (other than for good cause) of an existing tenant of any Low-Income unit, or (b) any increase in the gross rent with respect to a Low-Income unit not otherwise permitted under Section 42, IRC.

(14) This rule shall apply to qualified contract requests first submitted to the Corporation on or after the effective date of the rule.

Rulemaking Authority 420.507, 420.508 FS. Law Implemented 420.5099 FS. History–New 7-16-13, Amended 2-2-15, 9-15-16, 5-24-17, 7-8-18.

REAL ESTATE PURCHASE AND SALE AGREEMENT WITH ESCROW INSTRUCTIONS

Dated as of

July 31, 2017

By and Between

Jacksonville Waterstone, LLC, a Delaware Limited Liability Corporation

As Seller

Tralee Deer Meadow, LLC, a Florida Limited Liability Company,

As Purchaser

regarding

Deer Meadow Apartments

REAL ESTATE PURCHASE AND SALE AGREEMENT WITH
ESCROW INSTRUCTIONS

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT WITH ESCROW INSTRUCTIONS ("Agreement") is dated as of _____(the "Effective Date"), and is entered into by and between Jacksonville Waterstone, LLC, a Delaware Limited Liability Corporation ("Seller"), and Tralee Deer Meadow, LLC a Florida Limited Liability Company ("Purchaser"). As used herein the term "Buyer" shall mean Purchaser or its Permitted Assign (as defined in this Agreement).

RECITALS

WHEREAS, Seller is the owner of the land and improvements, including an apartment complex commonly known as Deer Meadow Apartments, consisting of 200 units built in 2000 in Jacksonville, Florida, as further described on Exhibit "A" attached hereto.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Property (as defined in this Agreement), subject to the terms and conditions of this Agreement and the exhibits attached hereto.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions. When used in this Agreement and the exhibits attached hereto, the following terms shall have the following meanings unless otherwise specifically defined. The singular shall include the plural and the masculine gender shall include the feminine and the neuter unless otherwise required by the context.

"Additional Deposit" shall have the meaning set forth in Paragraph 4(b) of this Agreement.

"Additional Title Policy Charge" shall have the meaning set forth in Paragraph 11 of this Agreement.

"Anti-Terrorism Laws" shall mean any laws related to terrorism or money laundering, including Executive Order 13224 and the USA Patriot Act, and any regulations promulgated under either of them.

"Broker" shall mean CB Richard Ellis (CBRE).

"Buyer's Title Notice" shall have the meaning set forth in Paragraph 8(a) of this Agreement.

"Cash Equivalent" shall mean a wire transfer of funds or other good and immediately available funds.

"Deer Meadow Marks" shall mean all words, phrases, slogans, materials, software, proprietary systems, trade secrets, proprietary information and lists, and other intellectual property owned or used by Seller in the marketing, operation or use of the Property, including, without limitation, "Deer Meadow Apartments" (or in the marketing, operation or use of any other properties owned by Seller).

"Closing" shall have the meaning set forth in Paragraph 18 of this Agreement.

"Closing Date" shall mean the date of the Closing.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Contingency Expiration Date" shall mean the date which is forty-five (45) days after the date of this Agreement, or such earlier date as may be specified by Buyer by delivering written notice thereof to Seller and Escrow Agent.

"County" shall mean the County in which the Real Property is located.

"Deposit" shall mean, to the extent deposited with Escrow Agent, the Initial Deposit and the Additional Deposit.

"Endorsements" shall have the meaning set forth in Paragraph 11 of this Agreement.

"Escrow Agent" shall mean First American Title Insurance Company.

"Extended Coverage Title Policy" shall have the meaning set forth in Paragraph 11 of this Agreement.

"Financing Contingency Expiration Date" shall mean the date which is sixty (60) days after the date of this Agreement, or such earlier date as may be specified by Buyer by delivering written notice thereof to Seller and Escrow Agent. (Not Applicable)

"Funds" shall mean all escrows, reserves, funds, letters of credit, bonds, security deposits or other funds deposited by Seller with respect to the Property, including, without limitation, (a) any utility deposits and (b) any such funds deposited with respect to any existing mortgage on the Property.

"General Assignment" shall mean a General Assignment and Bill of Sale in the form of Exhibit "E" attached hereto.

"Hazardous Materials" shall have the meaning set forth in Paragraph 17(d) of this Agreement.

"Housing Authority" shall mean the Florida Housing Finance Agency, the relevant tax credit allocation agency and any other federal, state or local agency with jurisdiction or other rights or authority over the Property or the Tax Credits related thereto.

"Improvements" shall mean the apartment complex and all other buildings, structures and improvements located upon the Real Property.

"Initial Deposit" shall have the meaning set forth in Paragraph 4(a) of this Agreement.

"Intangibles" shall mean, to the extent assignable by and in the possession of Seller: (i) any and all permits, licenses, certificates of occupancy and the like relating to the Property; (ii) any and all bonds, warranties, and guaranties relating to the Property; (iii) any and all third party site plans, surveys, environment, soil and substrata studies or assessments, plans and specifications, engineering plans and drawings, landscaping plans or other plans, diagrams or studies of any kind relating to the Property; (iv) books and records relating to the Tenants; (v) the name "Deer Meadow Apartments"; (vi) the telephone numbers, fax numbers, the community's domain name and or URL, website content but not any templates, and email addresses for the Property; and (vii) any and all goodwill or other intangible property directly relating to the Property and the Deer Meadow Marks.

"Lease Assignment" shall mean an Assignment and Assumption of Leases in the form of Exhibit "D" attached hereto.

"Losses" shall mean any and all demands, losses, costs, charges, damages, claims, liens, liabilities, obligations, suits, causes of action, judgments, settlements, penalties, fines, interest and/or expenses of any kind and nature, including, without limitation, attorneys', accountants' and other professionals' costs and fees.

"Land Use Regulatory Agreement" (LURA) shall mean the regulatory agreement recorded against the Property.

"Non-Delinquent Rents" shall mean rents that are equal to or less than thirty (30) days past due as of the Closing Date.

"Opening of Escrow" shall mean the date that both (i) a fully executed copy of this Agreement and (ii) the Initial Deposit have been delivered to Escrow Agent.

"Outside Closing Date" shall have the meaning set forth in Paragraph 18 of this Agreement.

"Permitted Assign" shall mean any subsidiary of Purchaser which is under common majority ownership and control with Purchaser, or, with the prior written consent of Seller, any other person or entity.

"Permitted Exceptions" shall mean (i) all items and matters identified as a "Permitted Exception" in Paragraph 8(a) of this Agreement, (ii) the Tenant Leases, and (iii) all items and matters which would be shown on an ALTA survey.

"Personal Property" shall mean the mechanical systems, fixtures, furniture, appliances, tools, supplies, inventories, furnishings, signs and rights to install signage, equipment and other items of tangible personal property placed or installed on or about the Real Property or the Improvements and which are owned by Seller and used as a part of or in connection with the Property, including, without limitation, all heating, ventilation and air conditioning compressors, engines, systems and equipment; any and all elevators, electrical fixtures, systems and equipment; all plumbing fixtures, systems and equipment; and all keys. Personal Property shall exclude personal property that is owned by the Tenants, former tenants or the management company, or which is leased pursuant to a Service Contract or Permitted Exception.

"Prior Noncompliance" shall have the meaning set forth in Paragraph 23(f) of this Agreement.

"Prohibited Person" shall mean (i) a person or entity subject to the provisions of Executive Order 13224; (ii) a person or entity owned or controlled by, or acting for or on behalf of, an entity subject to the provisions of Executive Order 13224; (iii) a person or entity with whom Seller or Buyer (as applicable) is prohibited from dealing by any of the Anti-Terrorism Laws; (iv) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department's Office of Foreign Assets Control; or (v) a person or entity that is affiliated with a person or entity described in clauses (i) through (iv) of this definition, if an entity existing in the United States is prohibited from doing business with such affiliated person or entity.

"Property" shall mean Seller's right, title and interest in the Real Property, the Improvements, the Personal Property, and, to the extent assignable, the Intangibles, the Tenant Leases and those Service Contracts being assigned to and assumed by Buyer pursuant to this Agreement.

"Property Files" shall have the meaning set forth in Paragraph 8(b) of this Agreement.

"Purchase Price" shall mean the monetary consideration specified in Paragraph 3 of this Agreement.

"Real Property" shall mean the certain real estate, located in the County and State, and further described on Exhibit "A" attached hereto.

"Regulatory Agreements" shall have the meaning set forth in Paragraph 23(a) of this Agreement.

"Rejected Exceptions" shall have the meaning set forth in Paragraph 8(a) of this Agreement.

"Representatives" shall mean, with respect to any person or entity, the direct and indirect directors, principals, officers, partners, members, shareholders, agents, contractors, employees, lawyers, accountants, advisors, asset managers, consultants, and other representatives of such person or entity, and its prospective lenders and investors.

"Required Consents" shall mean the timely notice to, and/or the written consent or approval of, each governmental or regulatory body (including the Housing Authority), in each case pursuant to the requirements applicable thereto and in each case to the extent required for the consummation of the transactions contemplated by this Agreement and the exhibits attached hereto.

"Review Period" shall mean a period until 5:00 p.m. Pacific Time on the date which is forty-five (45) days from and after the Effective Date to conduct a due diligence and feasibility review with respect to the Property and to satisfy itself with respect to all matters relating to the Property, including, without limitation, its physical condition, lease terms, financial and credit information of tenants, building plans and specifications, ADA compliance, zoning and environmental compliance, review of contracts and warranties relating to the Property, mechanical and engineering inspections, and environmental assessments.

"Seller Indemnified Parties" shall mean Seller and Seller's Representatives.

"Seller's Title Notice" shall have the meaning set forth in Paragraph 8(a) of this Agreement.

"Service Contracts" shall mean all service, equipment, supply, management, maintenance, utility, listing and other operating contracts relating to the Property.

"Special Warranty Deed" shall mean a deed in the form of Exhibit "B" attached hereto.

"State" shall mean the State in which the Real Property is located.

"Survey" shall mean the new or updated survey, if any, of the Real Property and Improvements obtained by Buyer.

"Tax Credit Laws" shall have the meaning set forth in Paragraph 23(a) of this Agreement.

"Tax Credits" shall have the meaning set forth in Paragraph 23(a) of this Agreement.

"Tenant Deposits" shall mean the deposits, if any, made by Tenants (including any interest accrued and unpaid thereon for the benefit of Tenants) less the amount such deposits have been charged, offset or otherwise reduced by Seller as permitted under the Tenant Leases or under applicable law.

"Tenant Leases" shall mean the agreements affecting the Property pursuant to which Tenants are leasing, renting and/or occupying space within the Improvements.

"Tenant Notice Letter" shall mean a Tenant Notice Letter in the form of Exhibit "F" attached hereto.

"Tenants" shall mean the tenants of the Real Property and Improvements as of the Closing.

"Threshold Amount" shall mean an amount equal to the product of (a) five percent (5%) times (b) the Purchase Price.

"Title Commitment" shall have the meaning set forth in Paragraph 8(a) of this Agreement.

"Title Company" shall mean First American Title Insurance Company.

"Title Policy" shall have the meaning set forth in Paragraph 9(a)(ii) of this Agreement.

"Title Requirements" shall mean those requirements set forth in the Title Commitment which are to be performed or otherwise satisfied as a condition to the issuance of the Title Policy by the Title Company.

2. Purchase and Sale. Seller hereby agrees to assign, sell and convey the Property to Buyer, and Buyer hereby agrees to purchase, accept and acquire the Property from Seller, subject to the terms and provisions of this Agreement and the exhibits attached hereto.

3. Price. The total Purchase Price to be paid by Buyer to Seller for the Property shall be the sum of Seventeen Million, Two Hundred Eighteen Thousand, Three Hundred Sixty Five and No/100 Dollars ($17,218,365.00), equal to the Qualified Contract Price, subject to adjustments, credits and prorations as set forth in this Agreement. The Property will transfer Free & Clear with no debts or mortgages to be assumed by the Buyer.

4. Payment of Purchase Price. The Purchase Price shall be payable as follows:

(a) Initial Deposit. Within two (2) business days after execution and delivery of this Agreement by all parties hereto, Buyer shall deposit with Escrow Agent cash or Cash Equivalent in the amount of One Hundred Fifteen Thousand and No/100 Dollars ($115,000.00) ("Initial Deposit").

(b) Additional Deposit. Unless this Agreement is sooner terminated by either Buyer or Seller in accordance with the terms of this Agreement, upon the Financing Contingency Expiration Date, Buyer shall deposit with Escrow Agent cash or Cash Equivalent in the additional amount of $_____.

(c) Cash Balance. On or before the Closing Date, Buyer shall deposit with Escrow Agent additional cash or Cash Equivalent equal to the sum of (i) the amount of the Purchase Price minus (ii) the amount of the Deposit plus (iii) the amount of Buyer's share of expenses plus (or minus) (iv) the amount of adjustments, credits and prorations due from (or owed to) Buyer in accordance with Paragraph 13 of this Agreement.

(d) Interest. While held by the Escrow Agent, upon the request and at the direction of Buyer, the Deposit shall be placed in an interest-bearing account under Buyer's taxpayer identification number with all interest accruing to Buyer, and all interest so earned in connection with the Deposit shall be deemed a part of the Deposit.

(e) Deposit Refundability. The Initial Deposit shall remain refundable to Buyer if this Agreement is terminated in accordance with the provisions of this Agreement on or before the Financing Contingency Expiration Date. After the Financing Contingency Expiration Date, the entire Deposit shall be held for the benefit of Seller and shall be nonrefundable, unless (i) Buyer is not in default hereunder and (ii) this Agreement is terminated in accordance with the provisions of Paragraph 20(a) of this Agreement or if Buyer is expressly entitled to a refund of the Deposit pursuant to Paragraph 9(c) of this Agreement. The Deposit shall be credited to Buyer and applied toward payment of the Purchase Price upon the Closing.

5. Special Warranty Deed. At the Closing, Seller shall convey the Real Property and Improvements to Buyer by the Special Warranty Deed and the other documents to be delivered under this Agreement.

6. Delivery of Agreement; Failure of the Opening of Escrow. A fully executed copy of this Agreement shall be delivered to the Escrow Agent by Seller, and this Agreement shall, thereupon, constitute escrow instructions. If the Opening of Escrow has not occurred within ten (10) days after the date of this Agreement, this Agreement shall be null and void ab initio and of no further force and effect.

7. Operation of Property Through Closing. From the Opening of Escrow until the Closing (or earlier termination of this Agreement):

(a) Except as otherwise provided in this Paragraph 7, Seller shall manage and operate the Property in accordance with Seller's current business practices.

(b) Without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, Seller shall not sell, mortgage, pledge, hypothecate or otherwise transfer or dispose of all or any part of the Property or any interest therein, except in the ordinary course of business or except for such mortgages, pledges or hypothecations as shall be released at or prior to Closing. Notwithstanding the foregoing, Seller may replace depreciated Personal Property and may otherwise deal with Tenant Leases in a commercially reasonable manner.

(c) Except as otherwise provided herein, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, Seller shall not terminate, modify, extend, amend or renew any Service Contract or enter into any new Service Contract, except in each case as may be reasonably necessary to protect the health or safety of individuals or the preservation of the Property or otherwise in accordance with Seller's current business practices. All new Service Contracts must be terminable, without penalty, on not more than thirty (30) days' notice.

8. Title; Property Files; Buyer's Inspection Rights.

(a) Title.

(i) Commitment. Within eight (8) business days after the Opening of Escrow, the Title Company shall issue and deliver to Buyer a commitment to insure the Real Property to be conveyed hereunder ("Title Commitment", as further defined in Paragraph 8(a)(vi) of this Agreement). Title Company shall provide Buyer with copies of all recorded documents shown as exceptions to title on the Title Commitment.

(ii) Title Notices. Within twelve (12) business days following the receipt by Buyer of the Title Commitment and copies of the title exception documents, Buyer shall notify Seller in writing (the "Buyer's Title Notice") as to which items, if any, disclosed in the Title Commitment are not acceptable to Buyer. Within five (5) business days following Seller's receipt of Buyer's Title Notice, Seller shall notify Buyer ("Seller's Title Notice") that, with respect to each matter objected to in Buyer's Title Notice: (A) it shall take such actions as may be reasonably necessary to eliminate such matter as an exception in the Title Commitment; or (B) it shall not take any or all of the actions identified in Buyer's Title Notice with respect to such matter. Except to the extent Seller's Title Notice expressly states that Seller will take an action with respect to a matter identified in Buyer's Title Notice (or if Seller fails to deliver Seller's Title Notice within such five (5) business day period), then Seller shall be deemed to have elected clause (B) of this Paragraph 8(a)(ii).

(iii) Rejected Exception. As used in this Paragraph 8(a), the term "Rejected Exception" means a matter which is both: (x) expressly objected to in Buyer's Title Notice (to the extent of such objection); and (y) expressly agreed to be eliminated in Seller's Title Notice (to the extent of such agreement).

(iv) Title Contingency. In the event Buyer fails to timely deliver Buyer's Title Notice, then Buyer shall be deemed to have waived all title objections to matters shown in the Title Commitment. If Buyer has timely delivered Buyer's Title Notice and Seller elects (or is deemed to have elected) to proceed (in whole or in part) in accordance with clause (B) of Paragraph 8(a)(ii) of this Agreement, then Buyer shall have until the Contingency Expiration Date to terminate this Agreement by delivering written notice thereof to Seller and Escrow Agent, in which case the provisions of Paragraph 9(c) of this Agreement shall govern. If Buyer shall fail to provide Seller and Escrow Agent with written notice of termination on or before the Contingency Expiration Date, then Buyer shall be deemed to have waived all of its title objections (except with respect to the Rejected Exceptions).

(v) Title Policy. Each item and matter revealed by the Title Commitment (other than the Rejected Exceptions) shall be a "Permitted Exception" under this Agreement. At Closing, the Title Policy (as further defined in Paragraph 9(a)(ii) of this Agreement) shall be as described in the Title Commitment (but free of each Rejected Exception), subject to the provisions of this Paragraph 8(a). Buyer shall use commercially reasonable efforts to satisfy or eliminate, on or before the Closing Date, those Title Requirements to be performed

or otherwise satisfied by Buyer. Seller shall use commercially reasonable efforts to satisfy or eliminate, on or before the Closing Date, those Title Requirements to be performed or otherwise satisfied by Seller. Notwithstanding anything to the contrary in this Agreement, except as otherwise set forth in Seller's Title Notice, (x) Seller shall not be required to expend any funds in connection with the Title Policy except (i) as expressly set forth in Seller's Title Notice, and (ii) in an amount not to exceed $50,000 in the aggregate to satisfy or eliminate the other Title Requirements to be performed or otherwise satisfied by Seller and other items and matters not revealed by the Title Commitment; (y) Seller shall have no obligation to execute, perform, satisfy, incur, make or otherwise undertake any affidavit, indemnity, disclosure, certificate, or other document, action, expense or liability requested or required by the Title Company in connection with the Title Policy (including, without limitation, such requirements as may be set forth in the Title Commitment); and (z) Seller may satisfy the Rejected Exceptions, the Title Requirements to be performed or otherwise satisfied by Seller, and any other items and matters not revealed by the Title Commitment in any manner that will result in the Title Company issuing the Title Policy (e.g. by providing a surety bond or other collateral acceptable to the Title Company). Except as expressly required under the foregoing sentence, or as expressly set forth in Seller's Title Notice, (A) Seller shall have no obligation to incur any expense or liability to satisfy or eliminate any Rejected Exception, Title Requirement or other item or matter not revealed by the Title Commitment, (B) no failure by Seller to satisfy or eliminate any Rejected Exception, Title Requirement or other item or matter not revealed by the Title Commitment shall constitute a breach of or default under this Agreement by Seller and Seller shall not have any liability for damages and Buyer shall have no recourse to equitable relief based on any such failure, and (C) if Seller fails to eliminate or satisfy, on or before the Closing Date, any Rejected Exception, Title Requirement or other item or matter not revealed by the Title Commitment, then Buyer shall have the sole option of either: (x) terminating this Agreement for failure to satisfy a Buyer closing condition under Paragraph 9(a) of this Agreement by delivering written notice thereof to Seller and Escrow Agent prior to Closing, in which case the provisions of Paragraph 9(c) of this Agreement shall govern; or (y) proceeding to Closing, subject to the provisions set forth herein. Upon Closing, Buyer shall be deemed to have waived all objections to the items and matters reflected on the Title Policy and each such item and matter shall thereafter be a "Permitted Exception" under this Agreement.

(vi) Survey Matters. Buyer shall have until the date Buyer's Title Notice is due under Paragraph 8(a)(ii) of this Agreement to review and approve or disapprove of any survey of the Property delivered by Seller to Buyer as part of the Property Files, and any such objections shall be treated in the same manner as objections to matters shown on the Title Commitment as set forth in Paragraph 8(a)(ii)-(v) of this Agreement. With regard to the Survey obtained by Buyer in accordance with the provisions of Paragraph 11 of this Agreement, Buyer shall have until the earlier of (A) five (5) business days after its receipt of the Survey or (B) the Contingency Expiration Date to deliver an additional Buyer's Title Notice with respect to any new item not shown on either the Title Commitment or any existing survey delivered to Buyer as part of the Property Files. The provisions of Paragraph 8(a) of this Agreement, including, without limitation, the timing and effect of any notices to be delivered and the effect of any failure to deliver same, shall govern with respect to any such additional Buyer's Title Notice.

(b) Documents and Materials To Be Made Available to Buyer. Within five (5) business days after the Opening of Escrow, Seller will make available to Buyer the Property Files (as defined in this Paragraph 8(b)) of Seller. To the extent Seller currently possesses the same, the "Property Files" are defined as the items set forth on Exhibit "I" attached hereto, and any other documents, instruments or other written information with respect to the Property that Seller may, in its sole discretion, provide to Buyer upon Buyer's request, or which Buyer may otherwise obtain from Seller or Seller's representatives; provided, however, that Seller shall not be obligated to update, prepare, or cause to be prepared any of the above referenced items which may or may not be contained in the Property Files. Property Files shall not include any materials not directly related to the leasing, maintenance and/or management of the Property such as Seller's internal memoranda, financial projections, any appraisals or other indications of the market value of the Property, tax records, and similar proprietary or confidential information. Buyer understands and acknowledges that neither Seller nor any of Seller's Representatives makes and/or has made any representation or warranty to Buyer as to the accuracy or completeness of the Property Files and that neither Seller nor any of Seller's Representatives has made or will make any attempt to verify the data contained therein. Buyer agrees that Seller shall not have any liability to Buyer as a result of Buyer's use of the Property Files.

(c) Buyer's Inspection Rights. From the Opening of Escrow and until the Closing or earlier termination of this Agreement, Buyer shall be provided with access to the Property and shall be permitted to inspect and examine the Property upon reasonable advance notice to Seller, subject in all cases to the provisions of this Paragraph 8(c) and the indemnification provisions described in Paragraph 8(d) of this Agreement. Subject to the rights of the tenants, Buyer and its Representatives shall have the right to conduct one or more "walk throughs" of the Property. Seller shall be entitled to have a representative present at all times while Buyer or its Representatives are physically on the Property. It is understood and agreed that Buyer shall be responsible to perform such inspections and other examinations of the Property as Buyer deems necessary or desirable (including, without limitation, any tests, studies, investigations, inspections and other examinations of physical and environmental conditions of the Property). Buyer will engage third party Representatives to perform such on-site inspections and examinations. Each such Buyer Representative shall deliver to Seller a certificate of insurance evidencing commercial general liability coverage of not less than $1,000,000 and worker's compensation insurance at statutory limits. Upon request, Buyer's Representatives' commercial liability insurance shall name Seller as an additional insured. All tests, studies, investigations, inspections and other examinations by Buyer of the Property shall be conducted in a non-invasive manner. Buyer shall restore the Property to its original condition promptly after completing each such test, study, investigation, inspection and other examination. Buyer's foregoing agreement shall survive any termination of this Agreement and shall survive Closing and the delivery of the Special Warranty Deed at Closing.

(d) Buyer's Termination Right; Indemnity. Buyer may terminate this Agreement by delivering written notice thereof to Seller and Escrow Agent on or before the Contingency Expiration Date, in which event the provisions of Paragraph 9(c) of this Agreement shall govern. If Buyer shall fail to provide Seller and Escrow Agent with written notice of termination on or before the Contingency Expiration Date, then Buyer shall be deemed to have affirmatively and expressly approved and accepted the Property Files, the Property and all

conditions, elements and matters pertinent thereto including, without limitation, soil conditions, zoning, drainage, flood control, water, sewage, electricity, gas and other utility connections, economic feasibility, construction suitability, submittals, the parcel map (and any conditions thereto), any survey or any other matter which was or could have been inspected or examined by Buyer, and Buyer and Seller shall proceed to Closing, subject to the provisions set forth herein. Seller shall terminate the existing management agreement for the Property, effective as of (or prior to) the Closing Date. On or before the Contingency Expiration Date, the parties may agree on other Service Contracts to be terminated by Seller on or before Closing. Seller shall terminate only those Service Contracts which the parties agree in writing shall be terminated and Buyer shall assume, from and after the Closing Date, the obligations arising or accruing under all of the other Service Contracts. In the event of termination of this Agreement and within a reasonable period of time after Seller requests such information, Buyer shall deliver to Seller copies of all third-party reports, plans, studies, applications or any other matters obtained by or prepared for Buyer in connection with Buyer's review of the Property and which relate to the physical condition of the Property, including, without limitation, any engineering and environmental reports completed and/or obtained by Buyer in connection with Buyer's review of the Property. IN ALL EVENTS, BUYER SHALL INDEMNIFY, DEFEND, EXONERATE, HOLD HARMLESS AND SAVE SELLER INDEMNIFIED PARTIES FREE FROM AND AGAINST: (i) ANY AND ALL LOSSES, WHICH LOSSES, IN ANY WAY, RELATE TO, ARISE OUT OF, ARE OCCASIONED BY OR ARE CONNECTED WITH THE ACCESS, INSPECTIONS AND OTHER EXAMINATIONS CONDUCTED BY BUYER OR ITS REPRESENTATIVES ("ACCESS"), WHETHER SUCH ACCESS OCCURRED BEFORE OR AFTER THE DATE OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BY A THIRD PARTY ARISING FROM ANY ACT OR FAILURE TO ACT AUTHORIZED BY BUYER OR ITS REPRESENTATIVES, BUT EXCLUDING ANY PREEXISTING CONDITIONS (EXCEPT TO THE EXTENT EXACERBATED BY THE ACTIVITIES OF BUYER AND/OR ITS REPRESENTATIVES) AND EXCLUDING ANY LOSSES ARISING OUT OF THE DISCOVERY OR DISCLOSURE OF THE PROPERTY'S CONDITION; AND (ii) ANY DAMAGE OR INJURY TO PERSON OR PROPERTY CAUSED BY BUYER AND/OR ITS REPRESENTATIVES. WITHOUT LIMITING THE FOREGOING, BUYER SHALL, AND SHALL CAUSE ITS REPRESENTATIVES TO, KEEP THE PROPERTY FREE AND CLEAR OF ANY MECHANICS' LIENS OR MATERIALMEN'S LIENS BEING CLAIMED BY, THROUGH OR UNDER BUYER AND/OR ITS REPRESENTATIVES AND RELATED TO ANY SUCH ACCESS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, BUYER'S OBLIGATIONS UNDER THIS PARAGRAPH 8(d) SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT AND SHALL SURVIVE CLOSING AND THE DELIVERY OF THE SPECIAL WARRANTY DEED AT CLOSING.

(e) Financing. Buyer shall have until the Financing Contingency Expiration Date within which to obtain a commitment for new financing needed to acquire the Property on terms and conditions reasonably satisfactory to Buyer. Buyer agrees to use good faith and commercially reasonable efforts to obtain such new financing. If such commitment has not been obtained on or before the Financing Contingency Expiration Date, Buyer may terminate this Agreement by written notice to Seller and Escrow Agent at any time on or before Financing Contingency Expiration Date (in which event the provisions of Paragraph 9(c) of this Agreement shall govern). If Buyer shall fail to provide Seller and Escrow Agent with written notice of

termination on or before the Financing Contingency Expiration Date, then Buyer shall be deemed to have waived all financing contingencies, and Buyer and Seller shall proceed to Closing, subject to the provisions set forth herein. (Not Applicable)

9. Conditions to the Closing.

(a) Conditions Precedent to Buyer's Obligations. The Closing and Buyer's obligation to consummate the transactions contemplated by this Agreement and the exhibits attached hereto are subject to the satisfaction of the following conditions (which can be waived by Buyer):

(i) Seller's delivery of the items described in Paragraph 10(a) of this Agreement, not later than the Closing Date (unless otherwise provided).

(ii) Title Company's issuance or commitment to issue on or before the Closing Date, a standard form Owner's Policy of Title Insurance (the "Title Policy", as further defined in Paragraph 8(a) of this Agreement), in the amount of the Purchase Price, insuring Buyer as the fee simple owner of the Real Property to be conveyed hereunder, subject to the Permitted Exceptions.

(iii) Seller's representations and warranties contained in this Agreement shall be true and correct in all material respects as of the Closing, and Seller shall have otherwise performed in all material respects its obligations under this Agreement which are required to be performed by Seller prior to the Closing Date.

(iv) Buyer shall have obtained the Required Consents.

(b) Conditions Precedent to Seller's Obligations. The Closing and Seller's obligation to consummate the transactions contemplated by this Agreement and the exhibits attached hereto are subject to the satisfaction of the following conditions (which can be waived by Seller):

(i) Buyer's delivery to Escrow Agent on or before the Closing Date, for disbursement as provided herein, of the Purchase Price (with credit for the Deposit), plus Buyer's share of costs (as set forth in Paragraph 12 of this Agreement), plus or minus prorations (as set forth in Paragraph 13 of this Agreement) and the other sums, documents and materials described in Paragraph 10(b) of this Agreement.

(ii) Buyer's representations and warranties contained in this Agreement shall be true and correct in all material respects as of the Closing, and Buyer shall have otherwise performed in all material respects its obligations under this Agreement which are required to be performed by it prior to the Closing Date.

(iii) Buyer shall have provided Seller with a copy of each Required Consent at least three (3) business days prior to Closing.

(iv) The Housing Authority shall have provided any Required Consents or approvals of the transaction contemplated by this Agreement. In the event the Required Consents have not been received by Buyer by the Contingency Expiration date, the date for Closing will be deemed automatically extended for thirty days. If not received in the first 25 of the 30 days the date for Closing will automatically be extended another 20 days.

(c) Failure of Conditions to Closing. If any of the conditions set forth in Paragraphs 9(a) or 9(b) of this Agreement are not timely satisfied or waived, or if this Agreement is otherwise terminated in accordance with the terms of this Agreement with reference to the provisions of this Paragraph 9(c), then:

(i) This Agreement and the rights and obligations of Buyer and Seller hereunder shall terminate, and this Agreement shall be of no further force or effect, except for those matters which, by the express terms of this Agreement, survive the termination of this Agreement; and

(ii) All documents deposited by Buyer shall be promptly returned by or through Escrow Agent to Buyer, and all documents deposited by Seller shall be promptly returned by or through Escrow Agent to Seller; and

(iii) Except in the event that either Buyer or Seller is in default under this Agreement (in which case the provisions of Paragraph 20 of this Agreement shall apply) or in the event that Seller has an outstanding claim for indemnification under the terms of this Agreement (in which case Escrow Agent shall hold the Deposit and disburse the same as mutually agreed by Buyer and Seller), all funds held by Escrow Agent for the benefit of Buyer shall be promptly delivered by Escrow Agent to Buyer, and all funds held by Escrow Agent for the benefit of Seller shall be promptly delivered by Escrow Agent to Seller, less, in each case, the amount of any fees and expenses required to be paid by such party under Paragraph 9(d) of this Agreement.

(d) Fees and Expenses. If this Agreement terminates because of the non-satisfaction of any condition to Closing, the fees and expenses of the Escrow Agent and/or the Title Company shall be borne one-half (1/2) by Seller and one-half (1/2) by Buyer (except in the event that either Buyer or Seller are in default under this Agreement, in which case the defaulting party shall pay the entire amount of such fees and expenses).

10. Deliveries to Escrow Agent.

(a) Seller's Deliveries. Seller hereby covenants and agrees to deliver or cause to be delivered to Escrow Agent, in the number of original counterparts requested by Escrow Agent, on or before the Closing Date the following instruments and documents, the delivery of each of which shall be a condition to Closing:

(i) Special Warranty Deed. The Special Warranty Deed, duly executed and acknowledged by Seller.

(ii) Non-Foreign Certificate. A Non-Foreign Certificate, duly executed by Seller (or, where appropriate, Seller's parent entity) in the form of Exhibit "C" attached hereto.

(iii) Lease Assignment. The Lease Assignment, duly executed by Seller.

(iv) General Assignment. The General Assignment, duly executed by Seller.

(v) Proof of Authority. Such proof of Seller's authority and authorization to enter into this Agreement and the documents to be executed and delivered in connection herewith, and the transactions contemplated hereby and thereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by Title Company.

(vi) Seller's Settlement Statement. A statement setting forth the Purchase Price and all prorations, adjustments, debits and credits pursuant to the terms of this Agreement, duly executed by Seller.

(b) Buyer's Deliveries. Buyer hereby covenants and agrees to deliver or cause to be delivered to Escrow Agent, in the number of original counterparts requested by Escrow Agent, on or before the Closing Date the following instruments, documents and funds, the delivery of each of which shall be condition to Closing:

(i) Purchase Price. The entire Purchase Price in accordance with the provisions of Paragraph 4 of this Agreement.

(ii) Costs; Prorations; Cash Balance. Buyer's share of costs and expenses as adjusted by the net adjustments, credits, prorations and other amounts due hereunder.

(iii) Lease Assignment. The Lease Assignment duly executed by Buyer.

(iv) General Assignment. The General Assignment duly executed by Buyer.

(v) Tenant Notice Letter. A sample Tenant Notice Letter duly executed by Buyer or Buyer's management company, which can be delivered to Tenants by either Seller or Buyer.

(vi) [reserved]

(vii) [reserved]

(viii) Housing Authority Documents. Any and all documents required of Buyer by the Housing Authority, duly executed by Buyer.

(ix) Proof of Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and the documents to be executed and delivered in connection herewith, and the transactions contemplated hereby and thereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Buyer to act for and bind such entity as may be reasonably required by Title Company.

(x) Buyer's Settlement Statement. A statement setting forth the Purchase Price and all prorations, adjustments, debits and credits pursuant to the terms of this Agreement, duly executed by Buyer.

(c) Other Required Documents. In addition, Buyer and Seller agree to execute such other instruments and documents as may be reasonably required in order to consummate the transactions contemplated in this Agreement and the exhibits attached hereto; provided, however, that such other instruments and documents are consistent with the terms hereof and thereof and are customarily executed and/or delivered in similar transactions. The obligations set forth in this Paragraph 10(c) of this Agreement shall survive Closing and the delivery of the Special Warranty Deed at Closing.

11. Title Insurance. At the Closing, the Escrow Agent shall direct the Title Company to issue the Title Policy to Buyer in the amount of the Purchase Price, as described in Paragraph 9(a)(ii) of this Agreement. In the event that Buyer desires to obtain (with respect to the Real Property and the Improvements to be conveyed hereunder) an extended coverage owner's policy of title insurance ("Extended Coverage Title Policy") and/or any endorsements ("Endorsements") to the Title Policy for the Real Property to be conveyed hereunder, Buyer shall notify Escrow Agent and Seller within five (5) business days after the Opening of Escrow. Buyer shall be responsible for the payment of the difference between (a) the cost of an Extended Coverage Title Policy, including any and all Endorsements and (b) the cost of a standard form Owner's Policy of Title Insurance ("Additional Title Policy Charge"). Buyer shall timely satisfy all additional requirements of the Title Company to the issuance of the Extended Coverage Title Policy and any Endorsements. If the Title Company requires a new Survey as a condition to the issuance of an Extended Coverage Title Policy, Buyer shall timely make the necessary arrangements to engage a surveyor, specify requirements, approve and pay the cost of, and otherwise cause a Survey to be timely obtained at Buyer's expense. Any such Survey shall be in a form acceptable to remove the survey exception(s) from the Title Policy as required by the Title Company and shall otherwise be in the following form: (i) the Survey shall be made in accordance with the "2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" as jointly established and adopted by American Land Title Association and National Society of Professional Surveyors; (ii) the Survey shall be certified by the surveyor to Seller, Buyer, Buyer's lender, if any, and the Title Company. If Buyer obtains a Survey, it shall deliver a copy of the Survey to Seller and Title Company. Provided that Buyer has timely satisfied the requirements thereto to be satisfied by Buyer, Buyer's ability to obtain the Extended Coverage Title Policy and/or any Endorsements shall be a condition to the Closing.

12. Costs.

(a) Seller shall pay: (i) the cost of a standard form owner's Title Policy (without Endorsements); (ii) the Florida documentary stamp tax on the Special Warranty Deed based on the Purchase Price; (iii) the state transfer tax; (iv) one-half (1/2) of all escrow fees and costs; (v) any document recording charges to record the Special Warranty Deed; and (vi) Seller's share of prorations (as set forth in Paragraph 13 of this Agreement).

(b) Buyer shall pay: (i) the cost of any Additional Title Policy Charge; (ii) any other document recording charges (i.e. Buyer's financing documents, etc.); (iii) one-half (1/2) of all escrow fees and costs; (iv) Buyer's share of prorations (as set forth in Paragraph 13 of this Agreement); and (v) all fees and expenses associated with all consents or other approvals by the Housing Authority of the transactions contemplated by this Agreement and the exhibits attached hereto. In addition, Buyer shall pay one hundred percent (100%) of all costs of Buyer's due diligence, including, without limitation, all fees due its consultants, advisors and attorneys and all costs and expenses of any Survey or Phase I or other physical or environmental studies or examinations which Buyer desires to obtain, and all lenders' fees related to any financing to be obtained by Buyer.

(c) Except as otherwise expressly provided for herein, Buyer and Seller shall each pay their own respective legal and professional fees and fees of other consultants respectively incurred by each of Buyer and Seller.

(d) All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice of the County.

(e) The terms set forth in this Paragraph 12 shall survive Closing and the delivery of the Special Warranty Deed at Closing.

13. Prorations.

(a) General. Non-Delinquent Rents, revenues, receivables and other income, if any, from the Property, and real estate and personal property taxes and the operating expenses described below affecting the Property shall be prorated as of 11:59 P.M. on the day preceding the Closing. For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Closing occurs. Seller shall be entitled to all third party reimbursements and payments (including, without limitation, all Section 8 and similar payments) which relate to the period prior to the Closing. Buyer shall be entitled to all third party reimbursements and payments (including, without limitation, all Section 8 and similar payments) which relate to periods on or after the Closing. Buyer shall use commercially reasonable efforts to collect Non-Delinquent Rents after the Closing in accordance with its current business practices. If Buyer has not collected Non-Delinquent Rents with respect to one or more Tenants after using commercially reasonable efforts attempting to do so for at least sixty (60) days after the Closing, then Seller shall, within ten (10) business days after Buyer represents and evidences the same to

Seller in writing, refund to Buyer the prorated amount of such Non-Delinquent Rents received by Seller from Buyer on the Closing relating to such Tenants.

(b) Taxes and Assessments. All non-delinquent real estate and personal property taxes and assessments on the Property shall be prorated based on the tax bill for the fiscal year in which the Closing occurs. If the tax bill for the current fiscal year is not available, then the proration shall be based on the prior fiscal year's assessment; and the parties shall reprorate such real estate and personal property taxes and assessments upon the issuance of the final tax bill. If after the Closing, any supplemental real estate and personal property taxes and assessments are assessed against the Property by reason of any event occurring prior to the Closing, or if there is any refund or other reduction in the taxes or assessed value of the Property for any period prior to Closing, then Buyer and Seller shall re-prorate the real estate and personal property taxes and assessments following the Closing. Any delinquent real estate and personal property taxes and assessments on the Property shall be paid at the Closing from funds accruing to Seller.

(c) Delinquent and Past Due Rents. From and after the Closing, Buyer shall use its commercially reasonable efforts in accordance with its current business practices to collect any rents or other charges under the leases which are delinquent (i.e. more than thirty (30) days past due) as of the Closing. The amounts collected after the Closing from a Tenant shall be applied first to any Non-Delinquent Rents and other charges due as of the Closing, second to any rents and other charges then due for any period from and after the Closing, and third to any Past Due Rents (as defined in this Paragraph 13(c)) as of the Closing in reverse chronological order of the date such amounts became due. In the event that Buyer has not, within ninety (90) days after the Closing, collected rents or other charges under the leases which are delinquent as of the Closing, then Seller may attempt to collect such rents or other charges and Buyer agrees to assign such rights to Seller if required in connection with Seller's collection efforts; provided, however, Seller agrees that any legal action or collection shall not include any right to evict the applicable Tenants. As an incentive to Buyer to attempt to collect delinquent rents due to Seller, Seller agrees that Buyer may retain twenty-five percent (25%) of the Past Due Rents which are collected by Buyer after the Closing. For purposes of this Paragraph 13(c), "Past Due Rents" are defined as those rents or other charges which are, upon the Closing, more than sixty (60) days past due. Past Due Rents do not include any Section 8 or similar payments, whether delinquent or not. All Section 8 and similar payments shall be prorated in accordance with Paragraph 13(a) of this Agreement.

(d) Operating Expenses. All utility service charges for electricity, heat and air conditioning service, other utilities, taxes (other than real estate and personal property taxes) such as rental taxes, other expenses incurred in operating the Property that Seller customarily pays, and any other costs incurred in the ordinary course of business or the management and operation of the Property shall be prorated on an accrual basis as of the Closing Date, including a prorated credit for any service agreement rebates or payments for agreements with a term greater than one year (e.g. cable, etc.). Seller shall pay all such expenses that accrue prior to the Closing and Buyer shall pay all such expenses accruing on the Closing and thereafter. To the extent possible, Seller and Buyer shall obtain billings and meter readings as of the Closing to aid in such prorations.

(e) Service Contracts. Charges under the Service Contracts shall be prorated on the basis of the periods to which such Service Contracts relate.

(f) Tenant Deposits and Prepaid Rents. From and after Closing, Seller shall retain any and all bank accounts, certificates of deposit, or any other cash or Cash Equivalent representing Tenant Deposits and prepaid rents and Buyer shall be credited and Seller shall be debited with an amount equal to the amount of the Tenant Deposits and prepaid rents. Upon the Closing, Buyer shall assume all of Seller's obligations with respect to the Tenant Deposits and prepaid rents.

(g) Funds. Buyer shall either (i) cause any person or entity that is holding Funds to return such Funds to Seller; (ii) pay Seller an amount equal to the amount of the Funds held by such person or entity, in which case Buyer shall retain such Funds; or (iii) replace the Funds held by such person or entity, in which case such Funds shall be returned to Seller.

(h) Rent Ready. Not more than seventy-two (72) hours prior to Closing, a representative of Buyer and Seller shall conduct an onsite walk-through of the then unoccupied rental units on the Property to determine whether any of such unoccupied rental units are in "rent ready" condition. With respect to any rental unit which is vacated on or before three (3) days prior to the Closing, Seller shall, at Seller's option, either (i) make such unoccupied rental unit into a "rent ready" condition, or (ii) provide Buyer with a credit against the Purchase Price due Seller at Closing, which credit shall be equal to the amount, if any, reasonably required to put said unoccupied rental units in "rent-ready" condition, provided, however, that such credit shall not exceed Five Hundred Dollars ($500.00) per unoccupied rental unit. With respect to any rental unit which is vacated later than three (3) days prior to the Closing, Seller shall have no responsibility or liability to put such unoccupied rental unit into a "rent ready" condition, and Seller shall not have to compensate Buyer if such unit is not "rent ready" as of Closing. "Rent ready" condition shall mean Seller's current practice of placing units in "rent ready" condition.

(i) Method of Proration. All prorations shall be made in accordance with customary practice in the County, except as expressly provided herein. Such prorations, if and to the extent known and agreed upon as of the Closing, shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer) by increasing or reducing the cash to be paid by Buyer at the Closing. Any such prorations not determined or not agreed upon as of the Closing shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash, as soon as practicable following the Closing, but in no event shall Buyer or Seller have any liability for any claim under this Paragraph 13 made more than twelve (12) months after the Closing. The terms set forth in this Paragraph 13 shall survive Closing and the delivery of the Special Warranty Deed at Closing.

14. Disbursements and Other Actions by Escrow Agent. On the Closing Date, Escrow Agent shall promptly undertake all of the following in the manner indicated in this Paragraph 14:

(a) Disbursements. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price (and in payment of any adjustments, credits and prorations to be charged to account of Buyer as set forth in Paragraph 13 of this Agreement) as follows:

(i) Deduct all items chargeable to the account of Seller pursuant to Paragraph 12 of this Agreement.

(ii) Deduct and disburse payment for obligations of Seller pursuant to Paragraph 8(a) of this Agreement.

(iii) If, as the result of the adjustments, credits and prorations pursuant to Paragraph 13 of this Agreement, amounts are to be charged to account of Seller, deduct the total amount of such charges.

(b) Recording. Direct the Title Company to record the Special Warranty Deed and any other documents required by the Title Company or which the parties hereto may mutually direct to be recorded in the official records of the County and obtain conformed copies thereof for distribution to Buyer and Seller.

(c) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(d) Delivery of Documents to Buyer. Deliver to Buyer any documents (or copies thereof) deposited with the Escrow Agent by Seller pursuant hereto.

(e) Delivery of Documents to Seller. Deliver to Seller any documents (or copies thereof) deposited with the Escrow Agent by Buyer pursuant hereto.

15. Seller's Representations and Warranties. Except, in all cases, for any fact, information or condition disclosed in the Title Commitment, the Permitted Exceptions, the Service Contracts, or the Property Files, or which is otherwise known by Buyer prior to Closing, Seller hereby warrants and represents to Buyer as of the date of this Agreement and as of the Closing Date as follows:

(a) Seller is a Limited Liability Corporation, duly organized and validly existing under the laws of the State of _____.

(b) Seller has all requisite corporate, company or partnership power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The person signing this Agreement on behalf of Seller has the authority to do so.

(c) Upon execution by all parties thereto, this Agreement and all other agreements, instruments and documents required to be executed or delivered by Seller pursuant hereto have been or (if and when executed) will be duly executed and delivered by Seller, and are

or will be the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, subject only to the effect of bankruptcy, insolvency or similar laws.

(d) The consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not result in a material breach of any of the material terms or provisions of, or constitute a material default under, any material agreement or material document to which Seller is a party or by which it is bound.

(e) Seller is not a "foreign corporation", "foreign partnership" or "foreign estate" as those terms are defined in the Code.

(f) Seller is not a Prohibited Person.

(g) To Seller's actual knowledge, as of the date set forth thereon, (i) the rent roll attached hereto as Exhibit "H" ("Rent Roll") lists all existing Tenant Leases related to the Property, and (ii) the information set forth on the Rent Roll with respect to rent, deposits, delinquencies and credits is true and correct, except for such inaccuracies which are not material when taken in the aggregate.

(h) To Seller's actual knowledge, it has received no written notices during the three (3) years prior to the date of this Agreement from any federal, state or local governmental authority of any zoning, safety, building, fire, environmental or health code violations with respect to the Property which have not been heretofore corrected. To Seller's actual knowledge, all permits, licenses and occupancy certificates necessary for the operation and occupancy of the Property have been obtained and there are no outstanding notices of non-compliance. To Seller's actual knowledge, Seller is in compliance, in all material respects, with all material state and municipal laws, ordinances and regulations regarding tenant security deposits and the payment of interest thereon. To Seller's actual knowledge, there are not presently any special assessment actions pending or overtly threatened against the Property.

(i) There is no litigation or proceeding (including, but not limited to, condemnation or eminent domain proceedings, arbitration proceedings or foreclosure proceedings) pending or, to Seller's actual knowledge, overtly threatened, against the Property except as disclosed to Buyer.

(j) As used in this Agreement, (i) the phrase "to Seller's actual knowledge" or words of similar import means the actual knowledge, without independent inquiry or duty of investigation, of Deer Meadow Apartments (notwithstanding anything to the contrary set forth in this Agreement, the foregoing individual shall not have any personal liability with respect to any matters set forth in this Agreement or any of Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete) but shall not include the knowledge, actual or implied, of any direct or indirect partner, principal, affiliate, independent contractor, consultant, property manager, asset manager or agent of Seller, or any employee of any thereof (i.e. Buyer acknowledges and agrees that the knowledge of any of the foregoing parties, including, without limitation, the property manager, shall not be imputed to Seller); and (ii) the phrase "Seller Qualification Matter" means any existing or new item, fact or circumstance which

renders a representation or warranty of Seller set forth herein incorrect or untrue in any material respect. If, prior to the Closing, to Seller's actual knowledge, there exists a Seller Qualification Matter, then Seller shall promptly give written notice thereof to Buyer. If, prior to the Closing, Buyer has actual knowledge of or is notified in writing of a Seller Qualification Matter by Seller or otherwise, then (x) Seller's representations and warranties shall be automatically amended and limited to account for such Seller Qualification Matter, and (y) Buyer shall have, as Buyer's sole and exclusive remedy therefore (unless such matter is cured, in which case Buyer shall have no remedy therefore), the right to terminate this Agreement prior to Closing by providing written notice thereof to Seller no later than three (3) business days after Buyer has actual knowledge of or is notified in writing of such Seller Qualification Matter (in which case the provisions of Paragraph 9(c) of this Agreement shall govern). Notwithstanding anything herein to the contrary, if Buyer does not timely terminate this Agreement per the terms of this Paragraph 15(j), then (A) Seller's representations and warranties shall be automatically amended and limited to account for such Seller Qualification Matter, (B) Buyer shall be deemed to have waived Buyer's right to pursue any remedy for breach of the representation or warranty made untrue on account of such Seller Qualification Matter and (C) the parties shall proceed to the Closing.

(k) Seller shall indemnify and hold Buyer harmless from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages and losses suffered by Buyer as a result of any breach of warranty or representation made by Seller in this Paragraph 15 (except as provided in Paragraph 15(j) of this Agreement); provided, however, that the representations, warranties and indemnities set forth in this Paragraph 15 shall survive Closing and the delivery of the Special Warranty Deed at Closing for a period of twelve (12) months after the Closing and in no event shall Seller have any liability under this Paragraph 15 for any claim made after such period.

16. Buyer's Representations and Warranties. Buyer hereby warrants and represents to Seller as of the date of this Agreement and as of the Closing Date as follows:

(a) Purchaser is a Limited Liability Company duly organized and validly existing under the laws of the State of Florida. Buyer is qualified to transact business in the State.

(b) Buyer has all requisite corporate, company or partnership power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The person signing this Agreement on behalf of Buyer has the authority to do so.

(c) Upon execution by all parties thereto, this Agreement and all other agreements, instruments and documents required to be executed or delivered by Buyer pursuant hereto have been or (if and when executed) will be duly executed and delivered by Buyer, and are or will be the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, subject only to the effect of bankruptcy, insolvency or similar laws.

(d) The consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not result in a material breach of any of the material terms or

provisions of, or constitute a material default under, any material agreement or material document to which Buyer is a party or by which it is bound.

(e) Buyer is not a Prohibited Person.

(f) The financial information delivered by or on behalf of Buyer to Seller regarding Buyer is not misleading and is true and correct in all material respects.

(g) To Buyer's actual knowledge, there are no actions, suits or proceedings pending or overtly threatened against Buyer which would prevent Buyer from acquiring the Property in accordance with the terms of this Agreement.

(h) Neither the Seller, the General Partner of Seller, the Broker nor any of their affiliates, or any of their respective partners, members, shareholders, officers, directors, senior employees, agents, immediate family members, successors or assigns, have any interest whatsoever in the Buyer, including, without limitation, any ownership, control or management interest.

(i) Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages and losses suffered by Seller as a result of any breach of warranty or representation made by Buyer in this Paragraph 16; provided, however, that the representations, warranties and indemnities set forth in this Paragraph 16 shall survive Closing and the delivery of the Special Warranty Deed at Closing for a period of twelve (12) months after the Closing and in no event shall Buyer have any liability under this Paragraph 16 for any claim made after such period.

17. AS-IS, WHERE IS, AND WITH ALL FAULTS CONDITION.

(a) Buyer does hereby acknowledge, represent, warrant and agree, to and with Seller, that (i) Buyer is purchasing the Property in an "AS IS, WHERE IS, AND WITH ALL FAULTS" condition with respect to any facts, circumstances, conditions and defects of all kinds; (ii) Seller has no obligation to repair or correct any such facts, circumstances, conditions or defects or compensate Buyer for same; (iii) Buyer is and will be relying strictly and solely upon the advice and counsel of its own agents and officers and such physical inspections, examinations and tests of the Property as Buyer deems necessary or appropriate under the circumstances, and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; (iv) Buyer has had and will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigations as Buyer deems necessary, desirable or appropriate with respect to the Property; (v) except as otherwise expressly provided in this Agreement, Seller is not making and has not made any warranty or representation, express or implied, with respect to the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property, or for any other purpose; and (vi) by reason of all of the foregoing, from and after the Closing, Buyer shall assume the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the physical and other conditions of the Property and/or the operation of the Property, regardless of whether the same is capable of being observed or ascertained.

(b) EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 15 OF THIS AGREEMENT, SELLER HAS NOT, DOES NOT AND WILL NOT, WITH RESPECT TO THE PROPERTY, MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION OR MERCHANTABILITY, OR WITH RESPECT TO THE VALUE, PROFITABILITY OR OPERATING POTENTIAL OF THE PROPERTY.

(c) Except with respect to actions arising from a breach by Seller of its express representations and warranties contained in Paragraph 15 of this Agreement, notwithstanding any provision of this Agreement and the exhibits attached hereto to the contrary, Buyer hereby releases Seller from any liability, claims, damages, penalties, costs, fees, charges, losses, causes of action, demands, expenses of any kind or nature or any other claim it has or may have against Seller resulting from the presence, removal or other remediation of "Hazardous Materials" (as hereinafter defined) on or under the Real Property or which has migrated from adjacent lands to the Real Property or from the Real Property to adjacent lands.

(d) The term "Hazardous Materials" shall mean asbestos, any petroleum fuel and any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state where the Property is located or the United States Government, including, but not limited to, any material or substance defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material" or "toxic pollutant" under state law and/or under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.

(e) Reserved

(f) The provisions of this Paragraph 17 shall survive any termination of this Agreement and shall survive Closing and the delivery of the Special Warranty Deed at Closing.

18. Closing. The purchase and sale of the Property shall be consummated (the "Closing") on a date mutually satisfactory to Seller and Buyer on or before the thirtieth (30^{th}) day after the later of (x) the End of the Contingency Period or (y) Housing Authority approval or (z) the end of the Review Period. . The Closing shall take place at the offices of the Escrow Agent, or via an escrow administered by the Escrow Agent pursuant to escrow instructions mutually agreed upon among the parties and consistent with the terms of this Agreement.

19. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service that provides tracing and proof of receipt of items mailed or by facsimile transmission followed by delivery of a hard copy. Such notices or other communications shall be deemed received: (1) if personally delivered, when so personally delivered, (2) if sent by mail, two business days after deposited with the United States postal service, (3) if sent by overnight courier service, the business day after

deposited with such service or (4) if sent by facsimile, when transmitted (with proof of transmission).

To Seller:	Jacksonville Waterstone, LLC 21 Ramah Circle Agawam, MA 01001
To Buyer:	Tralee Deer Meadow, LLC 7400 East Orchard Road, Suite 250S Greenwood Village, Colorado 80111 Attn: Mike Kelly Fax: (303) 857-5673
With a copy to:	Jeff Brown, LLC 7400 East Orchard Road, Suite 250S Greenwood Village, Colorado 80111 Attn: Jeff Brown Fax: (303) 872-4731
To Escrow Agent:	First American Title Insurance Company National Commercial Services Attn: Brian McDonald Fax:

Notice of change of address shall be given by written notice in the manner detailed in this Paragraph 19.

20. Default. If either party defaults in its obligation to complete the transaction contained in this Agreement, the parties agree to the following remedies:

(a) Breach by Seller. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTIONS HEREIN CONTEMPLATED DO NOT OCCUR AS HEREIN PROVIDED BY REASON OF A BREACH OF ANY OF THE TERMS OF THIS AGREEMENT BY SELLER, WHICH BREACH IS NOT CURED WITHIN TEN (10) BUSINESS DAYS AFTER SELLER RECEIVES WRITTEN NOTICE THEREOF FROM BUYER, SUCH BREACH SHALL CONSTITUTE A DEFAULT UNDER THIS AGREEMENT AND BUYER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT AND BE RELEASED FROM ITS OBLIGATION TO PURCHASE THE PROPERTY FROM SELLER. IN THE EVENT OF TERMINATION OF THIS AGREEMENT UNDER THIS PARAGRAPH 20(a), BUYER SHALL, AS BUYER'S SOLE AND EXCLUSIVE REMEDY THEREFORE, BE ENTITLED TO A REFUND OF THE DEPOSIT AND TO RECOVER (A) BUYER'S REASONABLE AND ACTUAL OUT-OF-POCKET COSTS (DOCUMENTED BY PAID INVOICES TO THIRD PARTIES) INCURRED WITH RESPECT TO THIS AGREEMENT, THE TRANSACTION DESCRIBED HEREIN AND THE DUE DILIGENCE PERFORMED IN

CONNECTION HEREWITH, NOT TO EXCEED $500,000.00 IN THE AGGREGATE PLUS (B) ANY NON-REFUNDED APPLICATION FEES AND/OR RATE LOCK FEES INCURRED BY BUYER RELATED TO ANY FINANCING TO BE OBTAINED BY BUYER IN CONNECTION WITH THE CLOSING, NOT TO EXCEED $500,000.00 IN THE AGGREGATE. EXCEPT AS SET FORTH IN THIS PARAGRAPH 20(a), BUYER SHALL HAVE NO RIGHT TO RECEIVE ANY EQUITABLE RELIEF. BUYER EXPRESSLY WAIVES ANY RIGHT UNDER THE LAW OF THE STATE OR AT COMMON LAW OR OTHERWISE TO RECORD A LIS PENDENS OR A NOTICE OF PENDENCY OF ACTION OR SIMILAR NOTICE AGAINST ALL OR ANY PORTION OF THE PROPERTY IN CONNECTION WITH ANY ALLEGED DEFAULT BY SELLER HEREUNDER. NOTWITHSTANDING THE FOREGOING, IF SELLER SHALL BREACH THIS AGREEMENT SOLELY BY FAILING TO DELIVER THE SPECIAL WARRANTY DEED AND BUYER HAS TIMELY PERFORMED ALL OF ITS COVENANTS AND CONDITIONS UNDER THE TERMS OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, DEPOSITING THE PURCHASE PRICE INTO ESCROW) AND IS OTHERWISE PREPARED TO CLOSE THIS TRANSACTION, THEN AND ONLY THEN, BUYER SHALL BE ENTITLED TO ELECT THE ALTERNATIVE REMEDY OF SPECIFIC PERFORMANCE. THE FOREGOING OPTIONS ARE MUTUALLY EXCLUSIVE AND ARE THE SOLE AND EXCLUSIVE RIGHTS AND REMEDIES AVAILABLE TO BUYER AT LAW OR IN EQUITY IN THE EVENT OF A SELLER BREACH OF OR DEFAULT UNDER THIS AGREEMENT PRIOR TO THE CLOSING. NOTWITHSTANDING THE FOREGOING, BUYER SHALL BE CONCLUSIVELY AND IRREVOCABLY DEEMED TO WAIVED THE REMEDY OF SPECIFIC PERFORMANCE IF BUYER FAILS TO FILE SUIT FOR SPECIFIC PERFORMANCE AGAINST SELLER IN A COURT HAVING JURISDICTION IN THE COUNTY AND STATE IN WHICH THE PROPERTY IS LOCATED ON OR BEFORE THIRTY (30) DAYS FOLLOWING THE OUTSIDE CLOSING DATE OR EARLIER DATE UPON WHICH THE CLOSING WAS TO HAVE OCCURRED.

(b) Breach by Buyer. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTIONS HEREIN CONTEMPLATED DO NOT OCCUR AS HEREIN PROVIDED BY REASON OF A BREACH OF ANY OF THE TERMS OF THIS AGREEMENT BY BUYER, WHICH BREACH IS NOT CURED WITHIN TEN (10) BUSINESS DAYS AFTER BUYER RECEIVES WRITTEN NOTICE THEREOF FROM SELLER, SUCH BREACH SHALL CONSTITUTE A DEFAULT UNDER THIS AGREEMENT AND SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER AS A RESULT OF SUCH BREACH. THEREFORE BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), THE AMOUNT OF THE DEPOSIT. SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF OR DEFAULT UNDER THIS AGREEMENT BY BUYER, ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES BEING HEREIN EXPRESSLY WAIVED BY SELLER. BUYER HEREBY AUTHORIZES

AND INSTRUCTS ESCROW AGENT TO DISBURSE THE DEPOSIT TO SELLER THIRTY (30) DAYS FOLLOWING NOTICE OF A BREACH AS SET FORTH IN THIS PARAGRAPH 20(b) UNLESS (i) SELLER (WITH LIMITED PARTNER CONSENT) AND BUYER OTHERWISE AGREE IN WRITING OR (ii) BUYER OBTAINS THE ORDER OF A COURT OF COMPETENT JURISDICTION PREVENTING ESCROW AGENT FROM MAKING SUCH DISBURSEMENT. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF THE LAW OF THE STATE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO THE LAW OF THE STATE. UPON DEFAULT BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER AND ESCROW AGENT AND EXCEPT FOR THOSE MATTERS WHICH, BY THE EXPRESS TERMS OF THIS AGREEMENT, SURVIVE THE TERMINATION OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, SELLER'S RIGHT TO OBTAIN LIQUIDATED DAMAGES SHALL IN NO EVENT LIMIT SELLER'S RIGHT TO ENFORCE AND COLLECT UPON ANY INDEMNIFICATION RIGHTS AFFORDED UNDER THIS AGREEMENT.

_____ _____

PURCHASER'S INITIALS SELLER'S INITIALS

21. Damage, Destruction or Condemnation. If between the date of this Agreement and the Closing, there occurs any destruction of or damage or loss to the Property or any portion thereof from any cause whatsoever, including, but not limited to, any flood, accident or other casualty which, according to Seller's good faith estimate, supported by a quote from Seller's insurance company (the "Estimate"), would cost, with respect to the Property, more than the Threshold Amount to repair, or any condemnation proceedings are commenced or overtly threatened which would involve the taking of any portion of the Property valued at more than the Threshold Amount, then Buyer shall have the right, exercisable by delivering written notice to Seller and Escrow Agent within ten (10) days after Buyer's receipt of Seller's written Estimate of the amount of such cost or the scope of any taking, to either (a) terminate this Agreement, in which case the provisions of Paragraph 9(c) of this Agreement shall govern, or (b) accept the Property in its then condition and proceed with the Closing, in which case Buyer shall receive a credit against the Purchase Price equal to the amount of the deductible under Seller's insurance policies (to the extent not satisfied by Seller prior to Closing), and Seller shall assign to Buyer its rights to any insurance proceeds or condemnation award received (to the extent not already spent in connection therewith) or to be received as a result of such event. Buyer's failure to deliver such notice within the time period specified shall be deemed to constitute Buyer's election to terminate this Agreement. In the event the Estimate of the cost of repair or the amount of the taking, with respect to the Property, is less than or equal to the Threshold Amount, then Buyer shall not have the option to terminate this Agreement, and the parties shall proceed to the Closing, in which case Buyer shall, (x) in the event of a casualty to the Property, receive a credit against the Purchase Price equal to the amount of the deductible under Seller's insurance policies (to the extent not satisfied by Seller prior to Closing), and Seller shall assign to Buyer its rights to any insurance proceeds received (to the extent not already spent in connection therewith) or to

be received as a result of such event and (y) in the event of a condemnation relating to the Property, Seller shall assign to Buyer its rights to any condemnation award received (to the extent not already spent in connection therewith) or to be received as a result of such event.

22. Brokerage. Buyer and Seller warrant that they have had no dealings with any real estate brokers in connection with the transaction set forth herein other than Broker. Seller shall pay Broker a commission pursuant to a separate agreement. Seller shall not be responsible for any commissions, finder's fees or similar compensation to any other broker or similar person. Buyer shall have the right, but not the obligation, to utilize the services of a real estate broker other than Broker; provided, however, that Buyer shall be solely responsible for the payment of any and all commissions, finder's fees or similar compensation to such broker that Buyer might employ. Seller and Buyer each warrant to the other that, except for the Broker, neither has dealt with or engaged any other brokers, realtors, finders or agents in connection with the negotiation of this Agreement. Seller and Buyer shall defend, indemnify and hold each other harmless from any cost or liability for any compensation, commission or charges claimed by any other brokers, realtors, finders or agents claiming by, through or on behalf of the respective indemnitor. This covenant shall survive any termination of this Agreement and shall survive Closing and the delivery of the Special Warranty Deed at Closing.

23. Tax Credits.

(a) Tax Credits and Affordability Requirements. Seller acquired, developed, owned and operated the Property as a project intended to generate tax credits ("Tax Credits"), including, without limitation, low-income housing tax credits under Section 42 of the Code and the Treasury Regulations promulgated thereunder (collectively, "Section 42"). The Property is subject to regulatory and other agreements relating to income, rent or other affordable housing restrictions (collectively referred to as the "Regulatory Agreements"). In order to maintain and preserve the Tax Credits, and otherwise comply with the Tax Credit Laws and other obligations under the Regulatory Agreements, the Property must be operated in compliance with the Regulatory Agreements and all applicable rules, procedures, regulations, guidelines and other requirements under Section 42 and all other applicable federal, state or local affordable housing laws, regulations and other requirements relating to the Property (collectively, the "Tax Credit Laws"). Buyer acknowledges that the failure to operate the Property in compliance with the Regulatory Agreements and Tax Credit Laws may cause the recapture (and/or related liability) of all or a portion of such Tax Credits and/or result in other significant damages and economic loss related to the Tax Credits. Buyer acknowledges also that Recapture Liability ends at the end of the 15th year after the 8609 was filed.

(b) Covenants. Buyer hereby covenants to Seller that, from and after Closing:

(i) Buyer, at its sole cost and expense and for the duration of all applicable time periods, shall (x) assume, undertake and cause to be performed all of the obligations under the Regulatory Agreements and the Tax Credit Laws applicable to the Property, including, without limitation, all ownership and operating restrictions and all tenant qualification and rent restrictions applicable to the Property, and (y) make timely, accurate and complete submissions of all reports to governmental agencies and any other reports reasonably required to

be delivered with respect to the Property pursuant to the Tax Credit Laws, the Regulatory Agreements and any other documents or regulations related to the Tax Credits (including, without limitation, any applicable Housing Authority monitoring requirements); and

(ii) Upon Seller's reasonable request, Buyer shall deliver to Seller copies of any back-up or supporting documentation in Buyer's possession or control relating to any obligation of Buyer under this Paragraph 23.

(c) Indemnification. As a material inducement for Seller to enter into this Agreement, Buyer hereby agrees to indemnify, defend, exonerate, hold harmless and save Seller Indemnified Parties free from and against: (i) the amount of any recapture of any Tax Credits; (ii) any penalties, interest or other claims by the IRS or any other governmental agency in connection with the Tax Credits; and (iii) any and all Losses, which Losses, in any way, relate to, arise out of, are occasioned by or are connected with (A) the breach of any of the covenants in this Paragraph 23; (B) the violation of any Regulatory Agreement; or (C) any failure to maintain ownership, use and operation of the Property in accordance with the Tax Credit Laws; provided, however, that the indemnity set forth in this Paragraph 23(c) shall not apply to any Prior Noncompliance to the extent provided in Paragraph 23(f) of this Agreement.

(d) Further Covenants. Notwithstanding anything to the contrary contained herein, following any sale, transfer or other conveyance of any or all of the interests in the Property, directly or indirectly, Buyer shall remain directly liable to the Seller Indemnified Parties and shall not be released from any obligations to the Seller Indemnified Parties under this Paragraph 23, whether accruing before or after the date of such sale, transfer or other conveyance.

(e) [reserved]

(f) Prior Non-Compliance. Except as otherwise set forth in this Paragraph 23, Buyer shall have no obligations or liabilities to the Seller Indemnified Parties, whether to indemnify, perform covenants, or to pay any damages, costs, or expenses, with respect to any noncompliance with any Regulatory Agreement or with the Tax Credit Laws, to the extent such noncompliance occurred prior to Closing ("Prior Noncompliance"). Buyer shall promptly notify Seller of any Prior Noncompliance of which it becomes aware. Notwithstanding anything to the contrary set forth herein, Buyer agrees to reasonably cooperate and/or jointly undertake with Seller, at Seller's expense, any corrective action Seller determines is necessary to remedy the Prior Noncompliance or to mitigate Seller's liability with respect thereto, including, without limitation, allowing Seller and its Representatives to have access to the Property and the Property files and to communicate directly with the tenants and other appropriate persons as to any such matters.

(g) Covenant Regarding Change of Status. Buyer hereby covenants that it shall not, prior to Closing, contact any federal, state or local governmental or quasi-governmental authority, tenant, tenant association, tenant's rights group, or similar person or organization, regarding the feasibility or possibility of changing the status of the Property from an affordable housing project as currently operated, or modifying any Regulatory Agreement, whether any

such change would occur prior to or after the expiration of the Tax Credits, or in any way indicate the intention to do the same. Any breach of this covenant by Buyer, whether occurring before or after the date of this Agreement, shall constitute a default hereunder by Buyer, in which event Seller may elect to terminate this Agreement by delivering notice to Buyer and Escrow Agent of such election, whereupon this Agreement shall be terminated and the Deposit shall be retained by Seller (and the other provisions of Paragraphs 9(c) and 20(b) of this Agreement shall govern).

(h) Regulatory Approval.

(i) Buyer's Obligations. In connection with all Required Consents, including, without limitation, the consent and approval of the Housing Authority, Buyer covenants to timely: (x) pay all fees and costs in connection with such consents and approvals; and (y) deliver all documents, certifications, information, representations, agreements and other materials reasonably required to obtain such Required Consents. Buyer shall timely (and in any event within fifteen (15) days after the Opening of Escrow) file all applications required by the Housing Authority for its consent and approval to the transactions contemplated herein and shall promptly respond to all additional requests of the Housing Authority for additional information. Buyer shall use its good faith and best efforts to timely obtain all Required Consents. Buyer shall keep Seller timely informed of the consent process and the status of its efforts.

(ii) Failure to Obtain Consent. In the event all Required Consents have not been obtained at least one (1) business day prior to the Outside Closing Date, this Agreement shall be terminated (in which case the provisions of Paragraph 9(c) of this Agreement shall govern).

(i) Third Party Beneficiary. The provisions of this Paragraph 23 shall inure to the benefit of Seller (which is expressly made a third party beneficiary of this Agreement and the exhibits attached hereto, with the right to take direct action hereon and to exercise any rights or remedies afforded to Seller hereunder), and each of their respective successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Buyer.

(j) Survival. The provisions of this Paragraph 23 shall survive Closing and the delivery of the Special Warranty Deed at Closing.

24. Miscellaneous.

(a) Partial Invalidity. If any term or provision of this Agreement or the exhibits attached hereto or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the exhibits attached hereto, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement and the exhibits attached hereto shall be valid and shall be enforced to the fullest extent permitted by law.

(b) No Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(c) Successors and Assigns. This Agreement and the exhibits attached hereto shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(d) Entire Agreement. This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement among, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. Neither this Agreement nor any of the other documents to be executed hereunder may be modified, changed, supplemented or terminated, nor may any obligations hereunder or thereunder be waived, except by written instrument signed by the party to be charged (and in the event Seller is to be charged) or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and their permitted successors and assigns.

(e) Time of Essence. The parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision of this Agreement and that failure to timely perform any of the terms, conditions, obligations or provisions of this Agreement by either party shall constitute a material breach of and a non-curable (but waivable in accordance with Paragraph 24(d) of this Agreement) default under this Agreement by the party so failing to perform.

(f) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement and the exhibits attached hereto, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement and the exhibits attached hereto shall not be construed as if they had been prepared by one of the parties, but rather as if all parties had prepared the same. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement.

(g) Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State. Any dispute arising under this Agreement or the documents referred to herein will be adjudicated exclusively in the courts of the State with venue in the County.

(h) Non-Binding. No party shall have any legal rights or obligations with respect to any other party, and no party should or may take any action or fail to take any action in detrimental reliance, unless and until this Agreement is executed by all of the parties hereto.

(i) Exhibits. All exhibits referred to in this Agreement are attached hereto and are fully incorporated herein by this reference as though set forth at length herein.

(j) Assignment. Buyer shall not assign its rights under this Agreement. Notwithstanding the foregoing sentence, prior to Closing, Purchaser shall have the right to assign its rights under this Agreement to a Permitted Assign; provided, however, that prior to such assignment, that such assignee shall assume all of Purchaser's obligations under this Agreement; provided, further, that Purchaser shall remain jointly and severally liable with its Permitted Assign for all obligations of Buyer under this Agreement and under the documents to be executed and delivered in connection herewith. This Agreement and the documents to be executed and delivered hereunder may be assigned by Seller to any affiliate of any partner of Seller. Notwithstanding any assignment or any other provision of this Agreement to the contrary, in no event shall Buyer be released from any of its obligations under this Agreement and/or the exhibits attached hereto, including, without limitation, the indemnification obligations under Paragraph 23(c) of this Agreement. In the event of any assignment permitted in accordance with the provisions of this Paragraph 24(j), the closing documents shall, where appropriate, reflect the name of Permitted Assign rather than Purchaser.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute a separate document but all of which together shall constitute one and the same agreement. Signature pages may be detached and reattached to physically form one document. This Agreement may be executed by facsimile or electronic (scanned) signature.

(l) Further Assurances. To the extent consistent with the terms of this Agreement and customarily executed and/or delivered in similar transactions, Buyer and Seller will make, execute, and deliver such documents and undertake such other and further acts as may be reasonably necessary to complete the transaction contemplated herein.

(m) Third Party Beneficiary. No term or provision of this Agreement or the documents to be executed and delivered hereunder is intended to be, nor will any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party hereto (including, without limitation, any broker), and no other person, firm, corporation or entity will have any right or cause of action hereunder.

(n) No Recording. The provisions of this Agreement will not constitute a lien on the Property and neither this Agreement nor any notice or memorandum of this Agreement will be recorded by Buyer.

(o) Business Days. If, under the terms of this Agreement, the time for the performance of any act, giving of notice, or making any payment falls on a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next succeeding business day.

(p) Limited Partner of Seller. Buyer acknowledges that each limited partner ("Limited Partner") of Seller, , is a limited partner of Seller and, therefore, does not have any personal liability for Seller's obligations. Even though any such Limited Partner may have been involved in the preparation, negotiation and consummation of this Agreement and the exhibits

attached hereto, such involvement does not, in any manner whatsoever, modify or change any such Limited Partner's status as a limited partner of Seller. Buyer has no claim against any Limited Partner (or any of its direct or indirect partners, principals, asset managers, contractors, agents, affiliates, successors or assigns) for the obligations of Seller hereunder.

(q) 1031 Exchange. Any party may consummate the purchase or sale (as applicable) of the Real Property to be conveyed hereunder as part of a so-called like-kind exchange (an "Exchange") pursuant to Section 1031 of the Code, as amended; provided, however, that: (i) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (ii) any assignment of this Agreement necessary to effect its Exchange shall comply with all of the terms of this Agreement; (iii) no party shall be required to take an assignment of any agreement for the relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; (iv) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange; and (v) the non-exchanging party shall not incur any liabilities. No party shall by this Agreement or acquiescence to an Exchange desired by the other party have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code. Subject to the provisions of this Paragraph 24(q), each party shall cooperate with the other party in effecting an Exchange.

(r) Confidentiality. Buyer shall treat this Agreement and the Property Files as confidential in all respects and shall not disclose the existence of this Agreement, the terms of this Agreement, the Property Files or the results of its due diligence under this Agreement without the advance written consent of Seller, except for (i) disclosure only to the extent reasonably necessary to Buyer's Representatives in connection with the transactions contemplated hereby; (ii) disclosure required by law or by regulators, including in response to a subpoena or similar process or as part of a filing required to be made under securities laws; (iii) disclosure in connection with litigation to enforce the terms of this Agreement; and (iv) disclosure by a party required to satisfy a condition precedent to Closing.

(s) Reserved.

(t) Survival. The provisions of this Paragraph 24 shall survive any termination of this Agreement and shall survive Closing and the delivery of the Special Warranty Deed at Closing.

(u) Merger. All provisions of this Agreement (except for the terms of this Agreement which expressly survive Closing and the delivery of the Special Warranty Deed at Closing) shall merge into the Special Warranty Deed with the delivery of the Special Warranty Deed, and the delivery of the Special Warranty Deed to Buyer shall constitute the full performance of Seller under this Agreement.

(v) Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT CONTEMPLATED AND EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO. BUYER AND SELLER EACH ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY GIVEN AFTER CONSULTATION BY IT WITH COMPETENT COUNSEL.

(w) Radon Gas Disclosure Required Under Florida Law. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

(x) Escrow Conditions. Escrow Agent is employed hereunder in a ministerial capacity only, and shall act in accordance with the terms and conditions of this Agreement, and shall not be liable to any party for any loss or damage resulting therefrom, except for loss or damage resulting from the bad faith, gross negligence or willful misconduct of Escrow Agent.

<Parties' Signatures On Next Page>

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SELLER:

Deancurt Jacksonville, LLC, a Florida Limited Liability Corporation

By: _____
Name: _____
Title: _____

PURCHASER:

Tralee Deer Meadow, LLC, a Florida Limited Liability Company

By: _____ 7/31/17
Name:
Title:

Signature page for REAL ESTATE PURCHASE AND SALE AGREEMENT WITH ESCROW INSTRUCTIONS dated as of 9/26/17 2017 by and between Tralee Deer Meadow, LLC

ACCEPTANCE BY FIRST AMERICAN TITLE INSURANCE COMPANY

First American Title Insurance Company, referred to in this Agreement as the "Escrow Agent" and "Title Company," hereby acknowledges receipt of the Initial Deposit in the amount of One Hundred Fifteen Thousand and No/100 Dollars ($115,000.00), together with a fully executed copy of this Agreement. First American Title Insurance Company certifies that it has received and understands this Agreement and hereby accepts the obligations of the Escrow Agent and the Title Company as set forth herein, including, without limitation, its agreement to hold the Deposit and disburse same, in strict accordance with the terms and provisions of this Agreement.

Date: _____

First American Title Insurance Company

By: _____
Name:
Title:

SCHEDULE OF EXHIBITS

EXHIBIT A	Legal Description
EXHIBIT B	Form of Special Warranty Deed
EXHIBIT C	Form of FIRPTA Certificate
EXHIBIT D	Form of Assignment and Assumption of Leases
EXHIBIT E	Form of General Assignment and Bill of Sale
EXHIBIT F	Form of Tenant Notice Letter
EXHIBIT G	Reserved
EXHIBIT H	Rent Roll
EXHIBIT I	List of Property Files

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

Insert legal description

EXHIBIT "B"
FORM OF
Special Warranty Deed

Prepared by and return to:

SPECIAL WARRANTY DEED

THIS INDENTURE made this ____ of _____, 20___, by and between _____ (herein referred to as "Grantor") whose mailing address is _____, and _____ (herein referred to as "Grantee") whose mailing address is _____.

WITNESSETH:

That the Grantor, in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other valuable consideration paid by the Grantee, receipt of which is acknowledged has granted, bargained, and sold to the Grantee, its successors, and assigns forever, that certain land located in _____, _____ County, Florida, being more particularly described as follows:

SEE **EXHIBIT "A"** ATTACHED HERETO AND MADE A PART HEREOF

Together with all the rights, tenements, improvements, hereditaments, easements, and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the same in fee simple forever.

The benefits and obligations hereunder shall inure to and be binding upon the successors and assigns of the respective parties hereto. Grantor hereby covenants with Grantee that the Property is free from all encumbrances made by, through, or under Grantor, except as noted on **EXHIBIT "B"** ("Permitted Encumbrances") attached hereto and made a part hereof, none of which shall be reimposed hereby, and the Grantor does hereby fully warrant title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under the Grantor, but against none other.

Parcel Identification Number: _____

Signed, sealed and delivered
in the presence of

WITNESSES:

_____

_____
Name:_____

_____
Name:_____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 20____, by _____, the _____ of _____, a Florida corporation, on behalf of the corporation. Such person *(notary must check applicable box)*:

☐ is/are personally known to me.
☐ produced a current Florida driver's license as identification.
☐ produced _____ as identification.

{Notary Seal must be affixed}

_____
Signature of Notary

_____
Name of Notary Typed, Printed or Stamped)
Commission Number (if not legible on seal): _____
My Commission Expires (if not legible on seal): _____

EXHIBIT "A"
Legal Description

Insert legal description

EXHIBIT "B"
Permitted Encumbrances

EXHIBIT "C"
FORM OF
TAXPAYER'S CERTIFICATION OF NON-FOREIGN STATUS

To inform Tralee Deer Meadow, LLC ("Transferee") that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code"), will not be required upon the transfer of certain real property to the Transferee by _____, the undersigned ("Taxpayer") hereby certifies the following on behalf of the Taxpayer:

1. That Taxpayer is a United States person and is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. The Taxpayer's U.S. employer identification number is 59-3197388; and

3. The Taxpayer's office address is c/o _____.

The Taxpayer understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Taxpayer.

Date: _____

Jacksonville Waterstone, LLC, a Delaware Limited Liability Corporation

By:
Name:
Title:

EXHIBIT "D"
FORM OF
ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES ("Assignment") is dated as of _____, and is entered into by and between Jacksonville Waterstone, LLC, a Delaware Limited Liability Corporation ("Assignor") and Tralee Deer Meadow, LLC ("Assignee"), with respect to the following matters.

W I T N E S S E T H:

Assignor and Assignee entered into that certain Real Estate Purchase And Sale Agreement With Escrow Instructions, dated as of _____("Agreement"), regarding the sale of that certain real property being more fully described on Exhibit "A" attached hereto and made a part hereof, together with all improvements and other property comprising Property (as defined in the Agreement). Unless otherwise indicated herein, all capitalized terms in this Assignment shall have the meaning ascribed to them in the Agreement.

Assignor, as lessor, and Tenants have entered into the Tenant Leases covering certain premises located on the Property.

Under the Agreement, to the extent assignable, Assignor is obligated to: (a) assign to Assignee any and all of its right, title and interest in and to all Tenant Leases; and (b) give Assignee a credit in an amount equal to the amount of the Tenant Deposits and prepaid rents.

Under the Agreement, Assignee is obligated to assume all of Seller's obligations with respect to the Tenant Deposits and prepaid rents.

A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to the Tenant Leases, as set forth on Exhibit "B" hereto and Assignee hereby accepts such assignment and hereby assumes all of the obligations and agrees to pay, perform and discharge all of the terms, covenants and conditions, in each case arising or accruing under or in connection with the Tenant Leases and Tenant Deposits from and after the date of this Assignment.

Assignee hereby acknowledges receipt of funds equal to the amount of, and in payment of, all Tenant Deposits and prepaid rents and hereby assumes all of the obligations in connection therewith.

In the event of the bringing of any action or suit by a party hereto against another party thereunder by reason of any breach of any of the covenants, conditions, agreements or provisions

on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including actual attorneys' fees and costs.

The transfers and assumptions given effect by this Assignment are limited by and made expressly subject to the terms, covenants and conditions set forth in the Agreement.

This Assignment may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State.

<Parties' Signatures On Next Page>

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR:
Jacksonville Waterstone, LLC, a Delaware Limited Liability Corporation
By:
Name:
Title:

ASSIGNEE:

Tralee Deer Meadow, LLC, a Florida Limited Liability Company

Attachments:

Exhibit “A” - Legal Description

EXHIBIT "A" TO ASSIGNMENT AND ASSUMPTION OF LEASES
LEGAL DESCRIPTION OF THE PROPERTY

Insert legal description

EXHIBIT "E"
FORM OF
GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE ("Assignment") is dated as of _____, and is entered into by and between Jacksonville Waterstone, LLC, a Delaware Limited Liability Corporation ("Assignor") and Tralee Deer Meadow, LLC ("Assignee"), with respect to the following matters.

W I T N E S S E T H:

Assignor and Assignee entered into that certain Real Estate Purchase And Sale Agreement With Escrow Instructions, dated as of _____ ("Agreement"), regarding the sale of that certain real property being more fully described on Exhibit "A" attached hereto and made a part hereof, together with all improvements and other property comprising Property (as defined in the Agreement). Unless otherwise indicated herein, all capitalized terms in this Assignment shall have the meaning ascribed to them in the Agreement.

Pursuant to the Agreement (except as otherwise provided for therein), Assignor is obligated to transfer, sell, convey and assign any and all of Assignor's right, title and interest in and to the Personal Property, and to the extent assignable, the Intangibles and the Service Contracts (collectively, the "Assigned Properties") and to delegate any and all of its obligations and responsibilities in the Assigned Properties from and after the date hereof to Assignee and Assignee is obligated to assume such obligations and responsibilities.

Further, pursuant to the Agreement, Assignee is obligated to assume such obligations and responsibilities arising or accruing under the Regulatory Agreements and the Tax Credit Laws applicable to the Property.

A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to the Assigned Properties and Assignee hereby accepts such assignment and hereby assumes all of the obligations and agrees to pay, perform and discharge all of the terms, covenants and conditions, in each case arising or accruing under the Assigned Properties from and after the date of this Assignment.

Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to the Regulatory Agreements and Assignee hereby accepts such assignment and hereby assumes, confirms and agrees to undertake all of the obligations arising or accruing under the Regulatory Agreements and the Tax Credit Laws applicable to the Property from and after the date of this Assignment. The provisions of this Paragraph shall survive any termination of this Assignment.

In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including actual attorneys' fees and costs.

The transfers and assumptions given effect by this Assignment are limited by and made expressly subject to the terms, covenants and conditions set forth in the Agreement.

This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State.

This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

<Parties' Signatures On Next Page>

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR:

Jacksonville Waterstone, LLC, a Delaware Limited Liability Corporation

By:
Name:
Its:

ASSIGNEE:

Tralee Deer Meadow, LLC

By:
Name:
Its:

Attachments:

Exhibit “A” - Legal Description

EXHIBIT "A" TO GENERAL ASSIGNMENT AND BILL OF SALE
LEGAL DESCRIPTION OF THE PROPERTY

Insert legal description

EXHIBIT "F"
FORM OF TENANT NOTICE LETTER

DEER MEADOW APARTMENTS

[CLOSING DATE]

Tenant Name: _____
Unit #: _____

Re: Notice of Sale regarding Deer Meadow Apartments, located at 8859 South Old Kings Road, Jacksonville, FL 32257 (the "Property")

Dear Resident:

You are hereby notified as follows:

1. As of the date hereof, the Property has been sold to a new owner.

2. The new owner has received and is now responsible for your tenant security, pet and other deposits and credits with respect to your lease at the Property. Any inquiries regarding your deposit should be directed to the on-site manager of the Property.

3. Future rental payments with respect to your lease at the Property should be made to the new owner by delivering a check or money order payable to the order of [_____] to the on-site manager of the Property.

Very truly yours,

[BUYER OR BUYER'S MANAGEMENT COMPANY]

By: _____
Name:
Title:

EXHIBIT "G"
[RESERVED]

EXHIBIT "H"
RENT ROLL

<Attached>

EXHIBIT "I"
LIST OF PROPERTY FILES

1.	Current rent roll
2.	Current standard tenant lease form
3.	Copies of current tenant leases and copies of tenant files (available on-site)
4.	Income Statement year-to-date and for the previous two (2) years for the Property
5.	Current year operating budget for Property
6.	Occupancy report for the past full year
7.	Copy of the property management agreement
8.	Listing of current on-site employees, their titles and duties / job description / compensation structure
9.	Service Contracts
10.	Two (2) most recent real estate tax statements for the Property
11.	Insurance bill(s) for the property plus a two (2) year loss run
12.	The utility bills for the Property for the past three (3) calendar months
13.	List of capital expenses for the previous two (2) years for the Property
14.	Regulatory Agreements
15.	Licenses, permits, and certificates of occupancy
16.	Existing as-built (ALTA or other) surveys for the Property
17.	Existing Phase I Environmental Site Assessments
18.	Third party engineering reports
19.	2016 and 2017 Compliance Audits and any physical inspection reports for the past two years from the Housing Authority
20.	Outstanding, unresolved IRS Form 8823s
21.	Schedule of Personal Property to be included in the sale
22.	IRS Form 8609s
23.	Warranties or guarantees for the property
24.	Copies of any written notice of Tax Credit non-compliance
25.	To the extent available and in Seller's possession, any notices or reports from the city regarding any code changes / violations and Current fire department inspection