

## QUALIFIED CONTRACT

Section 42(h)(6)(E) of the Internal Revenue Code, allows the extended use period to terminate after the original 15 year compliance period, if ADOH is unable to present a qualified contract for the acquisition of the low-income portion of the property by any person who will continue to operate such portion in accordance with the Tax Credit Program. A Qualified Contract (QC) is a *bona fide* contract to acquire a low-income housing tax credit project for the sum of the existing debt, adjusted investor equity and other capital contributions, less project cash distributions as set forth in I.R.C. § 42(h)(6)(F). ADOH has one-year from the date it has received a complete QC request to respond to the request.

The procedure for making a formal request to ADOH for a QC is described below.

### 1. Eligibility

An Owner is not eligible to submit a request for a QC unless and until the subject property has completed its 14<sup>th</sup> year of the compliance period. The compliance period means, with respect to any building, the period of 15 taxable years beginning with the 1<sup>st</sup> taxable year of the credit period with respect thereto. See I.R.C. §42 (i)(1). For example, if a project was placed in service and the 1<sup>st</sup> taxable year was 1991, the 15 year compliance period would end in 2005; therefore a written request for a qualified contract could be submitted anytime after January 1, 2004 in accordance with ADOH procedures.

### 2. Notice of Intent to File a Request for a Qualified Contract

An Owner must provide ADOH advance notice of its intent to request a QC no later than 5:00 pm on January 15 in any year in which the Owner is eligible to submit a request for a QC. The Notice of Intent shall be in the form of a letter and supplementary materials identified below demonstrating that Owner is eligible to make a request for a QC. The Notice does not bind the Owner and does not start the one year period for response from ADOH.

Supplements to the Notice of Intent:

- a. Fee in the amount of \$1,000;
- b. Waivers of any purchase options or rights of first refusal connected to the property
- c. A clean compliance report from ADOH dated within the 12 months preceding the date of the Notice of Intent.

Within 60 days of receipt of the Notice of Intent, ADOH shall determine if the Owner(s) is eligible to submit a request, ADOH will notify the Owner in writing.

### 3. Qualified Contract Request

If ADOH determines that Owner is eligible to make a QC request, based upon its determination of the Notice of Intent, then ADOH will accept a QC request on June 15 of the same year in which the Notice of Intent was submitted.

Eligible Owners shall submit the following items to the Department:

- a. A written for a QC request from the Owner, (the Qualified Contract Notification Letter).

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- b. A fully completed "Calculation of Qualified Contract Price," [is there a different form for this or are you referring to the Calculation Worksheet Summary ??] including the attached worksheets, A, B and C. These worksheets must be completed by an independent third-party CPA who is not an employee, officer, partner, member of share-holder of the owner. [Do you want to add an affirmation signed by the CPA that there is no conflict of interest?].
- c. A thorough narrative of the property identifying its location, indicating the number of units, amenities within the units as well as common areas, and proximity to schools, business districts, shopping, mass transportation, highways sufficient to familiarize a prospective purchaser with the property. Detailed digital color photographs of the property that may be easily displayed on the Department's website. All photos must have been taken within the six months of the date of the QC request.
- d. Annual partnership federal tax returns for all 15 years of the credit period [is this 15 years of the credit period or 10 years? Or do you want fed tax returns for the compliance period?]
- e. 15 years of audited financial statements
- f. Loan documents for all secured debt during the compliance period (*i.e.* 1<sup>st</sup> mortgage, 2<sup>nd</sup> and all soft loans)
- g. Current title report (dated not more than 30 days of the date of the QC request)
- h. \$5,000 non-refundable administrative fee
- i. \$30,000 deposit for anticipated third-party costs, including but not limited to fees for a Certified Public Accountant and attorney fees. Any remaining deposit will be returned to the Owner at the end of the one-year period.
- j. Current appraisal of the property (not older than 6 months)
- k. Current market study (not older than 6 months)
- l. Application fee of ¼ of one percent of QC price as calculated in the Calculation Worksheet submitted with the QC Request.
- m. Consent of all limited partners to negotiate on behalf of the partnership.

Upon receipt of all of the documents and fees set forth above, the Department will begin review of the material submitted. ADOH's one-year period to find a purchaser, however, shall not begin until Owner has submitted a complete request for a QC. ADOH and may request additional information as needed. The Department will market the property in good faith and will continue such efforts until the property is sold or the 1 year period has expired. Lack of cooperation by the Owner in the marketing of the property will cause the process to cease and the owner will be required to comply with the full term of the LURA. Lack of cooperation by Owner shall include, but not be limited to Owner's failure to respond to any ADOH request for documentation and Owner's delay or refusal to allow inspections of the property by potential purchasers. The Owner is not required to accept any purchase offers presented through the Department; however, if the Owner rejects an offer at or above the QC, the development will remain affordable throughout the extended compliance period. The Department may reject purchasers who have failed to demonstrate proficiency with the Housing Credit program or any other subsidized housing programs.

If the Department is unable to find a buyer pursuant to the "Qualified Contract" before the expiration of the one-year period, the project will no longer be subject to the LURA restrictions. However, the property will continue to be subject to the requirements of §42(h)(6)(E)(ii) for the three year period commencing on the termination of the LURA which states that the Owner may not evict or terminate tenancy for other than good cause of an existing tenant of any low-income unit or increase the gross rent beyond that allowable under the program.

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Upon the termination of the LURA, the owner will be required to provide written notice to each existing tenant of the project of the protection set forth in §42(h)(6)(E)(ii). The Owner will be required to submit a certification to the Department at the end of each year of the three year period, that the requirements of § 42 (h)(6)(E)(ii) have been met.

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## Instructions

Before the Department will commence marketing your project, you must complete the Calculation of Qualified Contract Price forms attached. This calculation will establish the minimum price at which the Department will market your project and present an offer for its purchase.

To complete the calculation forms you must complete all the worksheets.

The calculation form is derived from a statutory formula set forth in §42(h)(6)(F) of the IRC.

The statutory formula divides the purchase price between the low-income portion of the project and the market rate portion of the project.

Please note that the 1 year period will not commence until the calculation worksheets are received as well as all these documents. The calculation worksheets must be completed by a third-party CPA who is a disinterested party to the transaction.

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**CALCULATION WORKSHEET (Summary)**  
**Pursuant to §42(h)(6)(F) IRC**

As of \_\_\_\_\_, 200\_\_

- (A) Calculation of low-income portion
- (i) Outstanding indebtedness secured by or with respect to the building \$ \_\_\_\_\_
  - (ii) Adjusted investor equity \$ \_\_\_\_\_
  - (iii) Other capital contributions not reflected in (i) & (ii) \$ \_\_\_\_\_
  - (iv) Total of (i) (ii) and (iii) \$ \_\_\_\_\_
  - (v) Cash distributions from or available for distribution from the project \$ \_\_\_\_\_
  - (vi) Line (iv) – line (v) \$ \_\_\_\_\_
  - (vii) Applicable fraction \_\_\_\_\_%
  - (viii) Low-income portion of the QC line (vi) X line (vii) \$ \_\_\_\_\_
- (B) Fair Market Value of non low-income portion Of the building(s) \$ \_\_\_\_\_
- Total QCP (add line (viii) and line B)** \$ \_\_\_\_\_

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**WORKSHEET (A)**

The unpaid principal balance and accrued interest of each loan secured by the project. The total of all loans should be transferred to calculations worksheet summary line (i).

1. First Mortgage Loan:  
Lender: \_\_\_\_\_  
Outstanding Principal Balance \$ \_\_\_\_\_  
Accrued interest rate \_\_\_\_\_ \$ \_\_\_\_\_  
Subtotal \$ \_\_\_\_\_

2. Second Mortgage Loan:  
Lender: \_\_\_\_\_  
Outstanding Principal Balance \$ \_\_\_\_\_  
Accrued interest rate \_\_\_\_\_ \$ \_\_\_\_\_  
Subtotal \$ \_\_\_\_\_

3. Third Mortgage Loan:  
Lender: \_\_\_\_\_  
Outstanding Principal Balance \$ \_\_\_\_\_  
Accrued interest rate \_\_\_\_\_ \$ \_\_\_\_\_  
Subtotal \$ \_\_\_\_\_

4. Fourth Mortgage Loan:  
Lender: \_\_\_\_\_  
Outstanding Principal Balance \$ \_\_\_\_\_  
Accrued interest rate \_\_\_\_\_ \$ \_\_\_\_\_  
Subtotal \$ \_\_\_\_\_

Total all subtotals and place on calculation worksheet summary line (i). Please attach amortization from bank schedule of all loans.

## CALCULATION WORKSHEET (B)

The qualified contract price includes the sum of the "Adjusted Investor Equity" with respect to the project. "Adjusted Investor Equity" means, with respect to any calendar year, the aggregate amount of each taxpayer's investment with respect to the project increased by the amount of equal to such amount, multiplied by the cost-of-living adjustment for such calendar year, determined under §1(f)(3) by substituting the base calendar for "calendar 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.

Cost-of-living increases in excess of 5% not taken into account under regulations prescribed by the Secretary of the CPI for any calendar year (as defined in §1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5%, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account undischarged (i). "Base Calendar Year" means the calendar year with or within which the 1<sup>st</sup> taxable year of the credit period ends.

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**CALCULATION WORKSHEET (B) – Page 2**

1.	1990 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 34.3 %	
	<b>Subtotal</b>	\$ _____	
2.	1991 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 30.5 %	
	<b>Subtotal</b>	\$ _____	
3.	1992 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 27.4 %	
	<b>Subtotal</b>	\$ _____	
4.	1993 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 24.6 %	
	<b>Subtotal</b>	\$ _____	
5.	1994 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 21.7 %	
	<b>Subtotal</b>	\$ _____	
6.	1995 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 19.1 %	
	<b>Subtotal</b>	\$ _____	
7.	1996 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 16.2 %	
	<b>Subtotal</b>	\$ _____	

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**CALCULATION WORKSHEET (B) – Page 3**

8.	1997 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 14.0 %	
	<b>Subtotal</b>	<b>\$ _____</b>	
9.	1998 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 12.4 %	
	<b>Subtotal</b>	<b>\$ _____</b>	
10.	1999 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 10.1 %	
	<b>Subtotal</b>	<b>\$ _____</b>	
11.	2000 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 6.7 %	
	<b>Subtotal</b>	<b>\$ _____</b>	
12.	2001 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 4.0 %	
	<b>Subtotal</b>	<b>\$ _____</b>	
13.	2002 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 2.0 %	
	<b>Subtotal</b>	<b>\$ _____</b>	
14.	2003 Adjusted Investor Equity		
	(i) Investor _____		
	(ii) Investment Amount	\$ _____	
	(iii) Cost of Living adjustment	X _____ 0.0 %	
	<b>Subtotal</b>	<b>\$ _____</b>	

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**CALCULATION WORKSHEET (B) – Page 4**

15. 2004 Adjusted Investor Equity  
(i) Investor \_\_\_\_\_  
(ii) Investment Amount \$ \_\_\_\_\_  
(iii) Cost of Living adjustment X \_\_\_\_\_ TBD %  
**Subtotal** \$ \_\_\_\_\_

16. 2005 Adjusted Investor Equity  
(i) Investor \_\_\_\_\_  
(ii) Investment Amount \$ \_\_\_\_\_  
(iii) Cost of Living adjustment X \_\_\_\_\_ TBD %  
**Subtotal** \$ \_\_\_\_\_

Total all subtotals and place on Calculation Worksheet Summary, line (ii)

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**CALCULATION WORKSHEET (C)**  
**Other Capital Contribution**

If the qualified contract price includes the amount of other capital contributions made with respect to the project. For this purpose "other capital contributions may not be limited to cash, and therefore may include "in-kind" contributions such as land (at least until there is contrary guidance from the IRS). However, if non cash contributions are included, you must be able to justify the assigned value to the Department; if operating deficit loans or advances don't count as capital contributions:

- |    |                          |          |
|----|--------------------------|----------|
| 1. | Investment Amount        | \$ _____ |
|    | (i) Name of Investor     |          |
|    | (ii) Dates of Investment |          |
|    | (iv) Investment Use      |          |
| 2. | Investment Amount        | \$ _____ |
|    | (i) Name of Investor     |          |
|    | (ii) Dates of Investment |          |
|    | (v) Investment Use       |          |
| 3. | Investment Amount        | \$ _____ |
|    | (i) Name of Investor     |          |
|    | (ii) Dates of Investment |          |
|    | (vi) Investment Use      |          |
|    | <b>TOTAL</b>             | \$ _____ |

Total all and place on Calculation Worksheet Summary Line (iii).

**CALCULATION WORKSHEET (D)**  
**Cash Distributions**  
**From or Available from the Project**

The QCP is reduced by the total of all cash distributions from, or available from, the project.

1. Cash accounts held by the partnership  
And cash distributed to the partners over 15 years \$ \_\_\_\_\_
  
2. Replacement reserves \$ \_\_\_\_\_
  
3. Fees paid from cash flow to related parties  
(i.e. incentive management fees over 15 years,  
asset management over 15 years, or development  
fees) Maybe? \$ \_\_\_\_\_

Cash distributions and fees calculated over the 15 year compliance period. Total to be placed on Line (v)  
of the Calculation Worksheet Summary

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**CALCULATION WORKSHEET (E)**  
**Fair Market Value on Non Low-Income portion of Buildings**

The fair market value is \$ \_\_\_\_\_

Total to be placed on Line B of the Calculation Worksheet Summary.

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