MEMORANDUM

TO: 2009 Exchange Program Recipients

FROM: Barbara G. Wallace

DATE: July 23, 2010

SUBJECT: Thirty Percent (30%) Qualification Agreement

In order to satisfy Treasury’s Exchange Program rules and regulations outlined in the Federal Register/Vol. 74, No. 167, August 31, 2009, Part 32, Section 32.1(b)(2) (attached), the owner must complete the enclosed 2009 Section 1602 Tax Credit Exchange Thirty Percent (30%) Qualification Agreement (Agreement), including Exhibits A-D. The original Agreement and exhibits must be remitted to Alabama Housing Finance Authority (AHFA) by Wednesday, December 1, 2010.

Additionally, you must own the land or depreciable real property that is expected to be part of the project and must incur more than thirty percent (30%) of the reasonably expected basis in the project (land and depreciable basis) by December 31, 2010.

AHFA has no authority to extend this deadline. The owner’s failure to incur at least 30% of the total adjusted basis in land and depreciable property by December 31, 2010, will result in the owner’s loss of cash assistance under the Exchange program, including termination of future Exchange program funding, and immediate recapture of prior Exchange program funding.

Thank you for your efforts and interest in preserving and developing affordable housing for Alabama families. If you have any questions, or are unable to meet the required deadline, please let me know immediately.
whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The rule is a "significant regulatory action" as defined in Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act Analysis

Because no notice of rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

List of Subjects In 31 CFR Part 32

Low-income housing tax credits.

For the reasons set forth in the preamble, we add 31 CFR Part 32 to read as follows:

PART 32—PAYMENTS IN LIEU OF LOW INCOME HOUSING TAX CREDITS

Sec. 32.1 Timing of disbursements.

Authority: Public Law 111-5.

§ 32.1 Timing of disbursements.

(a) State housing credit agencies that receive funds under section 1602 of Division B of the American Recovery and Reinvestment Tax Act of 2009 must make subawards to subawardees to finance the construction or acquisition and rehabilitation of low-income housing no later than December 31, 2010. Any funds that are not used to make subawards by December 31, 2010, must be returned to the Treasury by January 1, 2011.

(b) The requirement in subsection (a) above does not prevent State housing credit agencies from continuing to disburse funds to subawardees after December 31, 2010 provided:

(1) A subaward has been made to the subawardee on or before December 31, 2010;

(2) The subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project; and

(3) Any funds not disbursed to the subawardee by December 31, 2011, must be returned to the Treasury by January 1, 2012.
This Thirty Percent (30%) Qualification Agreement is an allocation of 2009 Section 1602 Tax Credit Exchange Program funds ("Exchange") which was made pursuant to the American Recovery and Reinvestment Act of 2009. This allocation is subject to the terms and conditions stated herein, including Exhibits A through D ("the Agreement"), which have been entered into between the Alabama Housing Finance Authority ("AHFA") and the Owner identified below.

I. OWNER:
«Owner_Name_1» «Owner_Name_2»
Attn: «Owner_Attention»
«Owner_Address»
«Owner_City», «Owner_State» «Owner_Zip»
Tax Payer I.D. # __________________________

II. PROJECT:
«Project_Name»
«Apartment_Address»
«Apartment_City», «Apartment_State» «Apartment_Zip»
Project # «Project_Number»

III. BUILDING IDENTIFICATION NUMBERS:
«BIN_Prefix»-00«BIN_1» through «BIN_Prefix»-00«BIN_2»

IV. ANTICIPATED PLACED IN SERVICE DATE: «Placed_In_Service_Date»
(This Project must be placed in service on or before December 31, 2011.)

V. AGENCY:
Alabama Housing Finance Authority
P. O. Box 242967
Montgomery, AL 36124-2967
Tax Payer I.D. #63-0980480

VI. DATE OF ALLOCATION: (date of reservation) September 16, 2009
The exchange amount allocated to the above described project ("the Project") is not to exceed «EXCHANGE AMOUNT». AHFA is required to evaluate this Project a minimum of three times, therefore the exchange allocation may be subject to change. The last evaluation will occur after the Project has been placed in service and final certified cost numbers have been submitted for AHFA's approval.

The Owner understands and agrees that, if the exchange allocation amount set forth in the above paragraph exceeds the final allocation, any such excess shall be cancelled and returned to AHFA.

This allocation is expressly conditioned upon satisfaction of the rules and regulations of The United States Department of Treasury (Treasury) outlined in the Federal Register/Vol. 74, No. 167, Part 32, Section 32.1(b)(2).

VII. OWNER'S TOTAL REASONABLY EXPECTED BASIS: $ ________________ 
The Owner's actual basis including land costs as of the date of this Agreement is: $_______________ as defined in Exhibit C attached hereto.

Percentage of the actual basis as of this date to the total reasonably expected basis in the project is: ___%.
If the percentage above is less than thirty percent (30%), the Owner has not fully met the requirements of Section 32.1(b)(2) by the date of this Agreement, and the conditions of the paragraph below, apply.

In addition to all other terms and conditions of this allocation, if, by the date of this Agreement, the Owner’s basis in the Project is not at least thirty percent (30%) of the reasonably expected basis in such Project, this allocation is further subject for the Owner’s demonstration to AHFA, in a manner acceptable to AHFA (including, but not limited to, the Owner Certification, substantially in the form of Exhibit “C” attached hereto), that at least thirty percent (30%) of the reasonably expected basis in such Project has been achieved no later than December 31, 2010. In addition, Owner must submit items outlined in Exhibit A by December 1, 2010. Owner acknowledges that AHFA’s determination as to satisfaction of the thirty percent (30%) requirement is not binding upon the Treasury and does not constitute a representation by AHFA to the Owner or any other party to that effect.

VIII. Owner acknowledges that all the terms, conditions, obligations and deadlines set forth herein and in the Exhibits attached hereto constitute conditions precedent to this allocation, and that the Project’s failure to comply with all such terms and conditions will entitle AHFA, in its discretion, to deem this allocation to be cancelled by mutual consent. After any such cancellation, Owner acknowledges that neither it nor the Project will have any right to claim exchange funds pursuant to this allocation. AHFA reserves the right, in its discretion, to modify and/or waive any such failed condition precedent.

IX. Upon notification by the Owner that the Project has been placed in service, AHFA will issue an IRS Form 8609 to each building in the project to the extent required by, and in accordance with, applicable Federal law then governing allocation of exchange funds under Section 1602 of the Code. The total dollar amount of 2009 exchange allocation reflected on such Form 8609 would not exceed the exchange amount allocated to the Project in item VI above.

X. In issuing this exchange allocation, AHFA has relied upon information provided and representations made by the Owner or the Owner’s designee in connection with this allocation, and this allocation does not in any way constitute a representation, warranty, guaranty, advice or suggestion by AHFA as to the qualification of the Project for the exchange funds, or the feasibility or viability of the Project, and may not be relied on as such by any owner, developer, investor, tenant, lender, or other person, for any reason. In addition, AHFA’s acceptance of the certification described in Exhibit A does not constitute a representation as to the satisfaction of the requirements under Section 32.1(b)(2).

XI. The Owner hereby agrees and acknowledges that whether the thirty percent (30%) requirement has been met and whether the Owner has provided sufficient evidence thereof may be subject to future determination by AHFA or Treasury.

XII. AHFA has no authority to extend regulatory deadlines. The owner’s failure to incur at least thirty percent (30%) of the total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project by December 31, 2010, will result in the owner’s loss of cash assistance under the Exchange program, including termination of future Exchange program funding, and immediate recapture of prior Exchange program funding.

Alabama Housing Finance Authority

By: ___________________________ Date: ______________
Robert Strickland
Its: Executive Director

«Owner_Name_1» «Owner_Name_2»

By: ___________________________ Its:

Alabama Housing Finance Authority

By: ___________________________ Date: ______________
Robert Strickland
Its: Executive Director

«Owner_Name_1» «Owner_Name_2»

By: ___________________________ Its:
STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert Strickland, whose name as Executive Director of the Alabama Housing Finance Authority, an instrumentality of the State of Alabama and a public corporation, has signed the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such document, he as such officer and with full authority, executed the same voluntarily for and on behalf of said corporation.

Given under my hand official seal this ___ day of ____________, 2010.

[SEAL]  
Notary Public  
My Commission Expires:

STATE OF  
COUNTY OF

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that ________________, whose name as _______________ of _______________, a ________________ is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, being informed of the contents of such document, he as such officer and with full authority, executed the same voluntarily for and on behalf of said ________________.

Given under my hand and official seal this _____ day of ____________, 2010.

[SEAL]  
Notary Public  
My Commission Expires:

STATE OF  
COUNTY OF

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that ________________, whose name as _______________ of _______________, a ________________ is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, being informed of the contents of such document, he as such officer and with full authority, executed the same voluntarily for and on behalf of said ________________.

Given under my hand and official seal this _____ day of ____________, 2010.

[SEAL]  
Notary Public  
My Commission Expires:
Exhibit A

Additional Conditions

This allocation is subject to the following additional conditions:

1. A Certified Public Accountant's certification (substantially in the form of Exhibit "D" to the Agreement to which this Exhibit "A" is attached or other professional determination satisfactory to AHFA) demonstrating compliance with Section 32.1(b)(2), that at least thirty percent (30%) of the Owner's total reasonably expected basis in the Project has been incurred by December 31, 2010, together with such other evidence as AHFA shall deem necessary to permit it to make a determination that such requirement has been met. The certification shall be received by AHFA not later than December 1, 2010.

2. Evidence of substantial progress, as indicated by completion of all of the items below, will be required by AHFA not later than December 1, 2010, unless indicated otherwise on the Reservation Letter:
   - Recorded Land Use Restrictive Covenants
   - Recorded Warranty Deed
   - Title Policy
   - 2009 Carryover Allocation Agreement supported by CPA Certification
   - Counsel's Opinion of Non-Profit Qualification (if applicable)

3. The completion of all requirements listed on the Reservation Letter and Application Package, or any additional requirements AHFA may request before the issuance of the Form 8609.

__________________________       _______________________
Owner's Initial                Date

__________________________       _______________________
Owner's Initial                Date
Exhibit B

Legal Description of Property
Exhibit C
Owner Certification Qualification Test

Project Name: _______________________________ No. Bldgs. ______
Project Address: ____________________________

«Owner_Name_1» «Owner_Name_2» (whether one or more herein referred to as "Owner") hereby certifies under penalty of perjury that: Owner holds fee simple title to the real property (the "Property" referred to above) which is expected to be part of the Project and has incurred at least thirty percent (30%) of the reasonably expected basis in the Project (land and depreciable basis). Owner has attached hereeto copy of the Recorded Land Use Restrictive Covenants, Recorded Warranty Deed, Title Policy, and a Certified Public Accountant's written certification as supporting documentation to this Certification. The following represents the expected basis incurred and reasonably expected basis for the above-listed project.

<table>
<thead>
<tr>
<th>Line</th>
<th>Trade Item</th>
<th>Expected Basis Incurred</th>
<th>Reasonably Expected Basis as of 12/31/2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Land</td>
<td></td>
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<tr>
<td>2.</td>
<td>Existing Structures</td>
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<td>3.</td>
<td>New Construction Costs</td>
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<td>4.</td>
<td>Rehabilitation Costs</td>
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<td>5.</td>
<td>Builder Profit &amp; Overhead</td>
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<td>6.</td>
<td>Contingency</td>
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<td>7.</td>
<td>Architectural, Engineering &amp; Accounting Fees</td>
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<td>8.</td>
<td>Interim Costs</td>
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<td>9.</td>
<td>Legal Fees</td>
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<td>10.</td>
<td>Miscellaneous Soft Costs</td>
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<td>11.</td>
<td>Relocation/Displacement Expenses</td>
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<tr>
<td>12.</td>
<td>Permanent Financing Fees &amp; Expenses</td>
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<td>13.</td>
<td>Syndication Costs</td>
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<td>14.</td>
<td>Project Reserves</td>
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<tr>
<td>15.</td>
<td>Tax Credit Fees</td>
<td></td>
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<td>16.</td>
<td>Other (Describe)</td>
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<td>17.</td>
<td>Other (Describe)</td>
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<td>18.</td>
<td>Developer Fee</td>
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<td>19.</td>
<td>Total: (Lines 1 through 18)</td>
<td></td>
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</tr>
</tbody>
</table>

Qualification Test: Line 19 Column A
Line 19 Column B _____%

Consult your tax attorney to determine those eligible cost line items which may be included in the 30% qualification test under Section 32.1(b)(2).

«Owner_Name_1» «Owner_Name_2»

By: __________________________ Its: __________________________

Date: __________________________
Exhibit D

Form of CPA Certification Letter

(Must be submitted with Certification of Ownership and Qualification Test)
(To be submitted under Accounting Firm’s Letterhead)

Date

To: Alabama Housing Finance Authority
   Attn: Exchange Coordinator
   P.O. Box 242967
   Montgomery, AL 36124-2967

Re: Name of Project _____________________________
   Address of Project _____________________________
   Owner _____________________________ Project # __________

We have audited the accompanying Owner Certification and Qualification Test for (PROJECT OWNER) as of (DATE) for (PROJECT). The Certification Qualification Test is the responsibility of (PROJECT OWNER). Our responsibility is to express an opinion as to the authenticity of the eligible costs that have been expended to qualify for a Allocation of 2009 Section 1602 Tax Credit Exchange funds.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether or not the Certification of Ownership and Qualification Test is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Certification of Ownership and Qualification Test. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Certification of Ownership and Qualification Test. We believe that our audit provides a reasonable basis for our opinion.

The accompanying Certification of Ownership and Qualification Test has been prepared for the purpose of complying with the 2009 Section 1602 Tax Credit Exchange Thirty Percent (30%) Qualification Agreement issued by Alabama Housing Finance Authority (AHFA), and in conformity with the accounting practices prescribed by the Internal Revenue Service under the accrual method of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the Certification of Ownership and Qualification Test for an allocation of 2009 Section 1602 Tax Credit Exchange funds presents fairly, in all material respects, the eligible costs expended by (PROJECT OWNER) as of (DATE) for (PROJECT), on the basis of accounting described above.

In addition to auditing, the certificate of ownership and qualification test, we have, at your request, performed certain agreed-upon procedures, as enumerated below, with respect to the Project. These procedures, which were agreed to by the Owner and AHFA, were performed to assist you in determining whether the Project has met the 30% test in accordance with Federal Register/Vol.74, No. 167, August 31, 2009, Part 32, Section 32.1(b)(2) and Treasury Regulation Section 1.42-6. These agreed-upon procedures were performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representations regarding the sufficiency of the procedures below either for the purpose for which this report has been requested or for any other purpose.

We performed the following procedures:
• We calculated, based on estimates of total development costs provided by the Owner, the Project’s total reasonably expected basis as defined in Treasury Regulation Section 1.42-6, to be $__________ as of ____________, 2010.

• We calculated the reasonably expected basis incurred by the Owner as of ____________, 2010 to be $__________.

• We calculated the percentage of the development fee incurred by the Owner as of ____________, 2010 to be ________% of the total development fee.

• We compared the reasonably expected basis incurred as of ____________, 2010 to the total reasonably expected basis of the Project, and calculated that _______% had been incurred as of ____________, 2010.

• We determined that the Owner uses the accrual method of accounting, and has not included any construction costs in basis that have not been properly accrued.

• Based on the amount of total reasonably expected basis listed above, for the Owner to meet the 30% test in accordance with Section 32.1(b)(2), we calculated that the Project needed to incur at least $__________ of costs prior to ____________, 2010. As of ____________, 2010, costs of at least $__________ had been incurred, which is approximately ________% of the total reasonably expected basis of the Project.

We were not engaged to, and did not, perform an audit of the Owner’s financial statements or of the Project’s total reasonably expected basis. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Owner and the Owner’s management and for filing with AHFA and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

/s/Independent Auditors
City, State
_____________ ____, 2010