

TAX CREDIT ASSISTANCE PROGRAM AGREEMENT

This Tax Credit Assistance Program Agreement (“Agreement”) is entered into as of _____, 200__, between _____, a _____ (the “Project Owner” or “Owner”) and the **KENTUCKY HOUSING CORPORATION**, (“KHC”) a de jure municipal corporation and political subdivision of the Commonwealth of Kentucky, 1231 Louisville Road, Frankfort, Kentucky 40601.

WITNESSETH:

WHEREAS, the Owner successfully applied for Low Income Housing Tax Credits for the purpose of constructing or acquiring and rehabilitating rental dwellings (hereinafter “Development” or “Project”) in _____, Kentucky on certain property (hereinafter “Property”) legally described in Appendix A, which is attached hereto and incorporated by reference herein; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (hereinafter ARRA) appropriated additional funds for the Home Investment Partnership Program (“HOME”) provided that such funds are to be used for Low Income Housing Tax Credit projects pursuant to Section 42 of the Internal Revenue Code (“Section 42 of the Code”)

WHEREAS, the Housing and Urban Development Cabinet (“HUD”) created the Tax Credit Assistance Program (hereinafter “TCAP” and with regard to any appropriation there under the “TCAP Funds”) as the program outlet for these additional HOME funds appropriated under ARRA;

WHEREAS, the obligations, rules, and requirements of ARRA and Section 42 of the Code are applicable to TCAP Funds in lieu of the corresponding requirements of the HOME program; and

WHEREAS, KHC is the housing credit agency which administers the Low Income Housing Tax Credit program and TCAP for the Commonwealth of Kentucky; and

WHEREAS, KHC has distributed the TCAP Funds competitively and pursuant to its Qualified Allocation Plan (“QAP”); and

WHEREAS, current financial markets, including the current and expected future volatility of the Low Income Housing Tax Credit market, have reduced the overall amount of private investment available for projects with an award of Low Income Housing Tax Credits; and

WHEREAS, in order to provide safe, decent, and affordable housing for low to moderate income Kentuckians, the Owner requires additional subsidies beyond which was originally provided from the sale of the Low Income Housing Tax Credits;

NOW, THEREFORE, in consideration of the premises and the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and KHC agree as follows:

1. **Commitment of TCAP Program Funds.** Subject to the availability and appropriation of the TCAP Funds under ARRA, and subject to the terms and conditions set forth in this Agreement, the Appendices to this Agreement, the application for Low Income Housing Tax Credits, which is incorporated herein by reference including any representations, covenants, certifications and exhibits attached thereto, Section 42 of Code, and ARRA, KHC agrees to

make TCAP Funds available to the Owner in the form of a loan, in an amount not to exceed \$_____ for the purpose provided in Paragraph 3. Payment on such loan shall be required as provided in the Note.

2. TCAP Loan Agreement Documents. In connection with the loan contemplated herein, the Owner shall execute a Note, a Mortgage, an Assignment of Rents and Leases, a Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits and Subordination Agreement, and a Security Agreement (together with this Agreement, collectively hereinafter referred to as the "Loan Documents"), each of which shall be in the form attached hereto as Appendix B. The Owner shall cause the Mortgage, the Assignment of Rents and Leases, the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits and Subordination Agreement, and a UCC Financing Statement to be recorded in and filed with the appropriate Office(s) authorized under the Kentucky Revised Statute.

3. TCAP Program Funds and Project Requirements. TCAP funds shall be used in accordance with all requirements of Section 42 of the Code governing Low Income Housing Tax Credits, and as provided and described in the project application, and the loan and program documents. Similarly, the Project shall conform to all requirements of Section 42 of the Code governing Low Income Housing Tax Credits, and as provided in the project application and the loan and program documents.

4. Disbursement of TCAP Program Funds.

(a) TCAP Program Funds will be provided to pay for costs and fees associated with the Project identified on the Project Commitment letter which outlines the specific information of the tax credit project, location, units, parties, and Project Owner, attached hereto and incorporated herein as Appendix C hereto.

(b) TCAP Program Funds will be provided only for costs and reimbursement items identified in the financial spreadsheet attached hereto and incorporated herein as Appendix D hereto.

(c) Disbursement of TCAP Funds for services, fees and costs incurred by Project Owner will be made within thirty (30) days as requisitions are received and reviewed by KHC. Reimbursement by KHC does not imply acceptance of the work or concurrence in the reimbursement by KHC and KHC reserves the right to disallow payment of any item of cost or expense at any time upon later review and upon Project Owner's final submission of cost certification items.

(d) Requisitions for payment shall be in writing on a form provided by KHC. These forms and requisition requirements may be amended at anytime to meet KHC's protocols. To receive payment under this Agreement, Project Owner shall submit requests for payment based upon actual expenditures. KHC may set a minimum payment level or amount for each request for payment. Funds will NOT be provided in advance for any costs or expenses. KHC may not provide TCAP Program Funds to any Project Owner in advance of need. Any disbursement in violation of this section shall be subject to immediate repayment to KHC by the Project Owner.

(e) Requisitions must be submitted to KHC with all required signatures in place. If Project Owner has other funding sources, all disbursements must be made in accordance with a disbursement agreement signed by all parties in form and manner acceptable to KHC. KHC will not disburse any TCAP Funds to Project Owner if at any time there are not sufficient funds available from all funding sources to support the construction and rehabilitation set forth in Exhibit B.

(f) The Owner must fully account for all costs and expenses involved in the Project to satisfy KHC close out requirements at the end of the construction or rehabilitation of the Project (“Cost Certification”) and throughout the disbursement period as necessary to meet all applicable Tax Credit Program Requirements. KHC may establish separate reserves during the disbursement process to provide funds it deems necessary to ensure completion of the Property, including contractor holdbacks for work completed and hold back of earned, but unpaid Developer fees.

(g) KHC will only disburse funds it receives from the United States Department of Housing (“HUD”) pursuant to the TCAP. Nothing herein shall be construed as an assurance that funds will be available to the Project from HUD and Project Owner waives and holds KHC harmless from any delay or failure to fund for circumstances beyond KHC's control.

(h) Time is of the essence and Owner hereby covenants to complete thirty percent (30%) (the “Initial Completion Requirement”) of the Project as described in the Plans and Specifications prior to November 1, 2010 and submit all draw requests and supporting documentation required to evidence the attainment of the Initial Completion Requirement to KHC no later than November 15, 2010. No later than November 15, 2010, KHC may grant one thirty (30) day extension if the Owner demonstrates that at least thirty percent (30%) of the Project will be completed by December 15, 2010. Failure to complete thirty percent (30%) of the Project prior to November 1, 2010 or to demonstrate that thirty percent (30%) of the Project will be completed by December 30, 2010 shall constitute an event of default; and

(i) Provided that the Project Owner meets the deadlines provided in Paragraph 4(h) above, the Project Owner may continue to expend TCAP Funds after July 1, 2011 except that the TCAP prohibits KHC from disbursing TCAP Funds after February 16, 2012. The proposed Development must be placed in service no later than December 31, 2011.

5. Acquisition, Construction, Installation, Equipment and Improvement. The Owner shall acquire the Property and so much of the Project now existing and construct, improve and equip the Project on the Property with all reasonable dispatch and in accordance with the plans and specifications which have been filed with KHC (the “Plans and Specifications”). The Owner may revise the Plans and Specifications from time to time, provided that no revision shall be made which would (i) change the project purposes to any other purposes beyond that which is permitted by ARRA, Section 42 of the Code and the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits and Subordination Agreement, (ii) deviate from the amenities pledged in the application for Low Income Housing Tax Credits, or (iii) increase the cost of the Project without evidence satisfactory to KHC that moneys are available to meet such increased costs.

No material revision of the Plans and Specifications shall be made unless the Owner has first (i) delivered to KHC a narrative description of the proposed revision accompanied by a certificate of either an independent architect certifying the change in project costs resulting from the revision and that the moneys will be sufficient to pay in full the project costs including the change in project costs resulting from such revision, and (ii) obtained any necessary building and zoning permits approving or authorizing the work contemplated by the revision in the Plans and Specifications, and (iii) received written authorization from KHC approving the proposed revision.

6. **Title.** Owner understands and acknowledges that disbursement of the TCAP Funds is conditioned upon and subject to the title to the Project Owner's fee or leasehold title to the Property being marketable and free of any lien or encumbrance, except as expressly authorized in writing by the KHC's Chief Operations Officer.

7. **Insurance.** Owner shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, wind, and such other hazards as KHC may reasonably require and in such amounts and for such periods and from such providers as KHC may reasonably require, during the entire term of the extended use period. KHC shall be listed as a payee or co-payee.

8. **Taxes, Utilities, and Impositions.** Owner shall pay, or cause to be paid and discharged, all taxes and utilities on the Property and any assessments and payments, usual or unusual, which shall be imposed upon or become due and payable or become a lien upon the Property.

9. **Maintenance, Repairs, and Alterations.** Owner shall keep the Property, or cause the same to be kept, in good condition and repair and fully protected from the elements to the satisfaction of KHC. Owner shall commit or permit no waste thereon. Except as approved in the original Development application, Owner shall not remove, demolish, or structurally alter any of the Development or Property (except such alterations as may be required by laws, ordinances, or regulations) without the prior written permission of KHC. Owner shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any improvement which may be damaged or destroyed thereon and will pay when due all claims for labor performed and materials furnished therefore. Owner shall use and operate, and will require its lessees or licensees to use or operate, the Property in compliance with all applicable laws, ordinances, regulations, covenants, conditions, and restrictions.

10. **Liens.** Owner shall pay and promptly discharge, at Owner's cost and expense, all liens, encumbrances, and charges upon the Property or any part thereof or interest therein except those shown in KHC's title insurance policy and acceptable to KHC. Notwithstanding the preceding sentence, Owner shall have the right to contest in good faith the validity of any such lien, encumbrance, or charge, provided that Owner shall thereafter diligently proceed to cause such lien, encumbrance, or charge to be removed and discharged. Owner will not create, assume, or suffer to exist in respect to the Property, any mortgage or lien (other than the LURA) unless Owner, prior to the time such mortgage becomes a lien on the Property or any part thereof, shall receive the written permission of KHC.

11. **Fees and Expenses.** The following shall be due and payable by Project Owner at or prior to closing or at other times as required by KHC:

- (a) the cost of recording;
- (b) KHC's overnight mail expenses;
- (c) KHC's cost for servicing the TCAP Loan (in excess of standard rates);
- (d) KHC's costs associated with the performance of annual compliance and asset management duties, as required by ARRA. Owner shall not use TCAP funds to pay these fees.
- (e) Monthly Payment of Taxes and Insurance. Mortgagor shall pay to KHC a monthly installment for (i) taxes and special assessments levied or to be levied against

the Property, and (ii) premiums for insurance. Each monthly installment for taxes and insurance shall equal to one-twelfth of the annual amounts, as reasonably estimated by KHC. The full annual amount for each item shall be accumulated by KHC within a period ending one month before an item would become delinquent. KHC shall hold the amounts collected in trust to pay such taxes and insurance before they become delinquent. If the total of the payments made by Mortgagor for taxes and insurance is insufficient to pay each item when it becomes due, then Mortgagor shall pay to KHC any amount necessary to make up the deficiency on or before the date the item becomes due.

All fees are subject to periodic review by KHC and any future guidance from Treasury.

12. **Reporting.** Periodic reports are required by HUD and Sections 1512 and 1609 of ARRA. KHC must provide a financial status report and a project performance report on a quarterly basis, due 10 working days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31. To allow the completion of these reports in a timely manner, each Project Owner shall provide an initial Project report, as described below and in a format provided by KHC prior to the disbursement of any funds for the Project.

(a) Each report must contain the following elements:

- (i) Name of Project Owner;
- (ii) Name of project;
- (iii) Brief description of project;
- (iv) Location of project; city/county, State, zip code, congressional district;
- (v) Number of full-time equivalent construction jobs created;
- (vi) Number of full-time equivalent construction jobs retained;
- (vii) Number of full-time equivalent non-construction jobs created;
- (viii) Number of full-time equivalent non-construction jobs retained;
- (ix) Number of total housing units newly constructed;
- (x) Number of total housing units rehabilitated;
- (xi) Number of low-income housing units newly constructed;
- (xii) Number of low-income housing units rehabilitated;
- (xiii) Project Owner Duns Number and Employer Identification Number;
- (xiv) Building Identification Numbers; and
- (xv) Detailed information regarding Vendors paid by Project Owner with TCAP funds. Such details must include:
 1. Vendor Name;
 2. Vendor DUNS Number;
 3. Vendor Zip Code (Plus 4);
 4. Description of Product/Service Provided;
 5. Amount paid from TCAP funds;
 6. Schedule of payments; and
 7. Full-Time Equivalent Jobs Created or Retained by Vendor.

(b) The Owner shall submit any other reports that HUD or KHC deem necessary.

PROJECT OWNER ACKNOWLEDGES THAT THE REPORTING AND RECORD KEEPING REQUIREMENTS CONTAINED IN THE LOAN DOCUMENTS MAY BE SUPPLEMENTED AND AMENDED FROM TIME TO TIME AND PROJECT OWNER AGREES TO ABIDE BY ANY AMENDMENTS MADE TO ARRA IN THE FUTURE WHEN COMMUNICATED BY KHC.

FAILURE TO PROVIDE REPORTS REQUIRED BY THIS SECTION IN THE TIMEFRAME SET BY KHC MAY RESULT IN SUSPENSION OF ANY ONGOING DISBURSEMENT OF TCAP FUNDS BY KHC AND MAY RESULT IN RECAPTURE OR TERMINATION OF THIS AGREEMENT.

(c) Owner must provide monthly financial and occupancy reports on the Project operation in accordance with KHC guidance, as well as provide any other report as periodically requested by KHC. Once the last building has been placed in service, Owner must provide monthly financial and occupancy reports on the Project. This requirement is subject to periodic review by KHC.

13. Payment and Performance Bond. Assurance of Completion. Owner shall provide an acceptable assurance of completion to be kept in place during the entire period of construction or rehabilitation of the Project. Assurance of completion may take one of the forms as outlined below.

- (a) Payment and Performance Bond or similar security instrument that meets or exceeds 100% of the acquisition and rehabilitation or construction contract amount. Owner shall provide KHC evidence of such bond or instrument and list KHC as a payee., or,
- (b) Irrevocable On-Sight Demand Letter of Credit by the general contractor for 30 percent of the KHC resources awarded to the project. Owner shall provide KHC evidence of such bond or instrument and list KHC as a payee., or
- (c) Agreement to a 20 percent retainage of KHC resources and hold on all developer fees until project is complete. At project completion, up to 10 percent of the retainage will be released and up to 50 percent of the developer fee will be released.

The determination of adequacy and sufficiency of assurances of completion shall rest solely with KHC.

14. Minimum Standards. All buildings must comply with all state and local building codes including accessibility standards, applicable federal accessibility laws (including Fair Housing Accessibility Guidelines) and the Americans with Disabilities Act Accessibility Guidelines. All new construction projects must implement KHC's Universal and Minimum Design Standards to ensure energy-efficient design and that construction practices are utilized. Rehabilitation projects are encouraged to incorporate KHC's universal design standards when it is feasible. In addition to KHC's Universal and Minimum Design Standards, all projects must incorporate Energy Star features and green construction techniques. For additional information as it pertains to building code requirements, etc., please refer to the Rental Production Guidelines.

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

15. **Reserve Requirements; Audited Financial Statements.** Project Owner agrees to establish and maintain the following escrows and reserves:

(a) **Operating Reserve Account:**

Funding: *Upon closing any permanent financing*, the balance in the Operating Reserve Account shall be at least \$_____. The required minimum balance is \$_____ or another amount as determined by KHC for two (2) years from the date of the first mortgage payment or Reserve for Replacement payment.

Use/Disbursement: Funds in the Operating Reserve Account may only be used by Owner to cover the Project's operating deficits. KHC's prior written consent is required for any disbursements (i) if the balance in the Operating Reserve Account is below the Required Minimum Balance; or (ii) if the disbursement would cause the balance of the Operating Reserve Account to fall below the Required Minimum Balance. If KHC's approval is required for such disbursement, then Project Owner shall make written request for such approval, in form acceptable to KHC. Any such withdrawal approval request shall specifically itemize the operating expense(s) which the disbursement is expected to fund and shall include supporting documentation evidencing the Owner's actual cost for each such operating expense(s). KHC shall approve disbursement to Owner of such sums from the Operating Reserve Account to cover those operating expenses approved by KHC, in its sole and reasonable discretion. KHC, at KHC's discretion, may make disbursement directly to or direct that such disbursement be made directly to the contractor/vendor.

Replenishment: If at any time the balance in the Operating Reserve Account is less than the Required Minimum Balance, then Owner shall make deposits to replenish the Operating Reserve Account to the Required Minimum Balance as cash flow permits. Notwithstanding any other definition of "cash flow" used herein or used by Owner, Owner shall replenish the Operating Reserve Account (or any other Account required to be replenished) prior to making disbursements or any other payments to Owner, its partners, members or shareholders or to any other affiliate of Owner, its partners, members or shareholders or to any party related to Owner, its partners, members, shareholders or affiliated parties.

(b) **Replacement Reserve Account:**

Funding: If applicable, an initial deposit to the replacement reserve of \$_____ shall be made upon the closing and funding of any permanent funding source. Each year during the term of the Exchange Loan, Owner shall deposit into the Replacement Reserve Account the "Annual Replacement Reserve Deposit" as defined herein. The "Annual Replacement Reserve Deposit" is \$_____ per unit for the first year and shall be increased by three percent (3%) annually each year thereafter. The Annual Replacement Reserve Deposit shall be paid in monthly installments equal to one-twelfth (1/12) of the sum necessary for Owner to reach the Annual Replacement Reserve Deposit requirement.

Use/Disbursement: Funds in the Replacement Reserve Account may only be used as needed to cover the Project's capital improvement needs. KHC's prior written approval is required for any disbursement from the Replacement Reserve Account. Owner shall make written request for such approval, in form acceptable to KHC. Any such withdrawal approval request shall specifically itemize the capital improvements needed and shall include supporting documentation evidencing the Owner's actual cost for each such capital need. KHC shall approve disbursement to Owner of such sums from the

Replacement Reserve Account for such capital improvement(s) approved by KHC, in its sole and reasonable discretion. At KHC's request, Owner shall obtain lien waivers and/or releases from any contractor providing labor and/or materials to the Project for which a disbursement has been made.

(c) **KHC Asset Management, Compliance, and Guarantee Funding Account ("Asset Management Funding Account"):**

Funding: The establishment of an Asset Management Funding Account will be required to be funded at closing. Owner shall deposit into the Asset Management Funding Account the amount of \$_____. This account will be controlled by KHC or its designee for fifteen years. These funds will be used to pay costs associated with annual asset management responsibilities by KHC or its designee as well as the annual compliance monitoring costs normally imposed by KHC as provided for in KHC's Asset Management and Compliance Monitoring guidance. In the event that there is an issue of non-compliance that triggers a repayment of TCAP funds to HUD, funds from the Asset Management Funding Account will be applied to this amount. If the project meets the affordability and compliance requirements required by ARRA, then any remaining balance in the Asset Management Funding Account will be applied in the following order: first, to any outstanding TCAP loan on the property, second, deposited into the Replacement Reserve Account, or third, returned to the developer at the end of the fifteen year compliance period.

Remedies for Default: If Owner defaults under the terms of any Loan Document, then (i) KHC shall not allow or approve any disbursement from the Accounts, except for payment of asset management costs and compliance monitoring fees; so long as such default continues to exist; and (ii) if such default continues after any applicable notice and opportunity to cure, KHC may, in its sole discretion, use any or all funds held by KHC on Owner's account for any lawful purpose, including but not limited to the repayment of the indebtedness evidenced by the promissory note or reimbursement to the KHC for all losses, fees, costs and expenses suffered by KHC as a result of such default or otherwise expended by KHC on Owner's behalf as set forth in the Loan Documents.

General Requirements: All Accounts shall be held by KHC or a third party (such as a nationally chartered bank) approved or required by KHC. Unless otherwise specified herein or approved by KHC in writing, Accounts shall be interest-bearing and all interest earned will accrue in such Account for the benefit of the Project. At any time during the term of the TCAP Loan, Owner shall, upon request, provide KHC with evidence of the existence of and amounts deposited in any or all such Accounts. Owner shall not withdraw any funds from an Account without the prior written approval of the KHC and only for the purposes for which such Account was specifically established. At KHC's request, Owner shall furnish KHC with an accounting of any disbursements made from an Account. Any funds remaining in any Account at the end of the TCAP Loan term must be used for Project maintenance costs approved by KHC or applied against the outstanding balance of the TCAP Loan, at KHC's discretion.

Annual Audit: Project Owner will submit to the KHC an Audited Fiscal Year End Statement for the Project by the first day of April (or 90 days after the fiscal year end) for each year during the term of the TCAP Loan. The audit must be in a form approved by the KHC and performed in accordance with generally accepted standards.

16. **Developer Fees.** Subject to the Project Owner's election to defer development fees, the following schedule shall apply to the payment of development fees as approved in the financial spreadsheet contained in Appendix D:

- (a) 25 percent of total development fees at closing;
- (b) 25 percent at construction completion (as approved by KHC);
- (c) 25 percent upon qualified occupancy for 85% of the units for three months; and
- (d) 25 percent upon achievement of two (2) successive years of continued:
 - (i) no findings of non-compliance.

If developer fee will be used as part of the Assurances of Completion, 50 percent of the developer fee will be held until project completion (as approved by KHC).

KHC may require that such fees be requisitioned and paid out to the Project Owner for deposit into an escrow fund to be held by KHC in accordance with the schedule set forth above.

KHC may require additional retention of the Developer's fee or deposit of additional security in a pledged account, or financial guaranty from a qualified guarantor to ensure fiscal and physical compliance with the long term affordability period for Developments in its discretion. Such additional retention or security, in the form of unpaid developers fee, letter of credit, cash reserves, or guaranties will be determined by KHC in its sole discretion.

17. **Affordability; Extended Use Commitment.** The Project Owner shall maintain continued compliance with the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits and Subordination Agreement for a period of thirty (30) years. Project Owner hereby waives any rights it may have under the qualified contract process provided under Section 42 of the Internal Revenue Code (if such process is applicable).

Marketing: The Owner shall conduct the marketing of all units and the selection of all families in accordance with the TCAP affirmative fair housing marketing plan and procedures as established by KHC.

Signage: Owner shall post Project signage in a manner consistent with criteria established by HUD and KHC.

Record Retention: Owner shall maintain all Project records in accordance with the requirements of Section 42 of the Code, and for a minimum of fifteen years or for a longer period of time, as determined by KHC.

18. **Representations and Warranties.** The Project Owner represents and warrants that:

(a) The Project Owner is duly organized and existing under the laws of the Commonwealth of Kentucky, is in good standing under any applicable corporate standards and has all the power and authority to undertake all necessary acts to execute the Loan Agreement and finance, construct, administer and operate the Project and to abide by all of the applicable Tax Credit Program Requirements and to consummate all other transactions contemplated in this Agreement;

(b) The Project Owner has the full power and authority to borrow money and to undertake the other obligations as contemplated by this Agreement, to execute and deliver the Loan Documents, to encumber the Project as security, and to perform Project Owner's obligations under this Agreement. The execution and delivery of the Loan Documents will be duly authorized by all necessary corporate action on the part of

Project Owner, its partners, members, officers, and/or directors, as applicable, and the Loan Documents will be valid, binding and enforceable obligations of the Project Owner;

(c) All information set forth in the Application and in the supporting documentation provided to KHC is true and correct in all material regards and Project Owner agrees to provide immediate notice to KHC of any changes or modifications which, in any aspect, may affect the ability of the Project Owner to complete the Project on time and to place the Project in service, or which may raise the costs of construction or rehabilitation beyond the amount set forth in the financial spreadsheet;

(d) There is no action, suit or proceeding pending, or to the best of Project Owner's knowledge threatened, against or affecting Project Owner in any court at law or in equity, or before or by any governmental instrumentality, whether federal, state, county or municipal, affecting Project Owner's existence, the real and personal property of Project Owner or affecting Project Owner's ability to carry out and perform the duties of the Project or the Tax Credit Program Requirements;

(e) Project Owner shall not sell, transfer, exchange or otherwise convey the Property, or any interest in the Property, nor shall Project Owner transfer or contract to transfer any of its general partnership interests, membership interests, management control or controlling corporate stock, or any such interests of the general partner, managing member or other responsible party of Project Owner, without the prior written approval of the KHC. Any change in participation will need to maintain the experience level represented in the application. This prohibition does not apply to leases of individual residential units in the Project;

(f) To the best of Project Owner's current knowledge, the Loan Documents and the transactions contemplated therein will not cause a default under any other agreement and will not conflict with or violate any organizational document or agreement to which Project Owner is a party or by which Project Owner is bound;

(g) To the best of Project Owner's current knowledge, Project Owner has not executed and will not execute any agreements with provisions contradictory to, or in opposition to, the provisions of this Agreement or other Loan Documents;

(h) All information given to KHC is accurate and that it has not omitted any material facts;

(i) Project Owner certifies that it has made a good faith effort to secure necessary equity and investors in an amount sufficient for the consummation of the Development and has agreed that it is otherwise able and willing to meet all LIHTC Program requirements and obligations going forward;

(j) Project Owner will hold harmless and indemnify KHC from any and all claims, including reasonable attorney's fees actually incurred, for injury or damage to persons or property which may arise in connection with work performed under this Agreement.

(k) Project Owner shall promptly advise KHC in writing of any litigation affecting the Project Owner or the Project and of all complaints or investigations commenced or filed by an federal, state or local governmental authority affecting the Project or the Project Owner's construction or operation of the Project or which may impede the construction and placement in service of the Project or otherwise impair the security to KHC.

(l) Project Owner shall indemnify, defend and hold harmless KHC from any and all environmental liabilities, claims, damages, injuries, costs, expenses, and losses, of every kind whatsoever, that are paid incurred, suffered by or asserted against KHC, as a direct or indirect result of the presence of any hazardous substance on the Project or the escape, seepage, leakage, spillage, discharge, emission or release thereof at the Project.

(m) The Project has been designed and will be constructed to comply with all state and local building codes including accessibility standards, applicable federal accessibility laws (including Fair Housing Accessibility Guidelines) and the Americans with Disabilities Act Accessibility Guidelines. All new construction projects must implement KHC's Universal and Minimum Design Standards to ensure energy-efficient design and that construction practices are utilized. Rehabilitation projects are encouraged to incorporate KHC's universal design standards when it is feasible. In addition to KHC's Universal and Minimum Design Standards, all projects must incorporate Energy Star features and green construction techniques. For additional information as it pertains to building code requirements, etc., please refer to the Rental Production Guidelines.

(n) Pursuant to federal regulations under the Americans with Disabilities Act, 28 C.F.R. Section 35.101 *et seq.*, Project Owner agrees that no individual with a disability shall, on the basis of the disability, be denied or excluded from Participation under this Agreement or in the Program, or from activities provided for under this Agreement. As a condition of accepting the Assistance, Project Owner agrees to comply with the "General Prohibitions Against Discrimination", 28 C.F.R. Section 35.130 and all other regulations promulgated now or in the future under Title II of the Americans with Disabilities Act, which are applicable to the benefits, services, programs or activities provided by KHC through agreements with third parties.

19. Covenants of the Project Owner. The Project Owner hereby covenants and agrees that it shall at all times throughout the Project Term:

(a) Immediately report to KHC any indication of fraud, waste, abuse, or potentially criminal activity associated with the Project and the use of TCAP Funds.

(b) Comply, at all times, with the terms of the Agreement, the Loan Agreements and all Federal, State and local laws, regulations and requirements applicable to the Project.

(c) Promptly pay any and all additional funds necessary to complete the Project if the TCAP Funds and all other identified sources in the financial spreadsheet set forth herein as Appendix D are not sufficient to complete the Project or if KHC reasonably determines that costs for which TCAP Funding is sought are not qualified costs and expenditures under the Tax Credit Program Requirements or its funding guidelines.

(d) Promptly cause any mechanic's lien or other lien claim against the Project to be discharged or bonded over.

(e) Indemnify, defend and hold harmless KHC from any and all liabilities, claims, damages, injuries, costs, expenses, and losses, of every kind whatsoever, that are paid incurred, suffered by or asserted against KHC, as a direct or indirect result of its provision of TCAP Funds to support the construction and operation of the Project.

(f) At all times during the operation of the Project, employ qualified staff to provide management services for the Project.

(g) Meeting all timeframes, deadlines and requirements of ARRA and Section 42 of the Internal Revenue Code.

20. Additional Federal Program Requirements.

(a) Asset Management. Project Owner acknowledges that KHC must perform asset management functions so as to ensure compliance with Section 42 of the Code and the regulations thereunder (including Title 26 Code of Federal Regulations Section 1.42.9), and the long-term viability of the buildings funded by any Assistance under ARRA. Project Owner covenants to assist KHC in fulfilling its obligations to perform such functions under ARRA. Such functions will include but not be limited to the following: require the submittal of periodic occupancy and financial reports in format as required by KHC; require the submittal of annual audited financial statements; require the submittal of annual project budgets; conduct periodic on-site management reviews focusing on the overall management practices and policies of the project; conduct periodic on-site monitoring reviews to ensure ongoing compliance with Section 42 of the Code and Act. Additional definitions and guidance regarding Asset Management may be applicable as it becomes available from HUD.

(b) Financial Management. Project Owner acknowledges that KHC must perform financial management functions so as to ensure compliance with Section 42 of the Code and the regulations there under (including Title 26 Code of Federal Regulations Section 1.42.9), and the long-term viability of the buildings funded by any Assistance under ARRA. Project Owner covenants to assist KHC in fulfilling its obligations to perform such functions under ARRA and as required by HUD.

(i) Project Owner shall at all times expend and account for TCAP Funds in accordance with federal and state laws and procedures for expending and accounting to permit preparation of required reports and to support the application of funding expenditures adequate to establish that such TCAP Funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Effective control and accountability must be maintained for all TCAP Funds.

(ii) Project Owner shall at all times maintain program, financial, and accounting records sufficient to demonstrate that all TCAP Funds were used in accordance with the TCAP and these terms and conditions.

21. Information Availability.

(a) In addition to KHC and representatives of the Commonwealth of Kentucky, the Project Owner acknowledges that Treasury, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to Project and to any pertinent books, documents, papers, or other records (electronic and otherwise) of Project Owner, which are pertinent to the TCAP, in order to make audits, examinations, excerpts, and transcripts.

(b) Project Owner acknowledges that all information provided by or concerning the Project, Project Owner, TCAP, or the Application is subject to the requirements under the Kentucky's Open Records law.

22. Events of Default. The occurrence of any one or more of the following shall constitute an event of default hereunder (“Event of Default”):

- (a) Project Owner fails to perform or observe any term, covenant, condition or obligation contained in this Agreement, ARRA, Section 42 of the Code, or the application for Low Income Housing Credits and not remedy or correct such performance within any applicable cure period;
- (b) failure to (i) fully fund and maintain the Accounts, (ii) use the funds in any Account in accordance with the Loan Documents, the TCAP requirements, or KHC’s policies or (iii) obtain any required approval for withdrawals from KHC;
- (c) any representation by the Project Owner or its agents made in conjunction with the Application or any Loan Document, or any supporting documents, is false or misleading in any material respect when given or any warranty of the Project Owner is breached;
- (d) any default by the Project Owner under the terms of any instrument secured by a lien on the Project, or Project Owner’s interest in the Project, or any personal property given as security for the TCAP Loan;
- (e) the transfer of all or part of the Property, Project or Project Owner’s interest therein, whether by conveyance, operation of law or otherwise, whether voluntary or involuntary, without KHC’s prior written consent; provided, however, that this restriction shall not be deemed to preclude the leasing of residential units in the Project in the ordinary course of business;
- (f) the dissolution, merger, consolidation or termination of existence of Project Owner or the transfer of any beneficial interest in Project Owner without KHC’s prior written consent; provided;
- (g) the substantial destruction of the Project by an uninsured casualty;
- (h) failure to provide supportive services or comply with a targeting plan, if any, promised in Project Owner’s Application;
- (i) the failure of Project Owner to perform any other non-monetary obligation, term or condition of the Loan Documents or failure to comply with TCAP requirements, the applicable Qualified Allocation Plan, or the terms of the Rider(s) attached hereto within 30 days after notice from KHC;
- (j) forfeiture of any TCAP Loan funds to the United States Treasury Department in the event the TCAP Loan funds are not disbursed by February 16, 2012;
- (k) failure to place the Project in service by December 31, 2011;
- (l) failure to provide information on the project as KHC may reasonably require; and
- (m) failure to submit ARRA quarterly reports as required by KHC so that it may meet the ARRA reporting deadline of the 10th day of the month following the end of each quarter will result in all funds being frozen until receipt of the required report.

- (n) the discovery that any representation or warranty made by Project Owner in connection with the loan contemplated herein was untrue, misleading or incorrect in any material adverse respect as of the time made.
- (o) Project Owner fails to meet any condition, term, covenant, or obligation contained in the Loan Documents, any applicable grace period has expired and the required notice has been given.
- (p) Project Owner fails to comply with any of the covenants, terms and conditions contained in any agreement through which financial assistance is to be provided to assist in the construction and/or rehabilitation or operation of the Project and such failure is declared an event of default under such relevant agreements beyond any applicable notice and cure period.
- (q) If at any time title to any part of the Project is not satisfactory to KHC by reason of any lien, encumbrance or other defect (even though the same may have existed at the time of any prior disbursement), except those matters affecting title which appeared in the title insurance policy or binder delivered to KHC at the time of the recording of the Mortgage or which have at any time been consented to in writing by KHC, and Project Owner has failed to commence and proceed diligently to correct such lien, encumbrance or other defect within ten (10) days after notice to Project Owner, or if the Title Company shall fail or refuse to insure any disbursement to be secured by the Mortgage as a valid first lien on the Premises, subject only to those matters affecting title which appeared in the title insurance policy or binder delivered to KHC at the time of the recording of the Mortgage or which have at any time been consented to in writing by KHC.
- (r) Project Owner assigns this Agreement or any advance to be made hereunder or any interest in either, or if the Project or any part thereof is conveyed, assigned, mortgaged, pledged or encumbered in any way other than as herein provided without the prior written consent of KHC.
- (s) The improvements are partially or totally damaged or destroyed by fire or any other cause and the restoration thereof cannot be expected to be completed and placed in service on or before December 31, 2011, whether or not KHC and Project Owner agree to use of the proceeds of any fire or other casualty insurance.
- (t) There is any cessation of construction of the improvements for any period after the date construction and/or rehabilitation shall commence in excess of twenty (20) successive calendar days, unless the conditions of each of subparagraphs (i), (ii), (iii) and (iv) below shall have been satisfied:
- (i) the cessation of construction shall have been caused by conditions beyond the control of Project Owner, including, without limitation, acts of God or the elements, fire, strikes, labor disputes, delays in delivery of material and disruption of shipping;
 - (ii) Project Owner shall have made adequate provision, acceptable to KHC, for the protection of materials stored on site and for the protection of the Project, to the extent then constructed and/or rehabilitated, against deterioration and against other loss or damage and theft;
 - (iii) Project Owner shall have furnished to KHC satisfactory evidence that such cessation of construction will not adversely affect or jeopardize the rights of

Project Owner under material contracts relating to the construction and/or rehabilitation or operation of the Project; and

(iv) From time to time upon KHC's request therefore during any such cessation of construction and/or rehabilitation, Project Owner shall furnish to KHC satisfactory evidence that (notwithstanding such cessation of construction and/or rehabilitation) the proposed Development can be accomplished on or before December 30, 2011 and adequate additional funds are available to complete the Project.

(u) Except as specifically agreed to by KHC in writing, if

(i) Project Owner executes any chattel mortgage or other security agreement on any materials, fixtures or articles used in the construction and/or rehabilitation or operation of the Project or on articles of personal property located therein;

(ii) any such materials, fixtures or articles are not in accordance with the Project construction documents approved by KHC or are purchased pursuant to any conditional sales contract or other security agreement or otherwise so that the ownership thereof will not vest unconditionally in Project Owner free from encumbrances, or

(iii) Project Owner does not furnish to KHC upon request the contracts, bills of sale, statements, receipted vouchers and agreements, or any of them, under which Project Owner claims title to such materials, fixtures or articles.

(v) Any statements, details, budgets or revisions submitted by Project Owner to KHC indicate, in the opinion of KHC, that the estimated cost of construction and/or rehabilitation of the Project is in excess of the amount of funds available to Project Owner to complete and pay for such construction and/or rehabilitation.

(w) Project Owner fails to comply with any requirement of any governmental authority within the time period provided by the governmental authority or within thirty (30) days after notice in writing of such requirement shall have been given to Project Owner by such governmental authority, or fails to furnish to KHC upon request official reports made by any such governmental authority.

(x) A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee for any of its property is filed by Project Owner, or a petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee of any of its property is filed against Project Owner which is not dismissed within sixty (60) days, or a receiver or trustee of any property of Project Owner is appointed and is not discharged within sixty (60) days, or Project Owner makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts, or Project Owner is adjudged insolvent by any State or Federal court of competent jurisdiction, or an attachment of execution is levied against any substantial portion of the property of Project Owner which is not discharged within sixty (60) days.

(y) Project Owner fails to construct or rehabilitate, whichever is applicable, the Project in accordance with the Plans and Specification and any construction contract there under.

(z) Project Owner fails to comply with any audit requirements and Project Owner integrity requirements contained herein along with the reporting and record keeping which any governmental authority may deem applicable to Projects financed with TCAP Funds.

(aa) Project Owner fails to operate and maintain the Project as decent, safe, sanitary and affordable rental housing in accordance with the requirements of ARRA, Section 42 of the Code and the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits and Subordination Agreement, or becomes ineligible for funding for any reason during the thirty (30) year term of this Agreement.

(bb) If, at any time during the Recapture Period, there is not a financially responsible entity providing a guaranty (the "Guarantor") of the repayment of TCAP Funds which may be due to HUD if there is an event of default or a required recapture of TCAP Funds. Evidence of the satisfaction of this continuing obligation shall be documented by submission of annual audited financial statements by the Guarantor for the Project within 90 days of the close of each fiscal year which support the entity's financial capacity.

23. Notice and Cure. KHC shall give Project Owner written notice of default. However, no notice to Project Owner is required in event of a payment default under the Mortgage Note or if Project Owner knew or reasonably should have known of such Event(s) of Default. If the default is one which can be remedied, the Project Owner shall have thirty (30) days to remedy the Event(s) of Default; provided, however, that if Project Owner knew or reasonably should have known of such Event(s) of Default prior to notification by KHC to Project Owner thereof, then Project Owner shall have thirty (30) days from the date the Event(s) of Default became known or should have become known to Project Owner in which to remedy such default, and written notice by KHC shall not be a condition to the commencement of such cure period.

24. Recapture Provision; Action and Remedies upon an Event of Default. PROJECT OWNER ACKNOWLEDGES THAT FAILURE TO COMPLY WITH THE LOAN DOCUMENT, ARRA, SECTION 42 OF THE CODE AND OTHER LOW INCOME HOUSING TAX CREDIT PROGRAM REQUIREMENTS MAY TRIGGER THE RECAPTURE OF TCAP FUNDS AND ANY DEBT DETERMINED TO BE SUBJECT TO SUCH RECAPTURE WILL BE A DEBT OWED TO THE UNITED STATES PAYABLE TO THE GENERAL FUND OF HUD AND ENFORCEABLE BY ALL AVAILABLE MEANS AGAINST ANY ASSETS OF THE PROJECT OWNER.

(a) Upon the occurrence of any of the Events of Default hereof, KHC may immediately seek any legal remedies available to recover the full amount of TCAP Funds determined by KHC to be due as of the date thereof including but not limited to costs and legal fees.

(b) Upon demand, Project Owner shall immediately reimburse KHC for any funds used in violation of the TCAP Program. If not paid, an action will arise immediately for collection of any funds spent by the Project Owner in violation of this Agreement and will include fees and costs associated with enforcement and collection of such funds by KHC.

(c) Upon the occurrence of any Event of Default hereof, KHC or HUD may immediately take one or more of the following actions, as either of them deem appropriate in the circumstances:

(i) Temporarily halt the disbursement of TCAP Funds pending correction of the deficiency;

- (ii) Disallow all or part of the cost of the activity or action not in compliance;
- (iii) Wholly or partly suspend or terminate the TCAP Funds;
- (iv) Withhold further TCAP Funds;
- (v) Require the repayment of TCAP Funds in the amount due under the Loan Documents;
- (vi) Debar the Project Owner from further participation in KHC programs;
- (vii) Apply any Reserves or security funds to the outstanding Debt;
- (viii) Replace the general partner and managing member;
- (ix) Require the replacement of the management company
- (viii) Take any other remedies that may be legally available.

(d) Upon the occurrence of any Event of Default hereof, KHC may (i) withhold the disbursement from approve any disbursement from the Operating Reserve Fund, the Replacement Fund or the Asset Management Fund so long as such default continues to exist; and (ii) if such default continues after any applicable notice and opportunity to cure, KHC may, in its sole discretion, use any or all funds held or controlled by KHC on Owner's account for any lawful purpose, including but not limited to the repayment of the indebtedness evidenced by the promissory note or reimbursement to the KHC for all losses, fees, costs and expenses suffered by KHC as a result of such default or otherwise expended by KHC on Owner's behalf as set forth in the Loan Documents.

KHC's Right to Terminate: KHC shall have no obligation to close the TCAP Loan or continue to disburse in the event of a default, if Project Owner shall fail to satisfy any of the terms and conditions of the Agreement (including, without limitation, if the Loan Documents in form and content satisfactory to KHC are not executed and timely delivered to KHC), or if any of the following occurs:

(a) KHC reserves the right to terminate its obligations regarding any commitment or award if the terms of the application or any part of the transaction are changed in any material respect, if any material information submitted to KHC proves to have been inaccurate or incomplete in any material respect, or if any material adverse change occurs, or any additional information is disclosed to or discovered by KHC which KHC deems materially adverse in respect of the condition, financial or otherwise, business, operations, assets, nature of assets, liabilities or prospects of applicant or the proposed project; and

(b) KHC determines that Project Owner will be unable to spend all TCAP loan proceeds by December 31, 2011.

Prohibition on Transfer and Further Encumbrance: During the time that any of the obligations secured by this Mortgage have not been satisfied, any sale, transfer or voluntary encumbrance of all or any part of the Premises herein conveyed, excluding transfer by devise, descent or by operation of law upon the death of a joint tenant with right of survivorship without the prior written consent of KHC will give KHC the option to recapture the entire outstanding balance and to proceed to enforce the lien securing it.

25. Tax Credit Compliance. The provisions of this Agreement are intended to comply with Section 42 of the Code, as well as ARRA, as the same may be amended or interpreted from time to time by regulation or public pronouncement issued by the Internal Revenue Service or HUD. If any provision of this Agreement is inconsistent with any provisions of Section 42 of the Code, ARRA, or official HUD or IRS interpretations thereof, then such inconsistent provision(s) shall be construed and applied in a manner so as to comply with Section 42 and TCAP.

26. Audit Requirements.

- (a) Project Owner must provide project audit information in accordance with standards and schedules established by ARRA and KHC. Such audits must be completed by a qualified independent auditor in accordance with the Tax Credit Program Requirements.
- (b) Project Owner shall maintain books, records, and documents that support the services provided that the fees earned are in accordance with the Agreement, and that Project Owner has complied with the terms and conditions of the Tax Credit Program Requirements. Project Owner agrees to make available, upon reasonable notice, at the office of Project Owner, during normal business hours, for the term of this Agreement and the retention period set forth in this section, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal KHC or its authorized representative.
- (c) Project Owner shall preserve all books, records, and documents related to this Agreement for a period of time as required by applicable federal laws and regulations. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.
- (d) At all times Project Owner must maintain records relating to the Project and to evidence compliance with the requirements of the Loan Document and must provide, upon request, access to such records to the appropriate federal agencies or their authorized representatives.
- (e) All terms and conditions of this Agreement will remain in effect and be binding upon the parties thereto until the Project Term expires.

27. Project Owner Integrity.

- (a) Definitions for this Section are as follows:
 - (i) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth of Kentucky and/or KHC.
 - (ii) Consent means written permission signed by a duly authorized officer or employee of the Commonwealth of Kentucky and/or KHC, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth of Kentucky and/or KHC shall be deemed to have consented by virtue of execution of this Agreement.
 - (iii) Project Owner means the individual or entity that has entered into this Agreement with KHC, including directors, officers, general partners, managers, key employees.
 - (iv) Financial interest means ownership of more than a five percent (5%) interest in any business or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(v) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or agreements of any kind.

(b) Project Owner shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth of Kentucky or an instrumentality thereof including but not limited to KHC.

(c) Project Owner shall not disclose to others any confidential information gained by virtue of this Agreement.

(d) Project Owner shall not, in connection with this or any other Agreement with the Commonwealth of Kentucky and/or KHC, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth of Kentucky or an instrumentality thereof including but not limited to KHC.

(e) Project Owner shall not, in connection with this or any other Agreement with the Commonwealth of Kentucky and/or KHC, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth of Kentucky or an instrumentality thereof including but not limited to KHC.

(f) Neither Project Owner nor any related party shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.

(g) Except with the consent of the Commonwealth of Kentucky and/or KHC, Project Owner shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this Project.

(h) Project Owner, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify KHC in writing.

(i) Project Owner, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

(j) Project Owner shall, upon request of the KHC or a State or Federal agency, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of Project Owner of, concerning, and referring to this Agreement, or which are otherwise relevant to the enforcement of these provisions.

(k) For violation of any of the above provisions KHC may terminate this and any other Agreement with Project Owner, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the Project Owner from doing business with KHC. These rights and remedies are cumulative, and the use of nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those KHC may have under law, statute, regulation or otherwise.

28. Project Owner Responsibility.

(a) Project Owner certifies that it is not currently under suspension or debarment by the Commonwealth of Kentucky, any other state, or the federal government, and if the Project Owner cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made.

(b) The Project Owner cannot award a contract to any contractor who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs. The Owner agrees to remain in compliance 2 CFR Part 180, subpart C, as required by 2 CFR Part 2424. If Project Owner nonetheless enters into subcontract or employs under this Agreement any subcontractors/individuals who are currently suspended or debarred by the Commonwealth of Kentucky or the federal government or who become suspended or debarred by the Commonwealth of Kentucky or federal government during the term of this Agreement or any extensions or renewals thereof, the Commonwealth of Kentucky or KHC shall have the right to require Project Owner to terminate such subcontractors or employment.

(c) Project Owner agrees to reimburse the Commonwealth of Kentucky or KHC for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of Project Owner compliance with the terms of this or any other agreement between Project Owner and the Commonwealth of Kentucky which result in the suspension or debarment of Project Owner. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Project Owner shall not be responsible for investigative costs for investigations which do not result in the Project Owner's suspension or debarment.

29. Nondiscrimination and Sexual Harassment Rules. The Project Owner and all contractors and major subcontractors engaged in connection therewith shall comply with all fair housing, non-discrimination and sexual harassment statutes and regulations as they are amended from time to time, which include but are not limited to the following, each of which is hereby incorporated by reference into this Agreement:

Title VI of the Civil Rights Act of 1964;

Section 504 of the Rehabilitation Act of 1973;

Age Discrimination Act of 1975;

(a) Project Owner shall not discriminate against nor intimidate any employee, applicant for employment, independent contractor, or any other person for the manufacture of supplies, performance of work, or any other activity because of race, color, religious creed, ancestry, handicap, national origin, age, or sex. Project Owner shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Project Owner shall post in conspicuous places, available employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(b) Project Owner shall, in advertisements or requests for employment placed by it or on its behalf; state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.

(c) For any Project consisting of five (5) or more units Recipient must develop and adhere to a written Affirmative Fair Housing Marketing Plan which shall be made available to KHC for review upon request.

(d) Recipient agrees to develop and implement an outreach program for minority and women business enterprises. Furthermore, the Recipient will maintain the records of such outreach program, including the data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more, as well as additional details regarding the amount of the contract, subcontract, and documentation of Recipient's steps to assure that minority business and women's business enterprises have an equal opportunity to compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

(e) Project Owner shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Project Owner noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and all money due or to become due under this Agreement may be forfeited. In addition, Project Owner may be declared temporarily ineligible for further Agency or Commonwealth Agreements and Agency may proceed with debarment or suspension and may place the Project Owner in the Contractor Responsibility File and other sanctions may be imposed and remedies invoked.

30. Compliance with Other Applicable Laws. Project Owner, its subcontractors and assignees must agree to carry out all responsibilities under this Agreement in accordance with the a) Fair Housing Act, 42 U.S.C. Section 3601-3619 and 24 CFR Part 100 and 24 CFR part 107, b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(d) and 24 CFR Part 1, c) the Age Discrimination Act of 1975, 42 U.S.C. Section 6101-6107, d) Section 504 of the Rehabilitation Act of 1973, and e) Title II of the Americans with Disabilities Act, f) the Drug-Free Workplace Act of 1988, 41 U.S.C. Section 701 et seq. and 24 CFR Part 21, g) all other applicable federal and state contracting provisions.

Affirmative Marketing: For any Project consisting of five (5) or more units Recipient must develop and adhere to a written Affirmative Fair Housing Marketing Plan which complies with the requirements of 24 C.F.R. § 92.351 and it shall be made available to KHC for review upon request.

Lead Based Paint Rules: Any grants or loans made to Recipient for the rehabilitation of residential structures with assistance provided under this Agreement shall provide for the abatement of any lead based paint hazards found to exist. The Project must comply with all requirements regarding lead exposure as they are amended from time to time, which include but are not limited to the following, each of which is hereby incorporated by reference into this Agreement:

Lead-Based Paint Poisoning Prevention Act;

Residential Lead-Based Paint Hazard Reduction Act of 1992;

24 C.F.R. pt. 35 – Lead-Based Paint Poisoning Prevention in Certain Residential Structures;

Subpart A - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards upon Sale or Lease of Residential Property;

Subpart B - General Lead-Based Paint Requirements and Definitions for All Programs;

Subpart J – Rehabilitation;

Subpart K – Acquisition, Leasing, Support Services, or Operation;

Subpart M – Tenant Based Rental Assistance; and

Subpart R – Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities.

31. Conflict of Interest. Project Owner, their subcontractors, and assignees, on behalf of employees and/ or agents, covenants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of their activities hereunder. Project Owner, their subcontractors, and assignees further covenant that in the performance of this Agreement they will not knowingly employ any person having such interest.

32. Certification of Lobbying Activities. Project Owner shall disclose any lobbying activities in accordance with Section 1352, Title 31, U.S. Code, and 24 CFR Part 87 regarding “New Restrictions on Lobbying.” If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Project Owner shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. Project Owner shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000.00) and not more than one hundred thousand dollars (\$100,000.00) for each such failure.

33. Davis-Bacon Prevailing Wage Requirements. In accordance with Section 1606 of ARRA, Owner shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determinations regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: <http://www.gpo.gov/davisbacon/ky.html>.

34. Whistleblower Protection. Project Owner will comply at all times with Section 1553 of ARRA, which prohibits discrimination against or discharge of any employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds or (2) a gross waste of ARRA funds, (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule or mandatory regulation concerning a contract or award of ARRA funds. All grantees and sub-grantees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of ARRA.

35. Environmental Impact Requirements. In accordance with ARRA, Section 1609, Owner will comply with any application environmental impact requirements of the National Environmental Policy Act of 1970 (“NEPA”). Owner must comply with environmental requirements as set forth in 24 CFR Part 58 as amended. Owner must either carry out the necessary review through KHC or demonstrate to KHC that the necessary review has been carried out through HUD. Written and approved environmental review procedures, consistent with HUD regulations, must be submitted and approved by KHC, or a copy of the environmental review, if previously approved through HUD must be submitted and approved by KHC. Notwithstanding any provision of this Agreement to the contrary, and in accordance with 24 CFR Part 58, Owner agrees and acknowledges that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of an environmental review and receipt by KHC of a release of funds from HUD. Owner further agrees and recognizes that the disbursement of any funds for the Project is conditioned on KHC’s determination to proceed with, modify, or cancel the Project based on the results of the environmental review.

36. Assignment, Transfer and Collateral Use. This Agreement may not be assigned or transferred by Project Owner by operation of law or otherwise and Project Owner may not delegate its duties hereunder without the prior written consent of KHC. Any approval of an assignment and/or reimbursement of payment to any third party on behalf of Project Owner does not establish any legal relationship between KHC and the other third party, and under no circumstances shall KHC be held liable for any act or omission pursuant to such an assignment.

Entire Agreement: This Agreement, including all Exhibits, Schedules and Riders attached hereto, shall constitute the entire agreement and understanding between the KHC and Project Owner. In the event of any conflict between this Agreement and any other document or written or oral statement, the Promissory Note and Real Estate Mortgage will control. This Agreement supersedes all prior understandings, writings, proposals, representations and communications, oral or written, of any party relating to the subject matter hereof unless otherwise specified or specifically reaffirmed or restated herein.

37. Miscellaneous.

(a) Notices. Unless otherwise specified herein, all notices given hereunder shall be made by United States mail to the address provided below.

KHC: Attention: Asset Management
 Kentucky Housing Corporation
 1231 Louisville Road
 Frankfort, KY 40601

Project Owner: To the address set forth in _____ hereto.

(b) Governing Law. The validity, interpretation, enforcement, and effect of this Agreement shall be governed by and construed in accordance with, the laws of the Commonwealth of Kentucky.

(c) Amendment. This Agreement may not be modified or amended except in writing executed by all of the parties hereto.

(d) Counterparts. This Agreement may be executed in various counterparts each of which shall be an original but all of which shall constitute one instrument.

(e) Survival. The terms of this Agreement shall remain operative throughout the Project Term.

IN WITNESS WHEREOF, the signatory below is provided by a duly authorized person with full and complete authority to bind the party noted below, its successors and assigns on the date indicated below.

PROJECT OWNER

KENTUCKY HOUSING CORPORATION

By: _____
Name:

By: _____
Name:

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED FOR FORM AND LEGALITY

By: _____
Lisa A. Beran, General Counsel
Kentucky Housing Corporation