

**A. Section 42 Qualified Contract Provisions & Policies**

When submitting information to the Indiana Housing and Community Development Authority (IHCDA) to request release of an extended use agreement through Qualified Contract, the following Qualified Contract Provisions & Policies (“Policies”) must be addressed. As used herein, any capitalized term shall have the meaning as defined and set out in Section 42 of the Internal Revenue Code of 1986, as amended (“Code”) unless otherwise provided herein.

**Note: This Qualified Contract policy does not apply to projects funded through the 2020 QAP or any subsequent QAP, or projects with Section 1602 Tax Credit Exchange funding. Such projects have irrevocably elected to waive their right to request release through Qualified Contract as part of threshold.**

**B. Notification letter with required information submitted to IHCDA**

The Owner of the Development requesting that IHCDA find a Qualified Contract purchaser for the applicable Development must submit a notification letter (“Letter”) to IHCDA’s Chief Real Estate Development Officer stating this interest. The Letter must be created using the IHCDA template. The Letter must be accompanied by the following required information. All items must be submitted in an electronic format, either via e-mail or an IHCDA file transfer site. IHCDA will not accept hardcopy submissions:

1. A signed copy of the document entitled “Qualified Contract Request Acknowledgements.”
2. A fully completed calculation of the Qualified Contract price, including completed Worksheets A – E and a detailed list of all assumptions utilized to calculate the Qualified Contract price. The assumptions used must be consistent with those included in these Policies. A certified public accountant must complete, review and approve the calculation. Submission must include any supporting documentation used by the CPA to prepare the schedules and calculate the price.
3. A thorough narrative description of the Development, including a description of all amenities suitable for acquainting prospective purchasers with the Development.
4. A detailed set of color photographs of the Development, including photographs of the interior and exterior of representative apartment units and buildings, and photographs of the Development grounds.
5. A description of all restrictions applicable to the Development and its operation, including copies of any restrictive covenants recorded against the Development.
6. A statement of Income and Expenses and Balance Sheets of the Development for the three (3) years prior to the submission of the Letter and a statement of income and expenses of the Development for the year to date of the submission of the Letter. The statements must



fairly apprise a potential purchaser of the Development's operating expenses, replacement reserves and escrows, debt service, gross receipts, net cash flow and debt service coverage ratio.

7. A summary of existing debt including original loan balance, current loan balance, interest rate, name and contact information for lender, monthly principle and interest payments, amortization period, prepayment provisions and copies of existing mortgage(s) and note(s).
8. A current rent roll certified as true and accurate by the appropriate management agent.
9. Occupancy history for the three (3) years prior to the submission of the Letter.
10. Any third-party environmental reports, correspondence from governmental entities, and copies of any contracts that cannot be extinguished upon the sale of the Development.
11. A property condition report and property needs assessment. For initial submission, this may be prepared by the owner as a narrative. Upon review, IHCDCA may ask for a third-party report to completed if needed by IHCDCA's agents to complete the review.
12. Copies of the leases for the leased portions of the land or improvements, not including the residential units.
13. A Qualified Contract processing fee equal to \$5,000 payable through [IHCDCA's online payment portal](#).

The Letter and required information must be submitted before IHCDCA will begin the Qualified Contract process. IHCDCA will have one (1) year from the receipt of the Letter and required information to find a qualified purchaser for the Development, unless the owner agrees to a longer time period. All buildings within the Development must qualify before IHCDCA will accept a Qualified Contract provision request. A Development may make only one (1) request for a Qualified Contract purchaser. IHCDCA and its agents retain the right to request additional information as needed.

### **C. Certified Public Accountant Review**

To help assess the credibility of the assumptions used in calculating the Qualified Contract price, IHCDCA will contract with a reputable independent certified public accountant to review the Qualified Contract price calculated by the Development's certified public accountant. The Development will be notified of any adjustments in the Qualified Contract price suggested or required following the IHCDCA review.

### **D. Property listed with multi-family broker and on IHCDCA website**

IHCDCA will contract with a reputable multi-family housing broker to review, appraise, list and market all Section 42 properties that have requested to utilize the Qualified Contract provisions and



submitted all required information. In addition, if the property is determined to be feasible and practical for listing the Development must agree to list the property with the multi-family housing broker selected by IHCD. The listing price of the property will be the calculated Qualified Contract price. The final sales price will be the amount agreed upon by the parties. Properties that do not close after a purchaser has been found who will pay the calculated Qualified Contract price will be considered by IHCD to have forfeited their right to utilize the Qualified Contract provisions of Section 42 for that Development. If a property is determined not to be feasible or practical for listing by the multi-family broker the property will be released from its extended use commitment.

Regardless of whether the property is deemed feasible for listing by IHCD's contracted broker, IHCD will maintain a list of all projects currently going through the Qualified Contract process on its website. All projects will be included on this list for a one-year period starting when IHCD receives the Qualified Contract submission. At the end of the one-year period, IHCD will remove the project from the list and release the extended use agreement if it has not found a buyer.

## **E. Fees and cost**

IHCD has established a Qualified Contract processing submittal fee of \$5,000. This fee must be paid upfront via [IHCD's online payment portal](#) when the letter and supporting documentation are submitted to IHCD.

In addition, property owners requesting a Qualified Contract agree to pay costs incurred for submitting the required information and all commissions and fees owed to the multi-family housing broker for listing properties including the cost of a third party appraisal. If a property is determined to be feasible for listing the owner will be required to submit the additional administration and marketing fees and appraisal cost to IHCD. The fee structure for the multi-family housing broker is as follows:

### **1. Administrative and marketing fees:**

- a. \$5,000.00 for a property with a value less than or equal to \$250,000.00.
- b. \$10,000.00 for a property with a total value in excess of \$250,000.00.

The fee provided for herein is intended as compensation and reimbursement for Broker's time and costs incurred in the marketing of the subject property. This fee is in addition to reimbursement for MIA appraisal services which multi-family broker has incurred with regard to the subject property.

### **2. Sales Commissions**

At closing of the sale of a subject property, a brokerage commission, based upon the gross sales price of the property as follows:



Gross Sales Price	Broker's Commission
Under \$500,000.00	7% of GSP but not less than \$10,000.00
\$500,000.00 - \$2,000,000.00	6% of GSP
\$2,000,001.00 - \$4,000,000.00	5% of GSP
\$4,000,001.00 - \$7,000,000.00	4% of GSP
Over \$7,000,000.00	3% of GSP

The brokerage commission payable hereunder shall be reduced by the amount of the administrative and marketing fee previously paid to broker in regard to the subject property.

#### F. Qualified Contract Price Calculation and Assumptions

All calculations must follow the Code. All assumptions utilized must be, in the sole and absolute discretion of the IHCD, reasonable and customary. The following assumptions must be used when calculating the Qualified Contract Price using Worksheets A through E.

**Worksheet B – Adjusted Investor Equity:** May be included only if included in adjusted basis of the Development and required by the partnership agreement.

**Worksheet D – Cash Distributions:** For the purpose of these calculations, cash distributions include: Developer fees, Construction or Contractor fees, Asset manager fees, and any refinance proceeds from the inception through the initial 15-years of participation in the Section 42 Programs.

#### G. No Warranty

Property owner agrees that the actions, determinations, decisions, or other rulings made by the IHCD pursuant to this policy shall not be construed to be a representation or warranty by the IHCD as to a Development's compliance with applicable legal requirements, the feasibility or viability of any Development, or any other matter. No action of the IHCD shall be relied upon by any person as a representation or warranty by the IHCD in connection therewith.

IHCD reserves the right to resolve all conflicts, inconsistencies or ambiguities in these Policies, including those which may rise in administering, operating or managing the Qualified Contract Policies. The IHCD in its sole discretion reserves the right to, and from time to time may, amend these Policies pursuant to the Code.

#### H. Exemption Request to Serve Qualified Tenants for the Longest Period

Owners that have waived their right to apply for a Qualified Contract at the end of the 15-year compliance period and committed to the "Serve Qualified Tenants for the Longest Period" may request an exemption from that commitment. Owners that received points for that commitment in their original tax credit application may be eligible to request a Qualified Contract if granted an exemption from the original commitment.



In order to be considered for an exemption, a project must be in good standing with the IHCD. A project with outstanding noncompliance issues or unpaid fees is not eligible to request an exemption. In addition, the Owner must submit documentation to IHCD to demonstrate at least one of the following criteria:

1. The economic viability of the property is poor and cannot be maintained throughout the extended use period through its current rental structure. **Required documentation:** Narrative describing financial condition of the property including estimated costs for capital needs along with current YTD financials and financials for past two years; or
2. Current rents are approximately the same as local Fair Market Rents for units of similar size and structure and will remain similar for the foreseeable future. Required documentation: breakdown of current rents and analysis comparing those rents to the local HUD Fair Market Rent and rents charged at comparable properties in the area. This analysis does not have to be performed by a third-party market analyst.

Any Owner that received points for an extended commitment in the original tax credit application and wishes to be considered for a Qualified Contract will be required to pay an exemption fee equal to the remaining amount of Owner Certification fees in the Extended Use Period (based on the Extended Use Policy rate of \$10 per unit). For example, if there are 10 years remaining in the Extended Use Period on a project that contains 40 tax credit units and the compliance fee for each unit is \$10 per year, the fee to request an exemption would be \$4000 (10 years x 40 units x \$10 per unit).

If the exemption is approved the Owner may then follow the policy to request a Qualified Contract as described herein. If the exemption is denied, IHCD will retain \$1500 of the exemption fee and remit the remaining amount back to the Owner. The Owner must wait at least one year before resubmitting a request for exemption.

**Note: All projects funded with Section 1602 Tax Credit Exchange Program funding or in the 2020-2021, or later, Qualified Allocation Plan are required to irrevocably waive their right to request release through Qualified Contract. Such projects are not eligible for the exemption process outlined above.**

