



# Asset Management Handbook

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The Asset Management Handbook has been created to provide guidance after a project has been completed and placed in service. The Handbook should be used in conjunction with the applicable Qualified Allocation Plan and the Plan's Supplemental documents, the Arizona Department of Housing's ("ADOH") Compliance Manual, and any applicable Notice of Availability of Funds ("NOFAs") that are issued by the ADOH. Any term or provision herein not referenced, shall be defined as outlined in the stated documents and/or applicable regulation.

ADOH reserves the right to apply the following provision to all Applications submitted to ADOH. Applications shall include requests for funding, amendments, modifications, Change in Ownership, Acquisitions, Qualified Contracts, Refinances, Homeownership Conversions, and any other Material Change request.

To ensure that a Project Owner maintains and operates State funded Projects in accordance with the agreed upon terms and conditions of Federal and/or State funding requirements for the full term of the Affordability Period, ADOH reserves the right to reject, deny, and/or suspend any request in the event a Project Owner (or any party with an Identity of Interest that is materially associated with the Project Owner's request) has one or more of the following associated with any State Agency: (i) two or more projects with unresolved or outstanding compliance findings, (ii) projects that have been issued or have an unresolved I.R.S. 8823, (iii) a project that is classified as noncompliant, and/or (iv) projects with the Department with excessive and recurring complaints about their performance and maintenance. Notwithstanding the foregoing, in the event the Project Owner can establish financial, organizational, managerial, and administrative independence from any party deemed out of compliance and with whom it has an Identity of Interest, ADOH further reserves the right to waive its right to reject, deny, and/or suspend a request.

Identity of Interest is defined as the Project Owner's members, non-member managers, principals, entities, sub-entities, sponsors, any interest held in trust(s), family members, developers, or a property management company that (i) materially influences the ownership, management, operations, administration, or business activities of the Project, and/or (ii) have a financial interest in the Project, such as an equity investment or debt instrument/loan with influence to the Project, or receive a distribution of Project funds.

## I. INTRODUCTION

ADOH's Asset Management Division manages a growing portfolio of nearly 1,000 rental properties throughout Arizona. For each of these properties, ADOH has either secured financing and/or invested tax credits giving ADOH a vested interest in making sure that such properties remain financially viable, solvent and in compliance with the State and Federal funding requirements.

In order to ensure fiscal responsibility with respect to significant State and Federal investments in private properties, ADOH's Asset Management Division works with property owners and other internal/external parties to review and process property financial reviews, loan payment deferral requests, ownership changes or sales, Qualified Contract Applications, refinances, Homeowner conversions, as well as debt restructures and work-outs. In addition, ADOH helps to identify strategies to minimize the emergence of trouble properties in accordance with ADOH's mission to create and preserve affordable housing.

## II. OWNERSHIP CHANGE PROCEDURES

Multi-family residential properties developed using Federal Low Income Housing Tax Credits (“LIHTC”), State Tax Credits (“STC”), and/or State Housing Funds provided by ADOH require ADOH’s approval for any changes to the ownership. Ownership changes include, but are not limited to the Project Owner and any members of the Ownership Entity, namely the managing member (for a Limited Liability Company), general partner (for a Limited Partnership), limited partner (for a Limited Partnership), investor member (for a Limited Liability Company), and any other party with an Identity of Interest to the Project Owner, collectively referred to as “Change of Ownership.” This section provides ADOH’s Policies and Procedures for requesting an ownership change.

### A. KEY CONSIDERATIONS

The request for a change in ownership must demonstrate that the new owner, managing member/general partner, limited partner/investor member, and property manager possess the experience and financial capacity necessary to own and operate the property consistent with ADOH’s objective of providing safe, decent, affordable housing. To this end, both the new owner and any party with an Identity of Interest to the new owner must not be involved in any capacity with any State agency that has (i) two or more projects with unresolved or outstanding compliance findings, (ii) projects that have been issued or have an unresolved I.R.S. 8823, (iii) a project that is classified as noncompliant, and/or (iv) projects with the Department with excessive and recurring complaints about their performance and maintenance, as noted on page 2. ADOH expects that the seller will convey the property in good condition, which includes being in compliance with the Federal and/or State funding requirements; therefore, ADOH will only exercise its discretion to approve requests for properties in which there are no outstanding compliance findings, unresolved or outstanding I.R.S. 8823 Forms, designations of non-compliance, or excessive complaints.

### B. SUBMITTING THE REQUEST

To request a Change of Ownership, please submit the following documents through the Asset Management Portal on ADOH’s website at the following link:

<https://housing.az.gov/online-services/document-upload-portals/asset-management-portal>

1. A letter requesting a Change of Ownership and the reason(s) for the change.
2. Purchase and Sale Agreement or Assignment and Assumption Agreement.
3. A completed ADOH Contact Sheet, which can be downloaded from ADOH’s website at:  
<https://housing.az.gov/programs/rental-asset-management>
4. Evidence the equity partner(s) and/or lender(s) have approved the Change of Ownership.
5. An Organization Chart for both the existing and proposed entities/individuals. Organizational Charts must illustrate the relationship, whether through ownership, control, or contract within the ownership entity, between the managing member/general partner and limited partner/investor member and any party with an Identity of Interest to the proposed Project Owner.
6. A copy of the limited partnership agreement, operating agreement for a limited liability company, a development services agreement or similar agreement.

7. Resumes specifically identifying the officers or key employees of the managing member or general partner and proposed property manager (if applicable) demonstrating the knowledge and experience necessary to successfully manage the property.
8. Financial Statements for the prior two (2) years of the developer or parent company of the acquiring entity in the transaction. See below for specific requirements.
9. Evidence the new owner, managing member/general partner, or limited partner/investor member are duly formed legal entities authorized to transact business in the State of Arizona and in good standing with the Arizona Corporation Commission or the Arizona Secretary of State. See subsection D below for specific requirements.
10. Evidence the proposed property manager or key persons of a third party property management company have attended a two-day compliance training offered by a vendor listed in the current Qualified Allocation Plan or provided by the Compliance Division within one-year prior to submission.
11. A copy of the Property Management Agreement, if property is to be managed by a third party.
12. Financial Statements for the prior two (2) year-ends and an interim for the Property. See below for specific requirements.
13. Fifteen (15) year operating pro forma.
14. Current rent roll on the property.
15. If ADOH has a loan to the project, copy of a current insurance policy or certificate showing that ADOH is an additional insured lender.

### **C. ADMINISTRATIVE FEES**

Administrative Fees to process the request may be submitted by credit card through the Payment Portal on ADOH's website or by check. The Fees are as follows:

- \$1,750 for owner or managing member/general partner change.
- \$750 for limited partner/investor member change.

**Disclosure: Owners with properties in the Extended Use Period may resyndicate and recapitalize the project to fund deferred maintenance and/or capital improvements. Resyndications will be required to waive the Qualified Contract Option, as required by the Qualified Allocation Plan. Any request to amend the existing restrictions of the property may be considered by the Department on a case-by-case basis. The Department reserves the sole right to approve or deny any such request for changes as part of the resyndication.**

### **D. REQUIREMENTS FOR LEGAL FORMATION AND AUTHORIZATION TO DO BUSINESS IN ARIZONA**

#### **Corporations**

If the entity is a corporation, provide:

1. The Articles of Incorporation and Bylaws including all amendments thereto.
2. If the corporation was incorporated in Arizona, provide a certificate of good standing issued by the Arizona Corporation Commission confirming the legal existence of the entity as of the date of the certificate ("Certificate of Good Standing") and dated not earlier than thirty (30) calendar days prior to the submission.
3. An entity incorporated in another state and doing business in Arizona must submit a certificate of good standing or its equivalent from the state of incorporation confirming the legal existence of the entity dated not earlier than thirty (30) calendar days prior to the submission and a certificate of good standing to transact business in Arizona ("Certificate of Authority") for such foreign corporation, issued by the Arizona Corporation Commission and dated not earlier than thirty (30) calendar days prior to the submission.

### **Limited Partnerships**

If the entity is a limited partnership, provide:

1. An executed copy of the limited partnership agreement including all exhibits and amendments thereto.
2. If the limited partnership was organized under the laws of Arizona, provide a certificate of existence issued by the Arizona Secretary of State confirming the legal existence of the entity ("Limited Partnership Certificate of Existence") and dated not earlier than thirty (30) calendar days prior to the submission.
3. A Limited Partnership organized under the laws of another state and doing business in Arizona must submit the following: a limited partnership certificate of existence or its equivalent from the state of organization confirming the legal existence of the entity, dated not earlier than thirty (30) calendar days prior to the submission, and an Arizona Certificate of Authority from the Arizona Secretary of State dated not earlier than thirty (30) calendar days prior to the submission.

### **Limited Liability Companies**

If the entity is a limited liability company, provide:

1. The Articles of Organization (or its equivalent) and Operating Agreement including all exhibits and amendments thereto.
2. If the limited liability company is organized under the laws of Arizona, provide a certificate of good standing, issued by the Arizona Corporation Commission confirming the legal existence of the entity ("LLC Certificate of Good Standing"), dated not earlier than thirty (30) calendar days prior to the submission.
3. A limited liability company organized under the laws of another state and doing business in Arizona must submit the following: a certificate of existence or its equivalent from the state of organization confirming the legal existence of the entity dated not earlier than thirty (30) calendar days prior to the submission and an Arizona Certificate of Good Standing issued by the Arizona Corporation Commission for such foreign limited liability company dated not earlier than thirty (30) calendar days prior to the submission.

### III. FINANCIAL STATEMENT REQUIREMENTS

ADOH has established minimum requirements for the types of financial statements it receives depending on the type of financing it has provided for multi-family properties. These requirements are listed in the table below:

Funding Source: STC, LIHTC and/or ADOH Loan	Audited	Unaudited*
STC, 9% or 4% LIHTC – First 15 Years	Required	
STC, 9% or 4% LIHTC – Years 16-30, no ADOH loan		Accepted
ADOH Loan – Set Payment or Cash Flow Note –50 or more units, w/ or w/o STC or LIHTC	Required	
ADOH Loan – Set Payment or Cash Flow Note – less than 50 units, no STC or LIHTC		Accepted
ADOH Loan – no payment until maturity		Accepted

\*Must be prepared on an accrual basis and at minimum, consist of a balance sheet, income statement and cash flow statement with all accompanying schedules and notes.

If more than one type of financing was provided, creating a conflict in the type of financial statement that is required, or if the property is financed with other financing sources that require audited financial statements, then an audited financial statement is required.

Financial Statements **are required to be submitted to ADOH through the Audited Financial Statements portal:**

<https://housing.az.gov/online-services/document-upload-portals/audited-financial-statements-portal>

**Audited Financial Statements and Single Audits are no longer accepted in paper form as of March 31, 2016 pursuant to IB 06-16.**

### IV. PROCEDURES FOR LOAN SERVICING PROCESSES

\*All questions regarding procedures for loan servicing processes should be emailed to [AMD@azhousing.gov](mailto:AMD@azhousing.gov)

#### A. LOAN CONFIRMATIONS

Project owners, management companies, or their CPAs must submit requests for Loan Confirmations through the Asset Management Portal or emailed to AMD@azhousing.gov. Requests must include a cover sheet that identifies the owner, property, loan number and the applicable period. If the request is not from the owner of record, please include written authorization from the owner to release the requested information.

## B. LOAN PAYMENT DEFERRAL REQUESTS

Loans that contain a cash flow payment provision or properties experiencing financial stress may be eligible to receive a payment deferral. ADOH will consider requests to defer or modify a scheduled payment of a State Housing Fund (HOME, Housing Trust Fund, NHTF, NSP or TCAP, etc...) loan for Projects that did not generate sufficient cash flow to make the annual payment, after payment of the deductions specified in the Promissory Note, if applicable. No request for a loan deferral will be reviewed until all outstanding documents are received as outlined below and are submitted through the Asset Management Portal (**Loan deferral request will not be accepted via email**).

1. A written letter requesting a loan deferral, which must contain the loan information, requested payment year to be deferred, the name of the borrower entity, and a detailed explanation why the deferral is being requested.
2. A copy of the property's Audited Financial Statement for the applicable fiscal year, along with the owner's calculation of cash flow.

Based on the audited financial statement, initial underwriting, and the terms and conditions of the Promissory Note, ADOH will conduct a cash flow analysis and determine in its discretion whether, and to what extent, loan payments may be deferred. **Loan deferrals will not be considered for properties that are out of compliance with applicable CC&Rs and Land Use Restriction Agreements ("LURA").**

**It is further noted that all projects, regardless of whether they have an ADOH loan, are required to maintain the specified reserves (Operating, Replacement, etc...) for the full term of affordability, as detailed in the Qualified Allocation Plan that the project was awarded tax credits under or as specified in the Department's final underwriting of the project, and as further defined in the Promissory Note, CC&Rs and/or LURA.**

## C. LOAN PAYOFF REQUESTS

A project owner, management company, or any other party authorized by the owner may submit Loan Payoff Requests through the Asset Management Portal. Requests for a loan payoff must include a cover sheet that identifies the owner, property, loan number, and anticipated payoff date.

## D. RELEASES

If a Project has satisfied the requirements of a loan or the affordability period has expired as defined in the CC&Rs and/or LURA, the owner, management company, or any other party authorized by the owner, must submit a request for a release through the Asset Management Portal. Requests must include a cover sheet that identifies the owner, property, loan number and explanation for the requested release.

## E. ADMINISTRATIVE FEES

ADOH may invoice the Owner for (i) an Administrative Fee of up to \$500 in the event an existing



loan requires a modification or amendment to the loan documents or (ii) any amount for reimbursement of third party costs, as applicable.

## V. QUALIFIED CONTRACT PROCESS

All Qualified Low-Income Housing Projects allocated LIHTCs in the 1990 tax year or later must comply with all LIHTC requirements for the duration of the Extended Use Period; a period of not less than thirty (30) years after the project is placed in service. However, the LURA, in compliance with Section 42(h)(6)(E) of the Internal Revenue Code (“I.R.C.”), allows the Extended Use Period to terminate after the initial fifteen (15) year Compliance Period by applying to the State Tax Credit allocating agency for a Qualified Contract, provided the owner did not waive such rights. I.R.C. § 42(h)(6)(I) provides that Project owners may apply to the state Tax Credit allocating agency for a Qualified Contract after the fourteenth year of the Compliance Period.

### A. WHAT IS A QUALIFIED CONTRACT

A Qualified Contract is a Bona Fide Contract to acquire a LIHTC project for the sum of the existing debt, adjusted investor equity and other capital contributions, less project cash distributions as set forth in I.R.C. § 42(h)(6)(F).

In accordance with ADOH’s administrative discretion authorized by 26 C.F.R. § 1.42-18(d) to specify conditions applicable to the Qualified Contract, a Bona Fide Qualified Contract is defined as a legally binding written agreement that, at a minimum, must include (i) a contract of sale, (ii) a minimum purchase price equal to the Qualified Contract Price, (iii) clearly defined time frames for contingencies, and (iv) a term indicating that the offeror is contractually bound to deposit an earnest deposit into escrow within a certain period after the contract is accepted and executed. Further, a Bona Fide Qualified Contract Offer is defined as a good faith offer from a Qualified Buyer to enter into a Bona Fide Qualified Contract. Letters of Interest, request to negotiate, or similar non-binding offers will not be considered a Bona Fide Qualified Contract.

Pursuant to the Departments’ discretion and as discussed below in Section V.F, any failure by owner to accept, respond to, or negotiate a Bona Fide Qualified Contract Offer in good faith during the Marketing Period shall terminate the Qualified Contract process, and the property will be required to remain affordable through the remaining Period of Affordability. Further, notwithstanding the above, a Buyer’s material breach or failure to perform in good faith, as prescribed under the contract of sale, may invalidate a Bona Fide Qualified Contract presented by the Department and permit the Owner to terminate the Extended Use Period, provided that ADOH does not present any other Bona Fide Qualified Contract within the Qualified Contract Period.

The “Qualified Contract Price” establishes the minimum price required by I.R.C. § 42. Under the Qualified Contract process, the State Tax Credit allocating agency has one year from the date of application to procure a qualified buyer to purchase the project at the Qualified Contract Price. If the agency fails to do so, it may release the project from the requirements of the LIHTC program, subject to the three-year deregulation period required by I.R.C. § 42(h)(6)(E)(ii). The one-year Qualified Contract Period shall commence only when (1) ADOH receives a complete Qualified Contract Application, which includes the receipt of any requested material, third party reports, and applicable processing fees, and (2) ADOH and Owner establish in writing a mutually agreed upon Qualified

Contract Price, regardless of the date on which the applicant submits the Qualified Contract Application.

## **B. THE QUALIFIED CONTRACT APPLICATION PROCESS**

The Qualified Contract Application process and the requirements for requesting ADOH to procure a Qualified Contract buyer to purchase a Qualified Low Income Housing Project requires the owner to submit a Qualified Contract Application, which implements the Qualified Contract process described by I.R.C. § 42(h)(6)(F). Only Qualified Low-Income Housing Projects (i.e. ***LIHTC properties with no outstanding I.R.S. 8823 forms and no open and unresolved noncompliance findings***) after the fourteenth year of the Compliance Period or later are eligible to apply for a Qualified Contract. The Qualified Contract Application shall be provided upon request.

By submitting a Qualified Contract Application, the applicant agrees to the Qualified Contract process described below. To initiate the ADOH Qualified Contract Application Process, the property owner must **submit the following items through the ADOH Asset Management Portal**:

1. A cover letter describing the project and its eligibility for a Qualified Contract under I.R.C. § 42;
2. Completed application forms (parts A, B and C);
3. All documents and materials listed in part D - “Documents and Supporting Materials”;
4. Signed Owner’s Warranties and Representations (part F);
5. Calculation of the Qualified Contract Price (part G), as assessed by a licensed Certified Public Accountant no more than ninety (90) days before the submission of the Application. This price may be subject to an adjustment, based on ADOH’s separate appraisal and review.

## **C. QUALIFIED CONTRACT LURA AMENDMENT OPTION**

Upon submittal of a Qualified Contract Application, the Owner will be provided with a “LURA Amendment Options Form.” This Form will afford the Owner an opportunity to amend the existing LURA recorded against the Property to increase the rent and income restrictions identified in the LURA to 50% or 60% AMI through the remainder of the Extended Use Period in accordance with the initial election of the project. In other words, a LURA Amendment would allow a unit currently restricted to 20% AMI, 30% AMI, or 40% AMI to be restricted to 50% or 60% AMI. This is the **only** change that will be permitted to the LURA. The LURA Amendment shall be applied according to the Qualified Contract procedures identified herein.

**To pursue a LURA Amendment, the Owner (and any Qualified Buyer, as applicable) must agree to the following:**

- Allow the property to be marketed for the one-year Qualified Contract Period;
- Comply with the terms of the existing LURA throughout the Qualified Contract Period;

- Execute a LURA Amendment Options Form;
- Execute a LURA Amendment at the end of the Qualified Contract Period with language that holds ADOH harmless as a result of any changes to the rent and income restrictions that take effect at the close of the Qualified Contract Period, if no Qualified Buyer (Option #1), or if a Qualified Buyer (Option #2);
- Allow existing tenants with existing rent and income restrictions below 50% or 60% AMI, as applicable, to remain in their units with the existing rent and income restrictions for a three-year deregulation period beginning at the end of the one-year Qualified Contract Period. Once the LURA Amendment is in effect, the Owner (Option #1) or Qualified Buyer (Option #2) will be permitted to lease vacant units to new tenants at the 50 or 60% AMI rent and income restrictions; and
- Tender a Legal Opinion from the Owner's counsel (Option #1) or Qualified Buyer's counsel (Option #2) indemnifying and holding ADOH harmless as a result of any changes to the rent and income restrictions pursuant to the LURA Amendment.

#### **LURA Amendment Option #1: The Owner Elects to Pursue a LURA Amendment**

- If Owner elects to pursue a LURA Amendment, the LURA Amendment shall only be available if a Qualified Buyer is not identified during the one-year Qualified Contract Period and as part of the LURA Amendment Owner formally agrees to maintain the affordability through the remaining Period of Affordability. If a Qualified Buyer presents a Qualified Contract during the Qualified Contract Period accepting the LURA as-is (i.e., with the existing rent and income restrictions below 50% or 60% AMI), the Buyer will be considered to be presenting a Qualified Contract, which may be accepted by the Owner. If the Owner does not accept the Qualified Contract presented by the Buyer, this action by the Owner voids the LURA Amendment Option and the Owner will be required to maintain the original rent and income restrictions for the remainder of the Extended Use Period.
- If a Qualified Buyer presents a Qualified Contract and the Owner accepts, the Qualified Buyer is purchasing the property as-is and agrees to waive the Qualified Contract.

#### **LURA Amendment Option #2: The Owner Does Not Elect to Pursue a LURA Amendment.**

- If the Owner does not elect to pursue a LURA Amendment, the Project will be marketed to potential Buyers during the Qualified Contract Period. A potential Buyer who presents a Qualified Contract will be afforded the option to pursue a LURA Amendment. If a Buyer presents a Qualified Contract accepting the LURA as-is (i.e., with the existing rent and income restrictions below 50% or 60% AMI), that Buyer's Qualified Contract supersedes any other Qualified Contract requesting a LURA Amendment. If the Owner does not accept the Qualified Contract from the Buyer, the Owner will be required to maintain the original rent and income restrictions for the remainder of the Extended Use Period.
- If a Qualified Buyer presents a Qualified Contract and Owner accepts, the Qualified

Buyer is purchasing the property as-is (subject to the modifications by the LURA Amendment request) and agrees to waive the Qualified Contract.

#### **D. QUALIFIED CONTRACT FEES**

The following fees must be paid through the ADOH Payment Portal or by delivering them to the ADOH office:

- A non-refundable Administrative Fee in the amount of \$15,000.00 at the time of submission of the Qualified Contract Application; and
- The applicable Professional Service Fees which will be invoiced and are due upon receipt.

Failure to remit payment of these fees may result in ADOH classifying the Qualified Contract Application incomplete, resulting in ADOH suspending or revoking the Qualified Contract Application. The one-year Qualified Contract Period will not begin until ADOH has received all applicable fees.

ADOH will not review the Qualified Contract Application until the Administrative Fee is received. ADOH will use the Professional Fee to cover the costs of an appraisal prepared by a State-certified general appraiser and any other third-party reports, as deemed necessary. In the event that ADOH determines that additional third-party reports are necessary, ADOH will invoice the applicant for any additional amount. Failure of the applicant to remit any additional amounts requested by ADOH within thirty (30) calendar days shall prevent a written request from beginning the one-year Qualified Contract Period (or, if the one-year period has already begun, shall suspend the running of the one-year Qualified Contract Period until payment is remitted). Copies of any professional reports or opinions commissioned will be provided to the applicant upon request when they are available to ADOH.

ADOH will review the third-party reports and other available information. Upon acceptance of the third-party reports, ADOH will offer the project for sale to the general public, based upon reasonable efforts, at the determined Qualified Contract Price. This includes, at minimum, advertising the availability of the property on its website, issuing an information bulletin to its mailing list, and continuing its efforts until a Qualified Contract is presented to the owner or the one-year Qualified Contract Period has expired.

#### **E. QUALIFIED CONTRACT PROCESS SUSPENSION/INELIGIBILITY**

In the event that the owner fails to cooperate with ADOH during the Qualified Contract process, ADOH may suspend, toll, or revoke the one-year Qualified Contract Period, the three (3) year deregulation period, or the application, as applicable. Failure to cooperate shall include, but is not limited to, Owner's failure to complete the application, failure to respond to any ADOH requests for documentation, failure to remit payment, delay or refusal to allow inspections of the property by prospective purchasers, failure to ensure continual compliance with all restrictions, failure to timely take corrective action to cure findings or noncompliance issues, failure to negotiate with a Bona Fide Qualified Contract Offeror in good faith, and any other action by the owner that the Department deems in its discretion to be a bad faith effort to cause a Qualified Buyer to withdraw or terminate a

Bona Fide Qualified Contract or otherwise circumvent the Qualified Contract process.

## F. QUALIFIED CONTRACT PERIOD COMPLETION

The Owner is not required to accept any purchase offers presented through ADOH; however, if the Owner rejects or fails to respond to a Bona Fide Qualified Contract Offer at any point during the Qualified Contract Period, materially breaches, terminates, or causes the termination of a Bona Fide Qualified Contract before the sale closes, or negligently or in bad faith causes a potential buyer to withdraw a Bona Fide Qualified Contract Offer before the one-year Qualified Contract Period has ended (including if the withdrawal occurs while the Qualified Contract process is suspended), the development will remain affordable throughout the term of the LURA recorded against the property. However, if a potential buyer withdraws a Bona Fide Qualified Contract Offer due to no fault of the Owner, materially breaches a Bona Fide Qualified Contract previously presented by ADOH, or otherwise fails to perform in good faith as prescribed under an executed contract of sale, and ADOH has failed to present any other Bona Fide Qualified Contracts to purchase the property during the one-year Qualified Contract Period, the Owner will be permitted to terminate the Extended Use Period in accordance with the below – provided that the Owner has otherwise attempted to negotiate and participate in the Qualified Contract process in good faith.

If ADOH fails to present a Qualified Contract to purchase the project property by the end of the one-year Qualified Contract Period, ADOH may issue a Partial Release and Release of Declaration of Affirmative Land Use Restriction Covenants Agreement (“Partial Release”). This document terminates and releases the LURA except as required by I.R.C. § 42(h)(6)(E)(ii). If any compliance issues occur at the property in violation of I.R.C. § 42(ii), ADOH may seek specific performance or, if consistent with the terms in the LURA, delay or suspend the Partial Release until the issues are corrected. If granted a Partial Release, Owner agrees to notify the project’s tenants within 30-days of (i) the Qualified Contract’s release date, (ii) the Deregulation Period, and (iii) the provisions set forth in the release. Owner further agrees to provide copies of the notifications for the Departments records.

The execution of a Qualified Contract or passing of the one-year Qualified Contract Period shall not result in the termination of any restrictive covenant or other regulatory agreements related to a source of funding other than the LIHTC program.

## VI. REFINANCE REQUEST PROCESS

Project owners who desire to refinance their existing capital stack are required to obtain ADOH’s written approval. To request ADOH’s approval, please submit the following documents through the Asset Management Portal (<https://housing.az.gov/portals/document-upload-portals/rental-properties-asset-management-upload-portal>).

1. A cover letter providing an overview of the refinance with the targeted closing date;
2. A copy of the lender’s term sheet, commitment letter or loan documents that outline the terms and conditions of the proposed financing;
3. A copy of the 15-year Proforma;
4. A copy of the last two-years of Audited Financial Statements with a current interim financial

statement (balance sheet and income statement);

5. A copy of the preliminary title report with the contact information of the escrow and title officers;
6. A copy of the Subordination Agreement, if ADOH financing is part of the project's capital stack and is not being paid off and the proposed lender is requesting ADOH to subordinate;
7. Please download and update ADOH's Contact Sheet. (<https://housing.az.gov/sites/default/files/documents/files/ADOH-Contact-Sheet.pdf>).

ADOH may deny a request to refinance, if the Project's actual and projected financials do not support the proposed financing. ADOH's assessments evaluate the restricted rental income, vacancy, operating expenses, net operating income and its support of the proposed leverage (loan-to-costs and loan-to-value ratios) and debt service (ex. debt service coverage ratio) as set forth in the Qualified Allocation Plan and/or Notice of Availability of Funding years and lender's required covenants. Proforma/projection assumptions are based on the original underwriting and the specified growth factors outlined in the Qualified Allocation Plan under which the project was awarded tax credits.

ADOH prohibits any refinance that proposes to use a State funded project as additional collateral for securitizing any other loan or master line of credit by recording a lien against the property or pledging the property as collateral. In the event ADOH determines that a State funded project has been used as collateral for non-property related loans, the Department reserves the right to take any legal actions necessary to protect the project and the State Investment.

All refinance requests must be submitted at least 30-days prior to the anticipated closing.

#### **ADMINISTRATIVE FEE**

ADOH may invoice an Administrative Fee of \$500 to process the request. If the request requires the assignment, modification or amendment of ADOH legal documents or the review of a Subordination Agreement, an additional \$250 will be invoiced.

### **VII. HOMEOWNERSHIP CONVERSION PROCESS**

For those projects that originally applied and were allocated LIHTCs with a Homeownership Conversion Option, a property owner may convert rental units to homeownership units following the initial 15-year federal compliance period for all buildings under the LIHTC program. Existing qualifying tenants will have the right to exercise a Right of First Refusal ("ROFR") as provided for in I.R.C. §. 42(i)(7).

Owners who choose to proceed with a Homeownership Conversion Request will be required to submit the following information through the Asset Management Portal (<https://housing.az.gov/portals/document-upload-portals/rental-properties-asset-management-upload-portal>):

1. A cover letter request;

2. Confirmation that the Investor Member or Limited Partner has exited the partnership;
3. Separate legal descriptions for each unit, along with a survey and/or subdivision map;
4. A copy of the sample Purchase Agreement to be used. The minimum purchase price for a qualified tenant exercising their ROFR will be the sum of the property's outstanding debt and any taxes due upon the sale of the property as per I.R.C. § 42(i)(7)(B);
5. Evidence of tenant's income qualifications. The tenant exercising the ROFR to purchase must be a tenant of the project and demonstrate their financial ability to purchase;
6. A Relocation Plan for tenants that do not want to purchase a unit. Relocation Plans must include the process for tenants that would voluntarily relocate to a comparable unit and address tenants who desire to remain in the units through the Extended Use Period.
7. A Legal Opinion from Owner's legal counsel opining that the project as described to be sold is permitted under I.R.C. § 42; and
8. If the Project resides on Tribal Land, the Owner must include:
  - Written approval to convey/sell project units from the U.S. Department of the Interior, Bureau of Indian Affairs ("BIA").
  - A copy of the Land Lease and Building Deed.

The items listed above are considered Pre-Conversion due diligence items, which allow ADOH and Owner to review/approve the Project documentation in anticipation of a tenant purchase.

Once the Owner has a tenant or tenants prepared to exercise the ROFR, the Owner must provide the following documents for each purchaser and unit:

1. A request for the Partial Release of the LURA, as units are sold;
2. A copy of the fully executed Purchase Agreement;
3. A copy of the Title Insurance Policy;
4. A copy of the Preliminary Settlement Statement with a Certified Final Settlement Statement provided post-closing; and
5. If the Project resides on Tribal Land:
  - A copy of the fully executed Land Lease between the Tribe and Homeowner;
  - A copy of the certified TSR, once recorded with the BIA/LTRO; and
  - If the BIA requires an Environmental Assessment to be completed, a copy is to be provided for ADOH's record.

If the project has vacant units, those units must be made available for rent to income-qualified tenants, regardless of whether they want to purchase the unit. To exercise the ROFR, the purchaser must first be a tenant. Thus, tenants are subject to the initial lease requirements prior to being eligible to purchase.

## ADMINISTRATIVE FEES

ADOH may invoice a one-time Administrative Fee of \$950 for the review and setup of the Homeownership Conversion Process.

## **VIII. OTHER MATERIAL CHANGES**

For all Other Material Changes to a project caused by unforeseeable circumstances, please submit through the Asset Management Portal a written request that includes a detailed explanation of the request and any supporting documentation. Other Material Changes may include, but are not limited to, changes in amenities, a change in services, a change in the project design, a change in the need for a manager's unit, the imposition of extraordinary governmental rules or regulation, or the annexation of land for an easement.

### **ADMINISTRATIVE FEE**

ADOH may assess an Administrative Fee of \$500 to process the request.