# 

[Date]

[Full Name of Applicant]

**Re: [Name of Project] located in [City], Alabama, AHFA Project No. [Project Number]**

This letter acknowledges that Alabama Housing Finance Authority (the “Authority”) has received an application from [Full Name of Applicant] (the “Applicant” or “you”) dated [Application Date] (the “Application”) for an allocation of low-income housing tax credits (the “Credits”) and an allocation of state volume cap (the “Volume Cap”) for the issuance of tax-exempt bonds (the “Bonds”) in connection with the above-reference project or projects (whether one or more, the “Project”). Please be advised that the Authority will not take further action with respect to the Application unless and until you have executed and returned this letter to the Authority, as instructed below.

The purpose of this letter is to summarize certain requirements for allocation of the Credits and Volume Cap and for issuance of the Bonds. In summarizing these requirements, this letter will refer to the Authority’s [Plan Year] Housing Credit Qualified Allocation Plan (the “[Plan Year] QAP”) and its current Multifamily Housing Revenue Bond Policy (the “Bond Policy”), both of which can be downloaded at www.ahfa.com.

The [Plan Year] QAP, as well as applicable laws and regulations, require the Authority to provide only the resources necessary to make a project financially feasible. The Authority determines financial feasibility based on several factors, such as projected operating costs, debt service requirements and the reasonableness of overall development costs. The Authority determines reasonableness of development costs by comparing aggregate cost data based on all applications received, historical cost certifications, reported cost data for completed projects, and current cost data provided by the Authority’s third-party construction consultant reports. As a result, the Authority cannot and should not be expected to provide the full amount of funding you have requested, especially if the Project has higher-than-normal development costs. In accordance with the [Plan Year] QAP and applicable legal requirements, the Authority will allocate resources to the Project based on the lesser of the amount you requested and the amount that the Authority determines is necessary to make the Project financially feasible.

The Authority will adhere strictly to the terms of the [Plan Year] QAP. Efforts to influence the Authority’s administration of the Application through third-party lobbying efforts will have no effect and may be a considered a violation of the [Plan Year] QAP that results in termination of the application.

**This letter is merely a summary and is not intended to include all necessary information. Applicant is solely responsible for satisfying all applicable requirements for the Credits, the Volume Cap and the Bonds, and the Applicant must review the [Plan Year] QAP, the Bond Policy and the Commitment Agreement (as defined below) carefully in their entirety in order to ensure that all applicable requirements are met.**

Another purpose of this letter is to assist the Applicant in proceeding with the Project in the most efficient manner. Prioritizing and addressing requirements in the proper sequence will make the process more efficient for all parties, reduce costs and create the best opportunity for the Applicant and its development team to move forward in accordance with their desired timeline. To that end, the Authority recommends strongly that the Applicant provide a copy of this letter to all members of the development team as soon as possible.

Set forth below are the steps, in chronological order, that must be completed in order for the Authority to allocate Credits, allocate Volume Cap and issue Bonds for the Project. The Authority will not proceed from one step to the next step until the preconditions for the new step have been satisfied:

1. Execute and Return this Letter. As indicated above, the Authority will take no further action on the Application until you have executed and returned this letter to the Authority, as instructed below.
2. Complete Application. This letter does not confirm that the Application is complete. If you execute and return this letter as directed below, you will receive separate correspondence from the Authority with respect to missing and/or incomplete items in the Application. The requirements for completeness and the consequences of missing and/or incomplete items are set forth in the [Plan Year] QAP. Without limiting the foregoing, you are hereby notified that under the [Plan Year] QAP, applications with eight (8) or more missing and/or incomplete items will be terminated without further action. If you wish to pursue an Application that has been terminated for missing and/or incomplete items, you will be required to correct the missing and/or incomplete items and re-submit the Application, which will restart the application process from the beginning and reset all applicable timelines.
3. Credits. Applications for an allocation of Credits in connection with the issuance of Bonds are not required to participate in the Authority’s competitive application cycle, but such applications, including the Application for the Project, must satisfy all threshold requirements for Credits set forth in the [Plan Year] QAP. **It is imperative that the Applicant review the [Plan Year] QAP carefully in its entirety in order to ensure that all requirements for the Credits are satisfied, including without limitation the threshold requirements detailed in Section II.C thereof.**
4. Declaration of Official Intent. The Authority will not execute a declaration of official intent with respect to the Bonds unless and until the Application is deemed complete, including without limitation payment in full of the applicable application fee. *No sooner than 30 days after the Application has been deemed complete and the application fee has been paid in full,* the Executive Director of the Authority will execute a written declaration of official intent, which will serve as the Authority’s “official action” for purposes of Section 1.150-2 of the United States Treasury Regulations. This declaration will merely express the Authority’s intent, solely for federal tax purposes, to issue Bonds not in excess of a specified principal amount for the benefit of the Project. It will not obligate the Authority to issue the Bonds, will not guaranty the availability of Volume Cap for the Project, and will not establish the principal amount of Bonds that may be issued by the Authority for the Project. Each declaration of official intent will expire one year after its date, or if sooner, the date required by Section 148-6(d)(5) of the United States Treasury Regulations and its related statutes, regulations and IRS guidance.
5. Commitment Agreement*.* Following the Authority’s execution and delivery of a declaration of official intent, the Applicant must deliver a commitment agreement in form and substance satisfactory to the Authority (the “Commitment Agreement”) executed by the Applicant, by the lender and by the credit provider (if any) for the Project, as described below. The Authority will prepare and provide the form of the Commitment Agreement for the Project. The Authority’s signature is required in order for the Commitment Agreement to be effective. The Authority will not execute a Commitment Agreement with respect to the Project unless and until all of the following requirements have been met:
6. *Qualified Mortgage Lender.* Under the Authority’s enabling act (the “Act”), the Authority cannot loan Bond proceeds directly to the Applicant. Rather, the Act requires that the Bond proceeds be used to purchase a mortgage loan from a “mortgage lender”. The Act defines “mortgage lender” to include “national banking associations, banks chartered under the laws of the state, savings or building and loan associations chartered under the laws of the state or of the United States of America, Federal National Mortgage Association approved mortgage bankers and federal or state credit unions. The term shall also include other financial institutions or governmental agencies which customarily originate or service mortgage loans and mortgages.” **It is the Applicant’s responsibility to identify a qualified “mortgage lender” within the meaning of the Act that will execute the Commitment Agreement as the “lender” thereunder and will serve that role in the Bond financing.** The Authority will not execute the Commitment Agreement unless it has been executed by a qualified “mortgage lender” under the Act.
7. *Credit Provider.*If the Bonds are to be secured by a letter of credit or other form of credit enhancement, the provider of that letter of credit or credit enhancement must execute the Commitment Agreement as the “Credit Provider” described therein. **It is the Applicant’s responsibility to obtain the signature of the “credit provider” on the Commitment Agreement.** If the Bonds are to be secured by a letter of credit or other form of credit enhancement, the Authority will not execute the Commitment Agreement unless it has been executed by the “credit provider”.
8. *Commitment Fee.*The Authority will not execute the Commitment Agreement unless and until the Applicant has paid in full the commitment fee for the Project in the amount of $[Commitment Fee Amount] (the “Commitment Fee”). **No portion of the Commitment Fee may be used at closing to pay costs of issuance for the Bonds or used before closing to pay any other costs associated with the Project.** If the Bonds are issued, the Authority will refund 100% of the Commitment Fee to the Owner, **post-closing**, upon written confirmation satisfactory to the Authority that all costs of issuance incurred by the Authority have been paid, including without limitation, the fees and expenses of the Authority’s legal counsel, which may include issuer counsel, bond counsel and special tax counsel (the “Authority Expenses”). Even if the Bonds are never issued, the Applicant shall remain fully and solely responsible for paying or reimbursing the Authority for any Authority Expenses in excess of the amount of the Commitment Fee. If the Bonds have not been issued on or before the Termination Date described in the Commitment Agreement, the Authority may terminate the Commitment Agreement in accordance with its terms or may elect in its sole discretion (but shall have no obligation) to extend the Commitment Agreement, but only upon such additional terms and conditions as the Authority may require at that time in its sole discretion. The complete terms and conditions governing the Commitment Fee are set forth in the Commitment Agreement. To the extent that any conflict arises between this letter and the Commitment Agreement, the Commitment Agreement shall govern.
9. *Other Required Information.* In addition to executing the Commitment Agreement, the Applicant must complete all items of information required by the Commitment Agreement and provide all other items and information required by the Application to be delivered before execution of the Commitment Agreement. You must review the Application carefully in order to ensure that all such information has been provided to the Authority.

If a Commitment Agreement is fully executed, it will expire on a date by which Applicant has represented to the Authority that all conditions for issuance of the Bonds will have been satisfied (the “Termination Date”). The Termination Date must be satisfactory in all respects to the Authority, and in no event will the Termination Date be more than one year after the date on which the Authority executed and delivered the declaration of official intent. If the Bonds described in a Commitment Agreement are not issued on or before its Termination Date, the Commitment Agreement will expire automatically according to its terms on the Termination Date without notice or other action by the Authority or any other party.

Applicant may request an extension of the Termination Date for a period not to exceed six months, and if such request demonstrates good cause for the requested extension, the Authority may (but shall have no obligation to) extend the Termination Date for such period as it deems appropriate, not to exceed six months. Any extension will be conditioned upon (1) Applicant’s payment of an extension fee equal to one-quarter of one percent (0.25%) of the principal amount of Bonds proposed to be issued under the Commitment Agreement, and (2) the Applicant’s acceptance or satisfaction of additional terms and conditions determined by the Authority in its sole and absolute discretion.

1. Preparation of Financing Documents**.** The Authority’s legal counsel will not begin work on the Project, including preparation of financing documents, until after (a) the Commitment Agreement has been fully executed, (b) the Commitment Fee has been paid in full, and (c) you have completed, executed and delivered to the Authority the Initial Project Questionnaire attached to this letter (the “Project Questionnaire”). **Under the terms of the Commitment Agreement, the Applicant is solely responsible for payment of all legal fees incurred by the Authority’s legal counsel, regardless of whether any financing for the Project is actually completed.**
2. Requirements for Consideration of Bond Resolution. The Authority will present a resolution authorizing and approving the issuance of Bonds for the Project (a “Bond Resolution”) to the Board of Directors of the Authority (the “Board”) for consideration only upon satisfaction of the following requirements:
3. The declaration of official intent has been executed and delivered by the Authority, the Commitment Agreement has been executed and delivered by all parties thereto, and the full amount of the Commitment Fee has been received by the Authority.
4. **Not less than 30 days prior to the date of the Board meeting at which the Bond Resolution is proposed to be considered,** the applicant has submitted a duly executed Request for Bond Resolution in the form provided at www.ahfa.com with all information completed and attachments included (the “Request for Bond Resolution”). By executing and submitting a Request for Bond Resolution, the applicant will agree, among other things, to close the Bond issue for the Project within 120 days after the date of Bond Resolution. Failure to close the Bonds within 120 days after the date of a Bond Resolution will result in termination of the Commitment Agreement and expiration of any Bond Resolution and will require the Applicant to submit a new Application. The 30-day deadline referenced above is a minimum requirement, and the Authority recommends strongly that the Applicant submit a Request for Bond Resolution as soon as the Project is ready to do so in order to allow the Authority and its counsel *sufficient time in advance of the 30-day deadline* to review the Request for Bond Resolution and ensure that all required information is included and complete.
5. **Not less than 30 days prior to the date of the Board meeting at which the Bond Resolution is proposed to be considered,** the Authority has received fully executed and completed copies of firm commitments for all sources of project funding identified in the Application, as updated on the application portal at www.ahfa.com.
6. **Not less than 10 days prior to the date of the Board meeting at which the Bond Resolution is proposed to be considered,** the Authority has determined that the Applicant and the Project have satisfied all requirements contained in the [Plan Year] QAP, the Bond Policy, the Commitment Agreement and the Authority’s applicable instructions and other requirements for the issuance of Bonds, the allocation of Credits and the delivery of any other funding to be provided by the Authority. The Authority will make this determination based on the information contained in the Request for Bond Resolution and the Application, as updated on the application portal. If and to the extent the Request for Bond Resolution or the updated Application contains changes in Project information since the initial Application that require the Authority to re-underwrite the Project (or to require the Applicant to obtain an update of the Project’s subsidy layering review, where applicable) the fees and timelines specified in paragraph 13 below will apply, The 10-day deadline referenced above is a minimum requirement, and the Authority recommends strongly that the Applicant ensure that all Project information contained in the Request for Bond Resolution and the Application, as updated on the portal, is consistent and fully updated in order to allow the Authority and its counsel *sufficient time in advance of the 10-day deadline to complete its review of the foregoing requirements, including any re-underwriting and, where applicable, review of the Applicant’s updated subsidy layering review.*
7. **Not less than 10 days prior to the date of the Board meeting at which the Bond Resolution is proposed to be considered,** all financing documents proposed to be approved by the Bond Resolution are *in substantially final form*. Financing documents will be considered to be in “substantially final form” only after all parties to the financing and their counsel have acknowledged and agreed (which may be in the form of an email to the Authority’s legal counsel) that they have no further comments to the financing documents proposed for approval in the Bond Resolution, including, if applicable, the preliminary official statement for the Bonds (except for matters not necessary to deem the preliminary official statement “final” under MSRB Rule 15c2-12). The 10-day deadline referenced above is a minimum requirement, and the Authority recommends strongly that the Applicant ensure that the financing documents are prepared as soon as possible in order to allow the Authority and its legal counsel *sufficient time in advance of the 10-day deadline* to complete the process of drafting, negotiating and revising of the financing documents.
8. Applicant’s payment in full of all applicable fees and expenses due to the Authority.
9. Scheduling of Board Meetings. The Board conducts a required annual meeting in accordance with its bylaws and typically convenes only two or three additional Board meetings each year. Whether and when to schedule a Board meeting depends on the Authority’s business needs and the schedules of the Board members. **The Authority does not convene a Board meeting solely in order to consider a Bond Resolution, so it is imperative that the Applicant complete its responsibilities under the [Plan Year] QAP, the Bond Policy, the Commitment Agreement and any other source of funding to be provided by the Authority as soon as possible in order to ensure that the Bond Resolution for the Project is eligible for consideration at the next Board meeting, when scheduled.**
10. Pre-Closing and Closing Dates. The Authority will not schedule dates for pre-closing and closing of the Bonds for the Project until all of the following conditions have been satisfied:
11. The Board has adopted a Bond Resolution with respect to the Bonds, or alternatively, the Applicant has satisfied all requirements for consideration of a Bond Resolution at the next meeting of the Board, and
12. The Authority has confirmed or is satisfied that (1) all parties and their counsel have acknowledged and agreed (which may be in the form of an email to the Authority’s legal counsel) that all financing documents have been finalized and are ready to be executed, except changes dependent on final pricing of the Bonds, (2) all other conditions for the issuance of the Bonds are reasonably certain to be satisfied on or before the Closing Deadline established in the Bond Resolution (or that would be established if the Bond Resolution is adopted at the next scheduled Board meeting); (3) the Applicant has made satisfactory arrangements for execution of the financing documents by all parties other than the Authority, and (4) the Authority’s executing officers are available on or before the pre-closing date to execute and deliver the financing documents to which the Authority is a party.

When the Project has received a pre-closing and a closing date from the Authority, the Project will be considered ‘Prepared to Close”.

1. Volume Cap. The Authority will not allocate Volume Cap for the Project until it is Prepared to Close. **The Authority urges the Applicant to ensure that the Project is Prepared to Close as soon as possible; any delay increases the risk that the Authority’s Volume Cap will be depleted by other projects that are Prepared to Close before the Project.**
2. Pre-Closing. The purpose of the pre-closing for the Bonds will be to execute and deliver all financing documents and to coordinate the recording process for mortgages, UCC-1 financing statements and other security instruments, as applicable. Pre-closings generally take place in person at the Authority’s offices in Montgomery, Alabama. The Applicant, the bond trustee, and the Authority should have duly authorized signatories available to attend the pre-closing in person. **Late changes to a project’s sources and uses and construction budget are among the most common reasons for delay in scheduling pre-closings. Any such change may require the Authority to re-underwrite the Project for financial feasibility and for the proper amount of Volume Cap and Credits that can be awarded. Any such changes may also affect the Project’s subsidy layering review. In order to minimize or avoid unnecessary delay, the Applicant is strongly encouraged to keep the Authority completely up to date on all actual or expected changes in the plan of finance in accordance with the procedure described in paragraph 13 below.**
3. Closing. The closing will occur on the date on which the initial purchaser pays the purchase price for the Bonds. The closing will take place on a date satisfactory to the parties, including the Authority, but will not be sooner than the first business day after the day of the pre-closing.
4. Changes. If the Authority determines that changes in the Project information after the initial Application require the Authority to re-underwrite the Project or to require the Applicant to obtain an update of the Project’s subsidy layering review, the Authority will charge additional fees and require minimum times for completion as posted at www.ahfa.com. As of the date of this letter, subject to change at www.ahfa.com without notice, a re-underwriting of the Project due to changes in the Project information will require payment of the fee shown in the Approved and Funded Transaction Fee Requirements and a minimum time for completion of two weeks after the Authority determines that re-underwriting is required and has received all information necessary to proceed with re-underwriting, including without limitation receipt of an updated subsidy layering review from HUD or other approved provider, where applicable.

Again, this letter serves only to summarize certain material terms relating to the Credits, the Volume Cap and the Bonds requested for the Project. **Applicant is solely responsible for satisfying all applicable requirements for the Credits, the Volume Cap, the Bonds and any other sources of funding to be provided by the Authority, and the Applicant must review the [Plan Year] QAP, the Bond Policy, the Commitment Agreement and the requirements for any other sources of funding to be provided by the Authority carefully in their entirety in order to ensure that all applicable requirements are met.**

As a condition to completing its review of the Application, providing guidance concerning missing and/or incomplete items (if any), determining whether the Application is complete, and moving forward with any additional steps in this financing, the Authority requires that the Applicant execute this letter below and return a fully executed photocopy to me by scanned email at chert@ahfa.com or by facsimile at (334) 244-9200. **In addition, you are reminded that the Authority’s legal counsel will not begin work on the draft financing documents unless and until you have signed a Commitment Agreement, paid the Commitment Fee in full, and completed, signed and delivered to the Authority the attached Initial Project Questionnaire in accordance with this letter.**

Sincerely,

Chris Hert

Multifamily Manager

REVIEWED AND ACCEPTED:

By executing this letter below, the Applicant confirms and agrees that (a) it has reviewed the foregoing letter; (b) there have been no changes in the information contained in the Application, including without limitation the ownership structure of the Owner or the identified members of the development team; (c) the Applicant bears sole responsibility for meeting the requirements applicable to the Credits, the Volume Cap and the Bonds; and (d) Applicant will undertake careful review of the [Plan Year] QAP, the Bond Policy and the Commitment Agreement in their entirety in order to ensure that the Applicant (1) understands and satisfies all applicable requirements and (2) communicates all such requirements to its development team for the Project on a timely basis.

***[INSERT APPLICANT’S SIGNATURE BLOCK HERE]***

**INITIAL PROJECT QUESTIONNAIRE**

This Initial Project Questionnaire is prepared, certified and submitted by [Full Name of Applicant] (the “Applicant”) to the Alabama Housing Finance Authority (the “Authority”) as Exhibit A to that certain letter dated [Date] from the Authority to the Applicant with respect to [Name of Project]:

1. Is the Applicant (i.e., the project owner at closing) be a limited partnership with a general partner and a limited partner OR a limited liability company with a managing member and an investor member?
2. Provide for the financing documents the name, state of organization, and notice address for each of the three relevant entities (such as Applicant; General Partner/Managing Member; and Limited Partner/Investment Member):

|  |  |
| --- | --- |
| Applicant | General Partner/Managing Member |
| Name:  State of Formation:  Address:      Name of Contact: | Name:  State of Formation:  Address:      Name of Contact: |
| Limited Partner/Investment Member | Other Relevant Partner/Member |
| Name:  State of Formation:  Address:      Name of Contact: | Name:  State of Formation:  Address:      Name of Contact: |

1. In space below, provide the complete signature block for the Applicant as it should appear in legal documents (please confirm spelling, commas, spacing, etc. of the formal corporate name of the Applicant):
2. Provide the federal tax ID # of the Applicant: .
3. Provide a projected timeline for issuing the Bonds based on the following projected milestones:

|  |  |  |
| --- | --- | --- |
|  | Event | Projected Completion Date |
| (a) | Completed Application |  |
| (b) | Declaration of Official Intent1 |  |
| (c) | Execution of Fully Executed  Commitment Agreement |  |
| (d) | Payment of Commitment Fee |  |
| (e) | Financing Documents are deemed “Substantially Final” |  |
| (f) | Project ready for Bond Resolution to be considered *at next scheduled Board meeting*2 |  |
| (g) | Project Ready for *Initial Discussion*  *of Proposed* Date for Pre-Closing3 |  |
| 1 Not less than 30 days after date on which Application is deemed complete.  2 The date of Board meeting will be set by the Authority in its sole discretion. A Bond Resolution will not be considered at a Board meeting unless, not less than 30 days earlier, the Declaration of Official Intent was completed, the Commitment Agreement was fully executed, and the Commitment Fee was paid in full, and not less than 10 days earlier, financing documents were deemed “substantially final” . The 10-day and 30-day deadlines referenced in this footnote are minimums, and the Authority recommends strongly that the Applicant complete all of these items as soon as possible so that the Project can be considered for inclusion in the agenda for the next Board meeting, when scheduled.  3 Pre-Closing date will not be discussed until Bond Resolution has been adopted (or at minimum the Authority has set the date of the Board Meeting at which the Bond Resolution will be considered) and the parties and their counsel have agreed that they have no further comments to the financing documents and that all financing documents are ready for execution. | | |

1. Provide the name of the general contractor and its state of organization:
2. Provide the name of the architect and its state of organization.
3. Confirm that none of the contractor, the architect or the seller of any property to be financed by proceeds of the Bond, nor any other party receiving bond proceeds, is a related party to the Applicant (i.e., the Applicant or its partners or members).
4. Is there a HUD loan and, if so, will it be made under Section 221(d)(4) or Section 223(f)?
5. Is the project new construction or acquisition-rehabilitation?
6. Please provide the total number of units and the number of buildings in the project. Please distinguish between total buildings and residential buildings:
7. Please confirm the proper name of the project. Has the project recently been known by any other name? If so, provide recent name as well.
8. Please provide the address of the project (and include the county). For purposes of the “TEFRA” public hearing, the address must be exactly correct – no errors.

The undersigned hereby certifies on behalf of the Applicant that as of the date below the information provided in this Initial Project Questionnaire is true, correct and complete to the best of the Applicant’s knowledge.

Date:

***[INSERT APPLICANT’S SIGNATURE BLOCK HERE]***