

**COLORADO HOUSING AND FINANCE AUTHORITY LIHTC SITE CONTROL INSTRUCTIONS
EFFECTIVE JANUARY 2020**

The Applicant must provide one of the following forms of site control for all parcels of land and buildings constituting the project. Projects consisting of multiple sites must satisfy site control requirements for all sites.

Please note: Wherever "Applicant" is used, it shall refer to the Applicant, as defined in the QAP or an affiliate of the Applicant that will Control the Owner (as those terms are defined in the QAP).

*****An organizational chart will be required if the Applicant is not the ultimate Owner to confirm the Applicant meets the definition above.***

1. **Ownership by Applicant.** A fee simple interest in the site in the name of the Applicant.
 - a. The fee simple interest can be demonstrated by either a recorded deed vesting ownership in the Applicant listed or a current title commitment or policy that identifies the Applicant as the current owner of the real property. Deeds of trust or developer agreements do not constitute site control.
2. **Binding Agreement between the Applicant and a Third Party.** If the Applicant is not the current owner of the property, the Applicant must provide a fully executed, binding agreement that meets the following requirements:
 - a. The agreement must provide the Applicant with the ability to extend the termination date if an award is made; and
 - b. The documents must be executed by all parties to the agreement; and
 - c. The agreement must be in the name of the Applicant; and
 - d. If the agreement is not signed by the eventual tax credit entity, the agreement must be assignable to the eventual tax credit partnership without the consent of the counterparty to the agreement; and
 - e. The term must extend through the announcement of the tax credit award and provide the Applicant with the ability to extend the agreement if the Applicant receives an allocation of tax credits. All extensions of such instruments must be included at the time of application, so that it can be determined that such instruments are still in effect and have not expired at the time of submittal; and
 - f. The agreement must be in the form of one of the following agreements:
 - i. **Purchase Agreement** that meets the following requirements:
 1. Evidence acceptable to the Authority that the seller is the current fee simple owner of the site(s).
 2. The contract must unconditionally confer on the Applicant the right to purchase the real property within an agreed upon term at a named price.
 3. The contract must be binding on the seller of the property (i.e., there must be no conditions for termination within the sole discretion or control of the seller and the contract must provide that the seller cannot unilaterally withdraw, revoke or rescind the obligation to sell the real property to the Applicant unless the Applicant is in default under the agreement).
 4. The agreement must provide specific performance as the Applicant's remedy in the event of the seller's default.
 5. Note: A contract containing a right for the seller to continue to market the property, even if the Applicant has a right of first refusal, does not constitute the requisite site control.
 6. Although not required to meet threshold site control, the agreement should describe to what extent the real property has been environmentally reviewed and the impact of that review on the project's readiness to proceed.
 - ii. **Lease Agreement** that meets the following requirements:
 1. Evidence acceptable to the Authority that the lessor is the current fee simple owner of the site(s).
 2. The lease must unconditionally bind the owner of the property to lease it to the Applicant (or successor), subject to payment of a named rent and compliance by the Applicant.

3. The lease must contain standard commercial terms and have an initial term of at least 35 years from the application deadline.
 4. The lease must allow the Applicant to record the restrictive covenants (as contained in the land use restriction agreement) on the land and all improvements that is binding on the lessor and any successor in interest to the lessor.
 5. The lease must contain a provision acknowledging residential tenants may not be evicted without cause and their gross rent cannot be raised during the three year period after termination of the land use restriction agreement by foreclosure or deed in lieu thereof,
 6. Although not required to meet threshold site control, the lease should describe to what extent the real property has been environmentally reviewed and the impact of that review on the project's readiness to proceed.
- iii. **Donation Agreement** that meets the following requirements:
1. Evidence acceptable to the Authority that the donor is the current fee simple owner of the site(s).
 2. The donation agreement must unconditionally bind the owner of the property to donate it to the Applicant (or successor), subject to the Applicant meeting conditions that are within the Applicant's control.
- iv. **Purchase Option Agreement** that meets the following requirements:
1. Evidence acceptable to the Authority that the party granting the purchase option is the current fee simple owner of the site(s).
 2. The agreement must bind the optionor to sell the property within a specific date range at a specific price if the Applicant (or applicant's successor) exercises the option to buy in the manner described in the agreement.
 3. The option agreement must be secured by an option payment, which must be paid at the time of application. The Applicant must provide evidence of such payment if it is in excess of \$100.
 4. The option period must end no sooner than six (6) months after the application deadline. If extension fees or option payments are required to be paid to meet this requirement, the Applicant must provide evidence that the extension fees have been paid in full.
 5. Although not required to meet threshold site control, the option agreement should describe to what extent the real property has been or can be environmentally reviewed during the option period and the impact of that review on the project's readiness to proceed.
- v. **Option to Lease Agreement**
1. Evidence acceptable to the Authority that the party granting the lease option is the current fee simple owner of the site(s).
 2. The agreement must bind the optionor to lease the property within a specific date range at a specific price if the Applicant (or applicant's successor) exercises the option to lease in the manner described in the agreement.
 3. The option agreement must be secured by an option payment, which must be paid at the time of application. The Applicant must provide evidence of such payment if it is in excess of \$100.
 4. The agreement must provide the following terms, which will be incorporated into the lease:
 - a. The proposed lease term, which must be no less than 35 years
 - b. The proposed rental payment
 - c. Acknowledgement that the Applicant will record the restrictive covenants (as contained in the land use restriction agreement) on the land and all improvements that is binding on the to be lessor and any successor in interest to the lessor.
 - d. Acknowledgement of the three year period after termination of the land use restriction agreement by foreclosure or deed in lieu thereof during which residential tenants may not be evicted without cause and their gross rent cannot be raised.
 5. The option period must end no sooner than six (6) months after the application deadline. If extension fees or option payments are required to be paid, evidence that the extensions have been paid in full must be provided through the applicable date noted

above. The option agreement cannot be subject to extension fees in order for the agreement to reach required option period expiration date.

6. Although not required to meet threshold site control, the option agreement should describe to what extent the real property has been or can be environmentally reviewed during the option period and the impact of that review on the project's readiness to proceed.
 - vi. If the Applicant has an agreement that cannot be classified as an agreement set forth above, the Applicant may contact the Authority to see if such agreement will meet site control. However, for competitive rounds the deadline to contact the Authority to solicit feedback is two weeks prior to the application deadline and any feedback provided by the Authority should not be construed as an approval of the site control documents prior to the deadline. ***Additionally, a letter of intent is not evidence of site control and indicates a lack of readiness to proceed.***
3. ***Evidence of Current Owner Site Control.*** Only the following are considered acceptable evidence of the current owner's site control, as required in the agreements listed above:
 - a. A recorded warranty deed with the seller/lessor/donor/optionor listed as grantee or
 - b. A current title commitment or policy that identifies the seller/lessor/donor/optionor as the current owner of the real property. Deeds of trust or developer agreements do not constitute site control.

Special Situations Involving Governmental Entities. Where the Applicant cannot provide an agreement that meets the requirements above because the current owner of the real property is a municipality or other public body that must give final approval of the project by its board or by the public in an election as a result of its governing rules or ordinances, the Applicant must provide (1) information to the Authority as to the timing of these final approvals; (2) a letter from the public body's attorney, designating the Applicant as the selected developer and stating the terms of the sale/transfer of the property; (3) evidence of site ownership by the public body; and (4) a copy of the resolution of the public body approving the transfer of the property that outlines any conditions to such approval. Although a project will meet threshold site control if it meets these requirements, the project may have issues with readiness to proceed.

Special Situations Involving Federal Funds. If the project is receiving Federal Funds for the purchase, and the Purchase Agreement contains voluntary, arms' length transaction language to satisfy the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), the Applicant may need to provide additional documentation and/or contract amendments to support the binding nature of the agreement.