

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
Lexington Division**

<b>IN RE:</b>	:	
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<b>CREEKSIDE SENIOR APARTMENTS, LP</b>	:	<b>Chapter 11</b>
<b><i>et al.</i></b>	:	<b>Case No. 10-53019</b>
	:	<b>Judge Tracey N. Wise</b>
	:	
<b>Debtors</b>	:	
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**ORDER SETTING MARKET VALUE OF  
DEBTORS' LOW-INCOME HOUSING TAX CREDIT PROPERTIES**

This matter came before the Court on the motion ("Valuation Motion") [Doc. 164] of the Debtors<sup>1</sup> and General Partners<sup>2</sup> requesting a valuation hearing pursuant to 11 U.S.C. § 506(a)(1) and Federal Rule of Bankruptcy Procedure 3012. The valuation determined below is the fair market value of each Debtor's real estate securing the debt owed by each Debtor to the Bank of America (the "Bank") for use in connection with the plan, disclosure statement and confirmation process. An evidentiary hearing was held on August 18, 2011 ("Valuation Hearing"). As a result of the unique procedural posture of this case (including a pending appeal by the Debtors and their General Partners), the Court sets forth the nature of the parties' dispute, the jurisdictional basis for rendering this decision, the law governing the valuation, its analysis of the evidence presented at the Valuation Hearing and finally, its conclusions as to the fair market value of each Debtor's real estate which includes the impact of the Remaining Tax Credits (defined

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<sup>1</sup>The Debtors are: Creekside Senior Apartments, Limited Partnership ("Creekside"); Pennyrile Senior Apartments, Limited Partnership ("Pennyrile"); Nicholasville Greens, Limited Partnership ("Nicholasville Greens"); Franklin Place Senior Apartments, Limited Partnership ("Franklin Place"); and Park Row Senior Apartments, Limited Partnership ("Park Row").

<sup>2</sup> The Debtors' General Partners are: Alliant Holdings of Creekside, LLC, Alliant Holdings of Pennyrile, LLC, Alliant Holdings of Nicholasville Greens, LLC, Alliant Holdings of Franklin Place, LLC, and Alliant Holdings of Park Row, LLC. The Debtors and General Partners are referred to collectively as the "Debtors."

below) on the subject properties. The following constitutes the Court's findings of fact and conclusions of law.

### INTRODUCTORY FINDINGS

Between September 22, 2010 and October 22, 2010, the Debtors filed their Chapter 11 petitions for bankruptcy under Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* ("Bankruptcy Code"). These cases are Single Asset Real Estate matters under § 101(51B) of the Bankruptcy Code, and are being jointly administered. Each Debtor is a limited liability company that owns a parcel of real property on which is located a low-income housing apartment complex referred to as low-income housing tax credit properties or "LIHTC Properties." Of the five Debtors, only Park Row's complex contains commercial units as well as residential units. The apartment complex belonging to each Debtor is as follows:

Debtor	LIHTC Property
Creekside	Creekside Senior Apartments
Franklin Place	Franklin Place Senior Apartments
Nicholasville Greens	Nicholasville Greens Townhomes
Pennyrile	Pennyrile Senior Apartments
Park Row	Park Row Senior Apartments

Each Debtor has entered into a land use restriction agreement ("LURA") with the Kentucky Housing Corporation ("KHC") by which their respective LIHTC Properties became subject to the rent restrictions described below. It is important to note that the LURAs were entered into by the Debtor entity as "Owner" of the LIHTC Properties and not the individual limited partners of the Debtor entity. As an incentive to restrict their real property to low-income tenants, LIHTC Property owners, such as the Debtors, receive federal tax credits ("Tax Credits") during the first 10 years after an LIHTC Property is put into service. See Title 26 of the United States Code § 42 ("Internal Revenue Code").

In general, LIHTC Properties are housing developments that (i) have rent restrictions or ceilings on the amount of rent that the property owner can charge its tenants, and (ii) the property owner agrees to reserve a certain percentage of the units on the LIHTC Property for rent to low

income tenants.<sup>3</sup> The LURAs entered into by the Debtors provide that the rent restrictions are in effect for an initial 15-year compliance period (“Initial Compliance Period”) and then an additional 15-year extended period. Of substantial importance is that, with limited exceptions,<sup>4</sup> Debtors covenant and agree that the rent restrictions run with the land for the 30-year period. Any subsequent purchaser takes ownership of the LIHTC Property subject to the rental restrictions for the remaining period of time those restrictions are in effect. The LURAs between the Debtors and the KHC provide in Section 3 thereof:

(j) Subject to the requirements of Section 42 of the [Internal Revenue] Code and this Agreement, Owner may sell, transfer or exchange the entire Project at any time, but Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and the requirements of Section 42 of the Code and applicable regulations and the KHC Occupancy Restrictions. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project. KHC may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

(k) Owner will notify KHC in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

(Doc. 204 & Bank’s Ex. 1, Add. Ex. C, at 3).

Although any purchaser within the 30-year time period is subject to the rent restrictions, such purchaser also receives the benefit of any Tax Credits that have not been utilized

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<sup>3</sup> For instance, in the LURA entered into between Creekside and KHC, Creekside “has represented to KHC in Owner’s [Creekside’s] Application of Low Income Housing Tax Credit ... that Owner [Creekside] shall lease ninety-five percent (95%) of the units in the Project to individuals or families whose income is sixty percent (60%) or less of the area median gross income.” (Doc. 204 & Bank’s Ex. 1, Add. Ex. C, at 1). The LURAs contain additional restrictions such as each unit must contain complete facilities for living, sleeping, eating, cooking and sanitation and must be maintained in a suitable condition for occupancy. (Doc. 204 & Bank’s Ex. 1, Add. Ex. C, at 3).

<sup>4</sup> Those exceptions are “in the case of foreclosure or deed in lieu of foreclosure or when an eligible tenant exercises a Right of First Refusal under a program established by the Owner to provide home ownership opportunities.” (Doc. 204 & Bank’s Ex. 1, Add. Ex. C, at 4). Neither of the parties presented evidence that any of the Debtors’ LIHTC Properties was subject to such a Right of First Refusal program.

("Remaining Tax Credits"). With respect to the acquisition of the LIHTC Property before the end of the Initial Compliance Period, the Internal Revenue Code provides that:

[T]he credit allowable ... to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable ... for such period to the prior owner ... had such owner not disposed of the building.

Internal Revenue Code § 42(d)(7)(A)(ii). See also Internal Revenue Code § 42(f)(4) (providing that if an LIHTC Property is disposed of during any year for which tax credits are allowable, then such tax credits shall be allocated between the parties on the basis of the number of days during such tax year the LIHTC Property was held by each); Kenneth N. Alford & David C. Wellsandt, *Appraising Low-Income Housing Tax Credit Real Estate*, 10/1/10 APPRAISAL J. 350 (Oct. 1, 2010) ("The tax credits are not transferrable; they flow exclusively to the property owner on the basis of the ownership of the eligible LIHTC real property.") (citing Internal Revenue Code § 42(f)(4)). Debtors' LIHTC Properties were placed into service in 2004 or 2005. Therefore, there are 4 to 5 years of Remaining Tax Credits and 24 to 25 years remaining on the rent restrictions.

It is uncontroverted that the Bank holds a first mortgage on each Debtor's LIHTC Property. The Bank is a party to the LURAs between the Debtors and KHC for the limited purpose of subordinating the Bank's debt to the restrictions contained in the LURAs.

### **PROCEDURAL BACKGROUND**

A major point of contention between the Bank and the Debtors has been whether the value of the Remaining Tax Credits is relevant to the value of the Debtors' LIHTC Properties. Prior to the Valuation Hearing, the Debtors filed (i) an Objection to the Valuation of Tax Credits in Bank of America's Appraisals ("Objection") [Doc. 214] and (ii) a Motion *In Limine* to Exclude Portions of the Expert Reports, Affidavit, and Related Testimony of David A. Donan Regarding Asserted Value of Tax Credits ("Motion *in Limine*") [Doc. 215]. In their Objection and Motion *in Limine*, the Debtors argued that the Court should exclude portions of the Bank's Appraisals, affidavit, and related testimony that relate to the value of the Remaining Tax Credits ("Tax Credit Evidence"). Debtors argued that the Tax Credit Evidence is (i) irrelevant and will not assist the

trier of fact, and (ii) not based on sufficient facts or data and are not the product of reliable principles and methods.

On August 15, 2011, after consideration of the Objection and the Motion *in Limine*, the responses of the Bank thereto [Doc. 220, 228 & 229], and the reply of Debtors [Doc. 234], an Order Overruling Objection and Motion *in Limine* (the "Order on Tax Credit Evidence") [Doc. 235] was entered finding that (i) the Tax Credit Evidence is relevant to the value of the Bank's collateral, the LIHTC Properties, securing it claims, (ii) the Tax Credit Evidence is reliable and, therefore, admissible, and (iii) the Court would give the Tax Credit Evidence the weight to which it was entitled at the Valuation Hearing.

At the beginning of the Valuation Hearing, counsel for the Bank moved to limit Debtors' cross-examination of the Bank's Appraiser to those portions of the Bank's Appraisals that did not relate to the Tax Credit Evidence. Bank counsel argued that because the Court had ruled that the Tax Credit Evidence was admissible and the Debtors' Appraisals ignored the impact of the Remaining Tax Credits on the market value of the Debtors' LIHTC Properties, the only evidence before the Court as to the impact of the Remaining Tax Credits was that provided by the Bank. Since the Debtors' Appraisals did not include any analysis of the Remaining Tax Credits, the Bank argued that the Debtors should not now be allowed the opportunity to "poke holes" in the Bank's Tax Credit Evidence. The Bank's apparent interpretation of the Order on Tax Credit Evidence was that the Court's ruling found that the Banks' Appraisals established the impact of the Remaining Tax Credits on the value of the LIHTC Properties. The Order on Tax Credit Evidence did not go so far.

It was not incumbent upon the Debtors to address the impact of the Remaining Tax Credits in their direct testimony.<sup>5</sup> The Debtors indicated in their witness list that they might call rebuttal witnesses. In *Toth v. Grand Trunk Railroad*, the Sixth Circuit stated:

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<sup>5</sup> The direct testimony of both appraisers was submitted by affidavits to the Court and opposing counsel prior to the Valuation Hearing.

We review the district court's decisions regarding the order of proof and scope of rebuttal testimony for abuse of discretion. We have recognized that the district judge has the discretion to limit the scope of rebuttal testimony to that which is directed to rebut new evidence or new theories proffered in the defendant's case-in-chief. Evidence or theories offered by the defendant are "new" for rebuttal purposes if, under all the facts and circumstances, the evidence was not fairly and adequately presented to the trier of fact before the defendant's case-in-chief. The district court's discretion to exclude proffered rebuttal testimony is not unlimited. Where the evidence is real rebuttal evidence, the fact that it might have been offered in chief does not preclude its admission in rebuttal. Furthermore, with respect to "real rebuttal evidence," the plaintiff has no duty to anticipate or to negate a defense theory in plaintiff's case-in-chief.

*Toth v. Grand Trunk R.R.*, 306 F.3d 335, 345 (6th Cir. 2002) (internal quotations and citations omitted). In another case, the Sixth Circuit found that although rebuttal evidence presented by the plaintiff was not "new" since the parties knew of its existence prior to trial, it was new for rebuttal purposes. *Benedict v. United States*, 822 F.2d 1426, 1429 (6th Cir. 1987). "Under the law of this Circuit the [Debtors have] no duty to anticipate [the Bank's] argument or to negate in [their] own case-in-chief a theory that would later be raised by [the Bank]." *Id.* at 1429-30.

Given the above case law, Debtors were not required to address in their case-in-chief the issue of how the Remaining Tax Credits impact the value of the Debtors' LIHTC Properties. This is so even though Debtors were aware that it would be a component of the Bank's valuation testimony. Under Sixth Circuit precedent, Debtors were permitted to present testimony to refute the Bank's anticipated testimony regarding the Remaining Tax Credits in Debtors' rebuttal. Accordingly, the Court refused to limit the Debtors' and General Partners'<sup>6</sup> cross-examination of the Bank's witness.

On August 29, 2011, following the Valuation Hearing, but prior to the entry of this Order, the Debtors and their General Partners filed a Notice of Appeal [Doc. 246] and a Motion for Leave to Appeal [Doc. 247] the Order on Tax Credit Evidence.

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<sup>6</sup> No one has questioned the standing of the General Partners to participate in the valuation process; and at this point in these bankruptcy cases, the interests of the Debtors and General Partners may be aligned. However, those interests may well diverge at some point, particularly as regards any disposition of the subject properties given the fiduciary duties of the Debtors-in-Possession to their creditors.

## JURISDICTION

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B); however, as a result of the Debtors' and General Partners' attempt to appeal the Order on Tax Credit Evidence, the Court must determine whether it has lost jurisdiction to enter an order determining the value of the Bank's collateral. See *In re McBride*, 203 B.R. 633, 635 (Bankr. S.D. Ohio 1996). As reviewed by that court:

It is true that normally, when an appeal is instituted, the lower court is divested of jurisdiction on matters related to that appeal. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L. Ed. 2d 225 (1982).

This transfer of jurisdiction from the district court to the court of appeals is not effected, however, if a litigant files a notice of appeal from an unappealable order. *Griggs*, 459 U.S. at 58, 103 S. Ct. at 402 (citing *Ruby v. Secretary of the Navy*, 365 F.2d 385, 389 (9th Cir. 1966) ( *en banc* ), *cert. denied*, 386 U.S. 1011, 87 S. Ct. 1358, 18 L. Ed. 2d 442 (1967)); *Cochran v. Birkel*, 651 F.2d 1219, 1222 (6th Cir. 1981), *cert. denied*, 454 U.S. 1152, 102 S. Ct. 1020, 71 L. Ed. 2d 307 (1982) ("We are persuaded that filing a notice of appeal from a nonappealable order should not divest the district court of jurisdiction and that the reasoning of the cases that so hold is sound.").

Lower courts, in order to determine if they have lost jurisdiction, are therefore compelled to make a preliminary determination of what orders may be nonappealable. If the lower court were required to wait for an appellate court's determination, the result would defeat the holding of *Griggs* and *Cochran* by effecting a *de facto* divestiture of jurisdiction for both appealable and nonappealable orders.

This is consistent with the power of district courts to stay bankruptcy court proceedings under Fed. R. Bankr. P. 8005. See, e.g., *In re Dilley*, 125 B.R. 189 (Bankr. N.D. Ohio 1991) ("If the District Court views this matter differently, it has the authority under Rule 8005 to instruct this Court appropriately. If it does not, the Court's present order may prevent the Debtor from securing additional delay on the flimsiest of pretexts."); *In re Odom Enterprises, Inc.*, 22 B.R. 785, 789 (Bankr. E.D. Ark. 1982) ("[E]ven if it is an appealable order, the mere taking of a notice of appeal does not, without the granting of a stay pursuant to [Rule 8005] of the Rules of Bankruptcy Procedure, have any effect on the operation of the order appealed from.").

*In re McBride*, 203 B.R. at 634-35. The Court "retains jurisdiction to act in three discreet circumstances: (1) when a matter is not related to the issues involved in the appeal; (2) when the

order appealed is not appealable or is clearly frivolous; and (3) when a [lower] court's action would aid in the appeal.” *Id.* at 635.

The Order on Tax Credit Evidence was entered in response to the Objection and Motion *in Limine* regarding admission and relevance of evidence at a valuation hearing. The Debtors state in the Notice of Appeal that they appeal the Order on Tax Credit Evidence “specifically as the Order pertains to and overrules the *Objection of Debtors And General Partners To the Valuation Of Tax Credits In Bank Of America’s Appraisals* (as “Corrected,” Docket No. 218).” (Notice of Appeal at 1 [Doc. 246]). Debtors did not appeal the Motion *in Limine*. The Court is unsure as to the reason for limiting the appeal to the Objection since the basic gist of both the Objection and the Motion *in Limine* was to seek to prevent the introduction of evidence as to the value or impact of the Remaining Tax Credits at the Valuation Hearing. In any event, Debtors acknowledge that while the Objection is “styled as an Objection in accordance with the Court’s scheduling order, it is essentially a motion in limine.” (Objection at 1, n.3 [Doc. 215]).

A trial court's ruling on a motion in limine is not a final ruling on the admissibility of the evidence in question, but is only interlocutory, tentative, or preliminary in nature. . . . A motion in limine is advisory, and a denial of such motion cannot in and of itself constitute reversible error. Accordingly, the ruling on a motion in limine is not immediately appealable, and any claimed error based on the denial of the motion and subsequent admission of the evidence must be predicated on a renewal of the motion during the trial, giving the trial court an opportunity to rule on the admissibility of the evidence, and on timely and proper objection when the evidence is offered at trial.

75 AM. JUR. 2D *Trial* § 55 (2011). It is clear that the ruling on Debtors’ Objection, which Debtors agree is more in the nature of a motion in limine, is not a final, appealable order. Therefore, this Court has not been divested of jurisdiction to enter this Order.

#### **LAW RELATING TO THE VALUATION HEARING**

Debtors brought the Valuation Motion under § 506(a)(1) of the Bankruptcy Code<sup>7</sup> and Federal Rule of Bankruptcy Procedure 3012.<sup>8</sup> “In order to determine the value of a secured

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<sup>7</sup> 11 U.S.C. § 506(a)(1) provides:

claim, the court must determine the value of the collateral securing the claim.” 9 ALAN N. RESNICK & HENRY J. SOMMER, *Collier on Bankruptcy* ¶ 3012.01 (16th ed. 2011). The Supreme Court in *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 117 S. Ct. 1879, 138 L. Ed. 2d 148 (1997) held that the “replacement value” was the appropriate standard for valuing property when the debtor proposes to retain the property. *Id.* at 965, n.6. The Supreme Court defined “replacement value” as “the price a willing buyer in the debtor’s trade, business, or situation would pay a willing seller to obtain property of like age and condition.” *Id.* at 959, n.2. “In valuing real property in light of the *Rash* decision, one court noted: ‘the appropriate measure of value is what it would cost the debtor to purchase this, or like, property. In other words, ‘value’ means fair market value without any reduction for the cost of sale.’” *Five Star Roofing, Inc. v. Glover*, Bankr. No. 03-74415, Adv. No. 05-7052, 2006 WL 2130649, at \*1 (Bankr. E.D. Okla. June 28, 2006) (citing *In re Pepper*, 210 B.R. 480, 486 (Bankr. D. Colo. 1997)). Fair market value is not easily determined. As the bankruptcy court in *In re Smith* discussed,

“Valuation outside the actual market place is inherently inexact.” *Rushton v. Commissioner*, 498 F.2d 88, 95 (5th Cir. 1974). See also *Boyle v. Wells (In re Gustav Schaefer Co.)*, 103 F.2d 237, 242 (6th Cir.), *cert. denied*, 308 U.S. 579, 60 S. Ct. 96, 84 L. Ed. 485 (1939) (“The valuation of property is an inexact science and whatever method is used will only be an approximation and variance of opinion by two individuals does not establish a mistake in either.”); *In re Montgomery Court Apartments of Ingham County, Ltd.*, 141 B.R. 324, 337 (Bankr. S.D. Ohio 1992) (“Valuations of real property, like projections of income and expenses, are inherently imprecise. Opinions realistically may differ, depending upon the method of valuation used and the nature of assumptions adopted.”); *In re Jones*, 5 B.R. 736, 738 (Bankr. E.D. Va.1980) (“True value is an elusive

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An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

<sup>8</sup> “The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.” FED. R. BANKR. P. 3012.

Pimpernel.”). Because the valuation process often involves the analysis of conflicting appraisal testimony, a court must necessarily assign weight to the opinion testimony received based on its view of the qualifications and credibility of the parties' expert witnesses. See *In re Coates*, 180 B.R. 110, 112 (Bankr. D.S.C. 1995) (“The valuation process is not an exact science, and the court must allocate varying degrees of weight depending upon the court's opinion of the credibility of ... [the appraisal] evidence.”).

In weighing conflicting appraisal testimony, courts generally evaluate a number of factors, including the following enumerated by Chief Judge Waldron in *Buckland v. Household Realty Corp. (In re Buckland)*, 123 B.R. 573, 578 (Bankr. S.D. Ohio 1991): “the appraiser's education, training, experience, familiarity with the subject of the appraisal, manner of conducting the appraisal, testimony on direct examination, testimony on cross-examination, and overall ability to substantiate the basis for the valuation presented.” A bankruptcy court is not bound to accept the values contained in the parties' appraisals; rather, it may form its own opinion of the value of the subject property after considering the appraisals and expert testimony. See, e.g., *In re Abruzzo*, 249 B.R. 78, 86 (Bankr. E.D. Pa. 2000) (“I am left to some extent with the proverbial battle of the appraisers. Finding merit to both their positions, the only conclusion I can reach is to find some value in between.”); *Buckland*, 123 B.R. at 578–79 (rejecting both the debtor's valuation of \$45,000 and the creditor's valuation of \$60,000, determining subject property to have fair market value of \$48,000, and noting that “[a]lthough the court finds the testimony of the debtors' appraiser and the debtor to be persuasive, it does not find this testimony to be fully conclusive on the issue of valuation”).

*In re Smith*, 267 B.R. 568, 572-73 (Bankr. S.D. Ohio 2001). “With these principles in mind, the Court must weigh the evidence offered by each of the parties at the Hearing in support of their respective positions regarding the [LIHTC] Propert[ies]’ fair market value[s].” *Id.* at 573.

## DISCUSSION

### A. Appraisals/Expert Witnesses:

Neither party objected to the other party’s expert witness. Both are qualified as experts.

Debtors’ expert witness and appraiser was Brian Weinberg (“Mr. Weinberg” or “Debtors’ Appraiser”) of Novogradac & Co. LLP (“Novogradac”). Mr. Weinberg prepared a separate appraisal for each of the Debtors’ LIHTC Properties. Mr. Weinberg is the head of Novogradac’s government consulting and valuation advisory services group. He has extensive experience with regard to the development of properties under the LIHTC program.<sup>9</sup> Mr. Weinberg stated

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<sup>9</sup> Mr. Weinberg did not indicate how long he has been with Novogradac, how long he has been a certified appraiser, or when he graduated from college.

that he oversees nearly 1,000 market studies or appraisals each year, most of which relate to LIHTC Properties. On a national basis, he has conducted numerous market studies and appraisals for proposed and existing LIHTC Properties. He has a bachelor's degree in urban planning and a master's degree in accounting and finance management from the University of Maryland. He is a certified appraiser and a designated member of both the Appraisal Institute and the Commercial Investment Real Estate Institute.

The Bank's expert witness and appraiser was David A. Donan ("Mr. Donan" or "Bank's Appraiser") of Allgeier Co., Inc. ("Allgeier"). Mr. Donan also prepared a separate appraisal for each of the Debtors' LIHTC Properties. Mr. Donan is the principal/owner of Allgeier. He has over 20 years of real estate appraisal experience and is a certified general real property appraiser licensed in Kentucky, Indiana, Tennessee, and Ohio. Allgeier specializes in providing real estate appraisals of LIHTC Properties. Subsidized housing comprises approximately 40% of the appraisal business performed by Allgeier, with LIHTC properties comprising part of that 40%. Over the past 10 years, Allgeier has performed hundreds of appraisals and market studies involving LIHTC Properties with Mr. Donan personally performing and/or managing in excess of 50 of those appraisals. Mr. Donan has a Bachelor of Science degree in economics (1989) and a Bachelor of Business Administration degree in finance obtained from the University of Kentucky (1988).

As noted above, it is the Debtors' position and has remained so throughout the valuation process that the Remaining Tax Credits are not property of the Debtors' bankruptcy estates; but, rather, the Remaining Tax Credits belong to the Debtors' limited partners. Therefore, Debtors' contention is that the Remaining Tax Credits are irrelevant in determining the fair market value of their LIHTC Properties, and the Debtors' Appraisals do not include a discussion or opinion regarding either the impact of the Remaining Tax Credits on the value of the LIHTC Properties or the appropriate methodology to value any such impact. In fact, each of the Debtors' Appraisals, under the heading "Appraisal Assignment and Valuation Approach," state that, "Under a

bankruptcy situation it is not clear what will happen to the outstanding tax credits and an analysis of the potential disposition is beyond the scope of this report.” (Doc. 206 & Debtors’ Ex. 1, at 6). As such, Debtors’ Appraisals do not provide an opinion of the impact of the Remaining Tax Credits on the value of the Debtors’ LIHTC Properties.

The Bank’s Appraisals set forth a market value for each LIHTC Property including an analysis of the impact of the Remaining Tax Credits on that value and the methodology employed in reaching the conclusions regarding the Remaining Tax Credits.

Both appraisers use the following definition for “market value”<sup>10</sup> in their appraisals:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents normal considerations for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

The market values placed on the LIHTC Properties by each appraiser are as follows:

LIHTC Property	Debtor's Total Value	Bank's Total Value
Creekside Senior Apartments	593,000	1,240,000
Franklin Place Senior Apartments	274,000	980,000
Nicholasville Greens Townhomes	425,000	655,000
Pennyrile Senior Apartments	398,000	1,330,000
Park Row Senior Apartments	750,000	1,690,000

<sup>10</sup> As noted above, under *Rash* we are to value the Debtors’ collateral at its fair market value. According to BLACK’S LAW DICTIONARY, “market value” and “fair market value” are defined the same and consistent with *Rash* as “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s-length transaction.” BLACK’S LAW DICTIONARY (9th ed. 2009).

The Bank asserts that it has a secured claim with respect to each of the LIHTC Properties as follows:

LIHTC Property	Bank's Claim	
	Amount	Number
Creekside Senior Apartments	1,272,589.35	7 as amended
Franklin Place Senior Apartments	863,467.53	3 as amended
Nicholasville Greens Townhomes	714,857.43	1
Pennyrile Senior Apartments	466,294.67	5
Park Row Senior Apartments	1,037,461.15	6

B. Real Estate:

Both appraisers agree that of the three approaches to determining the market value of real estate,<sup>11</sup> the income capitalization approach is the most reliable with respect to income-producing properties such as the Debtors' LIHTC Properties. According to both appraisers, the income capitalization approach is superior to the sales comparison approach because of a dearth of comparable sales of other LIHTC Properties. They further agree that the income capitalization approach is far superior to the cost approach because the cost of construction of a typical LIHTC Property exceeds the market value of the property.

Both appraisers stated substantially the same formula for calculating market value under the income capitalization method:

- Estimate the potential Gross Income
- Estimate and deduct a vacancy and collection loss rate ("VCLR") or allowance to derive Effective Gross Income
- Estimate and deduct expenses of operation to derive net operating income ("NOI")
- Divide NOI by a determined capitalization rate
- Result equals the market value of the Debtors' real estate

Before the Bank's adjustment to value as a result of the Remaining Tax Credits and utilizing the capitalization approach, the parties' valuation of the real property was as follows:

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<sup>11</sup> The three approaches are: sales comparison, costs comparison and income capitalization.

LIHTC Property	Debtor's Total Value	Bank's Real Estate Value	Bank's Tax Credit Value	Bank's Total Value	Difference between Total Values
Creekside Senior Apartments	593,000	890,000	350,000	1,240,000	-647,000
Franklin Place Senior Apartments	274,000	535,000	445,000	980,000	-706,000
Nicholasville Greens Townhomes	425,000	495,000	160,000	655,000	-230,000
Pennyrile Senior Apartments	398,000	575,000	755,000	1,330,000	-932,000
Park Row Senior Apartments	750,000	825,000	865,000	1,690,000	-940,000

As noted by the difference in market value of the Debtors' LIHTC Properties arrived at by the two appraisers in this case, the income capitalization value is subject to variance depending on the estimates used by an appraiser for the various components of the calculation. It is the Court's responsibility to evaluate the appraisers' analyses and determine whether they have substantiated the bases for the components they used to arrive at their conclusions as to the market value of the subject properties. See *In re Smith*, 267 B.R. at 572-73 (in weighing conflicting appraisal testimony, one of the components courts may use is the appraiser's ability to substantiate the basis for the valuation presented).

In addition to the dispute regarding the effect of the Remaining Tax Credits (discussed *infra*), the parties disputed or addressed five components of the income capitalization methodology at the Valuation Hearing—each is discussed below.

1. Vacancy & Collection Loss Rate: The VCLR effectively lowers Gross Income. Therefore, the higher the VCLR, the lower the market value of a property. In all of the appraisals except for Nicholasville Greens Townhomes and the commercial component of the Park Row Senior Apartments VCLR, the Debtors' Appraisals contain a higher VCLR than the Bank's Appraisals.

Historically all of the Debtors' LIHTC Properties, except Nicholasville Greens Townhomes, have had very low vacancy rates. In fact, as of the date of the appraisals, Creekside Senior Apartments, Pennyrile Senior Apartments, Franklin Place Senior Apartments, and Park Row Senior Apartments all had waiting lists. Debtors' Appraiser, although stating he acknowledges

the historically low vacancy rate for the Debtors' LIHTC Properties appeared to place little weight on such historical vacancy rates and preferred to use a VCLR of 5% which he described as the "industry standard." The Bank's Appraiser based his conclusions of the VCLR on the actual historical vacancy rates of the Debtors' LIHTC Properties, the existing waiting lists and the vacancy rates of comparable LIHTC Properties.

While an industry standard might be sufficient or beneficial where historic information is unavailable, given the above discussion and the analysis related to each specific LIHTC Property below, the Court finds that the Bank's Appraiser has provided more convincing substantiation for his conclusion of the appropriate VCLRs to be used with respect to the Debtors' LIHTC Properties.

a. Creekside: Debtors' Appraiser used the industry standard VCLR of 5% for Creekside Senior Apartments. In April 2011, this complex had a waiting list with approximately 38 people on the list. The vacancy rate for Creekside Senior Apartments over the past three years has averaged 1.68%. The Bank's Appraiser used a VCLR of 3% (comprised of a vacancy rate of 2% and a collection loss rate of 1%) which he based on the historical vacancy rate of this property, the existing waiting list and the vacancy rates of comparable LIHTC Properties. Based on these facts, the Court finds the 3% VCLR to be the most substantiated.

b. Franklin Place: For Franklin Place Senior Apartments, Debtors' Appraiser used a VCLR of 6%. Mr. Weinberg came to this rate even though the comparable properties he used averaged a 2.6% vacancy rate, the current vacancy rate at the time of the appraisal of Franklin Place Senior Apartments was 3.1% and the past three-year vacancy rate for this apartment complex was 3.8%. Although there had been a waiting list in December 2010, there was not a waiting list on April 12, 2011, at the time of the inspection by the Bank's Appraiser, but the complex was 100% occupied. The Bank's Appraiser used a VCLR of 3% (comprised of a vacancy rate of 2% and a collection loss rate of 1%) based on the historical vacancy rate of Franklin Place Senior Apartments and the average vacancy rate of the comparable properties of

2.7%. Based on these facts, the Court concludes the Bank's VCLR of 3% is the most substantiated.

c. Nicholasville Greens: For Nicholasville Greens Townhomes, the Debtors' Appraiser used a 9%<sup>12</sup> VCLR which is lower than the 11% VCLR used by the Bank's Appraiser. Mr. Donan based his estimate of the VCLR on the average vacancy rate for the complex over the past three years which was 10.33%. He also considered that the only comparable LIHTC property was 96% occupied and that at the time of his appraisal in April 2011, Nicholasville Greens Townhomes was 94% occupied with the one vacant unit leased and awaiting move-in. Mr. Donan also took into consideration four market rate properties which had a weighted vacancy rate of 8.99%. The 11% VCLR figure arrived at by Mr. Donan for this complex is comprised of a 9% vacancy loss and a 2% collection loss. Based on these facts, the Court finds the Bank's VCLR of 11% to be the most substantiated.

d. Pennyrile: Debtors' Appraiser used the industry standard VCLR of 5% for Pennyrile Senior Apartments. Over the past three years, the average vacancy rate for Pennyrile Senior Apartments has been .79%. The Bank's Appraiser uses a VCLR of 3% (comprised of a vacancy rate of 2% and a collection loss rate of 1%) which he based on the historical vacancy rate of this property, the existing waiting list, and the vacancy rates of comparable LIHTC Properties. Based on these facts, the Bank's VCLR of 3% is the most substantiated.

e. Park Row: Park Row Senior Apartments has residential units but also has two commercial units. Therefore, both appraisers utilized both a residential and a commercial VCLR for that complex. The Debtors' Appraiser used a 4% residential VCLR. Mr. Weinberg came to this rate even though he acknowledged that over the past four years, from January 2007 until December 2010, Park Row Senior Apartments maintained a residential vacancy rate below

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<sup>12</sup> Mr. Weinberg states an 8% VCLR for Nicholasville Greens Townhomes in his written analysis. However, in his calculations, he uses a 9% VCLR.

3.4% with three of those four years being below 3.0 percent.<sup>13</sup> On the other hand, the Bank's Appraiser used a 2.5% residential VCLR based on the property's historical residential vacancy rates over 2008, 2009 and 2010, which average 2.45%. Based on these facts, the Court finds the Bank's residential VCLR of 2.5% to be the most substantiated.

With respect to the commercial VCLR for Park Row Senior Apartments, the Debtors' Appraiser actually used a significantly lower VCLR of 10% while the Bank's Appraiser used a 15% VCLR. Considering that one of the two commercial units is not and cannot be occupied without substantial build out expense for lighting and heating the unit, the Court finds that the 15% VCLR used by the Bank's Appraiser is more realistic and substantiated.

2. Capitalization Rate: The maximum variation between the capitalization rates estimated by the appraisers was ½ point or .5%. The evidence was undisputed that at the level of market values relevant to these LIHTC Properties, a difference in ¼ to ½ point in the capitalization rate does not make a significant difference in the market value of the Debtors' LIHTC Properties. As such, in arriving at the values herein, the Court split the slight difference, if any, between the rates chosen by the two appraisers.

3. Management Fee: The appraisers are basically in agreement as to a management fee based on 5% of Effective Gross Income for each LIHTC Property; except with respect to Nicholasville Greens Townhomes, the Debtor's Appraiser calculated a management fee based on 4% of Effective Gross Income. The management fee for this complex averaged over the last four years, however, is 4.875%. The Court, therefore, finds the 5% management fee for Nicholasville Greens Townhomes as used by the Bank's Appraiser to be the most substantiated.

Further, with respect to Creekside Senior Apartments, the calculation of the management fee by Mr. Weinberg reflects that it was calculated on Gross Income rather than Effective Gross

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<sup>13</sup> The vacancy rates for Park Row Senior Apartments were: 2007 @ 1.84%; 2008 @ 2.63%; 2009 @ 3.39% and 2010 YTD @ 1.34%.

Income. It appears that this was in error given Mr. Weinberg's statement in the Debtors' Appraisal for Creekside Senior Apartments that, "[m]anagement fees are typically billed to the property as a percentage of effective gross receipts," and Mr. Weinberg computed the management fee for the Debtors' other LIHTC Properties based on Effective Gross Income. (Doc. 207 & Debtors' Ex. 1 at 52). Therefore, in arriving at the values set forth below, the Court considered the management fee for each of the Debtors' LIHTC Properties, including Creekside Senior Apartments, on the Effective Gross Income of each property.

4. Legal Fees: Both appraisers opined that the Debtors' legal fees were significantly higher than they should be as reflected by comparable LIHTC Properties. Under the income capitalization approach, as with the VCLR component, higher legal fees (or other higher operating expenses), reduces the Effective Gross Income and thus the market value of the LIHTC Properties. Both appraisers also indicated that they have reduced the legal expense used in calculating administrative expenses of each Debtor. The Bank noted, however, that some of the comparables used by the Debtors were the other related Debtor entities. Therefore, since the legal expenses of those other Debtor entities were also high, the Bank argued that the Debtors' adjusted administrative expenses were still higher than a typical LIHTC Property. However, in reviewing the analysis of the comparables' legal expenses, it appears that the Debtors disregarded or did not use the higher legal expense figures of the related Debtor entities in determining the legal expense portion of the Debtors' administrative expenses. As such the Court finds that the Debtors' estimation of legal expenses included in their administrative expense calculations are properly adjusted to account for the excessive legal expenses. The Debtors' legal expenses do not need to be further adjusted.

5. Real Estate Taxes: Both appraisers also opined that the Debtors' real estate taxes were significantly higher than they should be as reflected by comparable LIHTC Properties. The Bank's Appraiser reduced the real estate tax expense to an amount that would be consistent with his opinion of the market value of the Debtors' real estate for each particular LIHTC Property

before any adjustments for the Remaining Tax Credit value. Debtors' Appraiser, on the other hand, reduced the real estate tax expense in only three of the LIHTC Properties, Creekside Senior Apartment, Franklin Place Senior Apartment, and Nicholasville Greens Townhomes. Moreover, the amount of real estate taxes estimated by Mr. Weinberg for those three LIHTC Properties has no correlation to the market value that Mr. Weinberg placed on the respective LIHTC Property. Further, with respect to Pennyriple Senior Apartments and Park Row Senior Apartments, Mr. Weinberg, without explanation, left the real estate taxes at the higher amount as currently assessed by the county.

The Court finds credible Mr. Donan's testimony to the effect that a fair market purchaser will consider the effect of the purchase price on future property taxes in his decision regarding the value of (and thus price to pay for) the property. In considering how the appraisers substantiated their opinions and estimates of the real estate taxes, the Court finds that Mr. Donan's approach to calculating the real estate taxes on the opined fair market value of the Debtors' LIHTC Properties is the appropriate calculation. As he testified, this estimate involves multiple calculations (or in his words "iterations") since the real estate taxes are a component of the total operating expenses used to arrive at the net operating income of a property. However, his approach failed to complete the iterations for the calculation once the effect of the Remaining Tax Credits was included in his opinion of the market value of each LIHTC Property. Thus, in arriving at its determination of value, the Court adjusted the real estate tax component, making multiple "iterations", to arrive at the annual real estate tax that is consistent with the Court's findings regarding the fair market value of each property.<sup>14</sup>

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<sup>14</sup> The Court notes that the assessment rate for each of the counties involved appears to have increased between the effective date of Debtors' Appraisals in December 2010 and the effective date of the Bank's Appraisals in April 2011. Since the Bank's Appraisals contain the most current information, we find that the rates used in the Bank's Appraisals are the proper rates.

C. Remaining Tax Credits:

As noted above, the Bank introduced an analysis of the impact of the Remaining Tax Credits by essentially placing a value on the Remaining Tax Credits and adding that to the income capital approach valuation for each property.<sup>15</sup> Also as noted above, Debtors did not introduce any evidence of the impact of the value of the Remaining Tax Credits on the Debtors' LIHTC Properties; however, in an attempt to rebut the Bank's evidence, Mr. Weinberg testified that in his opinion there is currently no market for the tax credits which he described as "midstream," "small market," and "secondary market." Therefore, it was Mr. Weinberg's testimony that because there is no market for the Remaining Tax Credits, they have no value.

Mr. Weinberg, however, misses the point. The Remaining Tax Credits are not being valued as if they are being sold. As previously held, the Remaining Tax Credits cannot be separated from the Debtors' LIHTC Properties and sold separately. See Order on Tax Credit Evidence. "Although market participants often talk casually about "selling" the tax credits, they are actually referring to selling a partial ownership interest in the *entity that owns the real estate*. The tax credits themselves cannot be severed from the ownership of the real estate." *Appraising Low-Income Housing Tax Credit Real Estate*, 10/1/10 APPRAISAL J. 350 (emphasis added). Contrary to Mr. Weinberg's opinion, the Bank's Appraiser testified that the market is rebounding with respect to LIHTC Properties and there is a market for the Debtors' Remaining Tax Credits and the LIHTC Properties which they impact. In fact, Mr. Donan testified that his office has been

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<sup>15</sup> The day before the Hearing, the Bank filed a Supplement to Appraisals and Affidavit of Bank of America to Clarify Status of Unclaimed Tax Credits, as amended ("Supplement") [Doc. 238 & 239]. In the Supplement, the Bank asserts that contrary to the statements in its appraisals, the 2010 Tax Credits have not been claimed by four of the Debtors. The Bank seeks to increase its original estimate of the value of the Remaining Tax Credits for Creekside, Franklin Place, Nicholasville Greens and Park Row. However, the Internal Revenue Code provides that a purchaser of an LIHTC Property is entitled to the unused tax credits according to the number of days in the tax year that the purchaser owned the LIHTC Property. Internal Revenue Code § 42(f)(4). Obviously, for 2010, a purchaser did not own any of the Debtors' LIHTC Properties. Therefore, we do not agree that the value of the Remaining Tax Credits should be increased to include the 2010 taxes for these four LIHTC Properties.

“extremely busy” with LIHTC Properties and offered evidence that the Remaining Tax Credits do have an impact on what a buyer is willing to pay for the Debtors’ LIHTC Properties.

In his rebuttal testimony, Mr. Weinberg stated that while he agreed generally with the methodology used by the Bank’s Appraiser in arriving at the value of the Remaining Tax Credits; he disputed that Mr. Donan had included all necessary components for the calculation. According to Mr. Weinberg, among other things, Mr. Donan erred in not including a deduction for the remaining mortgage balance at the time of reversion of the LIHTC Properties and did not take depreciation into account. Further, in Mr. Weinberg’s opinion, a discount rate of 15% should have been used rather than the 9% used by Mr. Donan. In Mr. Weinberg’s opinion, new transactions in the tax credit market would be done at a 12% to 15% discount rate and it is, therefore, a conservative estimate that transactions in the secondary market would be done at a 15% discount rate. In anticipation of this rebuttal testimony, Mr. Weinberg recalculated Mr. Donan’s value of the Remaining Tax Credits, making the corrections he noted in his testimony and providing the values of the Remain Tax Credits under this revised methodology at a 9%, 12% and 15% discount rate. (Debtors’ Rebuttal Ex. 1 [Doc. 240]).

In surrebuttal testimony, Mr. Donan disagreed that his methodology was incorrect and testified that there was more than one acceptable way to value tax credits. Mr. Donan testified that while his company does not do thousands of valuations of tax credits annually, he does have substantial experience with Allgeier’s having done over 1,000 valuations of tax credits in the history of the company. Mr. Donan testified that he has seen the method he employed used in various instances and stood by his valuation of the Remaining Tax Credits as well as the 9% discount rate.

The Court finds Mr. Donan’s testimony on the issue of the impact of the Remaining Tax Credits to be credible and further finds that the Debtors’ evidence presented on rebuttal is too little, too late. The Debtors’ Rebuttal Exhibit lacks the details, analysis and substantiation contained in the Bank’s Appraisals. Debtors chose to ignore the fact the Remaining Tax Credits

impact the value of the property, are owned by the Debtors and that any rights/benefit/burdens of the Remaining Tax Credits which inure to the limited partners do so only as a result of their ownership/partnership interests in the *Debtors*. If the LIHTC Properties are sold, all proceeds of a sale belong to the respective Debtor with any benefits of the Remaining Tax Credits flowing through the *new* entity to the owners of that *new* entity. Debtors further chose to ignore even the possibility that the Remaining Tax Credits have value and utilized a strategy that there is no market for the tax credits—or in essence, no market for the Debtors' LIHTC Properties from which the Remaining Tax Credits cannot be separated. When backed into a corner, Debtors finally chose to compute a value for the Remaining Tax Credits by challenging the methodology used by the Bank's Appraiser with unsupported assertions of components missing from Mr. Donan's calculations.

The Bank has provided the only detailed, substantiated evidence of the impact of the Remaining Tax Credits on the market value of the Debtors' LIHTC Properties and the Court will include the Bank's calculation as to the Remaining Tax Credits in its determination of the value of each property set forth below.

#### **VALUATION OF EACH LIHTC PROPERTY**

Based on all the evidence presented at the Valuation Hearing (whether or not addressed herein), the Court determines the value of each LIHTC Property as follows:

1. Creekside: The fair market value of Creekside Senior Apartments is \$1,058,718.67:

<b>CREEKSIDE SENIOR APARTMENTS</b>	
Total Annual Gross Income	239,400.00
Residential Vacancy & Collection Loss Rate (VCLR)	3.00%
Calculation of VCLR	7,182.00
Annual Effective Gross Income	232,218.00
Annual Expenses for Complex	168,433.32
General administrative & marketing	40,000.00
Maintenance & operating	26,400.00
Payroll	44,200.00
Utility	19,000.00
Insurance	6,000.00
Real estate taxes @ \$10.60 per \$1,000	11,222.42
Replacement reserve	10,000.00
Management fee (5% of effective gross income)	11,610.90
Projected Annual NOI	63,784.68
Capitalization Rate	9.00%
Market Value of Real Estate	708,718.67
Market Value of Tax Credits	350,000.00
<b>MARKET VALUE OF CREEKSIDE SENIOR APARTMENTS</b>	<b>\$1,058,718.67</b>

2. Franklin Place: The fair market value of Franklin Place Senior Apartments is \$816,244.42:

<b>FRANKLIN PLACE SENIOR APARTMENTS</b>	
Total Annual Gross Income	159,920.00
Residential Vacancy & Collection Loss Rate (VCLR)	3.00%
Calculation of VCLR	4,797.60
Annual Effective Gross Income	155,122.40
Annual Expenses for Complex	124,030.68
General administrative & marketing	25,920.00
Maintenance & operating	14,400.00
Payroll	35,232.00
Utility	20,960.00
Insurance	4,800.00
Real estate taxes @ \$8.53 per \$1,000	6,962.56
Replacement reserve	8,000.00
Management fee (5% of effective gross income)	7,756.12
Projected Annual NOI	31,091.72
Capitalization Rate	8.375%
Market Value of Real Estate	371,244.42
Market Value of Tax Credits	445,000.00
<b>MARKET VALUE OF FRANKLIN PLACE SENIOR APARTMENTS</b>	<b>\$816,244.42</b>

3. Nicholasville Greens: The fair market value of Nicholasville Greens Townhomes is \$467,475.86:

<b>NICHOLASVILLE GREENS TOWNHOMES</b>	
Total Annual Gross Income	119,665.00
Residential Vacancy & Collection Loss Rate (VCLR)	11.00%
Calculation of VCLR	13,163.15
Annual Effective Gross Income	106,501.85
Annual Expenses for Complex	78,060.33
General administrative & marketing	11,600.00
Maintenance & operating	13,360.00
Payroll	17,620.00
Utility	16,400.00
Insurance	3,200.00
Real estate taxes @ \$10.60 per \$1,000	4,955.24
Replacement reserve	5,600.00
Management fee (5% of effective gross income)	5,325.09
Projected Annual NOI	28,441.52
Capitalization Rate	9.250%
Market Value of Real Estate	307,475.86
Market Value of Tax Credits	160,000.00
<b>MARKET VALUE OF NICHOLASVILLE GREENS TOWNHOMES</b>	<b>\$467,475.86</b>

4. Pennyrile: The fair market value of Pennyrile Senior Apartments is \$1,201,188.44:

<b>PENNYRILE SENIOR APARTMENTS</b>	
Total Annual Gross Income	175,078.00
Residential Vacancy & Collection Loss Rate (VCLR)	3.00%
Calculation of VCLR	5,252.34
Annual Effective Gross Income	169,825.66
Annual Expenses for Complex	131,899.64
General administrative & marketing	22,925.00
Maintenance & operating	14,875.00
Payroll	35,240.00
Utility	23,135.00
Insurance	7,000.00
Real estate taxes @ \$9.560 per \$1,000	11,483.36
Replacement reserve	8,750.00
Management fee (5% of effective gross income)	8,491.28
Projected Annual NOI	37,926.02
Capitalization Rate	8.500%
Market Value of Real Estate	446,188.44
Market Value of Tax Credits	755,000.00
<b>MARKET VALUE OF PENNYRILE SENIOR APARTMENTS</b>	<b>\$1,201,188.44</b>

5. Park Row: The fair market value of Park Row Senior Apartments is \$1,592,427.01. As noted, there are two commercial units located at Park Row Senior Apartments. One of those units is occupied. According to both appraisers, the unoccupied unit needs to be built out to include lighting and heating before it can be rented. While the Bank's Appraiser estimated build out costs at \$70,000, he did not provide any substantiated basis for that estimate. The Debtors' Appraiser estimated build out costs of \$91,630 substantiated by a written estimate from a construction company located in Bowling Green, Kentucky, which is where Park Row Senior Apartments is located. Further costs considered by the Bank's Appraiser, and included in the above calculations, are the commercial rent loss and commission expense of 10%

that would be incurred during the build-out phase for this unit. All of these expenses have been considered and deducted from the initial market value of Park Row Senior Apartments.

<b>PARK ROW SENIOR APARTMENTS</b>	
Annual Gross Rental Income	204,912.00
Residential Vacancy & Collection Loss Rate (VCLR)	2.50%
Calculation of Residential VCLR	5,122.80
Effective Rental Income	199,789.20
Annual Gross Retail Income	43,800.00
Commercial VCLR	15.00%
Calculation of Commercial VCLR	6,570.00
Effective Retail Income	37,230.00
Annual Effective Gross Income for Complex	237,019.20
Annual Expenses for Complex	162,786.67
General administrative & marketing	36,000.00
Maintenance & operating	16,000.00
Payroll	38,600.00
Utility	22,510.00
Insurance	8,000.00
Real estate taxes @ \$12.45 per \$1,000	19,825.71
Replacement reserve	10,000.00
Management fee (5% of effective gross income)	11,850.96
Projected Annual NOI	74,232.53
Capitalization Rate	8.625%
Market Value of Real Estate	860,667.01
Costs to build out vacant commercial space	91,630.00
Rent loss on commercial space during build out	37,230.00
Commission for commercial space	4,380.00
Total Market Value of Real Estate less build out costs	727,427.01
Market Value of Tax Credits	865,000.00
<b>MARKET VALUE OF PARK ROW SENIOR APARTMENTS</b>	<b>\$1,592,427.01</b>

**CONCLUSION**

Based on the foregoing, the Court being otherwise sufficiently advised,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the fair market values of the Debtors' LIHTC Properties are as follows:

LIHTC Property	Market Value
Creekside Senior Apartments	1,058,718.67
Franklin Place Senior Apartments	816,244.42
Nicholasville Greens Townhomes	467,475.86
Pennyrile Senior Apartments	1,201,188.44
Park Row Senior Apartments	1,592,427.01

**Copies to:**

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Tracey N. Wise**  
**Bankruptcy Judge**  
**Dated: Monday, September 12, 2011**  
**(tnw)**