

**DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY
LOW-INCOME HOUSING TAX CREDIT
QUALIFIED ALLOCATION PLAN FOR 2010**

ARTICLE 1
DEFINITIONS

Section 1.0. The following terms shall have the meanings assigned below for purposes of this Plan and the Procedural Manual.

- a. Act: Minnesota Statutes, Sections 462A.221 through 462A.225, as amended.
- b. Agency: the Dakota County Community Development Agency.
- c. Code: the Internal Revenue Code of 1986, as amended.
- d. Declaration: a Declaration of Land Use Restrictive Covenants in a form acceptable to the Agency, imposing restrictions required by Section 42 or the Act on a particular project receiving Tax Credits.
- e. Market Study: In accordance with Section 42(m)(1)(A)(iii) of the Code, a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project, conducted before the credit allocation is made, and at the developer's expense by a disinterested party approved by the Agency.
- f. Section 42: Section 42 of the Code, as amended, relating to Tax Credits.
- g. Single Room Occupancy: A unit having one bedroom or less with rents affordable at 30 percent of median income.
- h. Substantial Rehabilitation: Rehabilitation of at least \$5,000 per unit, as defined in Minn. Stat. Section 462A.221, Subdivision 5.
- i. Tax Credit Agencies: Any entity authorized by the State of Minnesota and Section 42 to allocate Tax Credits in Minnesota.
- j. MHFA: Minnesota Housing Finance Agency.
- k. Plan: this Qualified Allocation Plan for the allocation of 2010 Tax Credits.
- l. Tax Credits: Low income housing tax credits, within the meaning of Section 42 of the Code.

ARTICLE 2
PURPOSE; AUTHORITY

Section 2.0 Section 42(m) of the Code, requires that Tax Credit Agencies develop and adopt a qualified allocation plan in connection with the allocation of Tax Credits. This Qualified Allocation Plan for 2010 sets forth selection criteria that are appropriate to local conditions and priorities to be used by the Agency in the allocation of Tax Credits to housing projects and provides procedures for the Agency to follow in monitoring noncompliance with the provisions of Section 42 of the Code and in notifying the Internal Revenue Service of such noncompliance.

Section 2.1 The Act provides that the amount of Tax Credits available in Minnesota shall be allocated among MHFA and certain cities and counties or their designees, including the Agency as designee for Dakota County. The Agency anticipates that it will be authorized to allocate approximately \$881,914 of 2010 Tax Credits pursuant to this Plan.

Section 2.2 This Plan was prepared in accordance with the procedures set forth in Section 42(m) of the Code, and is to be construed and governed under Section 42 of the Code, including applicable Treasury Regulations, and the Act. All applicable restrictions and requirements set forth in Section 42 of the Code and the applicable regulations are hereby incorporated by reference.

ARTICLE 3
GENERAL CONCEPTS

Section 3.0. This Plan sets forth selection criteria which reflect the housing policies of the Agency and will be used to determine the priorities for the allocation of Tax Credits within Dakota County. This Plan gives preference as required by federal legislation in allocating Tax Credits among selected projects to:

- a. projects serving the lowest income tenants,
- b. projects obligated to serve qualified tenants for the longest period, and
- c. projects which are located in a qualified census tract (as defined in Section 42(d)(5)(C), of the Code), the development of which contributes to a concerted community revitalization plan.

As part of the evaluation by or on behalf of the Agency of applications for Tax Credits, the applicant must demonstrate, to the satisfaction of the Agency, that the proposed project is marketable and financially feasible.

In addition, this Plan provides a procedure that the Agency (or an agent or other private contractor of the Agency) will follow in monitoring for noncompliance with the provisions of the Code, including monitoring for noncompliance with habitability standards through regular site visits, and in notifying the Internal Revenue Service of such noncompliance of which the Agency becomes aware.

Section 3.1. The following factors required under Section 42(m)(1)(C) of the Code are incorporated in the selection criteria to allocate Tax Credits to specific projects:

- a. project location,
- b. housing needs characteristics,
- c. project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,
- d. sponsor characteristics,
- e. tenant populations with special housing needs,
- f. whether tenant selection will involve special consideration for persons on public housing waiting lists,
- g. tenant populations of individuals with children,
- h. projects intended for eventual tenant ownership,
- i. the energy efficiency of the Project, and
- j. the historic nature of the Project.

Section 3.2. This Plan provides for review of financial feasibility of each project and its viability as a qualified low-income project throughout the Tax Credit period as of the application date, allocation date, and placed-in-service date, all as required by Section 42(m)(2) of the Code. Such review is solely for the purpose of allocating Tax Credits and may not be relied upon by an applicant or investor for any other purpose.

The Housing and Economic Recovery Act of 2008 authorizes housing credit agencies to designate buildings placed in service after July 30, 2008, for which the eligible basis will be increased by 30 percent, based on a determination by the housing credit agency that such increase is required in order for such building to be financially feasible as part of a qualified low income housing project. (This provision does not apply to buildings which receive automatic Credits because they are financed with tax-exempt bonds.) This Plan establishes standards for the Agency to determine which buildings will be designated for such increased basis.

Section 3.3. This Plan applies to tax-exempt bond financed projects as required by Section 42(m)(1)(D) of the Code.

ARTICLE 4 APPLICATION ROUNDS

Section 4.0. The Agency will accept applications on the deadline set by MHFA for the first application competition round. The application deadline for 2010 is tentatively scheduled for June 16, 2009, but applicants should confirm the actual deadline prior to submission. All applicants for competitively awarded credits must meet the minimum threshold requirements set forth in Sections 4.1 and 4.2 for the Dakota County area for selection consideration.

Section 4.1 A project for which Tax Credits are being sought must satisfy the following minimum requirements:

- a. Under the Act, all applicants must meet one of the following threshold types:
1. New construction or substantial rehabilitation of projects in which, for the term of the extended use period (term of the Declaration), at least 75% of the total tax credit units are Single Room Occupancy, efficiency, or one bedroom units and which are affordable by households whose income does not exceed 30% of the median income;
 2. New construction or substantial rehabilitation family housing projects that are not restricted to occupancy by persons 55 years old or older and in which, for the term of the extended use period (term of the Declaration), at least 75% of the total tax credit units contain two or more bedrooms and at least one third of the 75% contain three or more bedrooms;
 3. Substantial Rehabilitation projects in neighborhoods targeted by the city for revitalization;
 4. Projects that are not restricted to persons of a particular age group and in which, for the term of the extended use period (term of the Declaration), a percentage of the units are set aside and rented to persons:
 - (a) with a serious and persistent mental illness as defined in Minnesota Statutes Section 245.462, Subd. 20(c);
 - (b) with a developmental disability as defined in Title 42, Section 6001(5) of the Code;
 - (c) who have been assessed as drug dependent persons as defined in Minnesota Statutes Section 254A.02, Subd. 5, and are receiving or will receive care and treatment services provided by an approved treatment program as defined in Minnesota Statutes Section 254A.02, Subd. 2;
 - (d) with a brain injury as defined in Minnesota Statutes Section 256B.093, Subd. 4(a); or
 - (e) with permanent physical disabilities that substantially limit major life activities, if at least fifty percent (50%) of the units in the project are accessible as provided under Minnesota Rules ch. 1341;
 5. Projects, whether or not restricted to persons of a particular age group, which preserve existing subsidized housing which is subject to prepayment if the use of Tax Credits is necessary to prevent conversion to market rate use or to remedy physical deterioration of the project which would result in loss of existing federal subsidies; or

6. Projects financed by Rural Development, which meet state-wide distribution goals.

b. The project (i) must be financially feasible and viable as documented by information in the application which satisfies local underwriting standards used by the Agency and demonstrates preliminary financing commitments and which reasonably satisfies the Agency that the sponsor is reasonably experienced and the project is creditworthy, (ii) can be completed in a timely manner, (iii) has a positive after debt service cash flow, (iv) demonstrates reasonable operating expenses relative to comparable projects in the past, (v) complies with applicable building, land use and zoning ordinances, (vi) is consistent with a Market Study, (vii) the city in which the project will be located has not provided negative comments on the proposed project, and (viii) costs of intermediaries are not excessive for a project of that nature and in that location. In making its evaluation, the Agency shall take into account the following: the Market Study described above, sources and uses of funds, the total financing planned for the project, any proceeds or receipts expected to be generated by reason of tax benefits, and the percentage of the Tax Credit dollar amount used for project costs other than the costs of intermediaries.

c. The project must contain no more Tax Credit units than the greatest of:

- (i) fifty Tax Credit units;
- (ii) for a project to be held for occupancy by persons 55 or older, no more than the number of Tax Credit units supported by the market study for the project;
- (iii) 23% (rounded to the next greatest whole unit) of the total units in the Project, if the Tax Credit units are held for persons with incomes at or below 50% of AMI; and
- (iv) 43% (rounded to the next greatest whole unit) of the total units in the Project, if the Tax Credit units are held for persons with incomes at or below 60% of AMI.

d. The applicant must agree to utilize public housing waiting lists in Dakota County in marketing units to the public.

e. The applicant must demonstrate by information in the application that each building in the project is a qualified low-income building under Section 42(c)(2) of the Code.

f. The applicant must agree to enter into a Declaration in form and substance acceptable to the Agency and legal counsel appointed by the Agency.

g. The applicant must agree to resident screening criteria as provided in the Declaration.

h. The applicant must agree to waive the provisions of Section 42(h)(6)(E)(i)(II) and 42(h)(6)(F) which permit the owner to terminate the rent and income restrictions under this Plan at the end of the first 15 year compliance period.

Section 4.2 All new construction must meet the basic design requirements set forth in Exhibit B of the Procedural Manual, which include certain energy efficiency standards. Units that are designed to meet the threshold requirements of Section 4.1.a.4. above must comply with the appropriate local, state or federal requirements or building code; e.g. to be considered a handicapped unit, the unit must be designed to meet the standards in the Minnesota State Building Code, Chapter 1341, and be certified as complying by a registered architect.

Section 4.3 The Agency will require that the threshold type under which the applicant applies be included as a requirement of the Declaration, which is to be a recorded restrictive covenant.

ARTICLE 5 APPLICATION PROCESS

Section 5.0. The allocation process for awarding the Tax Credits for projects located in Dakota County consists of the following steps:

- a. Each applicant shall complete, sign, date and submit to the Agency no later than the application due date an original application and related documents on forms required by the Agency, including all required fees, deposits and exhibits, all as provided in the Procedural Manual.
- b. The Agency shall review and evaluate the application to:
 1. assure that the application is complete.
 2. assure that minimum threshold requirements to qualify for Tax Credits have been satisfied.
 3. assign points to the project according to the selection priority section of the Scoring Worksheet attached to this Plan as Exhibit A.
 4. determine the minimum amount of Tax Credits necessary to make the project financially feasible and viable pursuant to Section 42(m)(2)(B).
- c. Applicants with initial scores sufficient to receive an allocation of Tax Credits will be required to submit a Market Study, as required by Section 42(m)(1)(A) of the Code.
- d. Legal counsel appointed by the Agency shall also review the application.
- e. The Agency shall present the project to the Mayor and the staff of the city in which the project is located for review and comment prior to staff recommendation to the Agency.

- f. The Agency shall make a determination whether to approve or deny the Commitment of Tax Credits to the project based upon the findings and selection priority criteria and the requirements of this Plan and the Procedural Manual, provided, however that the Agency reserves the right (but shall not be obligated) to grant priority over higher ranking projects to projects that (i) have previously received tax credits and have an annual tax credit shortfall of at least 5 percent, but no more than 50 percent, of the total qualified annual tax credit amount **and (ii) demonstrate readiness to proceed by having city approvals and all funding commitments in place (other than the tax credits the applicant is presently requesting)**. The Agency shall provide a written explanation, available to the general public, for any allocation of a housing credit dollar amount which is not made in accordance with the priorities and selection criteria set forth in this Plan.
- g. The applicant shall be required to pay the application, commitment and allocation fees in the amounts and at the times described in the Procedural Manual in effect at the time of application, commitment or allocation, respectively.
- h. The applicant shall certify that the project has been placed in service.
- i. The Agency shall reevaluate the amount of Tax Credit for the project based on final information provided by the applicant and the final costs at the time the building is placed in service pursuant to Section 42(m)(2)(B).
- j. Legal counsel appointed by the Agency shall conduct a final review of the application.
- k. The Agency issues IRS Form 8609, Low Income Housing Credit Allocation Certificate.
- l. Evaluations of the amount of Tax Credit for a project may be completed by a fiscal consultant engaged to act on behalf of the Agency.

Section 5.1. The Agency will evaluate project proposals to determine the amount of Tax Credits to be allocated pursuant to Section 42(m)(2)(B) of the Code. The Agency will also evaluate project proposals to determine whether the permitted 30% increase in basis of particular developments is required in order for such building to be financially feasible. In making such determinations, the Agency will consider whether (i) the development meets housing priorities identified by the Agency, as evidenced by a competitive tax credit score; and (ii) funding gaps remain for such projects. In any event, the credits allocated to a development, even if it is designated for a basis boost, will not exceed the amount the Agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

The Agency's evaluation of projects and determination of the amount of tax credits necessary for feasibility of the project as provided above shall not be relied upon by any developer or investor or used in connection with any offering of interests in the entity owning the Project, and shall not

be construed as a representation or warranty as to the feasibility or viability of the project. There will be three such evaluations prior to delivery by the Agency of an executed IRS 8609 Form for the project, which are as follows:

- a. At time of the initial application for and Commitment of Tax Credits.
- b. At time of any carryover allocation of Tax Credits.
- c. In connection with the issuance of Form 8609, following the time the building is placed in service.
- d. Prior to each evaluation, the applicant will be required to submit the most recent information about the project and fees as required by the Procedural Manual. Any federal, state or local subsidies anticipated must be documented to the satisfaction of the Agency. Misrepresentations of information will result in failure to issue IRS Form 8609, debarment from participation in the Low Income Housing Tax Credit Program, and possible criminal penalties. At each evaluation, the Agency may reduce the amount of Tax Credits to be allocated to the project or may revoke any Commitment to allocate Tax Credits to the project if it determines that the financial feasibility or viability of the project does not justify the originally applied for or committed credit dollar amount or that the criteria and requirements of this Plan have not been satisfied.
- e. Selected applicants failing to place a project in service in the year in which an allocation is made may be awarded a carryover allocation of Tax Credits if federal tax law requirements and the requirements set forth in the Procedural Manual are met, including the following documentation for the Agency's approval:
 1. A written attorney's opinion letter or title policy verifying that the developer is the owner, for tax purposes, or has continued site control of the land and depreciable real property that can be expected to be part of the project; and
 2. A written certification of a certified public accountant verifying that the owner has incurred more than ten percent (10%) of the reasonably expected basis of the project by the later of the date which is nine (9) months after the date that the allocation is made or the close of the calendar year in which the allocation is made. The certification must include a statement of non-affiliation with the developer and/or owner.

If the final carryover basis and expenditures information is not available at the time the carryover application is due, the application must include a written estimate of this information prepared by the owner. Final CPA certifications of this information must be submitted to the Agency prior to the deadlines established by Section 42 and by no later than the submission deadline identified in this Plan and in the Procedural Manual.

- f. The Agency reserves the right not to allocate any tax credits.

ARTICLE 6
ADDITIONAL ADMINISTRATIVE PROCEDURES

Section 6.1 No applications will be considered for an existing project that contains units that are subsidized by state or federal resources except for troubled projects as defined by the Agency, or projects for which the Agency is provided convincing evidence that such projects would convert to market rate units.

Section 6.2 As described above, the Agency may elect to give priority in the award of credits to projects that have previously received tax credits and have an annual tax credit shortfall of at least 5 percent, but not more than 50 percent of the total qualified annual tax credit amount.

Section 6.3 No project may be divided into two or more projects during a single funding round to receive credits. Multiple applications, determined by the Agency to be one project, will be returned to the applicant and all fees forfeited. The Agency will consider such factors as ownership entities, general partnerships, sponsor relationships, and location of project, if contiguous site, to determine if multiple applications exists.

Section 6.4 The Agency may elect not to give partial credits to a higher-ranking application but to give the credits to the next ranking application that can use the balance of the credits.

Section 6.5 The Agency has no jurisdiction to interpret or administer Section 42 of the Code, except in those instances where it has specific delegation.

Section 6.6 The Agency may consult with MHFA, local communities, PHAs, HRAs, RD and HUD to determine the marketability of projects. If, in the opinion of the Agency, the issuance of the Tax Credits to a project could be detrimental to existing rental property, the Agency will not issue Tax Credits to the application. If necessary, the Agency may require an additional, updated market study and will evaluate it using the data from other sources, including tax credit saturation in a community.

Section 6.7 The Agency reserves the right to adjust fees due to changing circumstances in order to cover its costs associated with producing and delivering its Tax Credit Program.

ARTICLE 7
CREDITS FOR BUILDINGS FINANCED BY TAX-EXEMPT BONDS

Section 7.0. Section 42 of the Code provides a separate set of procedures for obtaining Tax Credits for projects financed with the proceeds of tax-exempt bonds that receive an

allocation of the volume cap for tax exempt bonds. Although such Tax Credits are not counted against the tax credit volume cap for the State of Minnesota, developers should be aware that:

- a. Section 42(m)(1)(D) provides that in order for a project to receive an allocation of Tax Credits for a project financed with tax-exempt bonds, the applicable allocating agency must determine that the project satisfies the requirements for allocation of a housing credit dollar amount under its qualified allocation plan. This Plan applies to all tax exempt bond-financed projects located within Dakota County, other than projects financed with bonds issued by MHFA.

An initial determination of whether a project complies with the requirements in this Section 7.0.a must be made **prior to the issuance of the bonds**. Subsequent to this determination, the Agency will issue the appropriate determination letter.

In order to qualify under this Plan, a developer must demonstrate that the project is eligible for not fewer than 5 points. The threshold requirements in Section 4.1.a and 4.1.h of this Plan do not apply to tax-exempt bond financed projects using credits not counted in the state's volume cap.

Important: In order to begin the above process, the developer must submit to the Agency all documents required for an application for tax credits as established by this Plan and Procedural Manual and any additional information requested by the Agency. The developer must also submit to the Agency the required application fees identified in this Plan and the Procedural Manual.

- b. Section 42(m)(2)(D) of the Code provides that in order for a tax-exempt bond financed project to receive an allocation of tax credits, the issuer of the bonds must make a determination that the housing credit dollar amount does not exceed the amount that the issuer determines is necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the Tax Credit period. The determination by the issuer shall be made in a manner consistent with this Plan and the Procedural Manual. Section 42 requires that the issuer of bonds must consider the following in making such determination:
 1. the sources and uses of funds and the total financing planned for the project;
 2. any proceeds or receipts expected to be generated by reason of tax benefits;
 3. the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries;
 4. the reasonableness of the developmental and operational costs of the project; and

5. a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project, conducted before the credit allocation is made, and at the developer's expense by a disinterested party approved by the Agency.

This determination must be made **prior to the issuance of the bonds.**

- c. Section 42 provides that in order for a project to be eligible for tax credits, the taxpayer/owner must enter into an extended use agreement (a Declaration of Land Use Restrictive Covenants). Section 42(h)(6)(C)(ii) of the Code provides that the credit amount claimed for buildings financed by tax-exempt bonds by the taxpayer/owner may not exceed the amount necessary to support the applicable fraction specified in the Declaration for the buildings.
- d. The provisions of Section 42(h)(6)(E)(i)(II) and 42(h)(6)(F), which permit the owner to terminate the restrictions under the extended use agreement at the end of the initial compliance period under certain circumstances will apply to projects financed with tax-exempt bonds and are not required to be waived.
- e. Subsequent to the project being placed in service, the development must submit to the Agency an application and appropriate fees for Form 8609 meeting the requirements of this Plan and the Procedural Manual. The developer must also submit to the Agency any other related fees identified in this Plan and the Procedural Manual.

ARTICLE 8 PROJECT SELECTION

Section 8.0 Selection Priorities: The Agency's selection priorities shall be as set forth in the Scoring Worksheet attached hereto as Exhibit A, provided however, that the Agency reserves the right (but shall not be obligated) to grant priority over higher ranking projects to projects that (i) have previously received tax credits and have an annual tax credit shortfall of at least 5 percent, but no more than 50 percent, of the total qualified annual tax credit amount and (ii) demonstrate readiness to proceed by having city approvals and all funding commitments in place (other than the tax credits the applicant is presently requesting).

Section 8.1 Preference Priorities: The Agency's preference priorities shall be as set forth in the Scoring Worksheet attached hereto as Exhibit A.

Section 8.2 Tie Breakers:

- a. If more than one project receives the same score for selection priorities, the first tie breaker will be the total number of points in the preference priority criteria.

- b. If a tie still remains, the Agency shall select the project which best meets the applicable city's housing priorities.

ARTICLE 9
MONITORING COMPLIANCE WITH LOW-INCOME
HOUSING CREDIT REQUIREMENTS

Section 9.0 Compliance monitoring by the Agency will be required as a result of the Federal Budget Reconciliation Bill. All tax credit projects will be monitored by the Agency in accordance with Section 42(m)(1)(b)(iii) of the Code and Federal Regulations Section 1.42-5.

Section 9.1 RECORDKEEPING AND RECORD RETENTION PROVISIONS.

- a. RECORDKEEPING. The owner of a low-income housing project shall be required to keep records for each qualified low income building in the project showing for each year --
1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
 2. The number of occupants in each low-income unit, including minors, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989). Housing information concerning race, ethnicity, family composition, age, income, use and amount of Section 8 rental assistance or similar assistance, disability status and monthly rental payments of households residing in the project, which information will be required to be provided annually to HUD, beginning in the first quarter of 2010;
 3. The percentage of residential rental units in the building that are low-income units, models, offices and management units;
 4. The rent charged on each residential rental unit in the building (including any utility allowances), and documentation, including rent rolls, leases and utility allowances per Internal Revenue Service Notice 94-60 issued June 1994;
 5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
 6. The annual income certification of each low-income tenant per unit;
 7. The annual student certification of each low income tenant;

8. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Anticipated income of all adult persons expecting to occupy the unit must be verified and included on a Tenant Income Certification prior to occupancy and annually recertified for continued eligibility. (i.e., Written third party verification is always preferred.) Income verifications are sent directly to and returned by the source to management, not through the applicant. Specific forms of income verification are in the Procedural Manual. Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g);
 9. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project);
 10. The eligible basis and qualified basis of the building at the end of the first year of the Tax Credit period; and
 11. Any additional records necessary to verify compliance with additional restrictions included in the carryover agreement or Declaration.
- b. **RECORD RETENTION.** The owner of a low-income housing project shall be required to retain the records described in paragraph 9.1(a) of this section for each building in the project for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the Tax Credit period, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period with respect to the building.
- c. **INSPECTION RECORD RETENTION PROVISION.** Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety or building code violation reports or notices that were issued by the state or local government unit for the Agency's inspection under this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notice and complete its inspection, unless the violation remains incorrect.

Section 9.2 CERTIFICATION AND REVIEW

- a. CERTIFICATION. The owner of a low-income housing project shall certify at least annually to the Agency that, for the preceding 12-month period --
1. The project meets the requirements of the 20-50 test under Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(1)(B), whichever minimum set-aside test is applicable to the project, and if applicable to the project, the 15-40 test under sections 42(g)(4) and 142(d)(4)(B) for “deep rent skewed” projects;
 2. The project complies with the requirements for special set-aside on which the allocation was based;
 3. There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change, and the description of the change;
 4. The owner has received an annual income certification from each low-income tenant and documentation to support that certification, or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described above, or the owner has a re-certification waiver letter from the IRS in good standing;
 5. Each low-income unit in the project is rent restricted under Section 42(g)(2);
 6. No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent for a low-income unit not permitted by Section 42.
 7. All units in the project are for use by the general public and were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii));
 8. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601 – 3619, has occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 C.F.R. 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;
 9. Each building and each low-income unit in the project is suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making local health, safety, or building code inspections did

not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under this section. In addition, the owner must state whether the violation has been corrected;

10. There has been no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there has been a change, and the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
11. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;
12. If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
13. If the income of tenants of a low-income unit in the project increases above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income;
14. An extended low-income housing commitment as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989), and the project meets the provisions, including any special provisions, of the extended low-income housing commitment, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1927 U.S.C. 1437s (for buildings subject to Section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439);
15. The project complies with the requirements for all applicable federal or state housing programs (e.g. FmHA assistance, HOME, Section 8 or tax-exempt financing), as applicable;

16. The project is otherwise in compliance with the Code, including any Treasury Regulations, the applicable Qualified Allocation Plan, and all other applicable laws, rules and regulations; and

17. There has been no change in the ownership or management of the project.

b. REVIEW. The Agency shall review the certifications submitted under Section 9.2(a) above for compliance with the requirements of Section 42 of the Code. In addition:

1. An owner of a low-income housing project must submit to the Agency a completed, Agency signed copy of IRS Form 8609 for the first year of the credit period, together with Schedule A and Form 8586.

2. The Agency will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service, and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units

3. The Agency will inspect low-income housing projects once every three years, and review the tenant income certifications for at least 20 percent of the tenants (and previous tenants, to the extent necessary) and the documentation the owner has received to support those certifications. All projects shall have their first compliance inspection no later than the year following the first credit period.

4. The low income housing projects to be inspected must be chosen in a manner that will not give owners of low income housing projects advance notice that their records for a particular year will or will not be inspected. The Agency may give an owner reasonable notice that an inspection will occur so that the owner may assemble records (i.e. 30 days advance notice of inspection).

c. FREQUENCY AND FORM OF CERTIFICATION. The certifications of and review of this section shall be made at least annually through the end of the 15-year compliance period under Section 42(i)(1) of the Code and shall be made under penalty of perjury.

Section 9.3. INSPECTION PROVISION. The Agency shall have the right to perform an on-site inspection of any low-income housing project at least through the end of the term of the Declaration of Land Use Restrictive Covenants. An inspection includes a physical inspection of any building(s) in the project, as well as a review of records described above. The auditing provision of this paragraph is required in addition to any inspection of low-income certifications, supporting documents and rent records under Section 9.2(b) above.

Section 9.4 NOTIFICATION OF NONCOMPLIANCE

- a. GENERAL. The Agency shall give the notice described in Section 1.42-5(e)(2) of the Treasury Regulations to the owner of a low-income housing project and the notice described in Section 1.42-5(e)(3) of the Treasury Regulations to the Internal Revenue Service.
- b. NOTICE TO OWNER. The Agency shall provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in Section 9.2(a) or 9.3 hereof or discovers in an audit, inspection or review, or in some other manner, that the project is not in compliance with the provisions of Section 42.
- c. NOTICE TO INTERNAL REVENUE SERVICE. When required, the Agency shall file Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in Section 9.5 hereof, including extensions permitted under that paragraph). The Agency must check the appropriate box on Form 8823 indicating the nature of the noncompliance or failure to certify and indicating whether the owner has corrected the noncompliance or failure to certify. If the Agency reports on form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance.

Section 9.5 CORRECTION PERIOD. The correction period shall be that period specified in the notice to the owner during which an owner will have the opportunity to supply any missing certifications and bring the project into compliance with the provisions of Section 42. The correction period will be set by the Agency and will not exceed 90 days from the date of the notice to the owner described in 9.4.b. The Agency may extend the correction period for up to six months, but only if the Agency determines there is good cause for granting the extension.

Section 9.6 AUTHORITY RETENTION OF RECORDS. The Agency must retain records of noncompliance or failure to certify for 6 years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency must retain the certifications and records described in paragraph 9.2(a) of this Plan for 3 years from the end of the calendar year the Agency receives the certifications and records.

Section 9.7 DELEGATION OF AUTHORITY.

- a. GENERAL. The Agency may retain an agent or other private contractor (the “Authorized Delegate”) to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Agency to monitor compliance, except for the responsibility of notifying the Internal Revenue Service under Section 9.4(c) hereof. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation under Section 9.2(b) hereof, the right to inspect buildings as described in Section 9.3 hereof, and the responsibility of notifying building owners of lack of certification of noncompliance under Section 9.4 hereof. The Authorized Delegate must notify the Agency of any noncompliance or failure to certify.

- b. LIMITATIONS. In the event the Agency delegates compliance monitoring to an Authorized Delegate, the Agency shall use reasonable diligence to ensure that the Authorized Delegate properly performs the delegated monitoring functions. Delegation by the Agency of compliance monitoring functions to an Authorized Delegate shall not relieve the Agency of its obligation to notify the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

Section 9.8 LIABILITY. Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the Tax Credit is allowable. The Agency’s obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner’s noncompliance.

ARTICLE 10
AMENDMENTS TO PLAN

This plan is subject to modification or amendment at any time to ensure that the provisions contained herein conform to the requirements of Section 42(m) of the Code, applicable State law, and all official interpretations thereof. Such modifications or amendments and the manner of adoption thereof shall not be inconsistent with the Code. Amendments required solely to comply with the Code, applicable regulations or applicable state law may be approved by the Executive Director.

EXHIBIT A

SELF-SCORING WORKSHEET

a.	<u>SELECTION PRIORITIES</u>	<u>Developer Claims</u>	<u>Agency Awarded</u>
1.	New construction which increases the supply of affordable rental housing. <i>(10 Points)</i>		
2.	<p>Preserves low-income housing receiving assistance under Section 8 or Section 236 which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use. <i>(20 Points)</i></p> <p>The Agency in its sole discretion must agree that a market exists for a conversion to market rate housing.</p> <p>Applicant must agree to continue renewals of existing project-based housing subsidy payment contracts for as long as assistance is available.</p>		
3.	<p>Local, state or federal financial participation, including non-first mortgage assistance, or first mortgage loans below market rate (Check box that applies):</p> <ul style="list-style-type: none"> ▪ <input type="checkbox"/> for developments receiving assistance in excess of 30% of total development costs, <i>15 points</i>, ▪ <input type="checkbox"/> developments receiving assistance in the range of 21-30% of total development costs, <i>10 points</i>; ▪ <input type="checkbox"/> developments receiving assistance in the range of 10-20% of total development costs, <i>5 points</i>; ▪ <input type="checkbox"/> for letters of intent with no specified dollar amount, <i>3 points</i>. <i>(Up to 15 Points)</i> <p>Assistance from the MHFA Super RFP and related joint funders is not eligible for inclusion in this section unless the applicant can confirm that the project has been selected for processing.</p> <p>Assistance can be in the form of a grant, donation or waiver of assessments of infrastructure improvement costs, the waiver of city development fees directly related to the project, local employer contributions, private foundation donations, philanthropic donations, land buydown, land donations, tax increment financing, below market rate mortgage loans, reinvestment of developer fees, HOME, etc. provided by local, state or federal governments, charitable foundations or a federal home loan bank.</p> <p>Documentation of the amount and the terms of assistance must be provided from the provider of the assistance at the time of application in the form of a development-specific letter of intent. In the case of below market rate financing, the applicant must secure a firm financing commitment signed by the lender. The value assigned to donations and in-kind contributions must be consistent with comparable market costs for materials and services.</p>		
4.	Housing design in which there are individual exterior entrances for each unit. <i>(10 Points)</i>		

5.	At least 25% of the units in the project are designed, equipped and set aside for the developmentally, physically or mentally disabled and there is a referral and marketing plan that includes an agreement with an established organization providing services for such persons. (5 Points)														
6.	A qualified non-profit or a governmental unit is the sole general partner. (10 Points) The non-profit must either be local, organized and incorporated in the State of Minnesota and have at least five-years experience in Minnesota owning and operating at least 100 units of affordable tax credit housing. For a non-profit, a copy of the Certificate of Incorporation from the Secretary of State of Minnesota must be submitted at the time of application. Points will only be given to a local non-profit. To be eligible for points, the non-profit must have Section 501(c)(3) approval from IRS at time of application, and meet requirements of Section 42(h)(5)(C) of the Code.														
7.	<i>Intermediary Costs (Soft Costs).</i> Points will be given to developments with the lowest intermediary costs on a sliding scale based on percentage of total development cost. (Up to 6 Points) <table border="0"> <thead> <tr> <th><u>% of Total Development Cost</u></th> <th><u>Points</u></th> </tr> </thead> <tbody> <tr> <td>0-15%</td> <td>6</td> </tr> <tr> <td>15.1-20%</td> <td>3</td> </tr> <tr> <td>20.1-25%</td> <td>2</td> </tr> <tr> <td>25.1-30%</td> <td>1</td> </tr> <tr> <td>Over 30</td> <td>0</td> </tr> </tbody> </table> For selected projects, the foregoing percentage of intermediary costs for which points are given will be enforced at issuance of the IRS Form 8609.	<u>% of Total Development Cost</u>	<u>Points</u>	0-15%	6	15.1-20%	3	20.1-25%	2	25.1-30%	1	Over 30	0		
<u>% of Total Development Cost</u>	<u>Points</u>														
0-15%	6														
15.1-20%	3														
20.1-25%	2														
25.1-30%	1														
Over 30	0														
8.	The development will provide wireless data networking via installation of all appropriate cable and connections to every unit in the development. This will be a design requirement if points are taken. (1 point)														
9.	Rehabilitation of existing housing as part of a community revitalization plan. (5 Points)														
10	<i>Eventual tenant ownership.</i> This point will be given to developments that include a plan for eventual tenant ownership of 100% of the units. (1 Point)														
11	Unacceptable Practices, transfer of ownership and displacement of Section 8 tenants as described in Section IV.F of the Procedural Manual. (Up to -50 Points)														

b.	<u>PREFERENCE PRIORITIES</u>	<u>Developer Claims</u>	<u>Agency Awarded</u>
1.	<p>Points are awarded to projects that will serve the lowest income tenants (50% or less of area median adjusted by unit size) with gross rents not to exceed 30% of income. <i>(Up to 15 Points)</i></p> <p>Applicants may choose any combination of the following rent limitations for the project, but may not count any unit more than once. This selection will restrict rents only (tenant incomes will not be restricted to the following levels by claiming points in this section). Check the box that applies.</p> <p> <input type="checkbox"/> 100% of HTC units at the rents for 50% of AMI: 15 points <input type="checkbox"/> 75% of HTC units at the rents for 40% of AMI: 15 points <input type="checkbox"/> 75% of HTC units at the rents for 50% of AMI: 10 points <input type="checkbox"/> 50% of HTC units at the rents for 40% of AMI: 10 points <input type="checkbox"/> 50% of HTC units at the rents for 50% of AMI: 5 points </p>		
2.	<p>Points are awarded to projects located in a Qualified Census Tract and are part of a cooperatively developed plan that provides for community revitalization. <i>(Points 5)</i></p>		

IMPORTANT:

All units with rents restricted per b.1. above must meet the applicable area median rent for a minimum of five years. After the first five year period has expired rents may be increased to the 40%, 50% or 60% rent limit (as applicable) over the following periods with increases not to exceed the amount listed in the table below.

Year	30% of 50% Rent Levels	30% of 40% Rent Levels
1 - 5	30% of 50%	30% of 40%
6	30% of 53%	30% of 45%
7	30% of 57%	30% of 50%
8	30% of 60%	30% of 55%
9	-	30% of 60%
10		-
11		