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**DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY**

**LOW INCOME HOUSING**

**TAX CREDIT**

**2011 PROCEDURAL MANUAL**

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# HOUSING TAX CREDIT PROGRAM

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## I. INTRODUCTION

The Low Income Housing Tax Credit (the “HTC” or “tax credit”) Program was established by Congress in 1986 by enactment of Section 42 (“Section 42”) of the Internal Revenue Code of 1986 (as amended, the “Code”). The HTC Program provides a reduction in tax liability to owners and investors in eligible low income rental housing developments through the allocation of certain tax credits to such owners.

The Minnesota Housing Finance Agency (the “MHFA”) has been designed by the Minnesota Legislature as the primary allocator of tax credits in Minnesota. In addition, pursuant to Minnesota Statutes, Sections 462A.221 to 462A.225 (the “Act”) certain local governmental entities are authorized to act as housing credit agencies for the purpose of allocating a portion of the available state cap. The Dakota County Community Development Agency (“CDA”) has been designated by the Minnesota Legislature as a suballocating agency of HTC in Minnesota.

Section 42 requires housing credit allocating agencies develop an allocation plan for the distribution of the tax credits within the jurisdiction of the allocating agency (IRS Regulations 1.42-17). The CDA’s *Qualified Allocation Plan for 2011* (“QAP”) combines federally legislated priorities with other priorities established by the CDA following receipt of comments from the public. The QAP is subject to modification or amendment to ensure the provisions conform to the changing requirements of Section 42 and applicable state statutes. No assurances can be given that IRS guidance will not require further adjustments to the QAP and additional review of selected developments.

The CDA or its designee is also required to monitor HTC projects during the Compliance Period and to notify the Internal Revenue Service (“IRS”) of any noncompliance with the requirements of Section 42 of which it becomes aware. All applicants should review the IRS Regulations 1.42-5 Monitoring Compliance. In addition, the CDA will monitor the projects during the remaining term of the Declaration of Land Use Restrictive Covenants (“Declaration”).

This information summarizing the HTC program is provided as a brief overview. It is not comprehensive and should not be relied upon for income tax purposes. The tax credits are allocated to the owner (taxpayer). The owner is solely responsible for compliance with Section 42.

The CDA is under no obligation to undertake an investigation of the accuracy of the information submitted in an application for housing tax credits. The CDA’s review of a proposed housing project does not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to the HTC program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the project. If any information submitted by the applicant in connection with the allocation of HTCs by the CDA is later found to have been incorrect or there has been a subsequent change in any material respect, it is the responsibility of the applicant to inform the CDA and to request a reexamination of the application.

This manual is provided solely for use in applying for the housing tax credits from the CDA and may not be relied upon in structuring or investing in specific transactions, compliance with the Internal Revenue Code, Treasury Regulations or any other laws or regulations governing tax credits. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.

## II. AGENCY MISSION STATEMENT

The CDA utilizes available federal, state and local resources to serve the residents of Dakota County by working to upgrade and maintain the existing housing stock, encourage the

construction of new housing affordable to low and moderate income households, promote economic development efforts and provide assistance to Dakota County communities through community development programs, and to provide low and moderate income family and senior households with decent, safe, and affordable rental housing opportunities.

### **III. ROLE OF THE AGENCY AS A SUBALLOCATOR**

Suballocators such as the CDA were authorized by the 1990 legislature to allocate and monitor tax credits to eligible projects in their cities or counties. The CDA awards its allotted tax credits in Round 1 of competition.

#### **A. Round 1**

During Round 1, for-profit applicants for projects to be located in Dakota County must apply directly to the CDA for a credit allocation. Non-profit applicants may apply to the MHFA non-profit set aside or to the CDA individually or concurrently. Any tax credits not used by the CDA prior to Round 2 are returned to MHFA.

#### **B. Round 2**

In Round 2, projects located in Dakota County may apply directly to the MHFA.

#### **C. [Reserved]**

#### **D. Subsidy Layering Review**

### **IV. POLICIES AND PROCEDURES**

#### **A. Application Cycle**

The CDA will accept applications in Round 1 in accordance with the QAP and this manual. The closing date for receipt of applications for Round 1 is tentatively scheduled for June 15, 2010, but applicants should note that MHFA establishes the closing date for Round 1 and should confirm the actual deadline prior to submission.

The CDA uses MHFA's Multifamily and Tax Credit application materials which can be found at <http://www.mnhousing.gov/housing/developers/common-app/index.aspx>

The CDA will base its selection decision upon the application and attachments received on the application due date. No applications, attachments or documentation will be accepted after the application due date unless requested by the CDA.

If the application and all required attachments are not legible and complete, the application will be returned. Applications will not be accepted by facsimile transmission.

The current version of the MHFA Multifamily Rental Housing Common Application Form, must be submitted electronically to [dhaugh@dakotacda.state.mn.us](mailto:dhaugh@dakotacda.state.mn.us). In addition, an original plus two copies of the entire application package should be submitted no later than 4:30 p.m. on the application date to:

Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, MN 55123  
Attn: Housing Finance Coordinator  
Phone: 651-675-4400

If the application and all required attachments are not legible and complete, the application will be returned.

Upon receipt of an application, as required by federal law, the CDA will notify the Chief Executive Officer of the local jurisdiction where the proposed development is planned. The notice will include characteristics of the proposed HTC development and provide an opportunity for the local government to comment on the development.

Information submitted in an application for housing tax credits is public information that is accessible to the public pursuant to Minnesota Statutes, Chapter 13.

**B. Multiple Buildings**

Projects may include “multiple buildings” having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same person for federal income tax purposes and are financed pursuant to a common plan of financing. Scattered site buildings on different tracts of land will also qualify if the project meets all of the other requirements described above and the project is 100 percent rent restricted.

**C. [Reserved]**

**D. [Reserved]**

**E. [Reserved]**

**F. Transfer of Ownership**

The CDA strongly discourages the transfer of ownership in developments that have been awarded tax credits. The CDA believes that for the long term viability of quality housing, the development and management teams making the decisions in developing the tax credit housing need to also own and operate the development for the long term. Any transfer of title of a selected development or transfer of more than a 50 percent interest in a general partner or change in a non-profit partner prior to a date five years after the development’s new construction/rehabilitation element has been placed in service will be considered a material change in the development and will be subject to the approval of the CDA. Owners wishing to change or transfer ownership must submit a revised application along with a completed and executed Notice of Intent to Transfer Ownership (MHFA Form HTC-27) and Transfer Agreement if prior to issuance of 8609 (MHFA Form HTC-20), a transfer of ownership fee (See Section X), and any other documentation that the CDA deems necessary.

**G. Unacceptable Practices**

1. Unapproved Transfer of Ownership:

Any unapproved change or transfer of ownership from selection through five years after the above cited placed in service date will have an effect on all individuals/entities from the development and management team on each side of

the transfer that submit applications in future HTC rounds. These entities may be penalized as follows:

For two funding rounds from the date the CDA discovers an unapproved change or transfer of ownership:

- a. First Transfer (-10 points on each submittal)
- b. Two or More Transfers (-25 points on each submittal)

In addition, if the CDA becomes aware of a transfer of ownership by an individual or entity without proper notification and approval by the CDA, the CDA reserves the right to determine that all parties involved in the transfer will not be eligible for participation in the CDA's HTC program for a period of ten years.

2. Displacement of Section 8 Tenants:

The CDA will not accept applications that have displaced (or will displace) Section 8 tenants in a housing development because rents will be increased above the Section 8 Payment Standard Rent limit. Rehabilitation developments that have existing Section 8 tenants may not increase those rents (in Section 8 units only) above HUD's Payment Standard Rents after completion of rehabilitation.

- a. The CDA may partner with the local HUD area office to determine if tenants of rehabilitation developments;
  1. were displaced prior to application;
  2. are displaced after rehabilitation has been completed.
- b. If the CDA and the local HUD area office agree that intentional displacement of Section 8 tenants has occurred, with exception given to lease violations by the tenant, the CDA will:
  1. reduce or rescind the reservation/allocation of the tax credits to the project prior to issuance of 8609;
  2. assess a -25 point penalty to all parties involved in ownership/management of the development for two funding rounds following notification of the assessment of the negative points by the CDA and may be placed against tax-exempt tax credit projects, owners and managers.

3. Changes to Development:

The award of tax credits is based upon information provided in the application and the preliminary plans submitted with the application. Until the property is placed in service, any material changes to the development or building design as submitted in the application require written notification to and approval from the CDA. Any changes that have not been previously approved by the CDA could result in a proportional loss of tax credits up to the full amount of the allocation as well as the assessment of penalty points to the owner/developer of up to -25 points.

4. Late 8609 Application Submissions and/or Filing of Non-Agency Approved 8609 with the IRS:

When the CDA becomes aware that a late submission of a complete and acceptable 8609 application package by a development's owner/agent results in the loss of any volume of housing tax credit authority to the State of Minnesota, the CDA reserves the right to determine that all parties involved will not be eligible for future participation in its HTC Program for a period of ten years.

When the CDA becomes aware that a development's owner/agent has filed a self-prepared 8609 with the Internal Revenue Service, or if the owner/agent electronically files an 8609 with the IRS that does not accurately reflect the information contained on the Agency signed version of the approved 8609, the CDA will file an 8823 Notice of Non-Compliance with the IRS and reserves the right to determine that all parties involved will not be eligible for future participation in its HTC Program for a period of ten years. This applies to all credits allocated by the CDA including, without limitation, those allocated in conjunction with tax-exempt bonds.

5. Repeated non-compliance with the CDA's Fair Housing Policies, Procedures, and/or Requirements:

Repeated failure to comply with the CDA's Fair Housing Policies, Procedures or Requirements will be penalized. The CDA will impose up to a -25 point penalty on future housing credit developments to all parties involved in ownership and/or management on the development(s) that repeatedly is found in non-compliance. The penalty points will be in effect for two (2) years following notification of the assessment of the negative points. Penalty points will also be applied to owners and/or managers of tax credit developments financed with tax-exempt bonds in the same way and for the same period of time.

**H. Minimum Underwriting Factors**

A development selected for a commitment of tax credits is selected based upon the underwriting factors relating to maintenance and operating expenses and permanent financing stated by the applicant in its application and as approved by the CDA (see Chapter VIB). These factors will be monitored throughout the tax credit process until the CDA's issuance of the approved IRS Form 8609. The CDA will not allow any significant adjustments to these factors. Changes in these factors could lead to the revocation of the tax credit allocation.

**I. Identity of Interest**

The applicant must disclose any and all relationships (generally based on financial interests or family ties) with others involved in the project. A written disclosure to the CDA detailing the nature of all identity of interest relationships is required for all parties.

**J. Disclosure and Eligibility of Development Team**

The applicant must disclose the names and addresses, including corporate officials where applicable, of all parties that have a significant role in the project (“significant parties”). These significant parties include, but are not limited to general partners, accountants, architects, engineers, financial consultants, any other consultants, management agents and the general contractor (each team member must complete a *Qualification Form* for their respective role (MHFA Form 203A, Form 210A, Form 205A, Form 208A, Form 206A, Form 209A and other applicable forms)). The CDA must be satisfied that those who will own and operate the project are familiar with and prepared to comply with the requirements of the program.

The following significant parties are not eligible to participate in the tax credit program:

1. Significant parties who have been convicted of, enter an agreement for immunity from prosecution from, or plead guilty, including a plea of *nolo contendere*, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records;
2. Significant parties who are currently debarred from any Minnesota program, other states’ program, or any federal program;
3. Significant parties who have serious and persistent compliance monitoring violations may not be eligible at the sole discretion of the CDA; or
4. Significant parties having an Identity of Interest with persons or entities falling into any of the above categories may not be eligible at the sole discretion of the CDA .

**K. Determination of Credit Amount**

Federal law mandates that, although a proposed project may be eligible for up to 70 percent or up to 30 percent present value credit amount, the CDA may not allocate more credit than is necessary for the financial feasibility of the project and its viability as a qualified affordable housing project throughout the compliance period.

After a project meets the threshold criteria, including marketability, the CDA will evaluate each proposed project, taking into consideration:

1. Development costs, including, developer fees, builder profits, contractor overhead, and general conditions.
2. All sources and uses of funds.
3. Projected income and expenses.
4. Proceeds expected to be generated from the sale of tax credits, including historic tax credits.

5. The difference between total project costs and total available financing resources, which is referred to as the GAP. A calculation is made to determine the amount of tax credits needed by the project to fund the GAP over a ten-year period, based on the estimated market value of the tax credits.

Based on this evaluation, the CDA will estimate the amount of credit to be reserved for each application. This determination is made solely at the CDA's discretion and is not a representation as to the feasibility of the project. Rather, it will serve as the basis for making a Commitment of tax credits. The amount of the tax credit can change during the process due to variations in cost, mortgage amount, tax credit percentage, syndication proceeds, etc.

This analysis to determine the amount of tax credits necessary must be performed by both the CDA and the owner/developer at the time of application, at the time a carryover allocation is approved, and at the time the project is placed in service, providing all project costs are finalized and certified.

If there are changes in resources and/or uses of funds or other material changes, the CDA will adjust the tax credit amount to reflect the changes, and the tax credit may be reduced. Tax credit amounts will not automatically be increased above the initial reservation request or allocation amount. Requests for additional tax credits for the project will depend upon the availability of credits.

**L. Requests for Additional Credit Amounts**

Developments which have previously received a partial allocation of tax credits may apply to MHFA for additional tax credits in Round 2 and may be eligible to apply for additional tax credit amounts when applications are due for Round 1.

Developers who have Carryover tax credit allocations from a prior year and who request additional tax credits will be required to submit a revised application package with all exhibits and a full application fee for the additional tax credits requested.

Applications requesting increases in tax credit amounts will be subject to the same evaluation process described above and to the availability of tax credits as well as limits on the time period for allocation for additional tax credits under Section 42.

**M. [Reserved]**

**N. Qualified Census Tracts, Difficult Development Areas and CDA Designation for Increase In Basis**

Federal law permits, but does not require, the CDA to reserve a greater amount of credits than the legislated maximum credit percentage for projects in areas that meet the following criteria:

1. Qualified census tracts ("QCT") designated by HUD in which 50 percent of the population has an income of less than 60 percent of the area median or has a poverty rate of at least 25 percent; where such areas do not comprise more than 20 percent of the overall population, (For a current list of the HUD-designated QCT on the Internet, go to [www.huduser.org/datasets/qct.html](http://www.huduser.org/datasets/qct.html). For Census Tract information on the Internet, go to the <http://factfinder.census.gov>.)

Or

2. Difficult development areas ("DDA") designated by HUD as having high construction, land, and utility costs relative to area median income.

**Note that there are currently no qualified census tracts or HUD designated difficult development areas in Dakota County.**

In accordance with the Housing and Economic Recovery Act of 2008, the CDA is authorized to designate buildings placed in service after July 30, 2008, to receive an increase of 30% of their eligible basis, based on a determination by the CDA 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.) In making a determination that an increase in basis is required, the CDA will consider whether (i) the development meets housing priorities identified by the CDA, 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 CDA determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

**O. Commitments**

Once staff has ranked applications and determined allowable credit amounts for each application, staff will make recommendations to the CDA's Board of Commissioners for final approval of a Commitment of tax credits. After the ten-day adjustment period (referenced below), the selected applicant will have 20 days to acknowledge selection by returning an executed project profile, and the appropriate commitment fee (See Section X).

A development selected for a Commitment of tax credits is selected based upon many specific factors relating to the application including site location. **Commitments are site specific.** Changing a development's site could lead to the revocation of the tax credit Commitment or allocation.

In general, federal law permits owners to elect the applicable percentage either at Commitment or placed in service (and if no election is made the default is placed in service), and once made the election is irrevocable. However, for buildings placed in service after July 30, 2008 and before December 31, 2013, the applicable percentage for new construction (not federally subsidized) and rehabilitation will be 9%, regardless of whether an election was previously made to use the applicable percentage in effect at the time of Commitment. This provision applies to buildings placed in service during the period described above, regardless of the year to which the Credits are allocable.

Revenue Procedure 94-57 allows the owner to fix the date of the gross rent floor to be the credit allocation date (the earlier of carryover or issuance of the 8609) or the placed in service date, as long as the owner/taxpayer, submits to the CDA prior to the placed in service date a fully executed Gross Rent Floor Election Form (MHFA Form HTC-26) including each building of the development in which there are housing tax credit units. If the fully executed form is not submitted to the CDA prior to the placed in service date, with all elections made by the owner, the gross rent floor date will be effective as of the date of the allocation of the tax credits to the project (the earlier of the carryover allocation or the issuance of the 8609).

The CDA maintains the right not to reserve tax credits for any project if it determines, in its sole discretion, that a Commitment for such project does not further the purpose and goals as set forth in Section II of this plan.

**P. Administrative Errors**

If the applicant believes that the CDA has misinterpreted, was not aware of a submission item, or miscalculated the applicant's selection points or credit amount at time of application/commitment, the applicant must submit in writing evidence supporting its position within five business days of the CDA's notification of application status. Notification will be in the form of a commitment selection or rejection letter. The first business day after the date on this letter will be the first day of the notification period.

If the evidence provided by the applicant is accepted and the selection points of the project are affected, the CDA will re-rank all projects in the order of descending selection points. After an additional five business day period, the CDA's rankings will stand and Commitments of tax credits for selected projects will be distributed.

**Q. Waiting List**

Eligible applications for which the CDA reserved no tax credits or fewer tax credits than were requested will be maintained on a waiting list in the event the CDA receives returned tax credits. The waiting list will follow the CDA's selection point ranking. Generally, projects will be chosen in order; however, depending on time and funds available, the CDA reserves the right to make modifications to the waiting list. If an application is not selected for a Commitment of tax credits by the deadline for return of unused tax credits to MHFA, there will be no further consideration. An applicant currently on the waiting list must submit a completely new application packet in the next funding round, which is a new tax credit year, to receive consideration for a tax credit allocation.

**R. Carryover Allocations**

Federal law (IRS Regulations 1.42-6 Carryover Allocation) provides that the CDA may give a carryover allocation to certain qualified building(s), which are to be placed in service no later than December 31 of the second year after the allocation year for which the Commitment was issued. To receive a carryover allocation, the owner must submit a complete carryover application package to the CDA no later than October 1 of the allocation year for which the Commitment was issued.

Federal law requires that more than ten percent (10%) of the expected basis in the project (including land) must be expended by the later of the date which is one year after the date that the allocation is made or the close of the calendar year in which the allocation is made. A written certified public accountant's (CPA) certification must be submitted verifying the owner has incurred required expenditures. As decided by the owner, submission of the CPA certification may be made at the time of carryover application or the deadline established in Section VIII.B of this manual. However, the carryover allocation agreement must be executed prior to December 31 of the allocation year for which the Commitment was issued. For a carryover agreement to be valid it must include, among other things, the amount of the reasonably expected basis at the end of the second year after the initial Commitment and the carryover basis expended by the later of the date which is one year after the date that the allocation is made or the close of the calendar year in which the allocation is made. If the final CPA certified carryover basis and expenditures information is not available at the time the carryover application is due, an estimate of the expenditure of greater than 10 percent of the expected basis must be performed by the owner and submitted to the CDA no later than October 1 of the allocation year for which the Commitment was issued. Final CPA certifications must be submitted to the CDA prior to the deadlines established by Section 42 and by no later than the CDA submission deadlines identified in Section VIII.B. of this manual. Failure

to comply with the submission dates will result in significant penalties as outlined in Section X.D. Additional carryover requirements are given in Section VIII.B.

The CDA tax credit carryover procedures are intended to conform to the federal laws and are based upon the limited guidance received from the IRS. At any time, additional IRS guidance may be issued that will require further adjustments to the QAP and additional reviews of developments relating to carryover.

#### **S. Final Allocations**

Except for carryover allocations, no allocation of tax credits will be made until a building or project is placed in service, and the proper documentation and fees have been received. The final amount of credits is determined when the project is placed in service.

Final allocations (Form 8609) may be requested when all eligible buildings are placed in service and the proper documentation and fees have been received. The CDA may establish, at its sole discretion, required deadlines prior to year-end for final allocation requests in order to permit timely processing of documents. If an owner of a tax credit development does not intend to obtain a carryover allocation, but instead intends to take a project from credit Commitment directly to placed-in-service status, an allocation via issuance of 8609 must be obtained prior to year-end of the allocation year for which the Commitment was issued. The tax credit application for issuance of such 8609's must be submitted to the CDA on or before November 1 of the allocation year for which the Commitment was issued.

**A project that has neither received a Carryover Allocation nor has been placed in service and issued appropriate 8609's before December 31st of the year of allocation will lose its entire allocation of credits.**

The tax credit amount that will be allocated is based on the CDA's final determination of the qualified basis for the building or project and a review of the project costs as outlined in this Procedural Manual. The allocation may be reduced to comply with federal law based on the final review of the project.

Prior to final allocation the project owner is required to execute and record a Declaration of Land Use Restrictive Covenants.

Non-compliance with the terms of a Commitment of tax credits or a carryover allocation will result in a loss of credits.

#### **T. Monitoring for Compliance**

Federal law requires that the CDA provide a procedure to be used in monitoring for noncompliance of Section 42 and for notifying the Internal Revenue Service of such noncompliance. The CDA is required to apply the monitoring procedure to all tax credit projects developed within the CDA's jurisdiction including tax credits issued with tax-exempt bonds since the inception of the HTC Program. The CDA shall perform such duties in accordance with its HTC Compliance Monitoring Manual. Copies are available upon request.

1. All tax credit recipients shall submit an annual certification to the CDA in a manner, form, and time established by the CDA. The certification will include, but is not limited to, the submission of completed IRS forms and compliance monitoring fees. Owners are required to certify whether or not the property is in compliance with Section 42 regulations and also whether or not the property

complies with the restrictions and/or set-asides under which the allocation was awarded.

In addition to the annual owner certification requirements, owners shall submit a copy of the Characteristics of Tenant Household report, which details demographic data on households initially occupying units in the development from the placed in service date to the end of the compliance period.

2. A review of tenant certifications including the tenant applications, third party verifications and supporting documentation of income, as well as general project appearance will be conducted in accordance with the CDA's Compliance Manual. The compliance report including tenant names(s), household information, amount and sources of income, rents, utility allowance or cost, and other unit information is required to be maintained at all times and will be submitted annually. All tax credit recipients will also maintain, as part of the official project records, the tenant applications, income certifications and verification of tenants' income. If a property received its credit allocation based on serving specific targeted population(s) the tenant files must also contain supporting documentation showing that the unit is serving such population(s).
3. The CDA will conduct its first monitoring inspection no later than the end of the second year of the credit period. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of 20 percent of the low income units.
4. The CDA will conduct a compliance inspection of each development at least once every three years. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of 20 percent of the low-income units.
5. The CDA shall have access to all official development records, including IRS reporting forms, upon reasonable notification. All official development records or complete copies of such records must be made available to the CDA upon request.
6. To accomplish its compliance monitoring responsibilities, the CDA will charge a fee, currently \$25 per low income unit annually. The CDA reserves the right to adjust the annual fee to offset administrative costs.
7. The CDA will promptly notify the IRS of any development noncompliance within its responsibility as contained in Section 42 of the Code. The CDA has no jurisdiction to interpret or administer Section 42, except in those instances where specific delegation has been authorized.

#### **U. Qualified Contract**

Section 42(h)(6)(E)(i)(II) of the Code created a provision that housing credit agencies respond to the request for presentation of a qualified contract for tax credit developments with expiring compliance periods. The request for presentation of a qualified contract may occur after year 14 of the compliance period. The request for presentation of a qualified contract is a request that the housing credit agency find a buyer (who will continue to operate the property as a qualified low-income property) to purchase the property for a "qualified contract" price pursuant to IRS regulations. If the housing credit agency is unable to find a buyer within one year, the extended use period is terminated.

Many owners have chosen to waive the right to request a qualified contract and have committed to thirty years or more of operation as low-income rental housing. Owners should review their development tax credit application, carryover agreement and

Declaration of Land Use Restrictive Covenants to determine whether the development has waived the right to request a Qualified Contract prior to contacting the CDA.

A Request for Qualified Contract may be submitted only once for each development. If an owner rejects an offer presented under the Qualified Contract or withdraws its request at any time after the Notification Letter and Applications Materials have been received by the CDA, no other opportunity to request a Qualified Contract will be available for the development in question.

**V. [Reserved]**

**W. Other Conditions**

No member, officer, agent, or employee of the CDA shall be personally liable concerning any matters arising out of, or in relation to, the allocation and monitoring of tax credits.

**X. Revisions to the Manual and Allocation Plan**

To the extent necessary to facilitate the award of housing tax credits that would not otherwise be awarded, this Procedural Manual and attached QAP may be modified by the CDA from time to time. The CDA staff may make administrative modifications deemed necessary to facilitate the administration of the HTC Program or to address unforeseen circumstances. Further, the CDA is authorized to waive any conditions that are not mandated by Section 42 on a case-by-case basis for good cause shown.

A written explanation will be made available to the general public for any allocation of a housing credit dollar amount that is not made in accordance with the CDA's established priorities and selection criteria.

The attached QAP may be amended for substantive issues at any time following public notice and public hearing. Said hearing will be held at the main offices of the CDA.

To the extent that anything contained in the Manual and QAP does not meet the minimum requirements of federal law or regulations, such law or regulation shall take precedence.

**V. FEDERAL PROGRAM REQUIREMENTS**

**A. Eligible Activities**

Eligible activities for tax credits include new construction, substantial rehabilitation, or acquisition with substantial rehabilitation.

**B. Applicable Percentage**

There are two levels of applicable percentage, depending upon whether the building is new or existing, whether there are rehabilitation expenditures and whether the buildings are federally subsidized.

**1. New Buildings and Qualifying Rehabilitation Expenditures (if neither is federally subsidized):**

With respect to new buildings or qualifying rehabilitation expenditures which are not subsidized, the applicable percentage is an amount resulting in aggregate

credits having a present value of 70 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 9 percent.

2. **New Buildings and Qualifying Rehabilitation Expenditures that are Federally Subsidized and Existing Buildings:**

With respect to new buildings and qualifying rehabilitation expenditures which are federally subsidized, and the acquisition of existing buildings that are substantially rehabilitated, the applicable percentage is an amount which results in aggregate credits having a present value of 30 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 4 percent.

The 9 percent and 4 percent credit percentage represents the maximum potential rate. For the current rate, you may visit <http://www.irs.gov/app/picklist/list/federalRates.html>.

Section 42(b)(2)(A) and (B) establishes a temporary minimum credit rate for non-federally subsidized buildings. In the case of any new building which is placed in service by the taxpayer after July 30, 2008 and before December 31, 2013, and which is not federally subsidized for the taxable year, the applicable percentage shall not be less than 9 percent.

Consult with your tax credit professionals for the current 4 percent credit rate.

**C. Qualifying Rehabilitation**

Rehabilitation expenditure requirements are established both by state and federal law.

Under Section 42(e), rehabilitation expenses qualify for the credit if the expenditures for each building:

1. Are able to be allocated to one or more low income units or substantially benefit low income units; and
2. Equal the greater of:
  - a. An average of \$6,000 in qualified basis per low income unit for a building increased by a cost of living adjustment per Section 42(e)(3)(D); or
  - b. An amount that is not less than 20 percent of the adjusted basis of the building, as determined pursuant to Section 42(e)(3) of the Code.

In addition to the Section 42(e) requirements, Minnesota Statutes Section 462A.221, Subdivision 5, requires rehabilitation expenditures for the project of an average of \$5,000 per unit.

It is necessary to acquire an existing building in order to incur qualifying rehabilitation expenditures with respect to that building. In such a case, the costs of acquiring the existing building may be eligible for the 30 percent present value credit and the rehabilitation expenditures may be eligible for the 70 percent present value credit.

**D. Existing Buildings**

In order for an existing building to qualify for the 30 percent acquisition credit in connection with substantial rehabilitation, there must have been a period of at least 10 years between the date the building was acquired and the date it was last placed in service.

Please note that the 10-year rule also applies to existing tax credit projects applying for a new allocation of acquisition credits at the end of the original 15-year compliance period.

**E. Exception to the Ten-Year Rule**

Exceptions to the ten-year rule are provided in Section 42(d)(6) of the Code for federally or State assisted buildings, certain low-income buildings subject to mortgage prepayment, and buildings acquired from insured financial institutions in default. Certain other situations are exempt from the ten-year rule, such as:

1. A person who inherits a property;
2. A government unit or qualified non-profit group if income from the property is exempt from federal income taxation;
3. A person who gains a property through foreclosure (or instrument in lieu of foreclosure) of any purchase money security interest, provided the person resells the building within 12 months after placing the building in service following foreclosure; or
4. Single family residences that had no use during the prior ten-year period except as an owner-occupied principal residence will not be treated as being placed in service for purposes of the ten-year holding period. Note that although the 10-year rule does not apply, the property must still be substantially rehabilitated to claim the acquisition costs of such a property.

**F. Federal Subsidies**

The determination of whether a building is federally subsidized is addressed in Section 42(i)(2) of the Code. In general, a building is treated as federally subsidized if there is financing (other than construction period financing, under certain circumstances) which is tax exempt under Section 103, the proceeds of which were used (directly or indirectly) with respect to such building or its operation.

Federal grants are not to be taken into account in determining eligible basis. The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

Owners of a property receiving a federal subsidy have the option of treating the subsidy amount as if it were a federal grant and deducting the amount of the subsidy from the qualified basis or costs against which the amount of the credit is calculated.

**G. [Reserved]**

**H. Federal Subsidy Layering Review.**

Section 911 of the Housing and Community Development Act of 1992 requires that specific procedures be followed for subsidy layering review when tax credits and HUD

assistance are combined in a single project. Applicants whose developments combine HUD assistance and tax credits should be aware that subsidy layering review must be completed by the CDA for their development, and should contact HUD and the CDA to receive additional information prior to submitting an application.

Subsidy layering review is required for the following programs, but not limited to: Metropolitan Housing Opportunity Program (“MHOP”), U.S. Department of Housing and Urban Development (“HUD”) insurance and Section 8 project-based rental assistance, etc.

At a minimum, the following documents must be submitted:

1. Rental Housing Project Income analysis and appraisal, signed and dated by HUD (form 2264a);
2. A line item sources and uses statement;
3. Partnership (Syndication) Agreement, spelling out the equity contributions and dates of disbursement; and
4. Copy of Multifamily Application MHFA Form HTC-1.

**I. Project Eligibility**

The purpose of the housing tax credit is to assure that a sufficient number of rental units are available on an affordable basis to low income persons. Applicants should be cautioned that this set aside represents the minimum number of units that must meet both rent and income restrictions to qualify for tax credits for each year of the credit period. A development must, for a specific period of time, meet one of the following minimum tests:

20/50 Test:

To meet the 20/50 Test, a minimum of 20 percent of the residential units must be both rent restricted and occupied by individuals whose income is 50 percent or less of AGMI (as established for different geographical areas by the U.S. Department of Housing and Urban Development) adjusted for family size.

Or

40/60 Test:

To meet the 40/60 Test, a minimum of 40 percent of the residential units must be both rent restricted and occupied by individuals whose income is 60 percent or less of AMGI adjusted for family size.

Once made, the choice between the 20 percent at 50 percent formulation and the 40 percent at 60 percent formulation is irrevocable.

Note: The actual number of restricted units within the project must be consistent with the initial applicable fraction selected at the time of Commitment.

## **J. Affordable Rents**

The rent restrictions for the units are governed by Section 42 and regulations, rulings and other announcements by the IRS. The following summary is not intended to be comprehensive. A violation of the tenant income or rental restrictions in Section 42 may result in project ineligibility or a reduction in basis and/or credit amount.

Rent Restriction: For a unit to count as a low-income unit, the gross rent may not exceed 30 percent of the imputed tenant income limitation. The imputed income limitation applicable to a unit equals the permissible income limitations that would apply if the number of individuals occupying the unit were:

1. One individual in the case of a studio apartment; and
2. 1.5 individuals per bedrooms in the case of a unit with one or more separate bedrooms.

Therefore, the rent restriction applicable to a low-income unit is determined by which test is elected and how many bedrooms are contained in the unit. Current income limits, as derived from the Department of Housing and Urban Development, for the CDA are described in the Rent and Income tables found in Minnesota Housing's Multifamily Common Application Reference Materials section.

For tax credit compliance purposes, "gross rent" means all payments by the tenant, including non-optional charges and payments for utilities other than telephone and cable. If the tenant pays utilities directly, the maximum rent that can be paid to the landlord is reduced by a utility allowance determined in accordance with rules under Section 8 of the U.S. Housing Act of 1937 ("Section 8"). IRS Regulations (Section 1.42-10 Utility allowance, as amended) provide guidance relating to Utility Allowances and lay out options for establishing them. The options, depending on assistance or regulation characteristics of the project or the tenant, may require use of an RD utility allowance, a HUD utility allowance, a PHA/HRA utility allowance, an Agency Estimate, a HUD utility Schedule Model, an Energy Consumption Model, or a utility allowance produced with information contained through a local utility company in a manner consistent with Section 1.42-10. Utility allowances must be updated at least annually.

Federal, state and local rental assistance payments (such as Section 8 payments) made on behalf of the tenant are not included in gross rent.

Additional rent restrictions may apply if the award of tax credits was made based on such additional restrictions.

## **K. Tenant Eligibility**

To be a low income unit for purposes of determining the qualified basis, the tenant must have income at or below 50 percent of AMGI if the 20/50 Test is elected, or 60 percent of AMGI if the 40/60 Test is elected. The unit must be rent restricted as set forth above, and the unit must be suitable for occupancy. Certain "hold harmless" rules, as described in Section 142(d)(2) of the Code, apply for purposes of calculating area median gross income.

The combined household income of all tenants occupying a tax credit eligible unit must be less than or equal to the elected income requirements.

Section 42 does not allow households comprised of full-time students to qualify as low-income units unless certain exceptions are met. The student exceptions are found in Section 42(i)(3)(D):

Certain students not to disqualify unit. A unit shall not fail to be treated as a low-income unit merely because it is occupied:

1. by an individual who is
  - a. a student and receiving assistance under title IV of the Social Security Act;
  - b. a student who was previously under foster care, as provided in Section 42(i)(3)(D)(i)(II); or
  - c. enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws, or
2. entirely by full time students if such students are:
  - a. single parents and their children and such parents and children are not dependents (as defined in section 152 determined without regard to subsections (b)(1), (b)(2) , and (d)(1)(B) thereof) of another individual and such children are not dependents of another individual other than a parent of such children, or
  - b. married and file a joint tax return.

See Chapter 17 of the Guide for Completing Form 8823, Low-Income Housing Credit Agency's Report of Noncompliance or Building Disposition, for additional guidance.

#### **L. Eligible Basis**

In general, the eligible basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42(d) of the Code. As a general rule, the adjusted basis rules of Code Section 1016 apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining eligible basis under Section 42(d) are:

The eligible basis may be increased for new buildings and substantial rehabilitation to existing buildings that are located in designated qualified census tracts, ("QCT"), difficult or development areas ("DDA") or designated by the CDA for increased basis, as described above.

The cost of the non-low income residential units in a building is included in eligible basis only if the quality of these units does not exceed the average quality of the low-income units. If the cost of a non-low income unit exceeds the cost of a low-income unit (using the average cost per square foot and assuming the same size) by more than 15 percent, the entire cost of the non-low income unit must be excluded from the building's eligible basis. If the excess cost is not more than 15 percent, the owner may make an election to exclude only the excess cost of the non-low income unit(s) from eligible basis.

The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g., carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g., parking, garages, swimming

pools) may be included in eligible basis if there is no separate charge for use of the facilities and they are available to all tenants in the project.

The cost of a community service facility is included in basis only if the building is located in a qualified census tract. The eligible basis of that facility must not exceed 25 percent of the first \$15 million of eligible basis in the project (not including such facility) and 10 percent of any additional basis in the project (not including such facility). All community service facilities that are part of the same qualified low-income housing project shall be treated as one facility. A community service facility is defined as a facility that is part of the qualified low-income housing project designed to serve primarily individuals including tenants and non-tenants whose income is 60 percent or less of area median income. **Only limited guidance has been issued by the IRS regarding these changes. No assurances can be given that additional IRS guidance will not require further adjustments to the QAP and additional reviews of selected developments.**

Eligible basis is reduced by federal grants, residential rental units that are above the average quality standard of the low-income units, historic rehabilitation credits, and nonresidential rental property. Buildings located in areas designated as a qualified census tract or difficult development area and buildings designated by the CDA may be eligible for an increase in allowable basis.

**Note that there are currently no qualified census tracts or HUD designated difficult development areas in Dakota County.**

**M. Qualified Basis**

Qualified basis is the portion of the eligible basis applicable to low income housing units in a building. Qualified basis is the product of a project's eligible basis multiplied by the applicable fraction.

**N. Applicable Fraction**

The applicable fraction is the lesser of:

1. The unit fraction, which is the number of low-income units in a building divided by the total number of residential rental units; or
2. The floor space fraction is the total floor space of the low-income units in the building divided by the total floor space of the residential rental units in the building.

A full time resident manager's unit is not considered a residential unit and must not be included in the numerator or denominator for calculating the applicable fraction.

Throughout the planning, construction and placed in service periods, the applicable fraction has different nuances. At initial application and at carryover, the **"estimated project applicable fraction"** will be used. It is an approximate goal that the developer is striving to attain. It is calculated by project in order to obtain a rough estimate of the percentage of eligible units and square footage needed and an estimate of the total amount of tax credits necessary for a particular project.

At the time that the placed in service application for 8609 is made, the **"targeted applicable fraction" for each building** is calculated. The targeted applicable fraction is determined on a building-by-building basis. Each building in a multiple building

development could have a different applicable fraction. Because the estimated project applicable fraction is approximate, the targeted applicable fraction calculated by building will frequently differ unless the project has a 100 percent applicable fraction. The targeted applicable fraction is also listed as part of the extended use criteria in the *Declaration of Land Use Restrictive Covenants*, which is recorded and remains with the property.

**O. [Reserved]**

**P. Annual Credit Amount**

The tax credit is available each year for 10 years. The amount of tax credit awarded is based on the Qualified Basis multiplied by the applicable percentage. However, Section 42(m)(2) requires the CDA to limit the amount of tax credit to the amount necessary to assure project feasibility under rules established by the IRS. Therefore, the actual amount of tax credits awarded could be less than the maximum allowable if the analysis reveals the project would still be feasible with fewer tax credits.

The IRS publishes the applicable percentages on a monthly basis. These figures are used to calculate the maximum allowable annual credit amount for which the project will be eligible, provided that for non-federally subsidized new construction and rehabilitation buildings placed in service after July 30, 2008 and on or prior to December 31, 2013, shall have an applicable percentage of 9 percent, regardless of the published percentages. (Also see Section V.B.)

**Q. Declaration of Land Use Restrictive Covenants**

Prior to an allocation of Section 42 tax credits, a project will be subject to a *Declaration of Land Use Restrictive Covenants* (“Declaration”) between the owner and the CDA through which the owner commits the building(s) to low income use for an extended use period of at least 15 years after the conclusion of the 15-year compliance period (a total of 30 years).

The Declaration terminates upon: (a) foreclosure of the building (or deed in lieu of foreclosure); or (b) during the extended use period, upon failure of the CDA to find a purchaser by the end of one year after a request by the owner to the CDA to find a purchaser for the low income portion of the building, at a statutory minimum purchase price, unless the owner has waived its right to exercise this option. Throughout the term of the Declaration and for a period of three years after termination of the Declaration, the owner may not evict existing low income tenants (other than for good cause) and may not increase the gross rent of low income units. Note that the CDA’s Qualified Allocation Plan requires applicants (other than applicants with projects financed with tax-exempt bonds) to waive the right to request a Qualified Contract.

The Declaration must be recorded in accordance with 42(h)(6) as a restrictive covenant and submitted to the CDA prior to the CDA issuing the allocation (IRS Form 8609), and will set forth the commitments made by the owner to the CDA in obtaining points including any additional rent restrictions and occupancy requirements placed upon the building at the time of Commitment. Non-compliance with these additional conditions will result in a permanent ban on future allocations of tax credits for all parties involved.

Notwithstanding limits on intermediary costs imposed by virtue of points assigned in scoring an initial tax credit application, the CDA will consider permitting an increase in the Developer’s Fee, which increases total intermediary costs (but not above the limits contained in Section VI.B hereof) for a project under the following circumstances:

1. the increase is attributable to a contingent developer's fee which is payable to the extent the developer has realized a saving in the total development cost of the project;
2. the general partner (or an entity related to the general partner, in connection with deferred loans) has either (a) made a partnership contribution in an amount exceeding the increase in the developer's fee, or (b) made deferred loans to the partnership in an amount exceeding the increase in the developer's fee;
3. the increase in the developer's fee will not cause total intermediary costs to exceed 25% of Total Development Costs; and
4. the increase in intermediary costs, if it had been included in the original tax credit application, would not have caused the project to have received a total score that would have been lower than the next lower ranking application which did not receive the full amount of tax credits requested.

**R. Ineligible Properties**

Life care facilities and manufactured housing parks are not eligible. Projects with buildings having four or fewer residential units must comply with 42(i)(3)(c).

**S. Passive Loss Restrictions**

There is a limit on the amount of credit any individual may effectively use due to passive loss restrictions and alternative minimum tax provisions. Consult your tax attorney or accountant for clarification of this regulation.

**T. Volume Limits**

Each state is limited to the amount of tax credits it may allocate annually. The CDA's 2011 per capita volume limit is expected to be approximately \$893,553.

Projects with tax-exempt bond financing, which are subject to a separate volume limitation, are not counted against the state volume limit. (See Article 7 of the QAP and Section IX of the Manual for further details.)

**U. Recapture**

The CDA reserves the right to recapture tax credits from projects that do not provide evidence satisfactory to the CDA of progress toward completion of the project in accordance with the construction schedule (submitted at initial application and updated at carryover), or noncompliance with the terms of the allocation.

Part of the tax credit will also be recaptured if the qualified basis at the close of any year is less than the amount of such basis at the close of the preceding taxable year, or if the minimum number of qualified low-income units is not maintained for the complete extended use period.

**V. Market Study**

Internal Revenue Code Section 42(m)(1)(A)(iii) requires that a comprehensive market study of the housing needs of low-income individuals in the area to be served by a developer's housing credit project must be conducted by a disinterested party, at the

developer's expense, who is approved by the housing credit agency. (Also refer to the Market Study Guidelines on the Minnesota Housing website)

**W. Tenant Ownership**

The CDA will review projects incorporating tenant ownership provisions in accordance with Sec. 42 (h)(6), IRS Revenue Ruling 95-49. It is the responsibility of the applicant to provide the CDA with any additional information or clarification as may be necessary. The CDA requires that developments proposing an eventual tenant ownership component must have 100 percent of the development's units specified for this ownership component. Developments proposing eventual tenant ownership for less than 100 percent of the units will not be considered for an allocation of tax credits. (See also Section VIII.A.22.)

**X. Fair Housing and Contract Compliance Policy**

It is the policy of the CDA to ensure fair housing opportunity in all CDA programs and to administer its housing programs affirmatively, so that all CDA residents of similar income levels have equal access to CDA programs regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to receipt of public assistance, disability, or familial status.

Affirmative fair housing marketing practices, which are action steps used to attract prospective borrowers or renters from all minority and majority groups, regardless of status, were initially defined in Title VIII of the Civil Rights Act of 1968. The Fair Housing Amendment Act of 1988 (which became effective March 13, 1989) strengthened the enforcement powers of Title VIII and established children and the disabled as protected groups.

Rules applying to the disabled are also addressed in Section 504 of the Rehabilitation Act of 1973, as amended, which states that no disabled person will be denied access to federal programs solely because of his or her disability.

Protected groups are any groups protected against discrimination by Federal law and Minnesota State statutes. This includes racial minorities (blacks, Asians, American Indians and Hispanics), persons with handicaps/disabilities, religious groups and all other groups defined or implied.

All developments will use affirmative fair housing marketing practices in soliciting buyers, borrowers and renters, or any other participants, and in determining eligibility and concluding all transactions.

All CDA programs are required to market affirmatively using specific steps for each program. These steps include:

1. Conducting public information forums and outreach programs geared to inform and encourage protected groups to participate.
2. Marketing strategies that reach protected groups using conventional methods such as newspapers and other media, as well as personal contact, mailings, and use of consultants.
3. Reviewing federal and state fair housing guidelines periodically to ensure compliance.

Failure to comply with the foregoing requirements could result in appropriate action by the CDA, including expulsion from CDA programs.

## **VI. DEVELOPMENT STANDARDS**

The CDA will review development costs based on comparability and reasonableness. Developments funded under this HTC Program will be evaluated according to the following standards. Small projects, hard-to-develop projects, and projects developed in difficult-to-develop areas may be considered eligible for variances from these standards, if justified.

### **A. Project Cost Reasonableness**

The CDA will evaluate the costs of each proposed project in comparison to current comparable projects to determine whether the proposed costs are reasonable. The CDA will take into consideration unique characteristics of the development and its comparability to similar developments. The CDA will require additional documentation if the CDA believes the proposed costs are not comparable or reasonable. Current CDA tax credit project comparables will continue to be the driving factor in approving project costs.

To ensure competitive construction pricing and cost reasonableness, all developments must meet the CDA Contracting Requirements. Furthermore, when a tax credit proposal receives deferred loan funds from the CDA, the development is subject to an additional CDA design review and cost reasonableness analysis, which may result in lower fees than allowed under Section VI.C.

### **B. Minimum Underwriting Standards for Amortizing Debt and Maintenance and Operating Expenses Benchmarks**

Minnesota Housing has established Minimum Underwriting Standards and Management and Operating (M&O) Expenses Benchmarks based on its existing portfolio of developments and the recommended Best Practices for HTC Underwriting adopted by the National Council of State Housing Agencies. These Minimum Underwriting Standards are described in Minnesota Housing's Multifamily Consolidated Request for Proposal Guide.

Comparisons will be made to M&O Data available from Minnesota Housing's maintenance data based on comparable projects. Determinations on whether proposed budgets are reasonable will also be based on the CDA's management, maintenance and operating experience. M&O numbers will be evaluated on an expense per room/per year basis; the M&O number will not include reserves, taxes and other tax assessments.

The CDA will require all first mortgage lenders to use minimum underwriting standards including: maintenance and operating expenses estimates, which are not less than the benchmarks contained in Maintenance and Operating Expense Review & Underwriting Certification (HTC 29) in their underwriting calculations. Written lender certification and supporting documentation is required.

### **C. Eligible Basis Tax Credit Fees**

*Developer Fees:* Include developer overhead, developer processing fees, developer profit, and any other amounts received by the Developer. The CDA will limit the amount of developer fees for the purposes of calculating eligible basis to determine the amount of tax credit. The developer fee is calculated by the CDA as follows:

The maximum allowable developer fee is calculated on a percentage of the total development cost less the developer fee.

In some instances, the developer may want to delegate some of the responsibilities to a third party, such as a processing agent or consultant. In such cases, the delegated responsibilities must be thoroughly understood by all parties involved and the fee paid to the third party shall be included as part of the developer fee. The limits are subject to CDA review. The following limits will be used by the CDA:

Project Type	Development Limits	Maximum Developer Fee
Acquisition and Substantial Rehabilitation	First 30 Units	15%
Acquisition and Substantial Rehabilitation	Units 31 and over	8%
New Construction or Substantial Rehabilitation	First 50 Units	15%
New Construction or Substantial Rehabilitation	Units 51 and over	8%

*Consultant Fees:* Consultant application processing fees will be included within the developer fee limitation and should not exceed 2 percent of total mortgageable costs. Syndication related consultant fees are not to be included in the eligible basis of the project.

*Net Construction Cost:* Construction costs and on-site work not including contractor profit, general requirements, and overhead. The CDA will limit the amount of contractor fees for the purpose of calculating eligible basis to determine the amount of tax credit.

*Contractor Profit:* The maximum contractor profit is 6 percent of net construction costs.

*General Requirements:* Items of costs to be considered in this allowance include: on-site supervision, signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, clean-up costs, rubbish removal, permits, watchmen’s wages, material inspection and tests, all of the builder’s insurance (except builder’s risk), temporary walkways, fences, roads and other similar expenses. The maximum general requirements allowed is 6 percent of the net construction cost.

*Contractor Overhead:* The CDA allows a contractor an overhead allowance based on a percentage of the net construction cost. The permitted maximum allowance is 2 percent.

It is possible to exceed expenses in one area, if other areas are not at their maximum. The CDA will allow the collective balance of contractor profit, general requirements and contractor overhead to equal 14 percent.

*Developer as Contractor:* When the developer and the contractor are the same entity, in addition to the fee limits stated above, the combined balance of developer fee, contractor profit, contractor overhead and general requirements may not exceed twenty percent (20%) of the total development cost.

*Total Mortgageable Cost:* The following is a partial listing of cost items that are mortgageable within total development costs:

1. Construction costs, including material and labor costs for all residential structures, site preparation, residential parking facilities and site improvements, demolition, general requirements, general contractor’s overhead, and profit;

2. Fees, including architectural design and construction administration, soils exploration, environmental analysis, survey, attorney, and other consultant fees, Housing Tax Credit Program syndication fees, developer's fees (subject to maximum amounts set by the CDA), reasonable marketing costs, and contractor's bond premium;
3. Financing and carrying costs, including interest during construction, insurance, real estate taxes, financing and inspection fees, title and recording costs, and where applicable the Development Contingency fund (the CDA retains the right to limit carrying costs);
4. Land and improvements, building acquisition, subject to the CDA valuation policy;
5. Development Cost Escrow;
6. Furnishings and equipment; and
7. Cost of providing Letters of Credit.

**D. Reserves/Contingencies**

The CDA will require documentation of the amount and disposition of reserves/contingencies. If they revert back to the developer, general partner, or any ownership interest, the CDA will consider the reserves/contingencies as deferred developer fees and the above limits will apply. For letters of credit, bonds, etc., use the actual cost, not face value, when completing the Development Cost Section IV of the HTC application.

**E. Comparative Analysis**

Notwithstanding these Development Standards and the Selection Criteria within this manual and the QAP, each and every proposed project is analyzed on a comparative basis in a variety of categories to ensure the highest value for the tax credits awarded.

**F. Property Standard**

All newly constructed property must meet the Uniform Building Code, the National Standard Plumbing Code and the National Electrical Code Handbook. Rehabilitation projects should strive to meet these codes when reasonable. Projects containing facilities that are available to the general public must meet the Americans with Disabilities Act ("ADA") requirements, and projects combining HTC with another federal source of funding must comply with Section 504 requirements.

In addition to the preceding requirements, the development at a minimum must comply with all the required development features as specified in **Exhibit B**.

Additional selection points are awarded to proposed developments for the inclusion of additional development features (refer to Section VII.)

The architect must certify on the final working plan that all the applicable standards and development features have been incorporated into the plans.

## **VII. PROJECT SELECTION**

### **A. Threshold Requirements**

The CDA will determine whether the project meets applicable minimum requirements as outlined in the QAP.

### **B. Scoring**

To efficiently and effectively process the applications submitted, the CDA will first rank proposals in accordance with the Selection Priorities and Preference Points (*Self Scoring Worksheet*) and, if necessary, Section VII.C. Tie Breakers, below. The highest ranking proposals based on the Selection Priorities and Preference Points will then be reviewed in accordance with the following Project Selection requirements described in D through I of this section. Lower ranking proposals will only be processed further if tax credit volume cap remains available after the higher ranking proposals are processed.

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

### **D. Market Review**

At the time of initial application, the applicant will be required to submit a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project at the applicant's expense by a disinterested party who is approved by the CDA, as required by Section 42(m)(1)(A) of the Code.

Proposed projects that do not appear marketable and do not modify their proposal will not receive further consideration in the current funding round.

### **E. Design Review**

The proposed owner or architect must certify compliance with all the required development features outlined in the CDA's Design Standards (**Exhibit B**) before the project will be scored and ranked. The CDA will review project costs based on comparability and reasonableness. The CDA may, at its sole discretion, reject applications that appear to have excessive project costs. (Also refer to Section VI.A. Project Cost Reasonableness).

### **F. Development Team Review**

The CDA will also consider the following factors when evaluating an application for a tax credit allocation.

1. The ability and capacity of the development team to proceed expeditiously to complete the proposed development.
2. The prior record of the development team in meeting CDA and IRS reporting requirements.

3. The experience of the development team in developing and managing similar residential housing.

Proposed projects from applicants that do not appear to have the experience, capacity or ability will not receive further consideration in the current funding cycle.

**G. Site Review**

CDA staff will conduct a site review for each project passing all the project selection requirements described in parts A through F of this chapter. Site reviews will consider physical characteristics, surrounding property and community, location of schools, shopping, public transportation, employment centers, community and housing service facilities, availability of utilities, water and sewage treatment facilities, and the suitability of the site for the proposed housing.

The CDA may, at its sole discretion, reject applications or recapture tax credits from projects that appear unsuitable for the housing proposed.

**H. Energy Efficiency and Historic Character**

The CDA's Design Standards (Exhibit B) include certain requirements regarding energy efficiency. In addition, the CDA will consider the historic character of proposed projects.

**I. Maintenance and Operating Expense Review and Underwriting Certification**

Minnesota Housing has established *Minimum Underwriting Standards and Management and Operating Expense Benchmarks* (also refer to chapter VI.B Minimum Underwriting Standards for Amortizing Debt and Maintenance and Operating Expense Benchmarks) based on Minnesota Housing's existing portfolio of developments and the recommended Best Practices for HTC Underwriting adopted by the National Council of State Housing Agencies. These *Minimum Underwriting Standards* are described in the Multifamily Consolidated Request for Proposal Guide on Minnesota Housing's web site.

The CDA will evaluate the completed *Multifamily Housing Application* and Lender Certification contained in the *Maintenance and Operating Expense Review and Underwriting Certification Form* (HTC 29) to determine the underwriting criteria used to calculate amortizing debt including but not limited to vacancy rates, debt coverage ratios, construction contingencies, management and operating expenses, reserve accounts, and inflation factors.

The CDA will contact the applicant if there are any questions regarding the maintenance and operating budget. While the CDA strongly encourages the use of the published minimum standards and benchmarks, the applicant will be given an opportunity to adjust the M&O budget and resubmit prior to the CDA scoring of selection priority points. At a minimum, the following information must be submitted with the HTC application:

1. Owner narrative summary supporting the proposed maintenance and operating number included in the application.
2. a. For new construction: copies of year-end operating information from three comparable developments that have been in operation at least five years.  
  
b. For existing developments: copies of audited financial statements for at least three years, as long as the development has been in operation for at least five years.

3. a. For new construction: name and phone number of local building inspector or housing official who can be contacted concerning each comparable development and its physical condition..
- b. For existing developments: copies of three years of annual inspection reports by the local building inspector or housing official.

The applicant should not assume that this request will be automatically approved. If no supporting data is provided, the minimum underwriting standards and benchmarks will be used. The CDA also reserves the right to reject or adjust the maintenance and operating numbers based on the information supplied, specific development type, circumstances and/or significant changes to the economics of the development's current marketplace.

#### **J. Financial Feasibility**

Proposals that meet the Project Selection Requirements in paragraphs C through H will be evaluated for financial feasibility as required by Section 1.42-17(a)(3). Projects determined not to be financially feasible will not be processed further.

### **VIII. SUBMISSION REQUIREMENTS**

It is the applicant's responsibility to be aware of the submission requirements needed to proceed to the next step in obtaining an allocation. If the applicant is unable to meet the submission requirements (financing, zoning, site control, syndication, construction start, etc.) in a timely manner, or if approvals have expired, the application will no longer be processed and the application fee will be forfeited.

All submissions must be separated by tabs with an index listing each attached submission item. DO NOT submit applications in three ring binders or with plastic casing around the pages. Submissions should be bound only by staples, binder clips, or rubber bands.

The following must be submitted to the CDA to process your application:

- the current version of the MHFA Multifamily Rental Housing Common Application Form, submitted electronically to Deborah Haugh at [dhaugh@dakotacda.state.mn.us](mailto:dhaugh@dakotacda.state.mn.us); and
- one (1) printed web-based MHFA Multifamily Rental Housing Common Application Form with an original signature plus two (2) copies, including all required attachments **in the order below**.

The Application for tax credits must be signed by one general partner (and the non-profit partner if appropriate), officer, director or corporate officer stating that under penalties of perjury, all facts and statements contained in the application and all documents and attachments submitted are true to the best of their knowledge.

**Any submissions not meeting the directions above will be returned to the applicant and fees paid not refunded.**

**A. Application Requirements**

At a minimum, the following Application Submittals must be completed as applicable, based upon the specific housing proposal, and submitted **in this order** within the Application package. If a submittal item within a specific subgroup is not applicable to your application, list the item and indicate not applicable. If the application and required attachments are not legible and complete, the application will be returned. No application, attachments or documentation will be accepted after the application due date unless requested by the CDA.

**Market Study:**

A comprehensive market study of the housing needs of low-income individuals in the area to be served by the project conducted by a disinterested party at the developer's expense who is on the Minnesota Housing Authorized Contractor list must be submitted with the application.

Developers/owners will contact and hire the authorized contractor of their choice to perform the required market study in the form and format outlined in Minnesota Housing's Market Study Guidelines found at <http://www.mnhousing.gov/housing/tax-credits/allocation/index.aspx>. Schedules and fees will be arranged between the developer/owner and the authorized contractor. The CDA will not endorse or recommend any contractor on the authorized contractor list and will not be a party to the individual transactions.

**Narratives and Project Schedule (submit electronically):**

The Minnesota Multifamily Rental Housing Narrative Questions and Project Schedule must be specific to your housing proposal. For a additional detail, refer to the Narratives Required section as found on the Multifamily Master Application Checklist. Note that requests to the CDA to apply the CDA designated 30% basis boost must be formally made in writing. The request should clearly outline the reasons supporting the request and clearly demonstrate how the proposal meets the criteria established by the CDA for receiving boost considerations. When part of an application package, the request should be incorporated into the required narrative component.

**Forms:**

1. Completed **Multifamily Rental Housing Common Application Form** (MHFA Form HTC-1) signed by at least one general partner involved in this project. An incomplete Multifamily Rental Housing Common Application Form will not be accepted and will be returned to the applicant. Complete and provide SSN or Tax Identification Number ("TIN") for all team members listed on the Multifamily Housing Resource Application Form.
2. **Notification of Local Official Form** (HTC 18)
3. **Local HRA/PHA Notice and Agreement to Utilize Public Housing and Section 8 Waiting Lists Form** (HTC 11)
4. **Project Schedule** MHFA Form 104.
5. **Qualifications Forms.** Complete all of the following applicable Qualification forms for purposes of evaluating organizational capacity, as applicable:

Qualifications of Developer — MHFA Form 203A  
Qualifications of Architect — MHFA Form 206A  
Qualifications of General Contractor — MHFA Form 209A  
Qualifications of Management and Marketing Agent — MHFA Form 210A  
Qualifications of Processing Agent — MHFA Form 205A  
Qualifications of Attorney — MHFA Form 208A  
Qualifications of Service Provider — MHFA Form 241  
Qualifications of Rental Assistance Administrator — MHFA Form 242

4. **Self Scoring Worksheet Form.** Submit a completed original for Selection Points signed by at least one general partner, attached as Exhibit A to the QAP.
5. **Maintenance and Operating Expense Review and Underwriting Certification Form** (HTC 29) See Chapter VII.H
6. **Release of Information Authorization Form** Completed by developer/owner and management firm, if known (MHFA Form HTC-17).
7. **Determination of Tax Credit Form** (MHFA Form HTC-8). Complete to determine the maximum allowed tax credit amount.

**Submittals:**

7. **Application Fee.** A check for the appropriate application fee and CDA Counsel Fee. (See Section X).
8. **Threshold Evidence.** Evidence that the threshold requirements are met.
9. **Evidence of Site Control.** Evidence of title or adequate site control must be submitted with the application. Acceptable evidence includes the following: warranty deed, contract for deed, purchase commitment, option, or letter of intent from governmental body for sole developer, etc. The evidence of site control must be current, fully executed and extend to anticipated date of carryover allocation, placed in service or provide provisions for extension. For allocation, an attorney's opinion that the applicant has ownership of the property will be required in accordance with Section 42 (see **Exhibit C**).

Owners should be cautioned that tax credit Commitments are site specific and the entire described property is subject to the terms and covenants of the CDA's Declaration of Land Use Restrictive Covenants for Housing Credits.

Loss of site control will result in cancellation of Commitment or Carryover allocation.

The CDA will not accept applications from different applicants for the same site.

10. **Legal description of land** (not property Tax ID Number) on separate 8½ by 11 sheet of paper labeled "Exhibit A, Legal Description".
11. **Location map.** Provide a legible map including major roads, cross streets and clear directions to the site. Do not use a zoning map for a location map. Site maps must identify the location of:

-parks,

- elementary, secondary and high schools,
- sources of employment,
- shopping and retail services,
- public transit routes and stops,
- regional and interregional transportation corridors and transit ways,
- recreational facilities,
- social and special service institutions,
- hospitals and health clinics,
- day care centers, and
- competitive developments.

Also, provide a list with distances from the proposed housing to each of the items above.

12. **Photographs.** (Submit electronically) Provide clear photographs of exterior and interior of building, if existing; or site and surrounding areas, if new construction.
13. **Status of zoning.** Letter from a local zoning official identifying the development, number of units, stories, and on site parking spaces, and stating the current zoning of the land. If measures need to be taken to change the status of zoning, indicate the steps required and the timetable for rezoning.
14. **Strategically Targeted Resources.** If the proposal is for the rehabilitation of an existing structure, which is part of a community revitalization plan or stabilization effort and claims points under a.9 on the self-scoring worksheet, provide a letter from the city verifying that the proposed project is part of an approved community revitalization area as established by resolution or other legal action, or evidence from the applicable entity that the proposal has undergone a stabilization needs assessment.
15. **Planning and Development.** If the proposal was created in accordance with a Cooperatively Developed Plan and claims points under b.2 of the self-scoring worksheet, submit evidence detailing how the housing proposal helps move toward attainment of one or more of the goals of a Cooperatively Developed Plan. Evidence could be in the form of a letter or resolution from the lead entity involved in the development of the Cooperatively Developed Plan. Also provide a list of entities including either a city or county or regional unit of government, and one or more of a neighborhood and/or community group, housing provider or funders that participated in the development of the cooperatively developed plan. A copy of the plan may be requested.  
  
If not part of a Cooperatively Developed Plan, submit evidence showing that the housing proposal is in compliance with the local comprehensive plan or city or regional master plan.
16. **Rent Assistance Payment Standards.** If proposing use of project based rent assistance, or if project based rent assistance exists in the development, attach a copy of the Payment Standards or Payment Standard Exceptions for the community in which the housing is proposed.
17. **Utility Allowance Schedule.** Provide a current utility allowance from the CDA. Include a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartments, townhomes, etc.). Also, include a list of each unit type, total tenant paid utilities, contract rent, and gross rent.

18. **Letter of Intent to Provide Project Based Rental Assistance.** For proposals planning to obtain Project-Based Rental Assistance, at time of application the applicant must submit a letter of intent signed by the CDA.
19. **Commitment for Project Based Rental Assistance.** For proposals including project-based rental assistance, at the time of application the applicant must submit a fully executed binding commitment for the project-based assistance (a binding resolution/letter of approval from the governing body). As a condition of Carryover or 8609, whichever occurs first, the applicant must submit a fully executed copy of the contract for the project-based assistance to be included in the development. In addition, if the CDA plans to enter into an “extended term” contract to provide the project-based assistance for a minimum of 10 years, language must be included in the contract indicating this intention and confirming the CDA’s ability to perform.
20. **Regulatory Cost Avoidance/Cost Reduction Documentation.** Provide documentation of the terms and conditions of a cost avoidance/cost reduction measure from the contributor of the assistance or authorized local official. The documentation shall be in the form of a development specific letter of intent, city or council resolution, letter of approval, statement of agreement or eligibility, or memorandum of understanding. Also provide the calculation method and expected dollar amount of the cost savings for this proposal.
21. **Preliminary Architectural/Construction Requirements.** Design development quality scalable presentation drawings containing at a minimum a site plan, elevations, unit plans, building plans, building section, and building materials certification (see **Exhibit B** hereto).
22. **Scope of Work.** For applications involving acquisition and rehabilitation of existing buildings, the applicant must submit a scope of work for each building. Housing credit properties must provide a minimum of 15 years, and often 30 years or more of affordable housing use. A capital needs assessment represents a qualified professional’s opinion of a property’s current overall physical condition and identifies significant deferred maintenance, existing deficiencies, and material building code violations that affect the property’s use and its structural and mechanical integrity. Selected applicants receiving tax credits for rehabilitation are strongly encouraged to get a capital needs assessment by a competent third party, such as a licensed architect or engineer. The assessment should include a site visit and physical inspection of the interior and exterior of units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs/improvements, pending repairs, and existing or chronic physical deficiencies. The assessment should also consider the presence of hazardous materials on site.
23. **Innovative building or construction techniques.** Provide a description by the project design professional of any innovative building or construction techniques, design feature or materials being proposed. Include information on how your feature enhances the quality of life, reduces operational costs (such as energy consumption, material waste, etc.) supports sustainability of the material resources, and/or offers socio-economic advantages. Also provide the method of calculation and the dollar amount of expected cost savings for the proposal.
24. **Proposed Sources of Funds Including Local Contributions.** Provide a current form of documentation of proposed sources of funds including; letter of intent, commitment, etc.; stating all terms and conditions (including dollar amount,

number of years, interest rate, debt service coverage, etc.). The value of the donations and in-kind contributions assistance must be consistent with current market comparable costs for materials and services.

1. Construction financing;
2. Permanent financing — (for RD Projects AD622 and letter of conditions);
3. Secondary financing;
4. Grants — letter from granting authority;
5. Syndication proceeds; and
6. Other sources of funds, including any federal, state, local and private subsidies.

Documentation of the amount and the terms of the proposed sources of funds must be provided by the provider of the funds at the time of application. Within 6 months of the date of selection the applicant must provide the CDA with documentation of a firm commitment (or authorization of approval) for each funding source and/or local contribution. The documentation must state the amount, terms and conditions and be executed or approved at a minimum by the lender or contributor.

Documentation containing words synonymous with “consider” or “may”, (as in “may award”) regarding a commitment of funding, will not be considered acceptable. Lack of acceptable documentation will result in the reevaluation and adjustment of the tax credits, up to and including the total recapture of tax credits.

Additionally, for tax credit developments, to qualify for points using historic credits and tax abatement, there must be satisfactory documentation that the resource will provide additional positive investment capital to the development that will reduce the demands on the state and federal housing resources. For tax increment financing to qualify for points, there must be satisfactory documentation that the resource is committed to the development at the time of application.

25. **Preservation of Federally Assisted Housing.** If the proposal is for preservation of federally assisted housing, please provide a copy of all relevant documents such as, HAP Contract, Regulatory Agreement, Note, Mortgage, amortization schedules, restrictive covenants, copy of most recent REAC or RD inspection report.
26. **Relocation Plan.** If temporary or permanent displacement or relocation of current tenants is necessary, include a relocation plan for minimizing relocation and displacement of tenants and a relocation budget.
27. **Rent Roll.** For an existing development, provide the most recent rent roll.
28. **Ten Year Rule Compliance.** For applications seeking acquisition credits, provide evidence that each building complies with the 10-year rule in 42(d) or an approved IRS waiver of the 10-year rule.
29. **A 15-year after tax cash flow proforma** (for five or more units).
30. **Non-profit Proof of Status.** If non-profit proof of status (IRS approval must be included for non-profit organizations).

- a. A description of the non-profit's intended participation in the development and operation of the project.
  - b. Articles of Incorporation.
  - c. Internal Revenue Service (IRS) documentation of status. A non-profit must have IRS 501(c)(3) or (4) approval from the IRS or expect to receive such designation prior to carryover allocation and meet requirements of Internal Revenue Code (42(h)(5).
31. **Tenant Ownership Plan.** If applicable, provide a detailed proposal for eventual tenant ownership. The proposal should incorporate a financially viable plan to transfer 100 percent of the HTC unit ownership at the end of the initial 15-year compliance period from the initial ownership entity (or CDA approved "Transfer of Ownership") of the project (the Limited Partnership) to tenant ownership.
- The unit purchase price at the time of sale must be affordable to incomes meeting HTC eligibility requirements. To be eligible, the buyer must have an HTC qualifying income at the time of initial occupancy (HTC rental tenant) or time of purchase. The plan must incorporate a Limited Partnership ownership exit strategy and the provision of services including home ownership education and training. The Declaration of Land Use Restrictive Covenants will contain provisions ensuring compliance with these home ownership program commitments by the Limited Partnership Owner. (Refer also to Section V.W. of this Manual for additional information.)
32. **Evidence of Supportive Services.** For developments meeting the Threshold Requirements as set forth in the Section 4.1.a.4 of the QAP evidence of supportive services must be provided to the CDA before a Commitment of tax credit is granted.
33. **Housing for Persons with Disabilities.** Provide a letter from the county human services department indicating that its staff has reviewed the proposed project in which units will be set aside for persons with disabilities, and stating whether there is a need for such housing and if the project would be eligible for funds to assist with the social service needs of the residents.
34. Opinion of Counsel (see **Exhibit C**).
35. **Other documents** and instruments as are necessary and as may be required by CDA.

**B. Carryover Requirements**

Several changes to Section 42 of the Internal Revenue Code were included in legislation passed by Congress in July 2008 as part of the Housing and Economic Recover Act of 2008. These amendments made certain changes to the Carryover Allocation requirements. Only limited guidance has been issued by the IRS regarding these changes. No assurances can be given that additional IRS guidance will not require further adjustments to the QAP and additional reviews of developments relating to carryover.

In addition to meeting requirements of federal law, the applicant of a selected project must provide no later than 4:30 p.m. on October 15 or the next business day of the year to

which the credits are allocable, a complete carryover package in final form containing the required documents in a form satisfactory to the CDA. Late fees will be enforced.

Note: Requests by Applicants/developers to the CDA to apply the 30% CDA designated basis boost at time of carryover application must be formally made in writing. The request should clearly outline the reasons supporting the request and clearly demonstrate how the proposal meets the criteria established by the CDA for receiving boost considerations. The following must be submitted to the CDA to process the Carryover application:

1. **MHFA Multifamily Rental Housing Common Application Form.** An updated form must be submitted in both printed and electronic form to Deborah Haugh at [dhaugh@dakotacda.state.mn.us](mailto:dhaugh@dakotacda.state.mn.us). Please refer to Minnesota Housing's web site at <http://www.mnhousing.gov/housing/tax-credits/allocation/index.aspx> for additional carryover information and related forms. Changes from the initial application must be highlighted and initialed. The updated application form must be signed by at least one general partner involved in the project. For material changes, refer to Manual Section IV.F.3.

Application forms containing incomplete revisions including those not highlighted, initialed and dated are not acceptable and will be returned to the applicant.

2. **Project Schedule.** An Updated Project Schedule (MHFA Form 104).
3. **Owner Certification/Application for Carryover Allocation.** A complete, signed and notarized Owner Certification/Application of Carryover Allocation Form (MHFA Form HTC-4) for every building.
4. **Building Information.** Provide a completed Building Information Form (MHFA Form HTC-5).
5. **Attorney's Opinion Letter.** An Attorney's Opinion Letter in a form approved by the CDA (see **Exhibit D**) verifying:
  - a. The name and Tax Identification Number (TIN) of the entity that will be/is the owner for tax purposes and/or has demonstrated continued site control of the land and depreciable real property identified as the project in the application and Commitment, and the names and TIN numbers of the general or managing partners. If the partners are entities, include the above information for each entity.
  - b. The legal description (to be labeled Exhibit A) of the project property and that it is correct and identical to the property identified in the application and the Commitment.
  - c. The name, legal designation and TIN of the ownership entity that will receive the tax credits and the legal designation of the party that signed the application.
  - d. Identification and copies of any waivers required by Section 42 obtained from the IRS.
6. **Certified Public Accountant's Certification.** A written Certified Public Accountant's Certification verifying:

- a. The amount of the reasonably expected basis, the carryover basis, and the percent of the expenses incurred.
  - b. More than 10 percent of the reasonably expected basis on the project must be expended by the later of the date which is one year after the date that the allocation is made or the close of the calendar year in which the allocation is made. **If the final carryover basis and expenditures information are not available at the time the carryover application is due, the application must include written estimates of this information prepared by the owner. Final CPA certifications of this information must be submitted to the CDA prior to the deadlines established by Section 42 and by no later than the CDA's submission deadline of September 30 (or the next business day if September 30 is not a business day).**
  - c. Also include a statement of non-affiliation with the developer and/or owner.
7. **Sources of Funds.** Identification of the sources of construction, interim and permanent financing arrangements. Provide a firm letter commitment in the form of a binding agreement as required in Minnesota Statutes Section 513.33. The agreement must:
    - a. Be in writing;
    - b. Specify the consideration for the transaction and pertinent terms;
    - c. Be signed by both the lender and the borrower (for RD Projects, Form 1994-51); and
    - d. Be current and state the effective and expiration date.
  8. **Maintenance and Operating Expense Review and Underwriting Certification Form** (HTC 29) See Chapter VII.H
  9. **Rental Assistance.** A description of any governmental assistance and/or rental assistance. This includes copies of any contracts/agreements executed or any applications made for rental assistance for the project.
  10. **15 year proforma.** A 15 year proforma signed by the lending institution signifying that they are aware of the figures presented on the HTC Application for Carryover Allocation
  11. **Gross Rent Floor Election.** If choosing to make the election at this time, supply a fully executed Statement of Election of Gross Rent Floor (MHFA Form HTC-26) including each building of the development in which there are housing tax credit units. If the required form(s) is not submitted to the CDA prior to the placed-in-service date, in fully executed condition, with all elections made by the owner, the gross rent floor will be determined to have been elected as the gross rent effective on the allocation date (the earlier of carryover or 8609) of the tax credits.
  12. **Fair Housing Form and Equal Employment Opportunity Policy Statement.** It is the policy of the CDA to take affirmative action to provide equal opportunity in all of our endeavors. Complete, execute and return an

Affirmative Fair Housing Marketing Plan describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance. In addition an equal employment opportunity policy statement must be completed and returned.

13. **Identity of Interest.** Provide a written disclosure as to any and all Identity of Interest parties (See Section IV.H & I).
14. **Allocation Fee.** The nonrefundable Allocation Fee, based on the annual tax credit Commitment amount, and the CDA Counsel Fee (See Section X.B and X.E) (Additional fees for additional credits secured at carryover will be collected following the award).

### C. **Placed in Service Requirements**

Generally, the placed in service date for HTC purposes, for a newly constructed building or for rehabilitation expenditures in an existing building, is the date when the first unit in the building is certified as available for occupancy. The placed in service date must occur for all buildings within a project within two years after the allocation year of tax credits.

The CDA will issue the IRS Form 8609 within 30 days when all the following items have been received by the CDA in a satisfactory form and substance. Issuance of IRS Form 8609 and subsequent submission of the original to the IRS is to be done only by MHFA or the CDA. Form 8609 shall not be created nor the original filed with the IRS by any other entity. The owner/agent shall not electronically file a form 8609 with the IRS which does not accurately reflect the information contained in the CDA signed version of the approved Form 8609. (Also refer to Section IV.F. Unacceptable Practices.) A condition to this effect will be added to the Carryover Agreement.

The following must be submitted to the CDA to process the 8609 application:

- an updated Multifamily Rental Housing Common Application Form (HTC-1) electronically to Deborah Haugh at [dhaugh@dakotacda.state.mn.us](mailto:dhaugh@dakotacda.state.mn.us); and
- one (1) original and one (1) copy of the balance of the application, including all required attachments **in the order below**.

The 8609 application should be submitted to the CDA **in the order of the documents listed below**, separated by index tabs, if the applicant wants to receive 8609s before year-end. The CDA will issue IRS Form 8609 when the following items have been received by the CDA in satisfactory form and substance:

1. **Transmittal Letter**. A transmittal letter indicating the project name, address, Commitment date and Carryover date. The letter should request the issuance of IRS Form 8609 and list the following required documents. In the letter, please list the revised information and explain the basis for the changes. The letter must be dated and signed by the owner or authorized individual.
2. **Placed in Service Evidence**. Evidence that all buildings have been Placed in Service. Submit a copy of the Certificate of Occupancy provided by the local governmental authority having jurisdiction for each building. If not available from the local government, a Certificate of Substantial Completion prepared by

the architect will be accepted. For acquisition and rehabilitation, the developer must provide supporting documentation for the elected date.

3. **Utility Allowance Schedule.** A copy of the current utility allowance schedule including a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartment, townhomes, etc.). Also, include a list of each unit type, total of tenant paid utilities, contract rent, and gross rent.
4. **Architectural.** The applicant must complete **Exhibit B** indicating the features included in the development for which the applicant was awarded points or which were otherwise required by **Exhibit B**. The completed copy of **Exhibit B** must be signed by a certified architect.
5. **Final Cost Certification.** A final cost certification (MHFA Form HTC-9) that evidences the CPA's Audit report and cost certification based upon an audit of the owners' schedule of total project costs.

All costs of projects owned by all entities for five or more units must be cost certified by a CPA when construction has been completed and before the CDA can complete its final evaluation.

Projects with four or less units must submit a sworn construction statement and/or certification by owner, as appropriate.

6. **Multifamily Rental Housing Common Application Form** (MHFA Form HTC-1). As part of your 8609 application package, an updated Multifamily Housing Resource Application Form (MHFA Form HTC-1) for tax credits must be submitted in electronic and printed form. A printed and fully signed/executed version of the application form, with *all changes from the most recent of your initial credit application or as applicable your carryover application highlighted and initialed*, must be submitted with your application package. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft cost changes and qualified basis are updated on the revised application pages. The updated application form must be signed by at least one general partner involved in the project. For material changes, refer to Manual Section IV.F.3.

Application forms containing incomplete revisions including those not highlighted, initialed and dated are not acceptable and will be returned to the applicant.

7. **Attorney's Opinion Letter.** An Attorney's Opinion Letter (see **Exhibit E**) verifying:
  - a. The legal description (to be attached to the opinion and labeled Exhibit A) of the property and that it is correct and identical to the property selected at application/Commitment and Carryforward.
  - b. The name of the entity that is the owner for tax purposes of the property to be part of the project and which is described in Exhibit A of the opinion.
  - c. The name, legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the tax credits; the legal

designation of the party that signed the application; and that the business is in good standing and duly authorized in Minnesota.

- d. The name, legal designation, and TIN of all the general partner(s); the name of the managing partner; the contact person and the required authorized signatories. If the partners are an organized entity, such as a limited liability corporation, a limited liability partnership, or an organized partnership, provide the above information for each.
  - e. Identification and copies of any waivers required by Section 42 obtained from the IRS.
8. **Reserves, Contingencies, and any Cash Savings.** A signed and dated statement documenting the amount and disposition of Reserves, Contingencies, and any cash savings. If any of the above revert back to developer/owner, general partner or any ownership interest, the CDA will consider them deferred developer fees, and for purposes of tax credit allocation, restrict the developer fees as specified in this Procedural Manual.
  9. **CDA Declaration of Land Use Restrictive Covenants.** A copy of the unrecorded CDA Declaration of Land Use Restrictive Covenants for Housing Credits (see **Exhibit F**). The declaration must be completed and recorded before the end of the first credit period to preserve the tax credits allocated to the project. Check with your tax advisor as to the timing of filing and claiming of credits. HUD may require that certain Riders be attached to your credit Declaration if your development has primary financing via a HUD direct insured loan. Check with your financing and legal advisors to determine if this may be required of your development.
  10. **Final Tax Credit Proceeds or Receipts.** Documentation of the final amount of tax credit proceeds or receipts generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
  11. **8609 Certification by Owner.** Submit a completed, executed and notarized original 8609 Certification by Owner/Application, (MHFA Form HTC-3) verifying:
    - a. The placed in service date as defined in IRS Notice 88-116 for each building and/or type of tax credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason; and.
    - b. Compliance with all requirements of selection, and additional or special conditions of commitment or carryover.
  12. **Final Loan or Grant Terms.** Summary of final loan or grant terms for all sources of funds (mortgage and note) that support the amount, terms and conditions stated on the Multifamily Application Form (MHFA Form HTC-1). Copies of final loan or grant documents should be available upon request by the CDA.
  13. **Maintenance and Operating Expense Review and Underwriting Certification Form** (HTC 29) See Chapter VII.H

14. **15-Year After-Tax Cash Flow Pro Forma.** A 15-year after-tax cash flow pro forma (for five or more units).
15. **Governmental Assistance and/or Rental Assistance.** If not previously provided as part of a carryover application, a description of any governmental assistance and/or rental assistance. This includes copies of any contracts/agreements executed or any applications made for rental assistance for the project.
16. **Transfer Ownership.** If ownership entity has changed, a copy of assignment, a revised Transfer Agreement (MHFA Form HTC-20) and Notice of Intent to Transfer Ownership (MHFA Form HTC-27), and Release of Information Authorization Form (MHFA Form HTC-17) (See Section IV.F.1.), and the Transfer of Ownership Fee (See Section X).
17. **Partnership Agreement.** A copy of the executed final Partnership Agreement.
18. **Photographs.** Clear photographs of completed building(s).
19. **Building Map.** A completed Building Map (MHFA Form HTC-28).
20. **Identity of Interest.** A written disclosure as to any and all Identity of Interest parties (see Section IV.H and I).
21. **Fair Housing Form and Equal Opportunity Form.** It is the policy of the CDA to take affirmative action to provide equal opportunity in all of our endeavors. Complete, execute and return an Affirmative Fair Housing Marketing Plan describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance. In addition the applicant must submit an equal employment opportunity policy statement.
22. **Gross Rent Floor Election.** A fully executed Statement of Election of Gross Rent Floor (MHFA Form HTC-26) if not previously provided pursuant to Article VIII B.
23. **Allocation Fee.** The Non-refundable Allocation Fee, based on the annual tax credit allocation amount (if not already paid at carryover) and CDA Counsel Fee (See Section X.)

## **IX. TAX EXEMPT PROJECTS SEEKING TAX CREDITS**

### **A. General**

Section 42 of the Internal Revenue Code establishes a separate set of procedures to obtain housing tax credits through the issuance of tax-exempt bonds. Although the tax credits are not counted in the tax credit volume cap for the State of Minnesota, developers of projects should be aware of the information contained in Article 7 of the CDA's QAP.

The project must comply with the QAP that is in effect for the calendar year in which the tax-exempt bonds were first allocated by the Minnesota Department of Finance to the issuer. The application and all required submissions must be complete and legible or the application will be returned. Applications should be submitted to the:

Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, MN 55402  
Attn: Assistant Director of Housing Finance & Development  
Phone: 651-675-4400

Developers should also be aware of the requirements of Minn. Stat. § 474A.047 including subdivision 2, which requires the extension of existing U.S. Department of Housing and Urban Development (HUD) Housing Assistance Payment (HAP) contracts to the full extent available.

**B. Application for Issuance of Preliminary Determination Letter**

Prior to Bond issuance, the developer must submit to the CDA a full and complete application for issuance of a Preliminary Determination letter pursuant to Section 42(m)(1)(D). The developer must submit to the CDA all documents required for an application for tax credits under Section VIII of the housing tax credit Program Procedural Manual and any additional information requested by the CDA. The developer must submit an application fee and CDA counsel fee (See Section X.A and X.E.) In addition, if the issuer of the bonds is not the CDA, the initial submission must include a preliminary determination issued by the issuer of the bonds addressing the tax credit dollar amount and project costs pursuant to Section 42(m)(2)(D) of the Code. Based upon the submission of documents the CDA will prepare a letter with its preliminary determination as to whether the project satisfies the requirements for allocation of a housing credit dollar amount under the QAP. A Preliminary Determination fee must be submitted to the CDA prior to release of the letter (See Section X.F). This process may take six weeks or more from the time the full application package is submitted. All applicants should develop their timelines and schedules accordingly.

**C. Election of Applicable Percentage**

Section 42 of the Internal Revenue Code requires that the Owner elect the applicable percentage for the project. The election is made at the time the tax exempt obligations are issued to fix the percentage for the month in which the building is placed in service or the month in which the tax-exempt obligations are issued. If the election is not made at the time the tax exempt obligations are issued, the percentage will be fixed for the month in which the building is placed in service. The Owner must be sure to consider the best options for this election and make sure the election is made at the correct time. Once made, the election is irrevocable.

**D. Requests for Building Identification Numbers (BIN)**

At the time of application for issuance of a Preliminary Determination letter, the applicant must obtain Building Identification Numbers (BIN) for each of the proposed buildings in the development. The applicant should submit a BIN Request form (MHFA Form HTC-31) to the CDA to receive BIN numbers. The CDA will assign all BIN numbers. An address or other specific legal description is needed for each BIN number to be identified with. The address and BIN numbers will be needed as part of an application for Form 8609.

**E. Election of Gross Rent Floor**

The Owner/Taxpayer of a qualified tax credit project financed with tax exempt bonds is permitted under IRS Revenue Procedure 94-57 to fix the date of the gross rent floor to be the date on which the CDA initially issues its Preliminary Determination letter to the building or the Placed in Service date (MHFA Form HTC-2). The election of one of the

two timing options must be completed and the election form(s) received by the CDA prior to the date the project is placed in service. If no election is made and/or no form(s) received by the CDA prior to the date the project is placed in service, then the gross rent floor date will automatically be fixed by the CDA to be the initial issuance date of the Preliminary Determination letter for the building.

**F. Application for Issuance of Form 8609**

Subsequent to the project being placed in service and prior to a Form 8609 being issued for the project by the CDA, the Owner must submit an application for the issuance of Form 8609 to the CDA. The application must contain those items as identified in Section G below titled Tax Exempt Placed In Service. The developer must submit an 8609 fee and CDA counsel fee based upon the requested annual tax credit amount. (See Section X.G and X.E.)

**G. Tax Exempt Placed in Service**

Placed in service dates for HTC purposes must be established for all buildings using credits including acquisition credits (which are treated as a separate building for tax credit purposes). Generally, the placed in service date for a newly constructed building or for rehabilitation expenditures in an existing building, is the date when the first unit in the building is certified as available for occupancy. The placed in service date for acquisition credits is generally the date of the acquisition of the building. Except for buildings eligible to receive tax credits outside the state cap by virtue of the issuance of tax exempt financing, the placed in service date for all buildings of a credit project must occur within two years after the allocation year of the tax credits. It is highly recommended that owners/developers of tax0exempt projects seek the appropriate legal and bond professional advice on these matters.

The CDA will issue the IRS Form 8609 on a tax exempt project within 30 days when all the following items have been received by the CDA in a complete and satisfactory form and substance. Issuance of IRS Form 8609 and subsequent submission of the original to the IRS is to be done only by MHFA or the CDA. Form 8609 shall not be created nor the original filed with the IRS by any other entity. IN addition, the owner/agent shall not electronically file a Form 8609 with the IRS which does not accurately reflect the information contained on the CDA signed version of the approved 8609. (Also refer to Section IV.F. Unacceptable Practices).

The applicant shall provide one printed web-based MHFA Multifamily Rental Housing Common Application Form with an original signature plus two (2) copies, including all required attachments **in the order of the documents listed below separated by index tabs:**

1. **Transmittal Letter.** A transmittal letter indicating the project name, address and Commitment date. The letter should request the issuance of IRS Form 8609 and list the following required documents. In the letter, please list the revised information and explain the basis for the changes. The letter must be dated and signed by the owner or authorized individual.
2. **Placed in Service.** Evidence that all buildings have been Placed in Service. Submit a copy of the Certificate of Occupancy provided by the local governmental authority having jurisdiction for each building. If not available from the local government, a Certificate of Substantial Completion prepared by the architect will be accepted. For acquisition and rehabilitation, the developer must provide supporting documentation for the elected date.

3. **Evidence of Tax Exempt Bond.** Evidence from the issuer of the bonds that the project received an approval of an allocation of tax-exempt bond volume cap from the State of Minnesota.
4. **Architectural.** The applicant must complete **Exhibit B** indicating the features included in the development for which the applicant was awarded points or which were otherwise required by **Exhibit B**. The completed copy of **Exhibit B** must be signed by a Certified architect.
5. **Utility Allowance Schedule.** A copy of the current utility allowance schedule from the CDA including a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartment, townhomes, etc.). Also, include a list of each unit type, total of tenant paid utilities, contract rent, and gross rent.
6. **Final Cost Certification.** A Final Cost Certification (MHFA Form HTC-9) that evidences the CPA's Audit report and cost certification based upon an audit of the owners' schedule of total project costs.

All costs of projects owned by all entities for five or more units must be cost certified by a CPA when construction has been completed and before the CDA can complete its final evaluation.

Projects with four or less units must submit a sworn construction statement and/or certification by owner, as appropriate.

7. **Multifamily Rental Housing Common Application Form.** An updated MHFA Multifamily Rental Housing Common Application Form (MHFA Form HTC-1) signed by at least one general partner involved in this project. Highlight all changes from Preliminary Determination Application, re-date and initial the revised pages. For material changes, refer to Section IV.F.3. Incomplete revisions or those not highlighted, initialed and dated are not acceptable and will be returned to the developer. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft cost changes and qualified basis are updated on the revised application pages.
8. **Determination of Credits.** Evidence that the governmental unit which issued the bonds (or on behalf of which the bonds were issued) made a determination that the amount of credits allocated to the project do not exceed the amount necessary to assure project feasibility pursuant to Section 42(m)(2)(A) and (B), including a copy of the final written determination (and the analysis on which it was based) that the credits allocated to the building did not exceed the maximum tax credit based upon the lesser of the eligible basis or the amount necessary to achieve financial feasibility. The issuer analysis and determination must address all of the items set forth in Section 42(m)(2)(B). The determination must be based upon the list of the submission requirements described in Section VIII.C. of the manual including at a minimum items 6, 8, 11, 13, 15 and 18.
9. **Attorney's Opinion Letter.** An Attorney's Opinion Letter/Opinion of Counsel (see **Exhibit E**) verifying:
  - a. The legal description of the property (to be labeled as Exhibit A and attached to the opinion) and that it is correct and identical to the

property identified in the application for Preliminary Determination and the legal description of the property financed with the tax exempt bonds.

- b. The name of the entity that is the owner for tax purposes of the property to be part of the project and which is described in Exhibit A of the opinion.
  - c. The name, legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the tax credits; the legal designation of the party that signed the application; and that the business is in good standing and duly authorized in Minnesota.
  - d. The name, legal designation, and TIN of all the general partner(s), the managing partner(s), contact person(s) and the required authorized signatories. If the partners are an organized entity, such as a limited liability corporation, a limited liability partnership, or an organized partnership, provide the above information for each.
  - e. Identification and copies of any waivers required by Section 42 obtained from the IRS.
  - f. The buildings qualify for an allocation of credits under Section 42(h)(4).
10. **Reserves, Contingencies, and any Cash Savings.** A signed and dated statement documenting the amount and disposition of Reserves, Contingencies, and any cash savings. If any of the above revert back to developer/owner, general partner or any ownership interest, the CDA will consider them deferred developer fees, and for purposes of tax credit allocation, restrict the developer fees as specified in this Procedural Manual.
11. **CDA Declaration of Land Use Restrictive Covenants.** A copy of the unrecorded CDA Declaration of Land Use Restrictive Covenants for Housing Credits (see **Exhibit F**).
- (NOTE: A copy of a properly recorded Declaration, or evidence satisfactory to the CDA that the Declaration has been filed for recording, in each case with the Declaration in final form and content as approved by the CDA following its review, must be provided to the CDA prior to the release of any 8609s to the Owner).
- (NOTE: A Declaration must be completed and recorded before the end of the first credit period to preserve the tax credits allocated to the project. Check with your tax advisor as to timing of filing and claiming of credits).
12. **Final Tax Credit Proceeds or Receipts.** Documentation of the final amount of tax credit proceeds or receipts generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
13. **8609 Certification by Owner/Application Form.** Submit a fully completed, executed and notarized original 8609 Certification by Owner/Application Form (MHFA Form HTC-3) verifying:

- a. The placed in service date as defined in IRS Notice 88-116 for each building and/or type of tax credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason.
  - b. Compliance with all requirements of the Preliminary Determination letter issued by the CDA on the project and the requirements of Article 7 of the CDA's QAP.
14. **Final Loan or Grant Terms.** Summary of final loan or grant terms for all sources of funds (mortgage and note) that support the amount, terms and conditions stated on the HTC Application. Copies of documents may be requested by the CDA.
  15. **Maintenance and Operating Expense Review and Underwriting Certification Form** (HTC 29) See Chapter VII.H
  16. **15-Year After-Tax Cash Flow Pro Forma.** A 15-year after-tax cash flow proforma (for five or more units) signed by the lending institution or source of credit enhancement, if any, signifying that they are aware of the figures presented on the HTC application.
  17. **Other Documents.** Such documents and instruments as are necessary and as may be required by the CDA.
  18. **Transfer Ownership.** If ownership entity has changed, a copy of assignment, a revised Transfer Agreement (MHFA Form HTC-20) and Notice of Intent to Transfer Ownership (MHFA Form HTC-27) an updated Qualification Form for all the new team members, a written disclosure as to any and all Identity of Interest parties and Release of Information Authorization Form (MHFA Form HTC-17) (See Section IV.F.1.), and the Transfer of Ownership Fee (See Section X).
  19. **Partnership Agreement.** A copy of the executed final Partnership Agreement.
  20. **Photographs.** Clear photographs of completed building(s).
  21. **Building Map Form.** A completed Building Map Form (MHFA Form HTC-28) for each building with a current rent roll attached.
  22. **Fair Housing Form and Equal Opportunity Form.** It is the policy of the CDA to take affirmative action to provide equal opportunity in all of our endeavors. Complete, execute and return an Affirmative Fair Housing Marketing Plan describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance. In addition an equal opportunity policy statement must be submitted.
  23. **Gross Rent Floor Election.** A fully executed Statement of Election of Gross Rent Floor (MHFA Form HTC-26) if not previously provided pursuant to Article IX E.

24. **Tax-Exempt Credit 8609 Fee and CDA Counsel Fee.** Non-refundable 8609 Fee based upon the annual tax credit amount and the CDA Counsel Fee. (See Section X).

**It is highly recommended that Owners/Developers of tax exempt projects seek the appropriate legal and bond professional advice on these matters.**

**X. FEES**

**A. Application Fee:**

An \$800 application fee must be submitted with application. The fee is non-refundable. For multi-building projects, the CDA will require only one application and a single fee.

**B. Commitment Fee:**

At the time the applicant and CDA enter into a Commitment Agreement , a commitment fee of 2 percent of the annual tax credit allocation must be paid to the CDA. The developer will have thirty (30) days in which to pay the commitment fee and maintain its tax credit allocation. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.

**C. Allocation Fee:**

At the time the taxpayer/owner submits an application for a carryover allocation or for issuance of IRS Form(s) 8609 (whichever occurs earlier), an allocation fee will be due which is equal to 2.5 percent of the annual tax credit allocation amount. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.

**D. Allocation Late Fee:**

Developers submitting a carryover package or, if an owner has elected not to request a carryover, an 8609 package prior to the end of the year of allocation for which the Commitment was issued that:

1. Do not submit a carryover/8609 application by the established due date; or
2. Submit a substantially incomplete carryover/8609 application by the established due date;

Must pay a \$1000 late fee plus a supplementary \$200 for each business day from the original due date through the date on which the CDA receives the carryover/8609 application in a substantially complete form.

The fee will not be allowed as an eligible cost in carryover/8609 basis and must be paid at the time the carryover/8609 application is substantially complete.

**E. CDA Counsel Fee.**

The applicant shall pay nonrefundable fees of the CDA's counsel of \$2,500 at the time of each review for (1) initial application, (2) carryover allocation, and (3) issuance of IRS Form 8609.

**F. Tax Exempt Credit Preliminary Determination Fee**

A Preliminary Determination Fee must be submitted to the CDA prior to issuance of a Preliminary Determination letter. The developer must submit a fee equal to 2 percent of the requested annual tax credit amount. This fee is non-refundable.

**G. Tax Exempt Credit 8609 Fee**

An 8609 Fee must be submitted at the time of application to the CDA for Form 8609. The developer must submit an 8609 fee equal to 2.5 percent of the requested annual tax credit amount. This fee is non-refundable.

**H. Monitoring Fee:**

The CDA or its designee will charge a proposed initial annual monitoring fee of \$30 per unit, based on the total number of units. Checks are payable to AHC, Inc.

The CDA will charge an additional annual monitoring fee of \$10 per unit, based on the total number of units. Checks are payable to the Dakota County CDA.

Additional fees for physical inspections will be charged by the CDA or its designee, as indicated in the Housing Tax Credit Program Compliance Manual (this fee applies when a physical inspection is required by IRS regulations or otherwise undertaken by the CDA and is charged on the 20% of the units in the project, as that is what the CDA is required to inspect). This fee may be increased depending upon the requirements of the U.S. Treasury, IRS, or increased costs of the CDA. The fee will be due in a manner and time as prescribed by the CDA. Failure to pay the fee will result in the CDA notifying the IRS that the development is out of compliance.

**I. Transfer of Ownership Fee:**

A non-refundable transfer of ownership fee of \$2,500 must be submitted to the CDA along with updated materials of the new owner/management team for each project in which 50 percent or more of the ownership entity is new since Commitment or carryover allocation. Prior to 8609, changes in ownership must be approved by the CDA. See Section IV.F. Unacceptable Practices for further details on Transfer of Ownership.

**J. Reimbursement of CDA:**

In addition to the foregoing fees, a developer shall reimburse the CDA upon request for any out-of-pocket costs, including, but not limited to, costs for legal counsel incurred by the CDA in connection with compliance monitoring issues or unusual circumstances involving such developer's project.

**K. Right to Adjust Fees**

**L. Check Cashing Procedure:**

Applicant's payments for fees (in the form of checks) will be cashed immediately following verification of the accuracy of the amount tendered.

**DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY  
LOW INCOME HOUSING TAX CREDIT PROGRAM**

**EXHIBITS**

- Exhibit A      CDA Qualified Allocation Plan
- Exhibit B      Development Features
- Exhibit C      Opinion of Counsel - Application
- Exhibit D      Opinion of Counsel - Carryover
- Exhibit E      Opinion of Counsel - Placed in Service
- Exhibit F      Declaration of Land Use Restrictive Covenants

**EXHIBIT A**  
**CDA QUALIFIED ALLOCATION PLAN**

**EXHIBIT B**  
**DEVELOPMENT FEATURES**

The award of tax credits is based on information provided in the application. Until the property is placed in service, any change in the construction method or use of material and design that are not within these basic design criteria must be approved in writing by the CDA.

I. Design Requirements for New Construction and Rehabilitation of Existing Structure

All applications must meet the Family Basic Design Requirements below. In addition to meeting the Family Basic Design Requirements, all family developments must meet the Additional Requirements for Family Developments.

A. Family Basic Design Requirements

1. Design must comply with all applicable codes, rules and regulations including but not limited to zoning, building and energy codes, accessibility and other local, state and federal requirements. Those developments for cities and municipalities which have not adopted the State Building Codes must design and construct the development to comply with the State Building Code.
2. A bedroom must contain a minimum of 100 square feet in area excluding any closet space, with a minimum dimension of 9'6". A living room's least dimension must be 11'6". In case of a rehabilitation, a 10% variation is permissible.
3. Grading plan must conform to City requirements.
4. Vehicular access to the main building entrance and provision for the move-in and move-out process, conveniently relating to the building entrances. This requirement does not apply for townhouse units and rehabilitation.
5. On site parking (paved either with bituminous or cement concrete) must be provided, along with concrete curb and gutter for the driveways. This may be forgiven for rehabilitation of existing building, only if the site is not large enough.
6. Concrete sidewalk (to parking, each unit entry, and to major amenities on site) is required.
7. 14 DU/acre maximum. Waivers to the 14 DU/acre maximum may be granted to developments that qualify under Article 4.1(a)(1), (3), (4) or (5) of the Qualified Allocation Plan, and to developments which are not required to meet the requirements of Section 4.1(a) of the Qualified Allocation Plan, determined by the CDA on a per project basis.

NOTE: This should only include usable land in the density computation. Marshes and unusable physical conditions must not be included in the area for the density computation. This requirement applies to both new construction and rehabilitation.

8. Three-bedroom and larger dwelling units which are qualified tax credit units may not be placed higher than the second floor of the building, when the building entrance is on the first floor level. This does not mean to limit the total building height. For example and example only, as far as such larger family qualified units are on the grade (with required parking and pedestrian access to public ways) or within the distance of one story up or down (not basement), this requirement is satisfied. For a further illustration is a building

on a slope with two different levels of grade, when both grades serve building entrances on different floors, the total number of floors that can accommodate such larger units may be more than two. This requirement applies to both new construction and rehabilitation. This requirement does not apply to market rate three bedroom or larger units.

9. Three bedroom and larger units must have a minimum of one and one-half bath, and whenever possible, each bathroom must be compartmentalized for a multiple, simultaneous use. This requirement applies to both new construction and rehabilitation.
10. Play area(s), sized and equipped for the child population of the development, must be provided. The play areas may best be placed in the center of the development, or at a location where the children do not have to cross driveways as much as possible. Consider separate play areas for preschoolers and older children. When site restriction presents, this requirements may be forgiven only for rehabilitation development.
11. For new construction projects, install Energy Star labeled appliances to include, at a minimum, refrigerators and dishwashers; install high efficiency furnaces with annual fuel utilization efficiency of 90% or greater and air conditioning systems with seasonable energy efficiency ratio minimum of fourteen (14); and install Energy Star labeled lighting fixtures in bathrooms, kitchens and hallways.
12. For rehabilitation projects, include all feasible energy efficiency improvements. A list of energy efficiency improvements must be attached to this Certification.

**Certification** (To be provided prior to issuance of IRS Form 8609)

(Name and address of the development.)

The Project Architect and the Developer certify that the above indicated Design Features have been incorporated into the final construction documents. Both the Architect and the Developer understand that those design features are required to be met in order for an 8609 to be issued for the project.

Project Architect  
Firm Name and Signature

Developer  
Firm Name and Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date

Date

**EXHIBIT C**

**[FORM OF OPINION OF PROJECT OWNER'S COUNSEL - APPLICATION]**

Date: \_\_\_\_\_, \_\_\_\_\_

Dakota County Community  
Development Agency  
1228 Town Centre Drive  
Eagan, Minnesota 55123

Leonard, Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, Minnesota 55402

RE: (Name of Developer)  
(Name of Development)

Ladies and Gentlemen:

I have acted as counsel to \_\_\_\_\_, a \_\_\_\_\_ (the "Developer") in connection with the Developer's application to the Dakota County Community Development Agency (the "CDA") for an allocation of low income housing credits pursuant to Minnesota Statutes, Chapter 462A.222 and Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). In that regard, I have reviewed and am familiar with the Developer's application for Low Income Housing Tax Credit dated \_\_\_\_\_ (the "Application"), and the [Partnership Agreement/Articles and Bylaws], of the Developer (the "Organizational Documents"), dated \_\_\_\_\_. I have further examined such documents and papers as I have deemed relevant and necessary as the basis for my opinions as set forth below. Based upon my examination, it is my opinion that:

1. Developer is a \_\_\_\_\_ organized and in good standing under the laws of the State of \_\_\_\_\_, and has full legal power and authority under its Organizational Documents to do all things necessary to complete the Development described in the Application.

2. I am not aware that the Application contains any untrue statement of a material fact with respect to the allocation of tax credit to the Developer.

3. Assuming that the facts set forth in the Application [and in the Certificate of the Developer attached hereto] with respect to costs of construction, schedule of completion, plans and specifications, tax credit allocation amount, occupancy by low-income tenants, rents, and other matters are, in fact, realized, and based on existing laws, regulations, rulings and decisions as of the date of this opinion;

- (a) (1) The Development will consist of \_\_\_\_\_ Buildings, with the following addresses;
- (2) [Each] [The] Building is a (new) (existing) building (with) (without) federal subsidies, within the meaning of Section 42(d) of the Code;
- (3) [(If applicable) The rehabilitation expenditures for the Building will be treated as a separate, new building within the meaning of Section 42(e) of the Code;]

(b) The (Development/Building) will be a qualified low-income housing project as defined in Section 42(g) of the Code;

(c) The (Development/Building) will be eligible for the (70%/30%) present value tax credit described in Section 42(b) of the Code;

- (d) The building is expected to be placed in service as such term is used in Section 42(g)(3) of the Code [in \_\_\_\_\_ of 20\_\_\_\_];
- (e) The applicable fraction as defined in Section 42(c) of the Code will be \_\_\_\_\_%;
- (f) As of the close of the first year of the tax credit period the eligible basis of the building as defined in Section 42(d) will be \$\_\_\_\_\_;
- (g) As of the close of the first year of the tax credit period the qualified basis of the building as defined in Section 42(c) will be \$\_\_\_\_\_;
- (h) The beginning of the tax credit period as defined in Section 42(f) will be \_\_\_\_\_.
- (i) [The] [A] general partner of the Developer is a qualified non-profit organization as defined in Section 42(h)(5)(c) (if applicable).]
- (j) The (development/building) is located in qualified Census Tract #\_\_\_\_\_ (if applicable)].

**EXHIBIT D**

**[FORM OF OPINION OF PROJECT OWNER'S  
COUNSEL - CARRYOVER]**

Date: \_\_\_\_\_, \_\_\_\_\_

Dakota County Community  
Development Agency  
1228 Town Centre Drive  
Eagan, Minnesota 55123

Leonard, Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, Minnesota 55402

RE: (Name of Owner)  
(Name of Development)  
(Building addresses, if more than one)

Ladies and Gentlemen:

I have acted as counsel to \_\_\_\_\_ [ownership entity receiving the tax credits], a \_\_\_\_\_ (the "Owner"), in connection with the Owner's application to the Dakota County Community Development Agency (the "CDA") for an allocation of low income housing credits pursuant to Minnesota Statutes, Chapter 462A.222 and Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). In that regard, I have reviewed and am familiar with the following:

1. Owner's application for Low Income Housing Tax Credit dated \_\_\_\_\_ (the "Application");
2. The [site control document] dated \_\_\_\_\_;
3. The [evidence of title (eg title commitment or abstract)] dated \_\_\_\_\_;
4. The Commitment of Credit for the project, dated \_\_\_\_\_ (the "Commitment");
5. The [Partnership Agreement/Articles and Bylaws], of the Owner (the "Organizational Documents"), dated \_\_\_\_\_.

I have further examined such other documents and papers as I have deemed relevant and necessary as the basis for my opinions as set forth below. Based upon my examination, it is my opinion that:

1. Owner's full name is identified above. Owner is a \_\_\_\_\_ organized and in good standing under the laws of the State of \_\_\_\_\_, and has full legal power and authority under its Organizational Documents to do all things necessary to complete the Development described in the Application.
2. I am not aware that the Application contains any untrue statement of a material fact.
3. The legal description of the development property is attached hereto as Exhibit A and is correct and identical to the property identified in the Application and the Commitment.
4. (If different than the Owner) The name of the entity that currently owns the property described in Exhibit A is \_\_\_\_\_, and Owner has control of the property by virtue of \_\_\_\_\_.
5. Assuming that the facts set forth in the Application [and in the Certificate of the Owner attached hereto] with respect to costs of construction, schedule of completion, plans and specifications, tax credit allocation amount, occupancy by low-income tenants, rents, and other matters are, in fact, realized, and based on existing laws, regulations, rulings and decisions as of the date of this opinion,

(a) (1) The Development will consist of \_\_\_\_\_ Buildings with the following addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) [Each] [The] Building is a (new) (existing) building within the meaning of Section 42(d) of the Code;

(3) [(If applicable) The rehabilitation expenditures for the Building will be treated as a separate, new building within the meaning of Section 42(e) of the Code;]

(b) The (Development/Building) will be a qualified low-income housing project as defined in Section 42(g) of the Code;

(c) The (Development/Building) will be eligible for the (70%/30%) present value credit described in Section 42(b) of the Code;

[(d) [The] [A] general partner of the Owner is a qualified non-profit organization as defined in Section 42(h)(5)(c) (if applicable).]

6. The following information is correct:

(a) Information regarding Owner:

- Name
- Legal designation
- Tax Identification Number (TIN)
- Required authorized signatories

(b) Information regarding party signing the Application:

- Name
- Legal designation

(c) Information regarding each general partner:

- Name
- Legal designation
- TIN
- Name of managing partner(s)
- Contact persons
- Required authorized signatories

(d) The following information for each partner which is an organized entity:

- Name
- Legal designation
- TIN
- Name of managing partner(s)/members
- Contact persons
- Required authorized signatories

7. The following waivers, if any, are required by the Code and have been obtained from the IRS and are attached as Exhibit B.

\_\_\_\_\_  
Name of Legal Firm

\_\_\_\_\_  
Signature

**EXHIBIT E**

**[FORM OF OPINION OF PROJECT OWNER'S COUNSEL - PLACED IN SERVICE]**

Date: \_\_\_\_\_, \_\_\_\_\_

Dakota County Community  
Development Agency  
1228 Town Centre Drive  
Eagan, Minnesota 55123

Leonard, Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, Minnesota 55402

RE: (Name of Owner)  
(Name and address of Development)  
(Building addresses, if more than one)

Ladies and Gentlemen:

I have acted as counsel to \_\_\_\_\_ [ownership entity receiving the tax credits], a \_\_\_\_\_ (the "Owner") in connection with the Owner's application to the Dakota County Community Development Agency (the "CDA") for an allocation of low income housing credits pursuant to Minnesota Statutes, Chapter 462A.222 and Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). In that regard, I have reviewed and am familiar with the following:

1. Owner's application for Low Income Housing Tax Credit dated \_\_\_\_\_ (the "Application"),
2. The [site control document] dated \_\_\_\_\_;
3. The [evidence of title (eg title commitment or abstract)] dated \_\_\_\_\_;
4. The Commitment of Credit for the project, dated \_\_\_\_\_ (the "Commitment");
5. The Carryover Agreement from the CDA dated \_\_\_\_\_ (the "Carryover");
6. The [Partnership Agreement/Articles and Bylaws], of the Owner (the "Organizational Documents"), dated \_\_\_\_\_.

I have further examined such other documents and papers as I have deemed relevant and necessary as the basis for my opinions as set forth below. Based upon my examination, it is my opinion that:

1. Owner's full name is identified above. Owner is a \_\_\_\_\_ organized and in good standing under the laws of the State of \_\_\_\_\_, and has full legal power and authority under its Organizational Documents to do all things necessary to complete the Development described in the Application and to receive the tax credits.

2. I am not aware that the Application contains any untrue statement of a material fact.

3. The legal description of the development property is attached hereto as Exhibit A and is correct and identical to the property identified in the Application, the Commitment and the Carryover

4. The name of the entity that currently owns the property described in Exhibit A is \_\_\_\_\_.  
(Provide a detailed explanation if this entity is different than the Owner.)

5. Assuming that the facts set forth in the Application [and in the Certificate of the Owner attached hereto (if necessary)] with respect to costs of construction, schedule of completion, plans and specifications, tax credit allocation amount, occupancy by low-income tenants, rents, and other matters are, in fact, realized, and based on existing laws, regulations, rulings and decisions as of the date of this opinion,

(a) (1) The Development will consist of \_\_\_\_\_ Buildings with the following addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) [Each] [The] Building is a (new) (existing) building within the meaning of Section 42(d) of the Code;

(3) [(If applicable) The rehabilitation expenditures for the Building will be treated as a separate, new building within the meaning of Section 42(e) of the Code;]

(b) The (Development/Building) will be a qualified low-income housing project as defined in Section 42(g) of the Code;

(c) The (Development/Building) will be eligible for the (70%/30%) present value credit described in Section 42(b) of the Code;

[(d) [The] [A] general partner of the Owner is a qualified non-profit organization as defined in Section 42(h)(5)(c) (if applicable).]

6. The following information is correct:

(a) Information regarding Owner:

- Name
- Legal designation
- Tax Identification Number (TIN)
- Required authorized signatories

(b) Information regarding party signing the Application:

- Name
- Legal designation

(c) Information regarding each general partner:

- Name
- Legal designation
- TIN
- Name of managing partner(s)
- Contact persons
- Required authorized signatories

(d) The following information for each partner which is an organized entity:

- Name
- Legal designation
- TIN
- Name of managing partner(s)/members
- Contact persons
- Required authorized signatories

7. The following waivers, if any, are required by the Code and have been obtained from the IRS and are attached as Exhibit B.

\_\_\_\_\_  
Name of Legal Firm

\_\_\_\_\_  
Signature

**EXHIBIT F**

This document drafted by:

Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, Minnesota 55123

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(Space above reserved for recorder’s use.)

**DECLARATION OF LAND USE**

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
(LOW-INCOME HOUSING TAX CREDITS)**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this “AGREEMENT”), dated as of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, and its successors and assigns (the “Owner”) is given as a condition precedent to the allocation of low-income housing credits by the Dakota County Community Development Agency, a public body corporate and politic and political subdivision of the State of Minnesota (the “CDA”) (together with any successor to its rights, duties and obligations).

**WITNESSETH:**

WHEREAS, the Owner is the owner of a \_\_\_\_-unit rental housing project [to be constructed] located on land in the City of \_\_\_\_\_, County of Dakota, State of Minnesota, more particularly described in **Exhibit A** hereto (the “Project Land”), known as or to be known as \_\_\_\_\_ (the “Project”); and

WHEREAS, the CDA has been designated by the Legislature of the State of Minnesota as a housing credit agency for the allocation of certain low-income housing credit dollars (the “Credit”); and

WHEREAS, Owner has applied to the CDA for Credits for the Project and the CDA has allocated \_\_\_\_\_ Credits in the amount of \$\_\_\_\_\_, of which allocation is subject to reduction in connection with the issuance of IRS Forms 8609 for each building in the Project; and

WHEREAS, the Internal Revenue Code Section 42 (hereinafter “Section 42” or “the Code”) requires as a condition precedent to the allocation of the Credit that the Owner execute, deliver and record in the official land deed records of the county in which the Project is located this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 and the

additional Restrictions found in Section 5 hereof and **Exhibit C** attached hereto by regulating and restricting the use and occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project Land for the term stated herein and binding upon all subsequent owners of the Project Land for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

## **SECTION 1 - DEFINITIONS**

All words and phrases not otherwise defined in this Agreement that are defined in Section 42 of the Code and by Treasury, Internal Revenue Service or Department of Housing and Urban Development regulations pertaining thereto shall have the same meanings in this Agreement.

## **SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

- (a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed with the County Recorder of Dakota County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the CDA an executed original of the recorded Agreement showing the date and document numbers of record, or a duly certified copy of the executed original. The Owner agrees that the CDA will not issue the Internal Revenue Service Forms 8609 constituting final allocation of the Credit unless and until the CDA has received the recorded executed original, or a duly certified copy, of this Agreement as recorded.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project Land during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project Land and the Project (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the term of this Agreement, binding upon the Owner, the Owner's successors in title and all subsequent Owners and Operators of the Project Land, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the CDA and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Minnesota to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. For the longer of the period this Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

- (c) The Owner covenants to obtain the consent of any prior recorded lienholder for the Project to this Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

### **SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

The Owner hereby represents, covenants and warrants as follows:

- (a) The Owner (i) is a \_\_\_\_\_ duly organized under the laws of the State of Minnesota and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner has good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any Loan Documents relating to the Project or other permitted encumbrances).
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.
- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations.
- (f) Each unit in the Project contains, or upon completion of construction will contain, complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.
- (g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.
- (h) The Owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.
- (i) [The Project is currently subject to a Housing Assistance Payments Contract (the "HAP Contract") between the \_\_\_\_\_ and \_\_\_\_\_, dated \_\_\_\_\_, Project Number \_\_\_\_\_. The Owner, during the term of this Agreement, will not terminate the HAP Contract, and will extend the HAP Contract, including any renewals or extensions thereof, and the existing low-income affordability restrictions as permitted by HUD.

In any event, the] Owner will not during the term of this Agreement refuse to lease a unit to the holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

- (j) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy.
- (k) Subject to the requirements of Section 42 of the Code and this Agreement, the Owner may sell, transfer or exchange the entire Project at any time, but the 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 to the requirements of Section 42 of the Code and applicable regulations. 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. The Owner agrees that the CDA 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.
- (l) The Owner agrees to notify the CDA in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project. The Owner shall obtain all required CDA approvals of the sale, transfer or exchange as described in the Housing Tax Credit Procedural Manual. The notification to the CDA shall be made in the manner described in the Procedural Manual.
- (m) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.
- (n) The Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.
- (o) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (p) Upon request by CDA, the owner agrees to provide CDA with a completed Characteristic of Tenant Household Form detailing the development's demographic characteristics and other documents deemed necessary or convenient by the CDA to preserve the credit.

#### **SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS**

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restrictions") that:

- (a) The determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually (except to the extent that annual determinations are not required by the CDA and Section 42 of the Code) on the basis of the current income of such Low-Income Tenant.

- (b) The applicable fraction (as defined in subsection 42(c)(1) of the Code for each building for each taxable year in the extended use period will not be less than the Applicable Fraction for each building specified in **Exhibit B**.
- (c) The applicable fraction (as defined in subsection 42(c)(1) of the Code) for the Project for each taxable year in the extended use period will not be less than the Applicable Fraction for the Project specified in **Exhibit C**.

## **SECTION 5 - ADDITIONAL RESTRICTIONS**

**Exhibit C** to this Agreement sets forth the additional obligations of the Owner with respect to the Project during the term of this Agreement upon which the allocation of Credits has been based, and with which the Owner covenants to comply throughout the extended use period. The obligations listed in **Exhibit C** must be consistent with the Project carryover, with the exception of approved amendments.

## **SECTION 6 - TERM OF AGREEMENT**

- (a) This Agreement and the Section 42 Occupancy Restrictions specified herein shall commence with the first day on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the close of the Compliance Period.
- (b) Notwithstanding Section 6, subsection (a) above, the Owner shall comply with the requirements of Section 42 relating to the extended use period for an additional 15 years, provided, however, the extended use period for any building which is part of this Project may terminate:
  - (1) on the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or
  - (2) [in the case of tax-exempt bond financed projects only] on the last day of the compliance period if the Owner has properly requested that the CDA assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is part of the Project and the CDA is unable to present a qualified contract.
- (c) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of three years following the termination of the extended use requirement specified in subsection (b) above. Throughout the term of this Agreement and during such three year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit.
- (d) Unless the Project received automatic credits because the Project was financed with tax-exempt bonds, this Agreement shall not terminate for a period of 30 years beginning on the first day of the compliance period in which the building is a part of a qualified low-income housing project.

## **SECTION 7 - ENFORCEMENT OF ADDITIONAL RESTRICTIONS**

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the CDA to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the CDA Restrictions specified in this Agreement.

- (b) The Owner shall submit any other information, documents or certifications requested by the CDA which the CDA shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the CDA Restrictions specified in this Agreement.

## **SECTION 8 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS**

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and applicable regulations of this Agreement. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the CDA) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the Department of Housing and Urban Development from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project.
- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE CDA AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the CDA and all persons interested in Project compliance under Section 42 of the Code and the applicable regulations.
- (d) The Owner acknowledges that the CDA is required, pursuant to Section 42(m)(1)(iii) of the Code and Section 1.42-5 of the Regulations, to establish a procedure to monitor the Owner's and the Project's compliance with the requirements of Section 42 of the Code, which procedure includes the monitoring of the Owner's compliance with the Additional Restrictions, if any, set forth in **Exhibit C** hereof. In addition, the CDA may be required to notify the Service of any noncompliance.

## **SECTION 9 - MISCELLANEOUS**

- (a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- (b) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the CDA:

Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, Minnesota 55123  
Attention: Executive Director

To the Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The CDA and the Owner, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (c) Amendment. Notwithstanding anything to the contrary contained herein, this Agreement may be amended by written agreement between the CDA and the Owner, which agreement shall be effective upon execution thereof by the CDA and the Owner and the recording of the amendment with the County Recorder of Dakota County. The Owner agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.
- (d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar as Section 42 requires otherwise (relating to the three-year vacancy control during and after the extended use period).
- (e) Governing Law. This Agreement shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.
- (f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the issuance of the allocation.

[Remainder of page intentionally left blank]



**EXHIBIT A**  
**(Legal Description)**

The real property situated in the City of \_\_\_\_\_, County of Dakota, State of Minnesota, described as follows:

**EXHIBIT B**  
**Declaration of Land Use Restrictive Covenants**  
**Applicable Fraction**

BIN #

BUILDING ADDRESS

APPLICABLE FRACTION\*

**\*the building applicable fraction stated on this form must match the building applicable fraction stated on Minnesota Housing Form HTC 28, Building Map.**



2.	<input type="checkbox"/>	The Project must conform with HUD guidelines, if any, governing combining Housing Tax Credits with HOME Investment Partnership Program under 24 CFR Part 92.
3.	<input type="checkbox"/>	The Owner agrees to lease 100 percent (Project Fraction) of the total units in the Project to individuals or families whose income is 60 percent or less of the area median gross income (including adjustments for family size as determined in accordance with Section 42 of the Internal Revenue Code of 1986 (“Section 42” or the “Code”) (“Low-Income Tenants”)) and shall lease units in each building in the Project to Low-Income Tenants according to the applicable fraction set forth in Exhibit B.
4.	<input type="checkbox"/>	Throughout the term of this Agreement, the Project shall provide at least 75 percent of the tax credit units for single room occupancy housing with one bedroom or less with rents affordable at 30 percent of median income.
5.	<input type="checkbox"/>	Throughout the term of this Agreement, the Project shall provide family housing that is not restricted to person 55 years or older in which at least 75 percent of the tax credit units contain two or more bedroom and at least one-third of the 75 percent shall contain units with three or more bedrooms.
6.	<input type="checkbox"/>	The Project involves substantial rehabilitation in neighborhoods targeted by the applicable City for revitalization.
7.	<input type="checkbox"/>	Throughout the term of this Agreement the Project shall rent at least __ percent of the total units to persons with mental illness, brain injury, drug dependency, development disabilities, or physical disabilities in a manner consistent with Minnesota Statutes, Section 462A.222, Subd. 3, subparagraph (d)(3), and shall obtain a commitment from a public or private social services agency to provide services consistent with applicable state licensing requirements for the services.
8.	<input type="checkbox"/>	The Project preserves existing subsidized housing.
9.	<input type="checkbox"/>	The Project is financed by the Farmers Home Administration and meets a state-wide distribution goal.
10.	<input type="checkbox"/>	The Owner agrees to maintain the housing tax credit units in the Project for at least 30 years and Section 42(h)(6)(E)(i)(II) and 42 (h)(6)(F) shall not apply to the Project. (This requirement applies to all projects except those receiving automatic tax credits because they are financed with tax exempt bonds.)
11.	<input type="checkbox"/>	The Owner agrees to use Public Housing waiting lists.

12.	<input type="checkbox"/>	The Owner agrees to comply with resident screening criteria established by the CDA from time to time.
-----	--------------------------	---

<b>Selection Priorities:</b>		
1.	<input type="checkbox"/>	The Project consists of new construction.
2.	<input type="checkbox"/>	The Owner agrees to preserve federally assisted low income housing. The Owner shall continue renewals of existing project based housing subsidy payment contract(s) for as long as the assistance is available.
3. The Project will have local, state or federal financial participation at the following levels:		
	<input type="checkbox"/>	assistance in excess of 30% of total development costs
	<input type="checkbox"/>	assistance in the range of 21-30% of total development costs
	<input type="checkbox"/>	assistance in the range of 10-20% of total development costs
	<input type="checkbox"/>	no specified dollar amount.
4.	<input type="checkbox"/>	The Project has individual exterior entrances for each unit.
5.	<input type="checkbox"/>	For the term of this Agreement, the Owner will reserve at least 25% of the units are reserved for and rented to mentally ill, developmentally disabled, drug dependent, brain injured, or physically handicapped persons.
6.	<input type="checkbox"/>	The Owner represents that a qualified nonprofit or a governmental unit is the sole general partner.
7. Intermediary costs (soft costs) shall not exceed the percentage of the Total Development Cost at the issuance of the IRS Form 8609 as indicated below:		
	<input type="checkbox"/>	0 - 15%
	<input type="checkbox"/>	15.1 - 20%
	<input type="checkbox"/>	20.1 - 25%
	<input type="checkbox"/>	25.1 - 30%
	<input type="checkbox"/>	30.1% and over
8.	<input type="checkbox"/>	The Owner agrees to provide high speed internet access and/or wireless internet service to every unit in the Project.

9.	<input type="checkbox"/>	The Owner represents that the project consists of rehabilitation of existing housing as part of a community revitalization plan.																					
10.	<input type="checkbox"/>	At the end of the initial 15-year compliance period, the Owner shall transfer ownership of 100 percent of the tax credit units in the Project to tenant ownership. The transfer shall be in accordance with Owner's transfer plan submitted and accepted by the CDA. The plan shall incorporate a limited partnership ownership exit strategy and provide for services including home ownership education and training. The purchase price for each unit at time of sale shall be affordable to households with incomes meeting tax credit eligibility requirements. To be eligible, the buyer must have had a low income housing tax credit qualifying income at the time of initial occupancy or time of purchase. Until the time the tax credit units are purchased by a qualified tenant or in the event the tax credit units are not acquired by a qualified tenant, the Owner will extend the duration of low income use for the longest period (30 years) and the Owner agrees that Section 42(h)(6)(E)i(ii) and 42 (h)(6)(F) shall not apply to the Project.																					
11. For a period of five years following the placed in service date for each building the following percent of the tax credit units shall have gross rents established at a level not greater than the applicable maximum tax credit rent for persons with incomes equal to the following percent of median income.																							
Applicable Rent Restrictions:																							
	<input type="checkbox"/>	100% of HTC units at rent limits for families at 50% of median income																					
	<input type="checkbox"/>	75% of HTC units at rent limits for families at 40% of median income																					
	<input type="checkbox"/>	75% of HTC units at rent limits for families at 50% of median income																					
	<input type="checkbox"/>	50% of HTC units at rent limits for families at 40% of median income																					
	<input type="checkbox"/>	<p>50% of HTC units at rent limits for families at 50% of median income</p> <p>Rents may (except to the extent restricted by virtue of selection of the 20% of the units at 50% of median income set-aside), following the five-year restricted period, be increased for the restricted units over the following periods beginning on the last day of the five-year restriction period to maximum tax credit rents for units occupied by persons at or below the following percent of adjusted median income:</p> <table border="1" data-bbox="370 1482 1159 1797"> <thead> <tr> <th>Year</th> <th>30% of 50% Rent Levels</th> <th>30% of 40% Rent Levels</th> </tr> </thead> <tbody> <tr> <td>1 - 5</td> <td>30% of 50%</td> <td>30% of 40%</td> </tr> <tr> <td>6</td> <td>30% of 53%</td> <td>30% of 45%</td> </tr> <tr> <td>7</td> <td>30% of 57%</td> <td>30% of 50%</td> </tr> <tr> <td>8</td> <td>30% of 60%</td> <td>30% of 55%</td> </tr> <tr> <td>9</td> <td>-</td> <td>30% of 60%</td> </tr> <tr> <td>10</td> <td></td> <td>-</td> </tr> </tbody> </table>	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		-
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8	30% of 60%	30% of 55%																					
9	-	30% of 60%																					
10		-																					
12.	<input type="checkbox"/>	The Project is located in a Qualified Census Tract and is part of a cooperatively developed plan that provides for community revitalization.																					

