



**DAKOTA COUNTY CDA**

**HOUSING TAX CREDIT**

**2021 PROCEDURAL MANUAL**

## 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” or “Minnesota Housing”) has been designated 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 as a suballocating agency of HTCs for Dakota County.

Section 42 requires housing credit allocating agencies to develop a qualified allocation plan (“QAP”) for the distribution of the Tax Credits within the jurisdiction of the allocating agency (IRS Regulations 1.42-17). The Dakota County CDA’s *Qualified Allocation Plan for 2021*, attached as **Exhibit A**, 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 projects.

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 Treasury Regulation Section 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 (of the project). 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 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 HTC Program Procedural Manual (this “Manual”) is provided solely for use in applying for the HTCs from the CDA and may not be relied upon in structuring or investing in specific transactions, compliance with the Code, Treasury Regulations or any other laws or regulations governing HTCs. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of HTCs.

## **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 an HTC allocation. Nonprofit applicants may apply to the MHFA nonprofit set aside or to the CDA individually or concurrently. Any Tax Credits not used by the CDA prior to Round 2 will be returned to MHFA.

### **B. Round 2**

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

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

### **D. 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. Sponsors of projects that combine HUD assistance and Tax Credits should be aware that subsidy layering review must be completed for their projects, and should contact the CDA to receive additional information prior to submitting their application.

Subsidy layering review is required for the following programs, but not limited to:

- Metropolitan Housing Opportunity Program (MHOP),
- U.S. Housing and Urban Development (HUD) Insurance
- Section 8 Project-Based Rental Assistance

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 MHFA Multifamily Workbook

#### IV. POLICIES AND PROCEDURES

##### A. Application Cycle

The CDA will accept applications in Round 1 in accordance with the QAP and this Manual. **Application must be submitted in the manner required by this Manual and must comply with the CDA's submission requirements.** The CDA uses MHFA's Multifamily and Tax Credit application materials which can be found at [www.mnhousing.gov](http://www.mnhousing.gov).

**The closing date for receipt of applications for Round 1 is tentatively scheduled for July 16, 2020**, but applicants should note that MHFA establishes the closing date for Round 1 and should confirm the actual deadline prior to submission.

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 or approved 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.

Applications should be submitted no later than 4:30 p.m. on the application due date to:

Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, MN 55123  
Attn: Housing Finance Program Coordinator  
Email: [kkugel@dakotacda.state.mn.us](mailto:kkugel@dakotacda.state.mn.us)  
Phone: 651-675-4400

Upon receipt of an application, as required by Section 42, the CDA will notify the Chief Executive Officer (or the equivalent) of the local jurisdiction where the proposed project is planned. The notice will include characteristics of the proposed HTC project and provide an opportunity for the local government to comment on the project.

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. Nonprofit Set-aside

MHFA complies with Section 42 which requires that 10 percent of the total annual Tax Credit available be reserved each year exclusively for projects involving ownership by nonprofit organizations which have either a 501(c)(3) or (c)(4) status or appropriate equivalent designation approval from the IRS.

In Round 1, nonprofit developers with projects located within the CDA's jurisdiction may apply for Tax Credits from MHFA, but only from the nonprofit set-aside. Nonprofit projects located in Dakota County may apply simultaneously to the CDA and to the MHFA nonprofit set-aside. If the MHFA nonprofit set-aside is exhausted during Round 1, the nonprofit applicant with proposed projects in the CDA's jurisdiction may be eligible for Tax Credits from the CDA set-aside and selected based upon its point ranking. However, any project with a qualified nonprofit applicant must comply with the nonprofit requirements of Section 42(h)(5)(C) and (D) of the Code, including material participation for the term of the Declaration. This requirement is a covenant on the land that shall apply to all subsequent owners.

**D. [Reserved]**

**E. [Reserved]**

**F. Transfer of Ownership**

The CDA strongly discourages the transfer of ownership in projects that have been awarded Tax Credits. The CDA believes that for the long term viability of quality housing, the project and management teams making the decisions in developing the Tax Credit housing need to also own and operate the project for the long term. Any transfer of title of a project or transfer of more than a 50 percent interest in a general partner or change in a nonprofit partner prior to a date following issuance of Form 8609 and five years after the project's new construction/rehabilitation element has been placed in service will be considered a material change in the project and **will be subject to the approval of the CDA.**

Owners wishing to change or transfer ownership must submit a Request for Action Form (RFA), Transfer Agreement (MHFA Form HTC 20), a transfer of ownership fee (See Section X) if the transfer occurs prior to a date five year after the project's new construction/rehabilitation placed in service date, and any other documentation that the CDA deems necessary. Owners wishing to change or transfer ownership **prior to issuance of 8609** must submit a revised application along with a completed and executed Notice of Intent to Transfer Ownership (MHFA Form HTC 27), Transfer Agreement (MHFA Form HTC 20), an updated Qualification Form for all the new team members, 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 reservation and through five years after the placed in service date will have an effect on all individuals/entities from the project 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. Failure to Notify:

Existing Tax Credit projects are required to notify the CDA of a transfer of ownership throughout the term of the Declaration. Failure to notify the CDA will have an effect on all individual/entities from the development and management team on each side of the transfer that submit applications in future HTC application rounds. These entities may be penalized as follows:

For two calendar years from the date the CDA discovers an unapproved change or transfer of ownership:

- a. First Transfer (-10 points on each subsequent application submittal); and
- b. Two or More Transfer (-25 points in each subsequent application submittal).

3. Displacement of Section 8 Tenants:

The CDA will not accept applications that have displaced (or will displace) Section 8 tenants in a project because rents will be increased above the Section 8 Payment Standard Rent limit. Rehabilitation projects 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 projects;
  - 1. were displaced prior to submission of an application; and/or
  - 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; and
  - 2. assess a -25 point penalty to all parties involved in ownership/management of the project for future Tax Credits. The penalty points will remain in place for two fund rounds (two years). This also applies to Tax Credit projects financed by tax-exempt volume limited bonds, owners and managers.

4. Changes to Project:

The award of Tax Credits is based upon information provided in the application and the preliminary plans submitted with the application. Until the project is placed in service, any material changes to the project or building design (i.e., changes in unit mix or unit size, that affect applicable Development Features or design features required or preference points) 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 may 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.

5. Late 8609 Application Submissions Resulting in the Loss of Tax Credit Authority to the State:

When the CDA becomes aware that a late submission of a complete and acceptable 8609 application package by a project'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 (10) years.

6. Filing of Non-Agency Approved 8609 with the IRS

When the CDA becomes aware that a project's owner/agent has filed a self-prepared 8609 with the IRS, or if the owner/agent electronically files an 8609 with the IRS that does not accurately reflect the information contained on the CDA 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 Tax Credits allocated by the CDA including, without limitation, those allocated in conjunction with tax-exempt volume limited bonds.

7. 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 Tax Credit projects to all parties involved in ownership and/or management on the project(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 projects financed with tax-exempt volume limited bonds in the same way and for the same period of time.

8. Non-Compliance with CDA's Compliance Policies, Procedures, and/or Requirements:

Failure to comply with the CDA's compliance policies, procedures, or requirements after repeated notices will be considered an unacceptable practice and result in negative points or ineligibility.

- a. On the date of submission of an application for an allocation of Tax Credits, if the applicant or any party with an identity of interest with the applicant who will have an ownership interest in the proposed project has been issued a notice of failure to comply involving any of the following violations, but has not submitted an acceptable plan and timeline to correct by the response due date, under Unacceptable Practices, the application will receive -25 points.
  1. Failed to meet minimum set-aside.
  2. Any Exigent Health and Safety violation under Uniform Physical Conditions Standards.
  3. Owner is charging rent on any Tax Credit unit that exceeds the allowable rent limit.
  4. Tax Credit unit rented to an ineligible household (i.e., household not properly certified, over income at initial occupancy, or ineligible full time student).
  5. Project not available to the general public or fair housing violation(s).
  6. Owner failed to respond to CDA or CDA's representative request for inspection.
- b. On the date of submission of an application for an allocation of Tax Credits the applicant is ineligible to receive an allocation of Tax Credits, if the applicant or project:
  1. Has been reported to the IRS by the CDA, MHFA or another suballocator as no longer in compliance, nor participating in Section 42 program on line 11p of IRS Form 8823 and has not taken steps to bring the property back into compliance to the satisfaction of the CDA, MHFA or suballocator; or
  2. Is on the CDA's, MHFA's or another suballocator's list of Properties Not in Good Standing in the Extended Use Period and has not taken steps to bring the property back into compliance to the satisfaction of the CDA, MHFA or suballocator.

#### H. Minimum Underwriting Factors

A project 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 Section 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. An entity will be deemed, at the discretion of the CDA, to have an identity of interest with an applicant if there is a financial or familiar relationship between the entities, including parent and subsidiary entities.

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

The applicant must disclose on the Multifamily Workbook 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. At the sole discretion of the CDA, significant parties who have serious and persistent compliance monitoring violations may not be eligible; or
4. At the sole discretion of the CDA, significant parties having an identity of interest with persons or entities falling into any of the above categories may not be eligible.

**K. Determination of Credit Amount**

Section 42 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 Tax Credits than necessary for the financial feasibility of the project and its viability as a qualified affordable housing project throughout the 15 year compliance period.

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

1. Project costs, including, acquisition costs, developer fees, builder profits, contractor overhead, and general conditions.
2. The reasonableness of the project costs and operational costs of the project.

3. All sources and uses of funds and total financing planned for the project.
4. Projected income and expenses.
5. Proceeds expected to be generated from the sale of tax credits, including historic tax credits.
6. 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 Tax Credits 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 may 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 must follow the procedures in Section IV.L of this Manual and will depend upon the availability of Tax Credits.

**L. Requests for Additional Tax Credit Amounts**

Projects that have had a justifiable increase in eligible basis or 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 to the CDA for Round 1.

Developers who have a Carryover allocation 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**

Section 42 permits, but does not require, the CDA to reserve a greater amount of Tax 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.gov/portal/datasets/qct.html](http://www.huduser.gov/portal/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. For DDA information, go to the same website set forth for QCTs above.
3. A project that is not located in a QCT or a DDA, pursuant to Section 42(d)(5)(B)(v), but meets the following criteria ("Credit Enhancement Criteria"), which will be used to determine if, when, and in what amount, the CDA will provide a basis boost for Tax Credit projects on a building by building basis to obtain financial feasibility, as formally determined by the CDA:
  - (i) The project does not use financing that is tax-exempt under Section 103 of the Code;
  - (ii) The project meets housing priorities identified by the CDA, as evidenced by a competitive Tax Credit score;
  - (iii) There remains a significant funding gap for such project and all funding sources have been investigated; and
  - (iv) But for the additional reservation of Tax Credits, the project would not be financially feasible.

Requests by applicants/developers to the CDA to apply for the 30% designated basis boost must be formally made in writing as an application submittal item. The request should clearly outline the reasons supporting the request and clearly demonstrate how the proposal meets the Credit Enhancement Criteria.

In any event, the Tax Credits allocated to a project, 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 Tax 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 project 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 project's site could lead to the revocation of the Tax Credit Commitment or allocation. For substantial rehabilitation projects, Tax Credit commitments are also conditioned on CDA approval of a detailed scope of work.

Federal legislation adopted in 2015 provides that the applicable percentage for projects which are not federally subsidized and which are placed in service after January 1, 2015, will be 9%. For projects not eligible for this provision, Section 42 permits owners to elect the applicable percentage either at Commitment or placed in service. If the election is not made at the time the Commitment is 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.

Upon receipt of the required documents, the CDA will complete its Commitment review and send Commitment agreements to be executed by the owner. Each Commitment shall be conditioned upon receipt of written certification, evidence of timely progress toward completion of the project acceptable to the CDA, and evidence of compliance with Section 42 requirements.

Choosing the gross rent floor date as the date of allocation or the date of placed in service can be done at any time from carryover allocation but **the election must be made and the completed election form received by the CDA no later than the date the project is placed in service.** If you choose to make the election as of the date of the carryover allocation, submit a fully executed Gross Rent Floor Election Form (MHFA Form HTC 26) including each building of the project in which there are housing Tax Credit units. If the required owner-executed forms with all elections made by the Owner, are not submitted to the CDA by a date no later than the placed in service date, the gross rent floor date will be effective on the carryover allocation date of the Tax Credits.

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 Manual.

**P. Administrative Errors/Appeals Process**

Applicants requesting Tax Credits in the CDA's Round 1 9% Tax Credit can request an appeal, if the applicant believes that the CDA has misinterpreted, was not aware of a submission item, or miscalculated the applicant's selection points or Tax Credit amount at time of application/commitment, the applicant must submit a letter with an original signature stating that the communication is an appeal under Section IV. P of this Manual, along with evidence supporting its position within five business days of the CDA's notification of application status. The letter containing the original signature may be submitted to the CDA in hard copy or through email, to the address specified in Section IV. A of this Manual. The CDA's notification will be in the form of a commitment selection or non-selection letter. The first business day after the date on this letter will be the first day of the notification period.

An applicant is not permitted to contest the scores of other applicants.

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. Projects placed on the waiting list must be fully evaluated for underwriting, market and financial viability prior to receiving consideration for a Tax Credit allocation. A project must satisfy these reviews to be eligible for selection from 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 commitment.

**R. Carryover Allocations**

Federal law (26 CFR § 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 15 of the allocation year** for which the Commitment was issued. **Carryover applications must be submitted in a manner required by this Manual and must comply with the CDA's submission requirements** utilizing forms supplied by the CDA or MHFA, including all required fees, deposits and exhibits.

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 carryover allocation is made or the close of the calendar year in which the allocation is made. A written certified public accountant (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 allocation agreement to be valid it must include, among other things, the amount of the reasonably expected basis of the project 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 carryover allocation is made or the close of the calendar year in which the carryover 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 of the project must be performed by the owner and submitted to the CDA no later than October 15 of the carryover allocation year for which the Commitment was issued. The final CPA certification 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 Section 42 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 this Manual and additional reviews of projects 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 by the CDA. The final amount of Tax Credits is determined when the project is placed in service.

Final allocations (Form 8609) may be requested when all eligible buildings have been placed in service and the proper documentation and fees have been received by the CDA. 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 project does not intend to obtain a carryover allocation, but instead intends to take a project from 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 October 15 of the allocation year for which the Commitment was issued.**

A project that has not received a carryover allocation nor has been placed in service and issued appropriate 8609s before December 31st of the year of allocation will lose its entire allocation of Tax 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 Manual. The allocation may be reduced to comply with Section 42 based on the final review of the project.

Prior to final allocation the project owner is required to execute and record a Declaration.

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

**T. Monitoring for Compliance**

Section 42 requires that the CDA provide a procedure to be used in monitoring for noncompliance of Section 42 and for notifying the IRS 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 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 project from the placed in service date to the end of the 15 year 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 Tax 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 on-site 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 not fewer than the minimum number of tenant files and units as required pursuant to Treasury Regulation §1.42-5.
4. The CDA will conduct a compliance inspection of each project at least once every three years. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of not fewer than the minimum number of the required low-income units.
5. The CDA shall have access to all official project records, including IRS reporting forms, upon reasonable notification. All official project 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 fees on all units within each property. An annual monitoring fee of \$45 per HTC Unit, plus \$15 per Market Rate Unit (minimum fee of \$500). This fee is reduced for properties “in their Extended Use Periods.” Additional fees are charged for physical inspections. The CDA reserves the right to adjust the annual fee to offset administrative costs.
7. The CDA will promptly notify the IRS of any project noncompliance within its responsibility as set forth 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.
8. Properties that received a Tax Credit allocation in 1990 and later are subject to a minimum 15-year Extended Use Period (the “Extended Use Period”). The CDA has defined compliance requirements and monitoring procedures during the Extended Use Period in the CDA HTC Compliance Manual.

**U. Qualified Contract**

All properties will be subject to a Declaration of Land Use Restrictive Covenants (the “Declaration”) with a term of 30 years or longer. Section 42(h)(6)(E)(i)(II) of the Code requires housing credit agencies to respond to the request for presentation of a qualified contract (the “Qualified Contract”) for Tax Credit projects 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, subject to a three-year period following its termination where existing low income tenants cannot be evicted or tenancy terminated for other than good cause and rents cannot exceed the allowable Tax Credit rent limits.

Owners of projects that receive 9% Tax Credits are required by the CDA to waive the right to request a Qualified Contract for a minimum of 30 years. Owners of projects that receive 4% Tax Credits are required to waive their right to request a Qualified Contract for a minimum of 20 years, which means the request for presentation of a Qualified Contract may not occur until after year 19. Some owners of projects that receive 4% Tax Credits have agreed to waive their right to a Qualified Contract for a longer period and in some cases extend the term of the Declaration. Owners should review the respective QAP, development Tax Credit application (including points claimed on the Self-Scoring Worksheet), carryover agreement and the Declaration to determine whether the project is eligible to request a Qualified Contract prior to contacting the CDA.

For owners who have not waived the right to request a Qualified Contract, a request for Qualified Contract may be submitted only once for each project. If an owner rejects an offer presented under the Qualified Contract or withdraws its request at any time after the Notification Letter and Application Materials have been received by the CDA, no other opportunity to request a Qualified Contract will be available for the project in question.

Owners who are contemplating requesting a Qualified Contract should directly contact the CDA and refer to Minnesota Housing’s Qualified Contract Guide which sets forth the

requirements and process the CDA will follow with regard to a request for a Qualified Contract.

**V. Tenant Selection Plan**

The CDA requires that a tenant selection plan is readily available to anyone interested in such a plan for review and/or retention. The CDA will not develop or provide such a plan to owners or management companies.

Federal, State and local fair housing laws should be consulted when owners/managers are developing a plan. It is the responsibility of the owner/manager to have a thorough understanding of the basis under which discrimination is prohibited. See MHFA's Tenant Selection Plan Guidance.

A plan developed for the purpose of objectively selecting potential residents should have a focus on demonstrating an ability to live in harmony with others in a respectful manner. Factors to consider of persons interested in the available housing should include, but not be limited to, income eligibility; ability to pay the required rent, deposits, and applicable tenant paid utilities; previous rental history; references; expectations of all residents to management, neighbors, visitors to the project, etc. (Also see related items in sections VIII.B.13, VIII.C.22 and IX.G.23)

**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 this Manual and QAP**

To the extent necessary to facilitate the award of Tax Credits that would not otherwise be awarded or to comply with the requirements of Section 42, applicable Treasury Regulations and applicable guidance from the IRS, this 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 or at such location as designated by the CDA.

To the extent that anything contained in this Manual and QAP does not meet the minimum requirements of Section 42 or regulations, such law or regulation shall take precedence.

## **V. FEDERAL HTC 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 Tax Credits having a present value of 70 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 9 percent. For projects placed in service by the owner after January 1, 2015, the applicable rate for new buildings (including qualifying rehabilitation expenditures which constitute a separate new building) which are not federally subsidized is 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 Tax Credits having a present value of 30 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 4 percent.

The 4 percent credit percentage represents the maximum potential rate. For the current rate, you may visit <http://www.irs.gov>.

The 9 percent and 4 percent credit percentage represent the maximum potential rates.

Applicants are strongly advised to consult closely with their tax credit professionals (legal and tax) for guidance with respect to structuring a project to use either the 9 percent or the 4 percent Tax Credit. Consult with your tax credit professionals regarding the current credit percentage rates.

### **C. Qualifying Rehabilitation**

Rehabilitation expenditure requirements are established both by state and Section 42.

Under Section 42(e), rehabilitation expenses qualify for the Tax 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 qualified basis amount per low income unit for a building which meets the inflation adjusted amount published by the IRS annually in accordance with 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 (9% 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 Tax 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 nonprofit 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 Tax 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 projects combine HUD assistance and Tax Credits should be aware that subsidy layering review must be completed by the CDA for their project, 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 MHFA Multifamily Workbook.

**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 project must, for a specific period of time, meet one of the following minimum tests:

1. **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 at or below 50 percent Multifamily Tax Subsidy Project limits (MTSP limits), as established for different geographical areas by the U.S. Department of Housing and Urban Development (HUD), adjusted for family size.

Or

2. **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 MTSP adjusted for family size.

Or

3. **Average Income Test:** To meet the Average Income Test, the average of the imputed income limitations designated by the applicant for a minimum of 40 percent of the residential units must be both rent restricted and occupied by individuals whose income does not exceed 60 percent MTSP limits, adjusted for family size.

In addition to the Federal requirements, projects electing the Average Income Test must meet the following additional requirements:

- a. Average Income Test may only be elected for 100% Tax Credit projects at initial application.
- b. Average Income Test income and rent tiers may be set in 10% increments, beginning at 20% AMI up to 80% AMI. A maximum of 4 tiers are allowed.
- c. Reasonable parity in terms of the unit layout, number of bedrooms and unit square footage across income tiers is required.
- d. Rent and income tiers will be designated at initial application and be included in the project's Declaration.
- e. For projects electing the Average Income Test set-aside, which also have Project Based Housing Choice Vouchers (PBV), the designation of imputed income limitation for the PBV units must match the rent level of that unit. The maximum gross rent must not exceed the lower of the designated HTC MTSP rent limit or PBV Payment Standard rent limit.
- f. The Average Income Test set-aside must be met on a project-wide basis; projects with more than one building must be designated as a multiple building project on Form 8609, therefore owners must select "yes" on Line 8b of Form 8609 and include the required attachments.
- g. Resyndications must comply with the terms of the original Declaration, if still in effect.
- h. Average Income Test projects will not be allowed a higher developer fee, when compared to a non-Average Income Test projects.

- i. The CDA reserves the right to negotiate specific terms for projects electing the Average Income Test set-aside. Electing the Average Income Test for projects with existing HTC and/or CDA deferred funding awards will be considered only if needed to improve financial feasibility, and/or to include/increase extremely low income HTC units (at or below 30% AMI).
- j. Rent and income restriction in the initial 15-year compliance period will also apply in the Extended Use Period.
- k. 4% Tax Credit projects electing Average Income Test must still meet all requirements associated with tax exempt bond financing.

Once made, the choice of the 20/50 Test, the 40/60 Test or the Average Income Test is irrevocable. The election of the eligibility formulation must be made at initial application.

Note: The actual number of restricted units within the project must be consistent with the initial applicable fraction selected at the time of Commitment. Also, the IRS defines each building as a separate project unless the owner elects to treat certain buildings as a multiple-building project on IRS form 8609. See the instructions for making a multiple-building election on form 8609.

#### **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 ([www.huduser.org/datasets/il.html](http://www.huduser.org/datasets/il.html)), 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"). Treasury Regulation (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 Treasury Regulation Section 1.42-10. Utility allowances must be updated at least annually. The CDA Housing Tax Credit Compliance Monitoring Manual provides additional information and instructions.

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 commitment of Tax Credits was made based on such additional restrictions.

**K. Tenant Eligibility**

To be an HTC unit for purposes of determining the qualified basis, the tenant must have income at or below 50 percent of MTSP if the 20/50 Test is elected, or 60 percent of MTSP if the 40/60 Test is elected, or an average imputed income which does not exceed 60 percent of MTSP limits if the Average Income Test is elected. Additionally, for the Average Income Test set-aside, tenants must have income at or below the corresponding rent tier. 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 an HTC 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 HTC units unless certain exceptions are met. The student exceptions are found in Section 42(i)(3)(D):

Certain students do not disqualify a unit. A unit shall be treated as a low-income unit if it is occupied:

1. by an otherwise eligible individual who is
  - a. a student and receiving assistance under title IV of the Social Security Act; or
  - b. a student who was previously under foster care, as provided in Code 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 otherwise eligible and:
  - a. single parents and their children and such parents and children are not dependents (as defined in Code 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:

1. The eligible basis may be increased for new buildings and substantial rehabilitation to existing buildings that are located in designated QCT, DDA or designated by the CDA for increased basis, as described above.
2. The cost of the non-HTC 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 HTC units. If the cost of a non-HTC unit exceeds the cost of an HTC unit (using the average cost per square foot and assuming the same size) by more than 15 percent, the entire cost of the non-HTC 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-HTC unit(s) from eligible basis.
3. 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, the 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.
4. The cost of a community service facility is included in eligible basis only if the building is located in a QCT. 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 projects.
5. 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 QCT or DDA and buildings that meet the Credit Enhancement

Criteria may be eligible for an increase in allowable basis.  
(See Section IV.N)

**M. Qualified Basis**

Qualified basis is the portion of the eligible basis applicable to HTC 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 HTC 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 HTC 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 project 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*, which is recorded and runs 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 tax credit 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 Section 42. Therefore, the actual amount of Tax Credits awarded could be less than the maximum allowable if the analysis reveals the project would be feasible with fewer Tax Credits.

The IRS publishes the applicable tax credit percentages on a monthly basis. These figures are used to calculate the maximum allowable annual Tax Credit amount for which a 4 percent project will be eligible. (Also see Section V.B.)

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

Prior to an allocation of Tax Credits, a project will be subject to a *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 5 years (for tax-exempt bond projects) or 15 years (for all other projects) after the conclusion of the 15-year compliance period (a total of 20 or 30 years, as applicable).

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 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. See Section IV.U above regarding circumstances under which applicants are required to waive the right to request a Qualified Contract.

Tax Credits allocated in association with the issuance of tax exempt bonds must commit their projects to Section 42 income and rent restrictions for a period of 20 years (at a minimum) beginning with the first day of the compliance period in which the building is part of a qualified low income housing project. Owners applying for the 9 percent Tax Credits must commit their projects to Section 42 income and rent restrictions for a period of 30 years beginning with the first day of the compliance period in which the building is part of a qualifies low income housing project.

The Declaration must be recorded in accordance with Code Section 42(h)(6) as a restrictive covenant and submitted to the CDA prior to the CDA issuing the IRS Form 8609. The Declaration 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 covenants will result in a permanent ban on future allocations of Tax Credits for all parties involved. Any projects that apply for Tax Credits as part of a resyndication process must comply with the original Declaration.

**R. Ineligible Properties**

Any residential rental units that is part of a hospital, nursing home, sanitarium, life care facility, manufactured housing park or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for Tax Credits under Section 42. Projects with buildings having four or fewer residential units must comply with Code Section 42(i)(3)(c).

**S. Passive Loss Restrictions**

There is a limit on the amount of Tax 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 State of Minnesota has established a formula by which it will suballocate a portion of its Tax Credits and publishes an estimate of its suballocation each April. The CDA's 2021 per capita volume limit is expected to be approximately \$1,071,077.<sup>1</sup>

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 this 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 for 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 Extended Use Period.

**V. Market Study**

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 Tax 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 Code Section 42(h)(6) and 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 projects proposing an eventual tenant ownership component must have 100 percent of the project's units specified for this ownership component. Projects 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.21.)

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<sup>1</sup> This estimate uses IRS 2020 population figures published March 2, 2020 and includes the increase approved in the March 2018 Spending bill.

**X. Fair Housing, Equal Opportunity 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, familial status, or sexual orientation. Protected groups are any groups protected against discrimination by Federal law and Minnesota State statutes.

Affirmative fair housing marketing practices, which are addressed in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, which states that it is unlawful to discriminate in the sale, rental, and financing of housing based on race, color, religion, sex, handicap, familial status or national origin; as well as the fair housing protections provided by the Minnesota Human Rights Act, which adds creed, marital status, status with regard to public housing, and sexual orientation.

In part, regarding rental housing issues, Title VIII and the Human Rights Act makes it unlawful to: (i) discriminate in the selection/acceptance of applicants in the rental of housing units; (ii) discriminate in terms, conditions or privileges of the rental of a dwelling unit; (iii) engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit; (iv) make or publish (or have anyone else make or publish) advertisements that indicate preferences or limitations based on race, etc.; (v) tell a person that because of race, etc., a dwelling unit is not available when it is; and (vi) deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation.

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.

All projects 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 require owners to market affirmatively, using specific steps for each program. These steps include, but are not limited to:

1. Outreach to all groups protected by the Civil Rights Act of 1968, as amended in 1988, and those protected by the Minnesota Human Rights Act.
2. Affirmative 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. Self-analysis to make sure all steps are non-discriminatory.
4. Upon request by the CDA, the submission of reports and documents that confirm the owner's fair housing efforts.

Affirmative Fair Housing Marketing regulations, held as centrally important by the CDA, require that each applicant carry out an affirmative marketing program to attract

prospective buyers or tenants in the housing market area who are least likely to apply, regardless of race, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, sexual orientation, gender identity, or familial status. Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application and use affirmative fair housing marketing practices in soliciting tenants, determining eligibility, and conducting all transactions. Throughout the Extended Use Period, owners must regularly update their Affirmative Fair Housing Marketing Plan and maintain a copy with their property records.

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

**Y. Occupancy Restrictions**

Under the Tax Credit general public use regulations, residential rental units must be for use by the general public, which incorporates HUD housing policy governing non-discrimination. Residential units provided only for a member of a social organization or provided by an employer for its employees are not considered for use by the general public are examples of restrictions not allowed under the HTC program. The CDA has an obligation to affirmatively further fair housing, and occupancy restrictions must comply with the Fair Housing Act and the Minnesota Human Rights Act. Projects must also comply with any occupancy limitations imposed by any additional source of funds provided by the CDA, MHFA, or other public funding partner.

Age related occupancy restriction or preferences will be approved only if set out in the QAP or if the property qualifies as housing for older persons under the Fair Housing Act and the Minnesota Human Rights Act. The Fair Housing Act exempts “housing for older persons” from the Act’s prohibition of discrimination against families with children in two categories: 100% of the occupants must be 62 years of age or older or 80% of the occupied units must be occupied by at least one person who is 55 years or older.

**VI. DEVELOPMENT STANDARDS**

The CDA will review project costs based on comparability and reasonableness. Projects funded under the 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 project and its comparability to similar projects. 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. Additionally, the CDA will use MHFA’s predictive cost model to test cost reasonableness for all projects. The model uses cost data from Tax Credit properties, industry cost data from RSMeans and regression analysis to predict total project costs. Based on a project’s characteristics (building type, building characteristics,

project size, project location, population served, financing, etc.), the model predicts the total project costs.

The CDA will evaluate the cost reasonableness of proposed acquisition costs by an as-is appraisal. The as-is appraisal and related costs will be the responsibility of the applicant. Appraisals must be completed within one year of the date of the final application and will be considered expired by the CDA one year after the effective date of the report.

The CDA reserves the right to reject Tax Credit applications that appear, at the CDA's sole discretion, to have excessive costs, or to size its award based on the lesser of the option/purchase agreement purchase price or the appraised value of the property.

To ensure competitive construction pricing and cost reasonableness, all projects must meet CDA Contracting Requirements as described in **Exhibit B**. Furthermore, when a Tax Credit project receives deferred loan funds from the CDA, the project is subject to additional CDA contracting requirements, design review and cost reasonableness analysis, which may result in lower fees than allowed under Section VI.C.

**B. Maintenance and Operating Expenses and Multifamily Underwriting Guidelines**

The CDA will review the applicant's proposed Management and Operating Expenses (M&O) and compare it with M&O data available from the CDA's or Minnesota Housing's maintenance and expense 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 underwriting standards that include maintenance and operating expenses estimates that can be supported by actual operating experience by the owner in their underwriting calculations. Written lender certification and supporting documentation is required.

**C. Eligible Basis Tax Credit Fees**

The CDA will evaluate intermediary costs with a view toward minimizing such fees. All costs of intermediaries must be reasonable, in the sole discretion of the CDA, as applicable. For purposes of determining the costs of intermediaries, "Intermediary Costs" shall be consistent with MHFA.

*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 fee 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 based on a percentage of the total project 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	Project Limits	Maximum Developer Fee
New Construction or Substantial Rehabilitation	First 50 Units	15%
New Construction or Substantial Rehabilitation	Units 51 and over	8%

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 capital contribution in an amount exceeding the increase in the developer's fee, or (b) will make 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.

*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, HTC 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 Costs tab of the Multifamily Workbook 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 Standards**

The purpose of design standards is to provide the best long-term affordable housing value for the resources that are invested and to further "best practice" designs that improve quality and control costs. To accomplish this, CDA staff will emphasize providing technical assistance for these purposes. The goal will be to provide design review at the time and

manner when it can be most useful to further the goals of a project. All completed projects must comply with all applicable codes, rules and regulations, mandated by the funding sources including but not limited to:

1. the Minnesota State Building Code (all State adopted codes including but not limited to the International Building Codes, including the Minnesota amendments) even in municipalities and cities where the State Building Code has been rescinded,
2. the Minnesota Housing Accessibility Requirements,
3. the Fair Housing Act (for accessibility) as prescribed in the current edition of Fair Housing Act Design Manual published by the U.S. Department of Housing and Urban Development,
4. the Federal Section 504 for projects funded by the U.S. Department of Housing and Urban Development, U.S. Department of Agriculture, or U.S. Department of Health and Human Services
5. the Americans with Disabilities Act (“ADA”) requirements for projects containing facilities that are available to the general public,
6. the Uniform Building Code
7. the National Standard Plumbing Code
8. the National Electrical Code Handbook.

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

Rehabilitation projects must also meet these codes and standards unless a waiver is granted by CDA. **Requests for waiver of any of the applicable requirements must be submitted to the CDA in writing prior to application submission.** Applicants not requesting necessary waivers prior to submission of the application may be assessed up to -25 penalty points for Unacceptable Practices as described in Section IV.G. of this Procedural Manual.

Additional selection points are awarded to proposed projects for the inclusion of additional development features (refer to QAP Schedule 1.)

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 Article 4.1 of the 2021 QAP. Note that in meeting the requirements of thresholds, fractions of units are not counted as a whole unit. Where unit percentage calculations result in a fraction of a unit being required, the fraction of a unit must be rounded up to the next whole unit in order to meet the requirement.

**B. Scoring**

To efficiently and effectively process the applications submitted, the CDA will first rank projects in accordance with the Selection Priorities and Preference Points (*Self Scoring Worksheet*) and, if necessary, Section VII.C. Tie Breakers, below. The highest ranking projects 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 projects will only be processed further if Tax Credit volume cap remains available after the higher ranking projects are processed; provided, however, that the CDA reserves the right (but shall not be obligated) to grant priority over higher ranking projects to projects that (i) have previously received Tax Credits and have an annual Tax Credit shortfall of the total qualified annual Tax Credit amount and (ii) demonstrate readiness to proceed by having city approvals and all funding commitments in place (other than the Tax Credits the applicant is presently requesting). The CDA shall provide a written explanation, available to the general public, for any allocation of Tax Credits which is made in accordance with the above provision.

**C. Tie Breakers**

If two or more projects have an equal number of points, the following will be used to determine selection:

1. The first tie breaker will be the total number of points in the preference priority selection.
2. If a tie still remains, the second tie breaker will be if the city in which the project is located has not received Tax Credits in the last two (2) years;
3. If a tie still remains, the third tie breaker will be the lowest percentage of cost of intermediaries; and
4. If a tie still remains, the CDA shall select the project which best meets the CDA's housing priorities and Dakota County's underserved communities.

**D. Market Review**

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 on the MHFA Authorized Contractor List, as required by Section 42(m)(1)(A) of the Code. Developers/owner will contact and hire the authorized contractor of their choice to perform the required market study in the form and format outlined in MHFA's Market Study Guidelines found on their website.

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 transaction.

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 and Cost Review**

The owner or architect must certify compliance with all the required development features outlined in the CDA's Development Features (**Exhibit C**) 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 project.
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 have a history of property neglect or poor management 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 section. 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 will consider, but is not limited to, the following environmental criteria when evaluating a proposed site:

1. Noise
2. Flood plains and wetlands
3. Site safety
4. Toxic and hazardous waste
5. Underground storage tanks
6. Asbestos and lead based paint

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 Development Features (**Exhibit C**) 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**

Applications shall follow all MHFA Multifamily Underwriting Standards, within reason, to receive an allocation of Tax Credits. All operating assumptions, including for rent, vacancy, operating expenses, reserves, inflation assumptions and debt coverage ratios, must be consistent with the Underwriting Standards. The structure of the development budget, including acquisition price, architect, general contracting, and developer fees; sales tax and energy rebates; as well as construction contingency, shall also meet the Underwriting Standards.

The CDA will review the applicant's proposed Management and Operating Expenses (M&O) and compare it with M&O data available from the CDA's or Minnesota Housing's maintenance and expense data based on comparable projects. (Also refer to Section VI. B.) 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 underwriting standards that include maintenance and operating expenses estimates that can be supported by actual operating experience by the developer in their underwriting calculations. Written lender certification and supporting documentation is required. The CDA will evaluate the completed *Multifamily Workbook Form* 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. At a minimum, the following information must be submitted with the Multifamily Workbook:

1. Owner narrative summary supporting the proposed maintenance and operating number included in the application. The proposed M&O expenses should be based on the developer/management company's current portfolio and supported by:
  - a. Actual operating data provided by the developer/management company for similar projects.
  - b. Circumstances and/or significant changes to the economics of the project's current marketplace, such as increased utility costs and property insurance.
  - c. Operating trends of the developer or management company.
2. For new construction: Copies of year-end operating information from three comparable projects that have been in operation for at least five years.

3. For existing projects: Copies of audited financial statements for at least three stabilized years.

The CDA also reserves the right to reject or adjust the maintenance and operating expense numbers based on the information supplied, specific development type, circumstances and/or significant changes to the economics of the project's current marketplace.

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

Proposals that meet the Project Selection Requirements in paragraphs B through I and K will be evaluated for financial feasibility as required by Treasury Regulation Section 1.42-17(a)(3) and Section IV.N. of this Manual. The primary financing proposed must meet the CDA's underwriting standards or demonstrate to the sole satisfaction of the CDA that the project can remain financially feasible for the entire duration of the Tax Credit use. Projects determined not to be financially feasible will not be processed further.

#### **K. Development Cost Review**

The CDA will review project costs based on comparability and reasonableness. The CDA may, in its sole discretion, reject applications that appear to have excessive project costs. (Also refer to Section VI.A., Project Cost Reasonableness.)

### **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. **Any submissions not meeting the directions in this Section will be returned to the applicant and fees paid not refunded.**

**Tax Credit applications must be submitted to the CDA in the manner required by this Manual and comply with the CDA's submission requirements.** All applicants must utilize forms supplied by the CDA, including the Notice of Intent to Apply, or Minnesota Housing, where indicated. The application materials can be found on the CDA's Housing Finance Resources webpage ([www.dakotacda.org](http://www.dakotacda.org)) and on Minnesota Housing's Multifamily Common Application and Tax Credit webpage ([www.mnhousing.gov](http://www.mnhousing.gov)).

All submissions **must be separately indexed in the order presented in the application requirements (Section VIII.A below)**. After receiving an applicant's Notice of Intent to Apply, the CDA will create a Box.com account, which is the submission tool for the full application, as well for the Carryover allocation and/or placed in service applications. In addition, the CDA will require one hard copy of all submission items that are separated by tabs. **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 application for Tax Credits must be signed by one general partner (and the nonprofit 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.

Information submitted in an application for Tax Credits is information that is accessible to the public pursuant to Minnesota Statutes Chapter 13.

**A. Application Requirements**

**Notice of Intent to Apply.** For Round 1 applicants, submit a completed CDA Notice of Intent to Apply form no later than **May 14, 2020** to [kkugel@dakotacda.state.mn.us](mailto:kkugel@dakotacda.state.mn.us) or by mail to:

Attn: Kathy Kugel, Housing Finance Program Coordinator  
Dakota County CDA  
1228 Town Centre Drive  
Eagan, MN 55123

**Application.** Applicants must submit one original printed version of the following application submittals, based upon the specific housing proposal, and submitted **in this order** within the application package. The application submittals shall also be individually indexed within the Box.com account created for each application. A Table of Contents should accompany all applications. **Note: submission requirements vary from Minnesota Housing's application requirements.**

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.

1. **Multifamily Workbook.** Submit an Excel version of the completed Multifamily Workbook and a printed version signed by at least one general partner involved in the project (one original and one copy). The Cash Flow tab of the Multifamily Workbook must reflect required payments of any deferred developer fees and demonstrate the payments after debt service agreed upon with the Tax Credit investor. **An incomplete Multifamily Workbook 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 Workbook Form.
2. **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 is required for a commitment of credits. Applicants with initial scores sufficient to receive an allocation of Tax Credits will be required to submit a comprehensive market study prior to receiving a recommendation for a commitment of Tax Credits.

The market study must be current by having 1) been completed within the past 6 months or 2) been completed within the previous 12 months and updated within the past 6 months. 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>. 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.

3. **Narratives (submit as Word Doc) and Basis Boost.** Complete the Minnesota Multifamily Rental Housing Narrative Questions with answers specific to your housing project.

Note: Requests to the CDA to apply the CDA-designated 30% basis boost must be formally made in writing. Projects seeking a boost in the eligible basis must provide evidence of the project's location in a QCT or DDA. For projects not located in a QCT or DDA and requesting a basis boost, the applicant must submit a narrative request which clearly outlines the reasons supporting the request and clearly demonstrates how the project meets the Credit Enhancement 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. For additional details see Section IV.N.

4. **Project Schedule.** Submit a Project Schedule in a format provided by Minnesota Housing specific to your proposal.
5. **Notification of Local Official Form (HTC 18) (submit as Word Doc).** Upon receipt of an application as required by Section 42, the CDA will notify the Chief Executive Officer of the local jurisdiction where the proposed project is planned. This notification will include characteristics of the proposed project and provide an opportunity for the local unit of government to comment on the project.
6. **Self-Scoring Worksheet Form.** Submit a completed CDA Self-Scoring Worksheet (attached as Schedule 1 to the CDA's 2021 QAP) form signed by at least one general partner and, if applicable, nonprofit partner. **Provide documentation supporting all points claimed.** For additional details, see Section VII.B.
7. **Threshold Evidence.** Provide evidence that the threshold requirements defined in Section 4.1.a of the QAP have been met.
  - a. *Evidence of Supportive Services.* If a project sets aside a percentage of units for persons with disabilities and if the project will be delivering supportive services to residents in these units, the applicant must complete and submit the supportive housing application materials, including the narratives, forms and submittals identified in the Minnesota Multifamily Rental Housing Narrative Questions. This must be provided before a Commitment of Tax Credits is granted.
  - b. *Housing for Persons with Disabilities (submit electronically).* The applicant must contact the county human services department to discuss the project. The applicant must submit a letter from the county human services department indicating that its staff has reviewed the proposed project, 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.
8. **Smoke Free Building(s).** Provide the written policy prohibiting smoking in all the units and all the common areas within the building(s) of the project for the term

of the Declaration. The project must include a non-smoking clause in the lease for every unit. The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner and must be included in the written policy.

Projects will be required to maintain the smoke-free policy for the term of the Declaration.

9. **Consideration of Public Housing Waiting Lists (Exhibit D) AND Local HRA/PHA Notice and Agreement to Utilize Public Housing and Section 8 Waiting Lists (HTC 11).** Section 42(m)(1)(C) requires the CDA consider the applicant's ability to utilize the local public housing authority's waiting list when filling vacant Tax Credit units. Complete form (Exhibit D) in full and sign.

Provide an HTC 11 Local HRA/PHA Notice and Agreement to Utilize Public Housing and Section 8 Waiting Lists form signed by both the Owner and the CDA.

10. **Status of Municipal Approvals.** Provide a letter from a local zoning official identifying the project, 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. The letter should include the status of any other land use approvals needed. The letter should also include the status of water and sewer service to the site and its appropriateness for the proposed project.

11. **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. Selection Criteria No. 12 on the self-scoring worksheet, an applicant must submit the Community Development Initiative Narrative form from Minnesota Housing and supporting documentation, including planning documents that support the initiative. A Community Development Initiative is an initiative which includes the following elements: a targeted geography with clearly defined boundaries, a scope that is larger than the proposed housing project, affordable housing units, milestones with dates for each key implementation step, and stakeholder involvement. The applicant must also 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.

Also, the amount of rehabilitation expenditures must meet or exceed:

- a. \$5,000 per low income unit for the project; and
- b. The greater of:
  - i. An average qualified basis amount per low income unit for a building which meets the inflation adjusted amount published by the IRS annually in accordance with Section (42(e)(3)(D) of the Code; or
  - ii. An amount that is not less than 20 percent of the adjusted basis of the building, as determined pursuant to Section 42(e)(3).

A qualified preservation project that receives points for “Preservation of Federally Assisted Housing” may qualify if rehabilitation exceeds the greater of b.i or b.ii above. The calculation is based on rehabilitation hard costs and cannot include intermediary costs or softs costs identified in the application; plans and/or scope of work must be provided at time of application.

12. **Preservation or Stabilization of Assisted Housing.** If the project is for preservation or stabilization of federal, state or locally assisted housing, please provide a copy of all relevant documents, as applicable:
- a. Multifamily Workbook;
  - b. Housing Assistance Payment (HAP) Contract;
  - c. Regulatory Agreement;
  - d. Filing documents of intent to opt out;
  - e. Note, Mortgage and other loan documents that describe the ability to prepay the financing including required approvals and/or penalties;
  - f. Amortization schedules;
  - g. Restrictive covenants;
  - h. Copy of most recent REAC or RD inspection report or other evidence of physical deterioration that would threaten the HAP Contract;
  - i. A map detailing the strategic location including specific proximity to services;
  - j. At least three market comparables for each bedroom size to indicate what market units might be achievable at the property without the federal assistance restrictions; and
  - k. Narrative describing the deterioration of current ownership/management entity capacity.

If applicable, following selection, projects awarded points through this category which have an identity of interest will be required to provide an as-is appraisal acceptable to the CDA to substantiate the acquisition price reflected in the application. Prices which are unsubstantiated or inconsistent with comparable current market pricing will be subject to re-evaluation and adjustment of the Tax Credits up to and including the total recapture of Tax Credits or other funds.

13. **Preservation of Existing Tax Credits.** If the proposal is for preservation of an existing Tax Credit project, please provide the Multifamily Workbook, relevant documents and information related to the existing Tax Credits, eligibility to exercise the option under Section 42(h)(6)(E)(i) and 42(h)(6)(F) of the Code within the next 12 months, and the risk of conversion to market rents.

If applicable, following selection, projects awarded points in this category which have an identity of interest will be required to provide an as-is appraisal acceptable to the CDA to substantiate the acquisition price reflected in the application. Prices which are unsubstantiated or inconsistent with comparable current market pricing will be subject to re-evaluation and adjustment of the Tax Credits up to and including the total recapture of the Tax Credits.

14. **Stabilization.** If the proposal is for stabilization, the applicant must provide the Multifamily Workbook and narratives to support the approach of a planned, long-term and cost effective stabilization that meets all of the criteria set forth in the QAP.

15. **All Proposed Sources of Funds Including Other 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.
- a. Construction financing;
  - b. Permanent financing — (for RD Projects AD622 and letter of conditions);
  - c. Secondary financing;
  - d. Grants — letter from granting authority;
  - e. Letter of Intent or commitment for Syndication proceeds;
  - f. Other sources of funds and contributions, including any federal, state, local and private contributions or subsidies; and
  - g. Regulatory cost avoidance/cost reduction - a project specific letter of intent, city or council resolution, letter of approval, statement of agreement or eligibility, or memorandum of understanding that includes the terms and conditions of a cost avoidance/cost reduction measure from the contributor of the assistance or authorized local official. Also provide the calculation method and expected dollar amount of the cost savings for this proposal.

**Financial Readiness to Proceed Permanent Funding Commitments.** If claiming points under the Financial Readiness selection criteria the commitment documentation must state the amount, terms and conditions and be executed or approved by the lender or contributor and the applicant. Points are awarded to projects that have secured funding commitments for permanent funding sources or have no funding gap at the time of application. Documentation containing words synonymous with “consider” or “may” (as in may award”) regarding the commitment will not be considered acceptable.

Assistance from MHFA Super RFP and related joint funders is not eligible for inclusion in this selection criterion unless the applicant can confirm that the project has been selected for processing of such funding.

Acceptable permanent funding commitments include:

- Syndication proceeds due to previously awarded Tax Credits: Syndication proceeds from Tax Credits awarded in a previous cycle/round may be included if verification is included in the application. Acceptable verification is an executed syndicator agreement or executed Letter of Intent from the syndicator that is acceptable to CDA. The executed Letter of Intent must:
  - Be current within 15 days of submission of application
  - Contain a projected closing date for the project
  - Contain a projected equity price for the purchase of the Tax Credits
  - Contain a detailed explanation of the assumptions being used by the syndicator to arrive at the projected equity price
- Monetary grants/donations/permanent general partner contribution.
- Amortizing first mortgage incorporates tax abatement for properties with a first mortgage.

- Tax Increment Financing (TIF): Provide satisfactory documentation that the contribution is committed to the project at the time of application, including a letter from the city and a city council resolution, indicating its intention to provide TIF assistance and the anticipated amount and term. The documentation should include the TIF analysis from the city or its consultant.
- Deferred loans with a minimum term that is coterminous with the Declaration with an interest rate at or below the Applicable Federal Rate (AFR).
- Grants from nonprofit charitable organizations converted to deferred loans with a minimum 30-year year term with an interest rate at or below the AFR. Award letter from the nonprofit charitable organization contributor must be provided at the time of application verifying the contribution. Documentation must evidence that the contribution is restricted for housing development uses and the contribution must be included as a development source.
- Energy rebates must be included in the denominator and can only be included in the numerator as a source if the full amount will be covered (bridged) during construction with general partner cash or general partner loan. Commitment documentation must state the amount terms and conditions and be executed or approved by the lender/contributor.
- Existing Debt: Lender/funder commitments to modify existing debt including forgiveness, assumption and extensions will only be counted if the project has received prior approval from the lender via a letter of commitment that clearly demonstrates that approval is for the re-syndication/receipt of a new Tax Credit award.
- Historic Tax Credits: In addition to the commitment documentation, at the time of application provide written documentation of eligibility through evidence of Historic Register listing or approval of Part 1-Evaluation of Significance. Lender/funder commitments to modify existing debt including: approval of assumption of debt and extension of loan term; commitments must contain no contingencies other than receipt of a Tax Credit award. At the time of application, written syndication/receipt of new deferred or Tax Credit award, justifying the amount and the terms of contribution must be provided.
- Deferred developer fee/Non-Permanent General Partner Contribution: The applicant must provide an executed letter committing to the amount of deferred developer fee and demonstrate repayment within 15 years (10 years is preferred) by the projected cash flow tab of the multifamily workbook. The deferred developer fee will continue to factor into this criterion's scoring percentages through 8609 for HTC projects and through construction completion for deferred only projects.

**Federal/State/Local/Philanthropic/Other Contributions.** If claiming points under the Federal/State/Local/Philanthropic/Other Contributions selection criteria the documentation must have the amount, terms and conditions and must be executed or approved, at a minimum, by the contributor. The value assigned to donations and in-kind contributions must be consistent with comparable market costs for materials and services. Documentation containing words synonymous with “consider” or “may” (as in may award”) regarding the commitment will not be considered acceptable.

Federal/State/Local/Philanthropic/Other Contributions include:

- Land donation or write down of the project site. Provide documentation from the selling entity in the form of a project specific letter of intent, governmental resolution, letter of approval, statement of agreement or eligibility, or a memorandum of understanding committing to the donation or write-down. Documentation used for determining market value must be submitted and could be an appraisal, tax assessment information, broker opinion with compatible properties or other reasonable data
- In-kind work and materials donated at no cost.
- Local government donation/waiver of project specific costs, assessments or fees (e.g. SAC/WAC).
- Reservation land not subject to local property taxes.
- Reservation land with long-term low cost leases.
- Lender/funder commitments to modify existing debt including: debt (principal) forgiveness; forgiveness of interest payable; reduction in interest rate (measured as amount of interest saved over term of loan) are eligible under this criterion. Commitments must contain no contingencies other than receipt of a Tax Credit award. At the time of application, written documentation from the funder justifying the amount and the terms of the contribution must be provided.
- Tax Increment Financing (TIF) (calculate Net Present Value (NPV) by using NPV discounted by Applicable Federal Rate (AFR) for the term of the TIF loan). Provide satisfactory documentation that the Loan is committed to the project at the time of application, including a letter from the governmental unit and a resolution, indicating its intention to provide TIF assistance and the anticipated amount and term. The documentation should include the TIF analysis from the governmental unit or its consultant.
- Tax abatement (calculate NPV by using NPV discounted by AFR for 30 years). Provide satisfactory documentation that the abatement is available/committed to the project at the time of application.
- Monetary grants/donations.

Documentation as to 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 in the form of a project specific letter of intent. 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.

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.

16. **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 and placed in service or provide provisions for extension. For carryover allocation, an attorney's opinion that the applicant has ownership of the project will be required in accordance with Section 42 (see **Exhibit E**).

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 Declaration.

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.

17. **Homelessness.** Tax Credits represent one of several resources selected to attain the Suburban Metropolitan Area Continuum of Care's goal of ending homelessness. To receive points under this category, the project must meet all of the following conditions:

- a. Projects must set aside/commit the specified number of suitable Tax Credit units for occupancy by households who are homeless ("Homeless Units") as defined in Minnesota Rules Chapter 4900.3705.
- b. The applicant must submit a letter of support from the Dakota County Affordable Housing Coalition (AHC).
- c. The applicant must agree to accept referrals from the Coordinated Entry system for openings in the set aside Homeless Units.

The Coordinated entry system is defined by the Statewide Coordinated entry standard and protocol as adopted by the local Continuum of Care, which is the Suburban Metro Area Continuum (SMAC).

- d. The applicant must complete and submit the Continuum of Care Confirmation form from Minnesota Housing and the supportive housing application materials, including the narratives, forms and submittals identified in the MHFA Multifamily Rental Housing Narrative Questions, a plan outlining the services to be provided, a budget to support the plan, and such other items as are required by the CDA for the Homeless Units.
- e. The applicant must agree to pursue and continue renewal of rental assistance, operating subsidy or service funding contracts for as long as the funding is available.
- f. Applicants with a set aside of 10% or more units must provide a written commitment from an appropriate social service agency to provide on-site support services.

A project which is selected to receive Tax Credits will be required to comply with any homeless reporting requirements, including, but not limited to, the Homeless Management Information System (HMIS) as defined by the CDA. The Declaration will contain performance requirements related to these homeless units, which may include a specific rider.

If, for a particular Homeless Unit(s) the necessary rental assistance or operating support (collectively "Homeless Unit Subsidy") is (i) withdrawn or terminated due to reasons not attributable to the actions or inactions of the owner; (ii) such withdrawal or termination materially adversely impacts the financial feasibility of the project; (iii) alternative funding is unavailable; and (iv) the project is otherwise in full compliance with all the terms of the funding for the project and the Declaration, the owner may petition the CDA to eliminate its requirements for the affected Homeless Unit(s). Such petition shall contain all material facts and supporting documentation substantiating owner's request including, but not limited to items (i), (ii) and (iii) above. Upon confirmation of such facts, which such confirmation shall not be unreasonably withheld or delayed, the owner shall no longer be required to treat such Homeless Unit(s) as Homeless Unit(s) but must convert the rents of those units to the 50 percent Tax Credit rent limit; provided that more restrictive threshold, selection priority or funding requirements, if any, do not apply. If such conversion occurs, in order to retain the Tax Credit allocation, the above described 50 percent Tax Credit rent limit and the Section 42 minimum set-aside elected for the project by the owner must be maintained.

If the CDA, at any time thereafter, in its sole discretion, determines that a Homeless Unit Subsidy may be available for the term of the Declaration, that would not adversely affect the full availability of the Tax Credit allocation and would permit the Homeless Unit(s) to again serve homeless households, then at the CDA's request the owner shall promptly apply for such Homeless Unit Subsidy for the Homeless Unit(s) upon terms reasonably acceptable to such owner and, if such Homeless Unit Subsidy is obtained, shall again set aside such Homeless Unit(s), when and to the extent available, to homeless households. If the Homeless Unit(s) are re-instated, then the owner is still required to provide support services for those re-instated units and to provide for all necessary reporting requirements.

If for a particular Homeless Unit(s), the necessary tenant support services funding is (i) withdrawn or terminated due to reasons not attributable to the actions or inactions of the owner; (ii) alternative funding or an alternative service provider is unavailable; and (iii) the project is otherwise in full compliance with all the terms of the funding for the project and the Declaration, the owner may petition the CDA to modify its requirements for the provision of such tenant services for the affected Homeless Unit(s). Such petition shall contain all material facts and supporting documentation substantiating the owner's request including, but not limited to, items (i) and (ii) above. Upon confirmation of such facts, which such confirmation shall not be unreasonably withheld or delayed, the owner shall modify such tenant support services for the affected Homeless Unit(s).

18. **Letter of Intent to Provide Project Based Rental Assistance or Commitment for Project Based Rental Assistance.**

Letter of Intent to Provide Project Based Rental Assistance: For projects planning to obtain Project-Based Rental Assistance, at time of application, the applicant must submit a letter of intent signed by the rental assistance provider. The letter of intent must establish that the provider: (1) will submit an application for HUD project based assistance; or (2) has sufficient project based authority available; or (3) has authority available to convert to project based units; or (4) is willing to commit the project based assistance to the proposed project. As a condition of Carryover allocation or Form 8609, whichever occurs first, the applicant must submit a fully executed copy of the HUD approval for the project based assistance to be included in the project. Various combinations of contract terms may apply.

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 allocation or Form 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 project. 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.

19. **Letter of Intent to Produce a Cooperatively Developed Housing Plan.** For projects proposing some form of rental assistance, such as tenant based Section 8, Shelter Plus Care, Housing Support, portable tenant based, formal recommendation for McKinney Vento funding, HUD operating subsidy or other similar rental assistance programs approved by the CDA, submit a letter of intent to develop a cooperatively developed housing plan or agreement which is signed by the applicant and the Agency or other similar entity. As a condition of carryover or Form 8609, whichever occurs first, the applicant must submit a fully executed copy of the cooperatively developed housing plan. A cooperatively developed housing plan must include, at a minimum: a description of how the project meets a community’s housing objectives; the type of rental assistance; the number of assisted households; the time period of the rental assistance; and the terms of agreement between the rental assistance provider and the owner.

20. **Rent Assistance Payment Standards.** If proposing use of Project Based Rent Assistance, or if Project Based Rent Assistance exists in the project, attach a copy of the Payment Standards or Payment Standard Exceptions for the community in which the project is proposed.

21. **Eventual Tenant Ownership Plan.** If applicable, provide a detailed proposal for Eventual Tenant Ownership (ETO). Only detached single family units are eligible for homeowner conversion. The project owner must submit a preliminary conversion plan with their application that is consistent with the requirements of Minnesota Housing’s ETO Guide. The proposal must incorporate a financially viable plan to transfer 100 percent of the Tax Credit 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 Tax Credit eligibility requirements. To be eligible, the buyer must have an Tax Credit qualifying income at the time of initial occupancy (HTC rental tenant) or time of purchase. The final conversion plan, to be submitted by the 15<sup>th</sup> year of initial compliance period, must incorporate a limited partnership ownership exit strategy, a third party Property Capital Needs Assessment report and a budget for capital improvements and services, including home ownership education and training. A final conversion plan complying with all of the requirements of the ETO Guide must be submitted to, and approved by, the CDA prior to commencing the conversion. The Declaration will contain provisions ensuring compliance with these home ownership program commitments by the owner, including a right of first refusal allowing tenants to purchase their units. (Refer also to Section V.W. of this Manual for additional information.)

22. **Planning and Development.** If the project was created in accordance with a Cooperatively Developed Plan and claims points under Preference Priorities No. 3 of the self-scoring worksheet, submit evidence of the project's location in a QCT and submit evidence detailing how the housing proposal helps move toward attainment of one or more of the goals of a Cooperatively Developed Plan.

For projects located in a QCT, submit evidence of a targeted geographic area for the community development initiative, a current implementation plan with goals or outcomes specific to the need identified by the initiative, and developments should demonstrate that affordable housing is a key strategy and there is active local stakeholder involvement. In addition, in order for a plan to be considered a concerted community revitalization plan, as defined in federal guidance, for purposes of the statutory preference, plans in a QCT should include a demonstrated strategy for obtaining a commitment of public or private investment (or both) in non-housing infrastructure, amenities or services

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.

23. **Legal description of land.** Provide the legal description of the land (not property Tax ID Number) on a separate 8½ by 11 sheet of paper labeled "Exhibit A, Legal Description".
24. **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 215A  
Qualifications of Rental Assistance Administrator — MHFA Form 216A  
Qualifications of Rental Rehabilitation Loan Administrator — Form 202A

25. **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:

- Usable park space/dedicated walking or biking trails,
- 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,
- Licensed child care centers, and
- Competitive developments.

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

26. **Utility Allowance Schedule.** Provide a current utility allowance from the CDA. Include a breakdown of the utilities that a tenant pays directly (i.e., gas, heat, electricity, etc.) 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.

27. **Maintenance and Operating Expense Review and Underwriting Certification Form (HTC 29).** See Section VII. Project Selection I. Maintenance and Operating Expense Review and Underwriting Certification for submission requirements. Submit a completed M&O Expense Review and Underwriting Certification and the following submittals, as applicable:

- a. Owner narrative summary supporting the proposed management and operating (M&O) number included in the application. The proposed M&O expenses should be based on the developer/management company's current portfolio and supported by:
  - Actual operating data provided by the developer/management company for similar developments.
  - Circumstances and/or significant changes to the economics of the development's current marketplace, such as increased utility costs and property insurance.

- Operating trends of the developer or management company.
  - b. For new construction: Copies of year-end operating information from three comparable developments that have been in operation at least five (5) years.
  - c. For existing developments: Copies of audited financial statements for at least three stabilized years.
28. **Development Features.** Submit a certification by the architect that the project meets the CDA's specified development features, attached to this Procedural Manual as **Exhibit C**.
29. **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 for proposed scope of work (see **Exhibit C** hereto).
30. **Scope of Work.** For applications involving acquisition and rehabilitation of existing buildings, the applicant must submit a scope of work for each building. Tax Credit properties must provide a minimum of 20 years, and often 30 years or more of affordable housing use.

A Capital Needs Assessment ("CNA") or Physical Needs Assessment ("PNA") 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 required to provide a CNA or PNA by a competent third party, such as a licensed architect or engineer. The assessment identifies capital needs predicted over the next 20 years. 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 inspection shall be conducted to identify deficiencies under applicable state and local codes and ordinances, and The Minimum Essential Physical Needs as per Chapter 3 of Minnesota Housing's Rental Housing Design/Construction Standards. The assessment should also consider the presence of hazardous materials on site.

Applicants shall submit either a full Capital Needs Assessment or a Physical Needs Assessment. Projects not required to complete a PNA or CNA are new construction projects, gut rehabilitation projects and adaptive re-use projects.

If the applicant chooses to submit the Physical Needs Assessment, it shall consist of a completed Minnesota Housing Physical Needs Assessment Template and the Minnesota Housing 20 Year Capital Expenditure Template (see Minnesota Housing website), or the preparer may use their own document with a similar format. When completing the 20 Year Capital Expenditure Template, it shall be completed "As Is" with the proposed immediate needs and rehabilitation scope of work noted in the "Year One" column.

If the applicant chooses to submit a full Capital Needs Assessment, it shall be completed by a third party qualified needs assessor and can be in any of the following established formats: USDA Rural Development, HUD/FHA Project Capital Needs Assessment (PCNA), ASTM E 2188-08 Standard Guide for Property Conditions Assessment, or other Minnesota Housing approved format.

Both the PNA and CNA shall provide a Life Expectancy analysis including Estimated Age, Expected Useful Life (EUL), and Effective Remaining Life (ERL) of the following minimum elements: roof; siding/exterior walls; windows; doors (interior/exterior, and overhead garage); plumbing fixtures; HVAC Systems; and kitchen appliances.

If a current CNA performed by a qualified individual is available at the time of application, it must be submitted with the application package. If one is required for the proposal by funders other than the CDA, it must be submitted to the CDA as soon as it becomes available. The CDA reserves the right to require that a CNA be produced by a qualified individual and submitted as part of the underwriting and due diligence submissions it requires for the proposal.

31. **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.
32. **Rent Roll.** For an existing project, provide the most recent rent roll.
33. **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.
34. **Photographs.** Provide clear digital photographs of exterior and interior of building, if existing; or site and surrounding areas, if new construction. Photographs must show clear and unobstructed views of the property (e.g. no snow cover).
35. **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 the following items:
  - a. An **Affirmative Fair Housing Marketing Plan (HUD Form 935.2A)** 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 protected classes under federal fair housing law: race, color, religion, sex, national origin, disability or familial status; or Minnesota law: marital status, status with regard to public assistance, creed or sexual orientation.
  - b. An **equal employment opportunity policy statement.**

36. **Ten Year Rule Compliance.** For applications seeking acquisition Tax Credits, provide evidence that each building complies with the 10-year rule in Code Section 42(d) or an approved IRS waiver of the 10-year rule.
37. **A 15-year after tax cash flow pro-forma** (for five or more units). Must reflect required payments of any deferred developer fee, as required by the CDA.
38. **Nonprofit Proof of Status.** If nonprofit proof of status (IRS approval must be included for nonprofit organizations).
  - a. A description of the nonprofit's intended participation in the development and operation of the project.
  - b. Articles of Incorporation.
  - c. IRS documentation of nonprofit status. A nonprofit 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 Code Section 42(h)(5).
39. **Release of Information Authorization Form.** Completed by developer/owner and management firm, if known (MHFA Form HTC 17).
40. Opinion of Counsel (see **Exhibit E**).
41. **Appraisal.** To help ensure cost reasonableness of projects awarded Tax Credits, for all projects with acquisition costs in excess of \$100,000, the applicant must provide an as-is appraisal of the property. If the CDA, in its sole discretion, has concerns or issues with the applicant's provided appraisal, the CDA may require that the applicant obtain another appraisal from a CDA selected appraiser, at the applicant's sole cost and expense.
42. **Average Income Test Items.** For projects electing the Average Income Set-Aside please review Section V.I.3. Average Income Test requirements. The following must also be submitted:
  - a. MHFA Rent and Income Grid Average Income Test form. A maximum of 4 tiers are allowed.
  - b. Written approval from the permanent lender(s) and Tax Credit syndicator/equity provider that the project may elect the Average Income Test and references the specific Average Income Test rent and income designations.
  - c. MHFA Average Income Election/Certification Form
  - d. Other materials as requested by the CDA
43. **Other documents** and instruments as are necessary and as may be required by CDA.
44. **Application Fees.** A check for the appropriate application fee and CDA Counsel Fee. (See Section X). Attach payment to the top of application package.

## B. Carryover Requirements

In addition to meeting requirements of Section 42, the applicant of a selected project must provide by no later than 4:30 p.m. on **October 15 or the next business day** of the year to which the Tax 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. Please refer to Minnesota Housing's website for additional important carryover information and related forms.

One original carryover application should be mailed to the CDA and uploaded to the Box.com account with the following submittals. The carryover application must be completed as applicable, based upon the specific housing proposal, and submitted in this order to the CDA to process the Carryover application:

1. **MHFA Multifamily Workbook Form (MHFA Workbook/HTC 1).** As part of your Carryover application, an updated Multifamily Workbook must be submitted. An electronic (Excel version) and a printed and fully executed version of the Multifamily Workbook, with all changes from the initial application Workbook 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.G.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).
3. **Owner Certification/Application for Carryover Allocation.** A completed, 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 F**) verifying:
  - a. The name, legal designation 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.
  - b. The name, legal designation and TIN numbers of the general partner(s), and the names of the managing partner(s). If the partners are an organized entity, such as a limited liability company, a limited liability partnership, or an organized partnership, include the above information for each entity.
  - c. 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.

- d. The name, legal designation and TIN number of the ownership entity that will receive the Tax Credits and the legal designation of the party that signed the application.
  - e. Identification and copies of any waivers required by Section 42 obtained from the IRS.
- 6. **Certified Public Accountant's Certification (HTC 6).** 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 Carryover 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) of the year following the date of allocation.**
  - c. Also include a statement of non-affiliation with the developer and/or owner.
- 7. **Sources of Funds.** Identify 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)** Provide a completed form signed and dated by the primary lender. See Section VII.I
- 9. **Rental Assistance.** Provide 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. This also includes copies of cooperatively developed housing plans/agreements between the owner and CDA or similar entity.

10. **15 year pro-forma.** A 15 year pro-forma signed by the lending institution signifying that they are aware of the figures presented on the MHFA Workbook Form 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 project in which there are housing tax credit units. If the required form(s) with all elections made by the owner is(are) not submitted to the CDA prior to the placed-in-service date, the gross rent floor will be determined to have been elected as the gross rent effective on the allocation date (the earlier of Carryover allocation 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 the following items:
  - a. **Affirmative Fair Housing Marketing Plan (HUD Form 935.2A)** 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 protected classes under federal fair housing law: race, color, religion, sex, national origin, disability or familial status; or Minnesota law: marital status, status with regard to public assistance, creed or sexual orientation.
  - b. **Equal Employment Opportunity Policy Statement.** Form from Minnesota Housing.
13. **Tenant Selection Plan.** Provide a written Tenant Selection Plan describing the tenant selection policy that the owner will use. The Tenant Selection Plan must be reviewed and approved by the CDA prior to the issuance of Form 8609. See Minnesota Housing's Tenant Selection Plan Guidance. The CDA requires maximum utilization of space for projects and prefers a minimum of at least one person per bedroom.
14. **Smoke Free Building(s).** Provide the written policy prohibiting smoking in all the units and all common areas within the building(s) of the project for the term of the Declaration. The policy must include a non-smoking clause in the lease for every unit. The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner but must be included in the written policy.
15. **Identity of Interest.** Provide a written disclosure as to any and all Identity of Interest parties (See Section IV.I & J).
16. **Project Development Features Certification Form.** Provide a completed Development Features form (**Exhibit C**) signed and dated by the Developer and Architect.

17. **Unit and Development Characteristics Profile Form.** Provide a completed form from Minnesota Housing indicating the unit counts and the related funding sources.
18. **Allocation Fees.** The nonrefundable Allocation Fee, based on the annual Tax Credit Commitment amount, and the CDA Counsel Fee (See Section X.C and X.E) (Additional fees for additional Tax Credits secured at Carryover will be collected following the award).

**C. Placed in Service Requirements**

Generally, the placed in service date for Tax Credit purposes, for a newly constructed building or for rehabilitation expenditures of 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.

An approved CDA Form 8609 must contain the signature of the authorized CDA representative. The CDA will issue an approved IRS Form 8609 within 30 days after all the following items have been received by the CDA in a satisfactory form and substance. Issuance of the CDA approved IRS Form 8609 is to be done only by MHFA or the CDA. An approved Form 8609 shall not be created nor the original filed with the IRS by any other entity. The owner shall not file a Form 8609 with the IRS in advance of owner's receipt of the CDA signed version of the approved Form 8609. In addition, the owner 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 Form 8609. (Also refer to Section IV.G. Unacceptable Practices.) A condition to this effect will be added to the Carryover Agreement.

Please refer to the Minnesota Housing website for additional important information and forms for filing a Form 8609 application with the CDA.

One (1) original placed in service application should be mailed to the CDA and uploaded to the Box.com account. The placed in service application must be individually indexed and submitted to the CDA **in the order of the documents listed below** to process the Form 8609 application:

1. **Transmittal Letter**. Provide a transmittal letter indicating the project name, address, Commitment date and Carryover allocation date. The letter should request the issuance of IRS Form 8609 and list the following required documents and submittals described below. 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**. Provide 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 placed in service date.

3. **Utility Allowance Schedule.** Provide a current utility allowance from the CDA. Include a breakdown of the utilities that a tenant pays directly (i.e., heat, electricity, etc.) and the actual charge of each type of utility (i.e., gas, electric, etc.), 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 C** indicating the features included in the project for which the applicant was awarded points or which were otherwise required by **Exhibit C**. The completed copy of **Exhibit C** must be signed by a certified architect.
5. **Final Cost Certification.** Provide 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. The CDA must be included as a specified party intended to use the report under the Restriction on Use section.

All costs of projects with five or more units owned by all entities 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 Workbook Form** (MHFA Multifamily Workbook/HTC 1). As part of your 8609 application package, an updated Multifamily Workbook Form (MHFA Multifamily Workbook/HTC 1) for tax credits must be submitted in printed and electronic XLS format. A printed and fully signed/executed version of the Multifamily Workbook, 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 and if applicable, the nonprofit partner. For material changes, refer to Manual Section IV.G.3. An electronic Excel version of this updated Workbook must be submitted to the CDA at the same time the printed application package is submitted.

In the Cash Flow tab of the Multifamily Workbook, the cash flow pro forma must reflect required payment of deferred developer fees and the flow of funds as agreed upon in the Partnership Agreement.

Multifamily Workbooks 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.** Provide an Attorney's Opinion Letter in approved CDA form (see **Exhibit G**) verifying:
  - a. The legal description of the property (to be attached to the opinion and labeled Exhibit A) and that it is correct and identical to the property

identified in the application, the Commitment and Carryover allocation agreement (if one was issued for the project).

- b. The name, legal designation and TIN of the entity that is the owner of the property to be part of the project and which is described in Exhibit A of the opinion.
  - c. The name, legal designation 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 names of the managing general partner(s); the 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.
8. **Reserves, Contingencies, and any Cash Savings.** Provide 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 Carryover allocation, restrict the developer fees as specified in this Manual.
9. **CDA Declaration of Land Use Restrictive Covenants.** Provide a draft copy of the unrecorded CDA Declaration for review well in advance of its required filing deadline (see **Exhibit H**). The Declaration must be completed and recorded before the end of the first year of the 10 year 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 Tax Credits. HUD may require that certain Riders be attached to the Declaration if your project 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 project. For those projects that have elected the Average Income Test, the Declaration will include the designation of imputed income limitations below 60% AMI.
10. **Final Tax Credit Proceeds or Receipts.** Documentation of the final amount of Tax Credit proceeds generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
11. **Application for IRS Form 8609/8609 Certification by Owner.** Submit a completed, executed and notarized original Application for IRS Form 8609/ Certification by Owner (MHFA Form HTC 3) with a completed Exhibit A, 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 applicable design requirements; and.
  - c. Compliance with all requirements of selection, and additional or special conditions of Commitment or Carryover allocation.
12. **Final Loan or Grant Terms.** Provide a 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 Workbook Form (MHFA Multifamily Workbook/HTC 1). Provide copies of final loan or grant documents for all sources of funds (loan/grant agreements, mortgage and note) that support the amount, terms and conditions stated on the Multifamily Workbook. The CDA will evaluate all final sources of funds to ensure the amount of Tax Credits allocated to a project does not exceed the amount necessary for financial feasibility. Therefore, the CDA will not issue an IRS Form 8609 prior to the execution of the final permanent loan documents, or its equivalent, for all funding sources.
- For projects that have elected the Average Income Test, must provide written approval from the permanent lender(s), the Tax Credit syndicator or equity provider and the bond issuer referencing the specific Average Income rent and income designations, if not previously provided.
13. **Maintenance and Operating Expense Review and Underwriting Certification Form** (HTC 29) Submit only if not previously submitted with Carryover application. See Section VII.I.
14. **15-Year After-Tax Cash Flow Pro Forma.** Provide a 15-year after-tax cash flow pro forma (for five or more units). Where applicable, the cash flow pro forma must reflect required payment of deferred developer fees.
15. **Governmental Assistance and/or Rental Assistance.** If not previously provided as part of a carryover application, provide 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, provide a copy of the assignment, an executed Notice of Intent to Transfer Ownership (MHFA Form HTC 27), a Transfer Agreement (MHFA Form HTC 20), Release of Information Authorization Form (MHFA Form HTC 17) (see Section IV.F.), the Transfer of Ownership Fee (See Section X) and any other documentation that the CDA deems necessary.
17. **Partnership Agreement.** Provide a copy of the executed final Partnership Agreement or Operating Agreement of the owner.
18. **Photographs.** Provide clear photographs of completed building(s).
19. **Building Map.** Provide a completed Building Map (MHFA Form HTC 28) for each building with a current rent roll attached. The applicable fraction on the building map must be the same applicable fraction for each respective Building Identification Number (BIN) on Exhibit B of the Declaration.
20. **Identity of Interest.** Provide a written disclosure as to any and all Identity of Interest parties (see Section IV.I and J).

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 the following forms:
- a. **Affirmative Fair Housing Marketing Plan (HUD Form 935.2A)** 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 protected classes under federal fair housing law: race, color, religion, sex, national origin, disability or familial status; or Minnesota law: marital status, status with regard to public assistance, creed or sexual orientation.
  - b. **Equal Employment Opportunity Policy Statement.**
22. **Tenant Selection Plan.** Submit only if not previously submitted or if the plan has changes since submitted with a Carryover application. Provide a written Tenant Selection Plan describing the tenant selection policy that the owner will use. The Tenant Selection Plan must be reviewed and approved by the CDA prior to the issuance of Form 8609. See Minnesota Housing's Tenant Selection Plan Guidance. The CDA requires maximum utilization of space for projects and prefers a minimum of at least one person per bedroom.
23. **Gross Rent Floor Election.** Provide a fully executed Statement of Election of Gross Rent Floor (MHFA Form HTC 26) if not previously provided pursuant to Article VIII B.
24. **Smoke Free Building(s).** Provide the written policy prohibiting smoking in all the units and all common areas within the building(s) of the project for the term of the Declaration. The policy must include a non-smoking clause in the lease for every unit. The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner but must be included in the written policy.
25. **Other Documents.** Provide such documents and instruments as are necessary and as may be required by the CDA.
26. **Allocation Fee.** Submit the non-refundable Allocation Fee, based on the annual Tax Credit allocation amount (if not already paid at Carryover application) and CDA Counsel Fee (See Section X.)

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

### **A. General**

Section 42 of the Code establishes a separate set of procedures to obtain 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.

Section 42(m)(1)(D) of the Code provides that in order for a project to receive an allocation of Tax Credits through the issuance of tax-exempt bonds, the project must satisfy the requirements of the QAP applicable to the area in which the project is located. The project must comply with the QAP that is in effect for the calendar year in which the tax-exempt bonds that require an allocation of the state's volume cap for private activity bonds were first issued. If those tax-exempt bonds are issued on a short-term basis, the year the tax-exempt bonds are reissued on a long-term basis may occur any time after the year the tax-exempt bonds were first issued. The effective QAP will always be the QAP for the year in which the tax-exempt bonds were first issued.

If, however, the principal amount of the tax-exempt bonds first issued is not sufficient to finance at least 50 percent of the aggregate basis of the building and the land it is located on, the project would not be eligible to apply for Tax Credits in connection with the initial bond issue. In that event these requirements would apply when tax-exempt bonds are issued in a principal amount that, together with the first issue of tax-exempt bonds, is sufficient to finance at least 50 percent of that aggregate basis of building and land.

Developers should also be aware of the requirements of Minn. Stat. § 474A.047 including subdivision 1, 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.

Tax Credit application must be submitted in the manner required by this Manual and must comply with the CDA's submission requirements. All applicants must utilize forms supplied by the CDA or Minnesota Housing, where indicated. The application materials can be found on the CDA website ([www.dakotacda.org](http://www.dakotacda.org)) and on Minnesota Housing's Multifamily Common Application and Tax Credits webpage ([www.mnhousing.gov](http://www.mnhousing.gov)).

The application and all required submissions must be complete and legible or the application or submission will be returned. Prior to submitting, request a Box.com account, the tool for submitting electronic materials for a preliminary determination and subsequent placed in service application, by sending an email to [kkugel@dakotacda.state.mn.us](mailto:kkugel@dakotacda.state.mn.us). In addition to the submission of items through Box.com, one printed application should be submitted to:

Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, MN 55123  
Attn: Housing Finance Program Coordinator  
Phone: 651-675-4400  
Email: [kkugel@dakotacda.state.mn.us](mailto:kkugel@dakotacda.state.mn.us)

All submission items must be separately indexed in the order of the documents listed below. DO NOT submit printed application in three ring binder or with plastic casing around the pages. Submission should be bound only by staples, bonder clips or rubber bands.

**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 by the CDA pursuant to Section 42(m)(1)(D). See the QAP for additional details. **The developer must submit to**

the CDA all documents required for an application for Tax Credits under Section VIII of this Manual, the items listed below and any additional information requested by the CDA.

1. **Election of Applicable Percentage (HTC 2).** Provide a completed HTC 2 indicating the developer's preference to elect the applicable percentage at the time the tax exempt obligation is made (month bonds are issued) or at the time the building is placed in service.
2. **Building Identification Number (BIN) Request Form (HTC 31).** Submit a BIN Request Form (HTC 31) to the CDA to receive BIN numbers.
3. **Evidence of CDA Allocation of Tax-Exempt Bond Volume Cap.** Provide evidence from the issuer of the bonds that the project received an approval of an allocation of tax-exempt bond volume cap.
4. **Bond Preliminary Determination Letter.** 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. See the QAP for additional details. For projects electing the Average Income Test ~~Set-Aside~~, this letter or other documentation from the bond issuer must provide written approval referencing the specific Average Income Test ~~Set-Aside~~ rent and income designations.
5. **Gross Rent Floor Election Form (HTC 34).** Provide a fully executed Election of Gross Rent Floor form (HTC 34).
6. **Application Fees.** The developer must submit an application fee and CDA counsel fee at the time of application. (See Section X.A and X.E.) A Preliminary Determination fee must be submitted to the CDA prior to release of the letter (See Section X.F).

Based upon the submission of documents, the CDA will prepare a letter with its preliminary determination pursuant to Section 42(m)(1)(D) as to whether the project satisfies the requirements for allocation of a Tax Credit dollar amount under the QAP. **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 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 project. 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 owner must submit a Tax Exempt Credit 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 Tax Credit purposes must be established for all buildings using Tax Credits including acquisition Tax 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 Tax 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 Tax Credit project must occur within two years after the allocation year of the Tax Credits. It is highly recommended that owners/developers of tax-exempt projects seek the appropriate legal and bond professional advice on these matters.

An approved CDA Form 8609 must contain the signature of the authorized CDA representative. The CDA will issue an approved IRS Form 8609 on a tax exempt project within 30 days after all of the following items have been received by the CDA in a complete and satisfactory form and substance. Issuance of the CDA approved IRS Form 8609 and subsequent submission of the original to the IRS is to be done only by MHFA or the CDA. An approved Form 8609 shall not be created by any other entity. The owner/agent shall not file a Form 8609 with the IRS in advance of the owner/agent's receipt of the CDA signed version of the approved Form 8609. 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 Form 8609. (Also refer to Section IV.G. Unacceptable Practices).

**Placed In Service applications must be submitted in the manner required by this Manual and must comply with the CDA's submission requirements.** All applicants must utilize forms supplied by the CDA or MHFA, where indicated. The applicant shall provide one original hard copy and upload indexed/tabbed materials to the project's Box.com account. All submission items must be **in the order of the documents listed below and separately indexed/tabbed:**

1. **Transmittal Letter.** Provide a transmittal letter indicating the project name, address and Preliminary Determination date. The letter should request the issuance of IRS Form 8609 and list the following required documents or forms. 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.** Provide evidence that all buildings have been placed in service. Submit copies of the temporary and final Certificates of Occupancy provided by the local governmental authority having jurisdiction for each building. A temporary Certificate of Occupancy is ~~needed~~ only needed if issued to determine the date of initial occupancy. If not available from the local government, a Certificate of Substantial Completion prepared by the architect will be accepted. For acquisition and rehabilitation, the owner must provide supporting documentation for the elected date.
3. **Evidence of Tax Exempt Bond.** Submit 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 detailing the amount of bonds, date of allocation and approval by entity that will issue the bonds.
4. **Architectural.** The applicant must complete and submit **Exhibit C** indicating the features included in the project for which the applicant was awarded points or which were otherwise required by **Exhibit C**. The completed copy of **Exhibit C** must be signed by a Certified architect.
5. **Utility Allowance Schedule.** Provide a copy of the current utility allowance schedule from the CDA including a breakdown of the utilities that a tenant pays directly (i.e., heat, electricity, etc.), and the utility allowance for each type of utility (i.e., gas, electric, etc.), 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 (HTC 9).** Provide a Final Cost Certification (MHFA Form HTC 9) when construction has been completed that evidences the CPA's audit report and cost certification based upon an audit of the owners' schedule of total project costs. The CDA must be included as a specified party intended to use the report under the Restriction on Use section.

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 Workbook.** Provide an updated MHFA Multifamily Workbook signed by at least one general partner involved in this project and, if applicable, the nonprofit partner. Please provide one original signed version and one electronic Excel version of the Workbook. **Highlight all changes from Preliminary Determination Application, re-date and initial the revised pages.** For material changes, refer to Section IV.G.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 Multifamily Workbook pages.
8. **Determination of Tax Credits.** Provide 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 Tax 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 Tax 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 this Manual.
9. **Attorney's Opinion Letter.** Provide an Attorney's Opinion Letter/Opinion of Counsel (see **Exhibit G**) 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 issued by the CDA and the legal description of the property financed with the tax exempt bonds.
  - b. The name, legal description and Tax Identification Number (TIN) of the entity that is the owner 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 names of 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 identified in the application qualify for an allocation of Tax Credits under Section 42(h)(4).

10. **Reserves, Contingencies, and any Cash Savings.** Provide 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 Manual.
11. **CDA Declaration of Land Use Restrictive Covenants.** Provide a copy of the unrecorded CDA Declaration of Land Use Restrictive Covenants for Housing Credits (see **Exhibit H**). For those projects that have elected the Income Average Set-Aside, the Declaration shall include the designation of imputed income limitations below 60%.

**NOTE:** A copy of a properly recorded Declaration in final form and content as approved by the CDA following its review, or evidence satisfactory to the CDA that the Declaration has been filed for recording, must be provided to the CDA prior to the release of any Form 8609 to the Owner.

**NOTE:** A Declaration must be completed and recorded before the end of the first of the Tax Credit period to preserve the Tax Credits allocated to the project. Check with your tax advisor as to timing of filing and claiming of Tax 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. **Application for IRS Form 8609/Certification by Owner.** Submit a fully completed, executed and notarized original application for IRS Form 8609/Certification by Owner with a completed Exhibit A (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.

**Note:** It is highly recommended that owners/developers of tax-exempt projects seek appropriate legal and bond professional advice on these matters.
  - b. Compliance with all applicable design requirements.
  - c. 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.** Provide a 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. Also, provide copies of documents for all sources of funds (loan/grant agreements, mortgage and note) that support the amount, terms and conditions stated on the Multifamily Workbook. The CDA must evaluate all final sources of funds to ensure the amount of tax credits allocated to a project do not exceed the amount necessary for financial

feasibility. Therefore, the CDA will not issue an IRS Form 8609 prior to the execution of the final permanent loan documents, or its equivalent, for all funding sources. For projects that have elected the Average Income Test, provide written approval from the permanent lender(s), Tax Credit syndicator or equity provider and bond issuer referencing the specific Average Income Set-Aside rent and income designations, if not previously provided.

15. **Maintenance and Operating Expense Review and Underwriting Certification Form (HTC 29).** See Section VII.I.
16. **15-Year After-Tax Cash Flow Pro Forma.** Provide a 15-year after-tax cash flow proforma signed by the lending institution or source of credit enhancement, if any, signifying that they are aware of the figures presented on the Tax Credit application. Where applicable, the cash flow proforma must reflect required payment of deferred developer fees.
17. **Governmental Assistance and/or Rental Assistance.** If not previously provided as part of the Preliminary Determination Letter application, provide a description of any governmental assistance and/or rental assistance. This includes copies of any contracts or agreements executed or any applications made for rental assistance for the project.
18. **Transfer Ownership.** If the ownership entity has changed, the CDA will require a letter advising the CDA of the transfer of ownership, a copy of the assignment, a Transfer Agreement (MHFA Form HTC 20), an executed Notice of Intent to Transfer Ownership (MHFA Form HTC 27), an updated Qualification Form for all new team members, a written disclosure as to any and all identity of interest parties, Release of Information Authorization Form (MHFA Form HTC 17) (See Section IV.F), a transfer of ownership fee (See Section X) and any other documentation that the CDA deems necessary.
19. **Partnership Agreement.** Provide a copy of the executed final Partnership Agreement or Operating Agreement of the owner.
20. **Photographs.** Provide clear photographs of completed building(s) showing a representative sample of building exterior, interior common spaces and units.
21. **Building Map Form (HTC 28).** Provide 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 its endeavors. Complete, execute and return the following forms:
  - a. **Affirmative Fair Housing Marketing Plan (HUD Form 935.2A)** from Minnesota Housing 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 protected classes under federal fair housing law: race, color, religion, sex, national origin, disability or familial status; or under Minnesota law: material status, status with regard to public assistance, creed or sexual orientation.

b. **Equal Employment Opportunity Policy Statement** from Minnesota Housing must be submitted.

23. **Tenant Selection Plan.** Provide a written Tenant Selection Plan describing the tenant selection policy that the owner will use. The Tenant Selection Plan must be reviewed and approved by the CDA prior to the issuance of Form 8609. See MHFA's Tenant Selection Plan Guidance. The CDA requires maximum utilization of space for projects and prefers a minimum of at least one person per bedroom.
24. **Gross Rent Floor Election.** A fully executed Statement of Election of Gross Rent Floor (MHFA Form HTC 34) if not previously provided pursuant to Article IX E.
25. **Smoke Free Building(s).** Provide a copy of the written policy prohibiting smoking in all the units and all common areas within the building(s) of the project for the term of the Declaration. The owner must include a non-smoking clause in the lease for every unit. The written policy must be submitted with the application and should include procedures regarding transitioning to smoke-free for existing residents and establishment of smoking areas outside of units and common areas if applicable. Consequences for violating the smoke-free policy are determined by owner but must be included in the written policy.
26. **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).
27. **Other Documents.** Such documents and instruments as are necessary and as may be required by the CDA.

**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:**

A \$800 non-refundable application fee must be submitted with the application. 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. An additional 2 percent commitment fee must also be paid for any additional Tax Credits awarded and allocated through Carryover and must be paid following issuance of the Carryover Agreement. The Commitment 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 owner submits an application for a Carryover Allocation or for issuance of IRS Form(s) 8609 (whichever occurs earlier), a non-refundable allocation fee will be due is equal to 3.0 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.

Note: See Section B for fee information relating to additional Credits allocated at carryover.

**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; or
3. Do not submit the Carryover CPA final certification by the established due date

Must pay a non-refundable \$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 a non-refundable fee of the CDA's counsel of \$3,500 at the time of each review for (1) initial application, (2) carryover allocation, and (3) issuance of IRS Form 8609, as well as any additional fees required to reimburse the CDA for legal fees in excess of this amount and other legal costs incurred. (See J below)

**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 non-refundable fee equal to 3.5 percent of the requested annual Tax Credit amount.

**G. Tax Exempt Credit 8609 Fee**

An IRS Form 8609 Fee must be submitted at the time of application to the CDA for Form 8609. The developer must submit a non-refundable 8609 fee equal to 3.5 percent of the requested annual Tax Credit amount.

**H. Monitoring Fee:**

The CDA or its designee will charge a fee, currently \$40 per low income unit annually for a desk audit plus \$35 per unit (minimum fee of \$500) per unit inspected. 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 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 project 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 has changed. Prior to Issuance of Form 8609, changes in ownership must be approved by the CDA. See Section IV.F. Transfer of Ownership for further details on Transfer of Ownership.

**J. Qualified Contract Fee:**

The CDA will require a fee of \$5,000 for processing a qualified contract request. The fee must be submitted at the time the Qualified Contract Notification Letter is presented to the CDA and is non-refundable. Additionally, the owner is responsible for paying for charges incurred for submission materials, appraisals, market studies and rent comparability studies.

**K. 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.

**L. Right to Adjust Fees**

The CDA reserves the right to adjust fees due to changing circumstances in order to cover its costs associated with producing and delivering the CDA's HTC Program.

**M. 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	CDA Contracting Requirements
Exhibit C	Development Features/Certification
Exhibit D	Consideration of Public Housing Waiting Lists
Exhibit E	Opinion of Counsel - Application
Exhibit F	Opinion of Counsel - Carryover
Exhibit G	Opinion of Counsel - Placed in Service
Exhibit H	Declaration of Land Use Restrictive Covenants

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



Dakota County  
Community Development  
Agency

## **DAKOTA COUNTY CDA**

### **HOUSING TAX CREDIT**

## **2021 QUALIFIED ALLOCATION PLAN (QAP)**

**EXHIBIT B**  
**CDA CONTRACTING REQUIREMENTS**

## CDA CONTRACTING REQUIREMENTS

### Purpose

The CDA seeks to ensure the most competitive pricing possible for new construction and rehabilitation projects. The construction process begins with bidding or negotiating contracts with those who will build the proposed site improvements. The CDA permits either direct selection (negotiated or comparative selection) or competitive bidding for awarding construction contracts. Regardless of what selection method is used, selection of a Contractor (Single Prime General Contractor) who has the capabilities and qualifications to meet the project's requirements is the Owner's (Borrower/Developer) responsibility. This document sets forth the CDA's requirements for Contractor selection and procedures for bidding the work to be performed.

### Requirements

1. If Contractor selection is direct selection:

- (a) It shall be done early in the development process to establish the Contractor as part of the design team.
- (b) All work shall be competitively bid to at least three (3) qualified subcontractors for each division of work, including work to be performed by General Contractor's own workforce.
- (c) The bidding process shall be facilitated by the architectural firm. Bids shall be solicited by and sent directly to the architectural firm. All bids received for divisions of work for which the General Contractor also intends to bid shall be received by the architect as sealed bids.

2. If Contractor selection is competitive bidding:

- (a) Bidding may be open to all or restricted to a few (3-5 is recommended) Contractors.
- (b) Bids shall be solicited from Contractors judged to be qualified for the job

3. The CDA reserves the right to approve or deny the developer's selected contractor if the contractor is determined to be unqualified to perform the work necessary or is unwilling or unable to comply with contracting requirements imposed by the funding sources for the project.

4. Regardless of what Contractor selection method is used, Contractor compensation shall be in the form of a fixed price (stipulated sum).

5. The Owner-Contractor agreement shall be the **American Institute of Architects AIA contract A101-1997, (AIA) A101- 2007 Stipulated Sum Agreement**, or another industry standard form of agreement approved by the CDA that when fully completed and executed is acceptable to the CDA in form and substance.

## BIDDING PROCEDURES

A written statement indicating the contractor selection method to be used and describing the process for soliciting and selecting bids shall be submitted to the CDA prior to soliciting bids. The written statement provided to the CDA shall include a list of bid invitation recipients. The list shall be sufficiently comprehensive to provide for a highly competitive bid process. If requested, work specifications, in whole or in part, must be provided to the CDA for approval prior to soliciting bids. Once the CDA approves the work specifications, if requested, bids shall be solicited in accordance with the agreed upon process. The bidding process must adhere to the following requirements:

- Divisions of work shall promote optimal competition among bidders. Divisions of work must be outlined clearly and include labor and material costs to be included in the bid proposal to ensure bids are for a common scope of work and can be directly compared.

- A pre-bid meeting and walk-through shall be held by the architect at the project site to familiarize bidders with the site and the scope of work.
- Where specifications for particular products are provided, more than one product of comparable quality shall be specified, unless a product of comparable quality is not available or is economically infeasible.
- Where direct selection is the contracting method, if the General Contractor submits the low bid for a division of work, a breakdown of the costs forming the bid shall be provided to the CDA. The cost breakdown shall include the overall hours required, hours required per unit/item, labor costs, material costs, and additional costs that may factor into the bid proposal.

#### **CONTRACTOR SELECTION PROCEDURES**

- ✓ If requested by the CDA, work specifications in whole or in part must be provided to the CDA for review and approval prior to soliciting bids.
- ✓ Project architect will send the approved bid specification and the bid packet to be submitted by bidders with a cover letter scheduling the solicitation of bids.
- ✓ Once bids are reviewed, architect prepares a bid summary sheet and provides contractor selections to the CDA. If any bid other than the low bid is selected, a written explanation shall be provided.

**EXHIBIT C**  
**DEVELOPMENT FEATURES/CERTIFICATION**

## DEVELOPMENT FEATURES / CERTIFICATION

The award of tax credits by the Dakota County Community Development Agency is based on information provided in the application. Until the property is placed in service, any change in the design, construction method or material must be approved in writing by the CDA.

- I. **Mandatory Standards.** New construction and remodeling or rehabilitation must meet these mandatory standards:

**Building codes.** The project must comply with local zoning codes, local laws and regulations, local engineering and public works requirements and the current Minnesota State Building Code. This is required whether or not the State Building Code is adopted locally.

**Site and Site work.** Grading must comply with local government requirements and all work must be done in compliance with Minnesota erosion and storm water requirements (SWPPP plan and NPDES permit).

**Accessibility.** The project must comply with the current *Fair Housing Act Design Manual* as published by the U.S. Department of Housing and Urban Development or with a standard that is listed by that department as a "Safe Harbor" equivalent. Accessibility includes access to site amenities, mailboxes and other common features.

**Roofing Materials.** Roofing, if shingles, shall be 30-year laminated-tab style asphalt shingles with ice-and-water protection underlay at all areas susceptible to ice dams. Built-up roofing shall be four-ply laminated; membrane roofing shall be 60 mil EPDM with 20-year minimum warranty.

**Roof Ventilation.** Roof ventilation and vented soffits shall be provided that meet the building code.

**Building Exteriors.** Exterior siding shall be fiber-cement siding, LP SmartSide or a siding approved by the CDA. Masonry veneer shall be used at high abuse and high visibility areas such as near grade, on main building facades and at building and garage entrances. All siding shall be backed by a drainage-type weather barrier with water-elimination details such as full pan-flashing at window, door and other penetrations and kick-out flashing at roof/wall intersections.

**Windows.** Windows shall be single or double hung, casement or H-windows rather than sliding style. All windows and glazing shall be Energy-Star qualified (at this time the previous U-factor of 0.30 is acceptable). Interior window sills shall be cultured marble or solid PVC or hardwood with moisture-resistant finish.

**Energy Efficiency.** Energy efficiency shall exceed minimum requirements by use of ECM type multi-speed/multi level furnaces, sealed combustion water heaters, spray-foam sealing of rim joist areas, air-seal flanged electrical boxes, blow-in high R value wall insulation, and sealing of non-taped drywall joints (such as the base of drywall at subfloors). Blower door testing is encouraged to locate and eliminate leakage paths. If providing appliances, install ENERGY STAR clothes washers, dishwashers and refrigerators.

**Floor Finishes.** Floor finishes shall be level-loop or Berber type carpet, 26 oz. minimum face, 100% continuous filament nylon in living rooms, bedrooms, on stairs and in hallways serving those rooms. Floor finishes in entrance areas, kitchens and bathrooms shall be commercial grade sheet vinyl with sealed seams. Ceramic tile and luxury vinyl tile (LVT) may be used where it is appropriate to enhance durability.

**Painting.** All interior and exterior painting shall be one coat of primer and two finish coats of high-quality paint. Interior painted walls shall be washable and kitchens and bathrooms shall have smoother, higher gloss finishes.

**Cabinetry.** Kitchen and bathroom cabinetry shall have solid hardwood face frames, hardwood veneered panels and hardwood drawers with dovetail-style corner joints. Hinges shall be fully adjustable to allow alignment of doors.

Bathroom Ventilation. Bathroom fans shall be very-low sone (sound level) models either continuous running (where required by code) or with an occupant sensor or timer switch.

**Detailed Requirements.**

Paved (concrete or bituminous or pavers) on-site parking must be provided. Driveways must have concrete curb and gutter. Concrete sidewalks must lead from parking to unit entrances and to all major site amenities. Vehicle access must be provided to the main building entrance (or for townhomes and rehabilitation, to reasonable proximity to the entrance) to allow for move-in and move-out and deliveries.

Play areas must be provided in a central location that minimizes crossing of streets and driveways by children. Play equipment must be provided and shall be appropriate for the anticipated age and number of the child population of the project.

Bedrooms must contain 100 square feet, minimum, not including closet, and must have a minimum dimension of 9'-6" in any direction. Living rooms must have a minimum dimension of 11'-6" in any direction. Units of three bedrooms or larger must be no more than one floor level above or below an on-grade building entrance. (Does not apply to market-rate units).

One full bathroom (minimum) must be provided for studio, one and two bedroom units. One and one-half bathrooms (minimum) must be provided for three bedroom and larger units. Where practical, bathrooms shall be compartmented to allow multiple simultaneous use.

**Waivers.** Any requested waiver from any of the above listed standards shall be made in writing to the CDA at the time of application for tax credits. The CDA may, at its sole discretion, grant such waivers as it finds to be reasonable.

- II. **Voluntary Standards.** The following standards are suggested. Though not mandatory, the CDA will consider them if there is a need to choose between multiple project applications. These standards are based on CDA experience and are believed by the CDA to enhance the livability, efficiency and value of a project.

Visitability. Meet the *Minnesota Visitability Requirements* as defined by Minnesota Housing Finance Agency (Minnesota Housing).

Sustainability. Meet mandatory and voluntary standards of the *Green Communities Criteria* (2008 or later as published by Enterprise Communities Partners) as amended by the *Minnesota Overlay* (2010 or later by Minnesota Housing). Submit a checklist to the CDA at time of application defining those sections of this standard that will be met.

Attachments. Clear description of all Voluntary Standards described above that are included in a project design and that the developer wishes to be considered by the CDA in its comparative evaluations shall be attached to and submitted with the proposal. Describe attachments:

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

(Name and Address of Project)

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The Project Architect and Developer certify that the above indicated design features have been incorporated into the final construction documents. Both the Architect and Developer understand that these initial design features are required to be incorporated into the completed project in order for a Form 8609 to be issued for the project.

**Project Architect**

(Firm name and signature)

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

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

**Developer**

(Firm name and signature)

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

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

**EXHIBIT D**  
**CONSIDERATION OF PUBLIC HOUSING WAITING LISTS**



**EXHIBIT D  
CONSIDERATION OF PUBLIC HOUSING WAITING LISTS**

Pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, the CDA must consider public housing waiting lists in its selection criteria for awarding Tax Credits. The Dakota County CDA's Property Management department maintains waiting lists for Public Housing units throughout Dakota County.

To receive consideration under this selection criterion, the CDA requires applicants to certify that they will notify the CDA when tax credit units are available both at initial occupancy and as units turn over. The CDA will make this information available on request to housing seekers and may refer eligible households from its Section 8 and Public Housing waiting lists.

**Development and Ownership Information**

Owner Name _____	Contact Person _____	Phone Number (____) ____ - ____	
Address _____	City _____	State _____	Zip Code _____
Project Name _____			
Address _____	City _____	State _____	Zip Code _____

**Owner Certification**

☐ I certify that I will notify the Dakota County CDA when tax credit units are available for initial occupancy and when units are available at turnover by making a vacancy listing request by completing and submitting the Rental Vacancy Listing form, available on the CDA's website at [www.dakotacda.org](http://www.dakotacda.org), to the CDA as instructed on the form.

Signature \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

**EXHIBIT E**  
**OPINION OF COUNSEL - APPLICATION**

**Exhibit E**

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

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

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

Kutak Rock LLP  
1650 Farnam Street  
The Omaha Building  
Omaha, NE 68102-2186

RE: (Name of Developer)  
(Name of Project)

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 tax 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 review, 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 Project described in the Application.

2. I am not aware that the Application contains any untrue statement of a material fact with respect to an allocation of tax credits 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 Project 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 (Project/Building) will be a qualified low-income housing project as defined in Section 42(g) of the Code;

(c) The (Project/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 nonprofit organization as defined in Section 42(h)(5)(c) (if applicable).]

(j) The (project/building) is located in Qualified Census Tract #\_\_\_\_\_ or Difficult Development Area of \_\_\_\_\_ (if applicable)].

**EXHIBIT F**  
**OPINION OF COUNSEL - CARRYOVER**

**EXHIBIT F**

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

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

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

Kutak Rock LLP  
1650 Farnam Street  
The Omaha Building  
Omaha, NE 68102-2186

RE: (Name of Owner)  
(Name of Project)  
(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 tax 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 (e.g. title commitment or abstract)] dated \_\_\_\_\_;
4. The Commitment of Tax 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 review, 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 Project 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 project 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 Project will consist of \_\_\_\_\_ Buildings with the following addresses:

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

(c) The (Project/Building) is 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 nonprofit 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 G**  
**OPINION OF COUNSEL – PLACED-IN-SERVICE**

**EXHIBIT G**

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

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

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

Kutak Rock LLP  
1650 Farnam Street  
The Omaha Building  
Omaha, NE 68102-2186

RE: (Name of Owner)  
(Name and address of Project)  
(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 (e.g. title commitment or abstract)] dated \_\_\_\_\_;
4. The Commitment of Tax 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 review, 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 Project 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 project 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 Project consists 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 (Project/Building) is a qualified low-income housing project as defined in Section 42(g) of the Code;

(c) The (Project/Building) is 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 nonprofit 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 H**  
**DECLARATION OF LAND USE RESTRICTIVE COVENANT**

## EXHIBIT H

This document drafted by and when  
recorded, return to:

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 FOR LOW-INCOME HOUSING TAX CREDITS 2021 ALLOCATION YEAR

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS for Low Income Housing Tax Credits (this "AGREEMENT" or "LURA"), 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 in an amount not to exceed \$\_\_\_\_, 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 this Agreement in the official land deed records of the county in which the Project is located in order to create certain covenants running with the Project 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, 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 the United States Department of Treasury, Internal Revenue Service or Department of Housing and Urban Development in rules and 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 with the County Recorder or Registrar of Titles 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, or a duly certified copy of the executed original, showing the date and document numbers of record. The Owner agrees that the CDA will not issue the Internal Revenue Service Forms 8609 constituting the final allocation of the Credit for the Project 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 and the Project 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, Project Land 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, Project Land 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 the final allocation of the Credit for the Project.

### **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) At the time of execution and delivery of this Agreement, 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 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 “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 Project’s demographic characteristics and other documents deemed necessary or convenient by the CDA to preserve the Credit.

- (q) The Owner represents that it will fully comply with the requirements of Section 42 of the Code and any applicable regulations as they may from time to time be amended.

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

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the income and rental restrictions required by 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) In accordance with Section 42(g)(1) of the Code, the Owner has elected that \_\_\_\_\_ percent or more of the residential units in the Project shall be occupied by families whose income is \_\_\_\_ percent or less of area median gross income. *[OR if Average Income Set-Aside insert: At least 100% of the residential units in the Project shall be occupied by families whose income is equal to or less than the designated area median gross income. In the aggregate, the income/rent designation of the units taken into account for purposes of the set-aside must average 60% or less of area median income and the income/rent designation of each unit taken into account for purposes of the set-aside must by one of the following: 20%, 30%, 40%, 50%, 60%, 70%, 80%. Designations for each unit as set forth in Exhibit C.*
- (c) All units subject to Section 42 shall be rent-restricted in accordance with Section 42(g)(2) of the Code.
- (d) The Applicable Fraction (as defined in subsection 42(c)(1) of the Code) for each building for each taxable year during the term of this Agreement will not be less than the Applicable Fraction for each building specified in **Exhibit B** attached hereto.
- (e) The Applicable Fraction (as defined in subsection 42(c)(1) of the Code) for the Project for each taxable year during the term of this Agreement will not be less than the Applicable Fraction for the Project specified in **Exhibit C** attached hereto.

#### **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 allocation, with the exception of approved amendments.

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

- (a) The following definitions shall apply to this Section 6:
  - (1) "Compliance Period" means, with respect to any building that is part of the Project, the period of 15 taxable years beginning with the first taxable year of the credit period with respect thereto.

- (2) “Extended Use Period” means, with respect to any building that is part of the Project, the period beginning on the first day in the Compliance Period on which such building is part of a qualified low-income housing project and ending on the date that is 15 years after the close of the Compliance Period as specified in **Exhibit B**.
- (b) This Agreement and the Owner’s obligation to comply with Section 42 of the Code and the Occupancy Restrictions shall commence on the first day of the Compliance Period and shall end at the close of the Extended Use Period. This term may be referred to as the “term of the Agreement” or the “term of the LURA.” Throughout the term of this Agreement, the Owner will comply with Section 42, the Occupancy Restrictions, the Additional Restrictions, and all other provisions of this Agreement.
- (c) Notwithstanding Section 6(b) hereof, the Extended Use Period for any building that is part of the Project shall terminate:
  - (1) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with the Owner, a purpose of which is to terminate this Agreement; or
  - (2) 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. This Section 6(c)(2) will be subject to the time limitation and any waivers set forth in **Exhibit C**.
- (d) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of three years following the termination of this Agreement pursuant to subsection 6(c) 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 Section 42 of the Code with respect to such low-income unit.
- (e) *[Revise to reflect the requirements regarding projects 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 and the requirements of Section 42 of the Code.

## 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, any applicable regulations, or 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 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)(B)(iii) of the Code and Section 1.42-5 of the Treasury 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 Internal Revenue 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:** ATTENTION: Executive Director  
Dakota County Community Development Agency  
1228 Town Centre Drive  
Eagan, MN 55123

To the Owner: ATTENTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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. Notices regarding compliance and monitoring by the CDA or Minnesota Housing may be sent by electronic mail.

- (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 or County Registrar 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 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 eviction and rent restrictions following the early termination of this Agreement in accordance with Section 6(c) hereof).
- (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]

IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first written above.

**OWNER**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_, [the general partner of \_\_\_\_\_, a  
\_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

**EXHIBIT A**  
**Declaration of Land Use Restrictive Covenant**  
**(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**

<b>BIN#</b>	<b>BUILDING ADDRESS</b>	<b>APPLICABLE FRACTION*</b>	<b>1<sup>ST</sup> YEAR OF CREDIT PERIOD</b>	<b>**YEAR EXTENDED USE PERIOD TERMINATES</b>
		%		
		%		
		%		
		%		
		%		
		%		
		%		
		%		
		%		
		%		
		%		

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

\*\*Extended Use Period means, with respect to any building that is part of the Project, the period on the first day in the Compliance Period on which such building is part of a qualified low-income housing Project and ending on the date that is 15 years after the close of the Compliance Period (i.e., December 31 of the year the Extended Use Period terminates).

**EXHIBIT C**  
**Declaration of Land Use Restrictive Covenants**  
**Dakota County CDA Project Summary and Additional Restrictions**

The Allocation of Credits is based on the following:

1. Project Name:
2. Project Location:
3. Total Units:                      Tax Credit Units:
4. Partnership Name:
5. Partnership Address:
6. Name(s) of General Partner(s):
  
7. Name(s) of Nonprofit General Partner(s):
  
8. Owner Taxpayer I.D. No:
9. Nonprofit Tax I.D. No.:
10. Type of Credits:
11. Minimum Set-Aside:
12. Qualified Census Tract Number:  
Agency Designated Basis Boost Applied: \_\_\_\_ Yes \_\_\_\_ No
13. Total Qualified Basis: \$  
Note: Total should not exceed the amount necessary to result in a Credit allocation
14. Total Eligible Basis: \$  
Note: if applicable include the basis boost
15. Applicable Percentage:
16. Annual Credit Amount: \$
17. Term of the LURA:
18. Qualified Contract Waiver (term):

The Owner represents warrants and covenants throughout the term of this Agreement that:

The following performance items are indexed with a square ☐ to the left side of their text. If this square is checked (X), the performance item is a requirement of this Agreement. The development (Project) Owner is responsible for ensuring that the Project fully complies with all of the terms of the requirements.

<b>Check all that apply:</b>		
<u>Threshold Criteria:</u>		
1.		Minimum Set Aside Election:
	<input type="checkbox"/>	At least 20% or more of the total residential units in the Project are both rent-restricted and occupied by individuals whose income is 50% or less of area median income; or
	<input type="checkbox"/>	At least 40% or more of the total residential units in the Project are both rent-restricted and occupied by individuals whose income is 60% or less of area median income; or
	<input type="checkbox"/>	<p>Average Income Set Aside, the project meets the minimum requirements of Section 42(g)(1)(C) if 100% or more (25% or more in the case of a project described in Section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the owner with respect to the respective unit.</p> <p>Income/rent Tier 1:</p> <p><input type="checkbox"/> one bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> two bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> three bed at <input type="text"/>% AMI</p> <p>Income/rent Tier 2:</p> <p><input type="checkbox"/> one bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> two bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> three bed at <input type="text"/>% AMI</p> <p>Income/rent Tier 3:</p> <p><input type="checkbox"/> one bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> two bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> three bed at <input type="text"/>% AMI</p> <p>Income/rent Tier 4:</p> <p><input type="checkbox"/> one bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> two bed at <input type="text"/>% AMI</p> <p><input type="checkbox"/> three bed at <input type="text"/>% AMI</p>

2.	<input type="checkbox"/>	Subsidy Layering. If this item is checked, the Project must conform with Section 911 of the Housing and Community Act of 1992, which requires that specific procedures be followed for subsidy layering review when Credits and HUD assistance are combined in a single Project.
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 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 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 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 Rural Development and meets a state-wide distribution goal.
10.	<input type="checkbox"/>	<p>Project is new construction or substantial rehabilitation multifamily housing project that is not restricted to persons 55 years of age or older and is located within one of the following areas:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> an area within one-half mile of a completed or planned light rail transitway, bus rapid transitway, or commuter rail station;</li> <li><input type="checkbox"/> an area within one-fourth mile from any stop along a high-frequency local bus line;</li> <li><input type="checkbox"/> an area within one-half mile from a bus stop or station on a high-frequency express route;</li> <li><input type="checkbox"/> an area within one-half mile from a park and ride lot; <u>or</u></li> <li><input type="checkbox"/> an area within one-fourth mile of a high-service public transportation fixed route stop</li> </ul>
11.	<input type="checkbox"/>	The Owner agrees not to refuse to rent a unit to a tenant because that tenant has a Section 8 voucher.

12.	<input type="checkbox"/>	Minimum Requirement 9% Tax Credit Projects: The Owner agrees to maintain the Credit units in the Project for at least 30 years and Code Sections 42(h)(6)(E)(i)(II) and 42 (h)(6)(F) (which permit Owner to terminate the restrictions under this Agreement at the end of the 15-year Compliance Period in the event that the CDA does not present Owner with a qualified contract for the acquisition of the Project) shall not apply to the Project, and that the Section 42 and the CDA income, rental, and occupancy restrictions will apply for a period of 30 years beginning with the first day of the Compliance Period in which the building is a part of a qualified low-income housing Project. (This requirement applies to all projects except those receiving 4% Credits because they are financed with tax exempt bonds.)
13.	<input type="checkbox"/>	Minimum Requirement 4% Tax Credit Projects: The Owner agrees to maintain the Credit units in the Project for at least 20 years and Code Sections 42(h)(6)(E)(i)(II) and 42 (h)(6)(F) (which provisions would permit Owner to terminate the restrictions under this Agreement at the end of the 15-year Compliance Period in the event that the CDA does not present Owner with a qualified contract for the acquisition of the Project) shall not apply to the Project, and that the Section 42 and the CDA income, rental, and occupancy restrictions must apply for a period of 30 years beginning with the first day of the Compliance Period in which the building is a part of a qualified low-income housing Project. (This requirement applies to projects financed with tax exempt bonds.)
14.	<input type="checkbox"/>	The Owner agrees to use Section 8 and Public Housing waiting lists.
15.	<input type="checkbox"/>	The Owner agrees to comply with resident screening criteria established by the CDA from time to time.
16.	<input type="checkbox"/>	The Owner agrees to provide high speed internet access via installation of all appropriate infrastructure and connections for cable, DSL or wireless/data internet service to every unit in the Project.
17.	<input type="checkbox"/>	The Owner has a written policy prohibiting smoking in all units and common areas.

Selection Priorities:

1.	<input type="checkbox"/>	The Project consists of new construction.
2.	<input type="checkbox"/>	The Owner agrees to preserve federally assisted low income housing or to provide stabilization/preservation to an existing property which has federal, state, or local assisted units or previously funded by Credits. The Owner shall continue renewals of existing project based housing subsidy payment contract(s) for as long as the assistance is available.
3.	<input type="checkbox"/>	The Project received all land use and zoning approvals at the time of application.
4.	The Project will have secured funding commitments for permanent funding sources or had no funding gap at the following level:	
	<input type="checkbox"/>	70.1% or more of gap funds committed or no gap
	<input type="checkbox"/>	50.1-70.0% of gap funds committed
	<input type="checkbox"/>	30.1-50.0% of gap funds committed
	<input type="checkbox"/>	10.1-30.0% of gap funds committed

5. The Project will have non-capital contributions from local/state/federal, philanthropic or other organizations at the following level:	
<input type="checkbox"/>	contributions of 20.1% and above of total development costs
<input type="checkbox"/>	contributions in the range of 10.1-20.0% of total development costs
<input type="checkbox"/>	contributions in the range of 5.1-10.0% of total development costs
6.	<input type="checkbox"/> The Project is located on property fully/entirely owned by the CDA, Dakota County, or a municipality in Dakota County at the time of application.
7.	<input type="checkbox"/> For the term of this Agreement, the Owner will reserve at least 25% of the units for and rented to mentally ill, developmentally disabled, drug dependent, brain injured, or physically disabled persons. The Owner will maintain a referral and marketing plan that includes an agreement with an established organization to provide services for such persons.
8.	<input type="checkbox"/> The Owner represents that a qualified nonprofit or a governmental unit is the sole general partner.
9. 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%
10.	The Owner commits Credit units for occupancy by households who are experiencing homelessness and provides supportive services. These units must provide rental assistance or for those units occupied by households without rental assistance must have the gross rent, including allowance for tenant paid utilities, that do not exceed the greater of 30 percent of the household's monthly income or the most current supportive housing standard for the unit size as published by MHFA. Owners will first go through the Suburban Metro Area Continuum of Care Coordinated Entry System to fill the homeless units as is reasonable and feasible.
<input type="checkbox"/>	The Project commits 5%-9.99%, but no fewer than 2 Credit units and to provide supportive services for occupancy by households who are experiencing homelessness.
<input type="checkbox"/>	The Project commits 10%-49.99%, but no fewer than 5 Credit units and to provide appropriate on-site supportive services for occupancy by households who are experiencing homelessness.
<input type="checkbox"/>	The Project commits 50% or more, but no fewer than 20 Credit units to provide suitable housing with appropriate on-site supportive services for occupancy by households experiencing homelessness.

		<p><b><u>Homeless Relief Provisions</u></b></p> <p><b>Specific performance requirement relief provisions are available for projects receiving points under the Homelessness category.</b></p> <p>If, for a particular Homeless Unit(s) the necessary rental assistance or operating support (collectively "Homeless Unit Subsidy") is (i) withdrawn or terminated due to reasons not attributable to the actions or inactions of the owner; (ii) such withdrawal or termination materially adversely impacts the financial feasibility of the project; (iii) alternative funding is unavailable; and (iv) the project is otherwise in full compliance with all the terms of the funding for the project and the Declaration, the owner may petition the CDA to eliminate its requirements for the affected Homeless Unit(s). Such petition shall contain all material facts and supporting documentation substantiating owner's request including, but not limited to items (i), (ii) and (iii) above. Upon confirmation of such facts, which such confirmation shall not be unreasonably withheld or delayed, the owner shall no longer be required to treat such Homeless Unit(s) as Homeless Unit(s) but must convert the rents of those units to the 50 percent Tax Credit rent limit; <b>provided that more restrictive threshold, selection priority or funding requirements, if any, do not apply.</b> If such conversion occurs, in order to retain the Tax Credit allocation, the above described 50 percent Tax Credit rent limit and the Section 42 minimum set-aside elected for the project by the owner must be maintained.</p> <p>If the CDA, at any time thereafter, in its sole discretion, determines that a Homeless Unit Subsidy may be available for the term of the Declaration, that would not adversely affect the full availability of the Tax Credit allocation and would permit the Homeless Unit(s) to again serve homeless households, then at the CDA's request the owner shall promptly apply for such Homeless Unit Subsidy for the Homeless Unit(s) upon terms reasonably acceptable to such owner and, if such Homeless Unit Subsidy is obtained, shall again set aside such Homeless Unit(s) , when and to the extent available, to homeless households. If the Homeless Unit(s) are re-instated, then the owner is still required to provide support services for those re-instated units and to provide for all necessary reporting requirements.</p> <p>If for a particular Homeless Unit(s), the necessary tenant support services funding is (i) withdrawn or terminated due to reasons not attributable to the actions or inactions of the owner; (ii) alternative funding or an alternative service provider is unavailable; and (iii) the project is otherwise in full compliance with all the terms of the funding for the project and the Declaration, the owner may petition the CDA to modify its requirements for the provision of such tenant services for the affected Homeless Unit(s). Such petition shall contain all material facts and supporting documentation substantiating the owner's request including, but not limited to, items (i) and (ii) above. Upon confirmation of such facts, which such confirmation shall not be unreasonably withheld or delayed, the owner shall modify such tenant support services for the affected Homeless Unit(s).</p> <p>Owner agrees to comply with the reporting requirements contained in the Homelessness Rider to the Declaration.</p>
11.	<input type="checkbox"/>	The Owner represents that the project consists of rehabilitation of existing housing as part of a community revitalization plan and that is contributing to the revitalization.

12.	<input type="checkbox"/>	At the end of the 15-year Compliance Period, the Owner shall transfer ownership of 100 percent of the 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 Credit eligibility requirements. To be eligible, the buyer must have had a Credit qualifying income at the time of initial occupancy or time of purchase. Until the time the Credit units are purchased by a qualified tenant or in the event the 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 Code Sections 42(h)(6)(E)(i)(ii) and 42 (h)(6)(F) shall not apply to the Project.
13.	<input type="checkbox"/>	The Project is located within walking distance of public transportation.
14.	Projects financed with tax-exempt Bonds which agree to extend the long term affordability of the project and maintain the duration of the low-income use for:	
	<input type="checkbox"/>	A minimum of 25 years (i.e. a 10-year extended use period)
	<input type="checkbox"/>	A minimum of 30 years (i.e. a 15-year extended use period)
15.	<input type="checkbox"/>	The Project has a prior commitment/reservation of Credits from a previous round that did not fully fund the Project and requires additional Credits to make the Project feasible.
16.	The following percent of the Credit units shall have gross rents established at a level not greater than the applicable maximum Credit rent for persons with incomes equal to the following percent of median income.	
	Applicable Rent Restrictions:	
	<input type="checkbox"/>	100% of Credit units at rent limits for families at 50% of median income
	<input type="checkbox"/>	75% of Credit units at rent limits for families at 40% of median income
	<input type="checkbox"/>	75% of Credit units at rent limits for families at 50% of median income
	<input type="checkbox"/>	50% of Credit units at rent limits for families at 40% of median income
	<input type="checkbox"/>	50% of Credit units at rent limits for families at 50% of median income
17.	<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.

