
# STATE OF MINNESOTA

# HOUSING TAX CREDIT

# 2008 QUALIFIED ALLOCATION PLAN (QAP)

The Minnesota Housing Finance Agency does not discriminate on the basis of race, color, creed, national origin, sex, religion, marital status, status with regard to public assistance, disability familial status, or sexual or affectional orientation in the provision of services.

An equal opportunity employer.

This information will be made available in alternative format upon request.

# ARTICLE 1

## DEFINITIONS

1.0 Metropolitan Area: The area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka, Carver, Dakota (excluding the city of Northfield), Hennepin (excluding the city of Hanover), Ramsey, Scott (excluding the city of New Prague) and Washington.

1.1 Single Room Occupancy: A unit having one bedroom or less with rents affordable at 30 percent of median income.

1.2 Substantial Rehabilitation: Rehabilitation of at least $5,000 per unit, as defined in Minn. Stat. § 462A.221, Subdivision 5.

1.3 Family Housing: A housing development that is not restricted to persons 55 years old or older. At least 75 percent of the units must contain two or more bedrooms and at least one-third of the 75 percent must contain three or more bedrooms.

1.4 Federally Assisted Units: Any housing receiving federal project based rental assistance, operating subsidies or mortgage interest reduction payments. The Federal Programs include public housing; Rural Development financed properties; Section 236 and Section 221(d)(3) interest reduction payments; and any development with a project based Section 8, rent supplement, or rental assistance payment contract.

1.5 "Households experiencing long-term homelessness" means persons, including individuals, unaccompanied youth, and families with children, lacking a permanent place to live continuously for one year or more or at least four times in the past three years. Any period of institutionalization or incarceration shall be excluded when determining the length of time a household has been homeless, as defined in Minnesota Rule Chapter 4900.3705, Subpart 10a.

1.6 The Code: Internal Revenue Code, (Title 26 of the United States Code).

1.7 Section 42: Internal Revenue Code Section 42: Low-Income Housing Credit (26 USC § 42) as amended.

1.8 Tax Credit Agency: Any entity authorized by the State of Minnesota and Section 42 to receive an allocation of tax credits in Minnesota.

# ARTICLE 2

## PREPARATION OF THE PLAN

2.0 Pursuant to Section 42(m) of the Code, Tax Credit Agencies are required to develop and adopt a "Qualified Allocation Plan" (the "Plan"). The Plan sets forth selection criteria that are appropriate to local conditions and priorities for allocating Tax Credits to housing projects.

2.1 Minn. Stat. § 462A.221 to 462A.225 (the Statute) provides that the federal allocation of tax credits available in Minnesota should be allocated among certain cities and counties and the Minnesota Housing Finance Agency (the "Agency"). The Agency is the designated Tax Credit Agency for the State of Minnesota, as stated in Minn. Stat § 462A.223.

2.2 The Plan was prepared by the staff of the Agency according to a procedure set forth in Section 42(m) of the Code. All applicable regulations set forth in Section 42 of the Code, as amended, are hereby incorporated by reference.

2.3 The distribution of tax credits for Greater Minnesota was based upon the housing needs assessment prepared by the Agency staff and comments from the Greater Minnesota Allocation and Need Analysis Task Force.

2.4 The distribution of tax credits for the Metropolitan Area was developed by the Metropolitan Council, in consultation with the Agency and representatives of local government and housing and redevelopment authorities, in accordance with Minn. Stat. § 462A.222.

# ARTICLE 3

## GENERAL CONCEPTS

3.0 The Plan sets forth selection criteria to be used to determine housing priorities of the Minnesota Housing Finance Agency, Tax Credit Agency, for the State of Minnesota, which are appropriate to local conditions.

3.1 As part of the evaluation by the Agency, the developer must first demonstrate, to the satisfaction of the Agency, that the proposed project is marketable and financially feasible.

3.2 The Plan gives preference as required by federal legislation in allocating housing credit dollar amounts among selected projects to:

a. Projects serving the lowest income tenants;

b. Projects obligated to serve qualified tenants for the longest periods; and

c. Projects in Qualified Census Tracts that are part of concerted community revitalization plan.

# ARTICLE 4

## GEOGRAPHIC DISTRIBUTION

4.0 The state of Minnesota is divided into two general geographic areas: (1) the Metropolitan Area, as defined in Section 1.0; and (2) the Greater Minnesota Area, which consists of the balance of the state. Distribution of tax credits between the two general areas is based on each area's percentage share of the entire state's total of public assistance recipients pursuant to Minnesota Statutes § 462A.222, subd. 1a. For Greater Minnesota the percentage is 38 percent, and for the Metropolitan Area the percentage is 62 percent.

4.1 Under Minnesota law, certain cities and counties have been designated as suballocators to allocate and monitor tax credits to eligible projects in their cities or counties. Some suballocators have entered into a Joint Powers Agreement with the Agency under which the Agency will perform certain functions related to the credit allocation and compliance monitoring.

4.2 Except for the nonprofit set-aside, the Agency will not accept applications for developments located within the jurisdiction of suballocators in Round 1, unless the suballocator has entered into a Joint Powers Agreement with the Agency, or has returned all of their credits to the Agency. For a thorough discussion of nonprofit set-aside procedures, refer to Article 5. For suballocator procedures, refer to Article 13.

4.3 The Greater Minnesota Suballocator tax credit allocations are based on the city's or county's percentage share of the total population of the Greater Minnesota Area times the tax credits available for Greater Minnesota, multiplied by 1.75 (or as adjusted annually for inflation, the per capita number for Minnesota published by the Internal Revenue Service).

4.4 The Metropolitan Area consists of two pools of funds: (1) a pool for administration by the statutorily designated suballocators; and (2) a pool for administration by the Agency. The Metropolitan Area distribution has been established pursuant to Minnesota Statutes § 462A.222, subdivision 4.

The Agency will administer the tax credits for all areas outside the jurisdiction of suballocators.

Rural Development (RD) financed projects will receive a special set-aside administered by the Agency until the end of Round 2, or until the State Rural Development (RD) office notifies the Agency that the balance of the set-aside will be unused.

# ARTICLE 5

## NONPROFIT SET-ASIDE OF FUNDS

5.0 Ten percent of the total tax credits are set aside for allocation to nonprofit sponsored developments with a Section 501(c)(3) or (4) designation as required by Section 42(h)(5). This set-aside is administered by the Agency. In Round 1 the nonprofit set-aside is divided in two parts, with 38 percent for Greater Minnesota and 62 percent for the Metropolitan Area. In Round 2, any remaining nonprofit tax credit set-aside will be available statewide. The nonprofit set-aside is determined by calculating 10 percent of the respective total of tax credits available for Greater Minnesota and the Metropolitan Area. On an annual basis, in addition to the 10 percent reserved for allocation to nonprofits required by Section 42(h)(5), an additional 5 percent may be set aside for qualified nonprofits subsequent to all suballocators and the Agency agreeing to set aside an additional 5 percent from their respective allocations to the respective geographic area.

a. In Round 1, nonprofit developments located within the jurisdictions of suballocators will be allowed to apply for nonprofit tax credits to the extent of the nonprofit set-aside, but not for-profit tax credits from the Agency. Nonprofit developments located in the allocating jurisdiction of a suballocator may apply simultaneously to the suballocator and to the Agency nonprofit set-aside. Note that the Agency's application fee is nonrefundable. Nonprofit developments located in the allocating jurisdiction of the Agency will compete for tax credits from the for-profit pool if the nonprofit set-aside has been exhausted.

# ARTICLE 6

## APPLICATION ROUNDS

6.0 The Agency, in consultation with the suballocators, shall determine application competition deadlines as required by Statute. Application deadlines for the Agency and the suballocators will be the same date. For a thorough discussion of suballocator procedures, refer to Article 13.

a. **In Round 1, all applicants must meet the minimum threshold requirements (see Article 6.2) for their geographic area for selection consideration**. Applications for developments located within the jurisdiction of the suballocators are not eligible to apply to the Agency with the exception of nonprofits in some circumstances (see Article 5.0). No allocating Tax Credit Agency may award tax credits prior to the application closing date for Round 1.

b. Tax credits for Round 2 will be selected based on the selection point system. The threshold requirements will no longer apply after Round 1.

c. In Round 2, all unallocated tax credits will be transferred to a unified pool for allocation by the Agency on a statewide basis [with the exception of Rural Development (RD) and specific selection or preferences priorities identified in the Self-Scoring Worksheet (HTC Form 10)].

### 6.1 ROUND 1 – GEOGRAPHIC CREDIT POOLS AND SET-ASIDES

a. Greater Minnesota Pool (see definition in Article 4)

1. RD/Small Project Set-Aside (25 percent, not to exceed $200,000 of Greater Minnesota tax credit total)

2. Three suballocators eligible to administer credits within their respective city limits:

   Duluth
   Rochester
   St. Cloud

3. Balance of Greater Minnesota Area and nonprofit set-aside administered by the Agency.

b. Metropolitan Area Pool
(see definition in Article 1.0)

1. Four suballocators eligible to administer credits within their respective city or county limits:

   Minneapolis
   St. Paul
   Washington County
   Dakota County

2. Balance of Metropolitan Area and nonprofit set-aside administered by the Agency.

## 6.2 ROUND 1 – MINIMUM THRESHHOLD REQUIREMENTS

For applications submitted in Round 1 all applicants statewide must meet one of the following threshold types. An allocating agency will allocate tax credits only to the following types of projects:

a. In the Metropolitan Area:

1. New construction or substantial rehabilitation in which, for the term of the extended use period (term of the Declaration of Land Use Restrictive Covenants), at least 75 percent of the total tax credit units are single room occupancy units with rents affordable to households whose income does not exceed 30 percent of the area median income.

2. New Construction or substantial rehabilitation family housing projects that are not restricted to persons 55 years old or older in which, for the term of the extended use period (term of the Declaration of Land Use Restrictive Covenants), at least 75 percent of the total tax credit units contain two or more bedrooms and at least one-third of the 75 percent contain three or more bedrooms; or

3. Substantial rehabilitation projects in neighborhoods targeted by the city for revitalization.

b. Outside the Metropolitan Area:

1. Projects which meet a locally identified housing need and which are in short supply in the local housing market as evidenced by credible data such as local council resolution submitted with the application. (For Threshold Letter – Sample Format, see HTC Procedural Manual, Reference Materials Index.)

c. Projects that are not restricted to persons of a particular age group and in which, for the term of the extended use period (term of the Declaration of Land Use Restrictive Covenants), a percentage of the units are set aside and rented to persons:

1. with a serious and persistent mental illness as defined in Minnesota Statutes § 245.462, Subdivision 20, paragraph (c);

2. with a developmental disability as defined in Section 6001, paragraph 5 of the Code.

3. who have been assessed as drug dependent persons as defined in Minnesota Statutes § 254A.02, Subdivision 5, and are receiving or will receive care and treatment services provided by an approved treatment program as defined in Minnesota Statutes § 254A.02, Subdivision 2;

4. with a brain injury as defined in Minnesota Statutes § 256B.093, Subdivision 4, paragraph (a); or

5. with permanent physical disabilities that substantially limit major life activities, if at least 50 percent of the units in the project are accessible as provided under Minnesota Rules ch. 1341;

d. Projects, whether or not restricted to persons of a particular age group, which preserve existing subsidized housing, if the use of tax credits is necessary to (1) prevent conversion to market rate use or (2) to remedy physical deterioration of the project which would result in loss of existing federal subsidies; or

e. Projects financed by Rural Development, which meet statewide distribution goals.

6.3 Units that are designed to meet the above threshold requirements must comply with the Agency Housing Tax Credit Program Design Standards and the appropriate local, state or federal requirements or building code (e.g. to be considered an accessible unit, the unit must be designed to meet the standards in the Minnesota State Building Code, Chapter 1341, and be certified as complying by a registered Architect).

6.4. The Agency will require that the threshold type the applicant is applying under becomes part of the Tax Credit Reservation and Commitment and be secured by a restrictive use covenant on the land for the term of the compliance period and, as applicable, the extended use period.

**6.5. ROUND 2**

a. There is a single application date for remaining and/or returned credits.

b. There are no suballocators; all applications are submitted to the Agency.

c. Applications will be accepted without regard to geographic distribution. There will be one unified pool with no set-asides [with the exception of specific selection preferences or priorities identified in the Self-Scoring Worksheet (HTC Form 10)]. In the event that the Minnesota RD office has not received a funding allocation in time for RD projects to be included in Round 1, the RD/Small Projects set-aside will be carried forward and allocated in Round 2.

d. The Agency may decide at its discretion to maintain a waiting list if sufficient credits are no longer available. If the Agency decides to maintain a waiting list, all applications would be considered at the same time to determine selection when credits become available. If the waiting list is exhausted, the Agency may accept additional applications.

e. Projects that have previously received tax credits and have an annual tax credit shortfall of at least 5 percent, but not more than 50 percent of the total qualified annual tax credit amount, subject to the Agency approval, will have priority over other applicants at the start of Round 2. As stated in Section 13.5, suballocator may recommend one (1) of their partially funded projects for additional credits, if more than one applicant applies to the Agency.

# ARTICLE 7

## APPLICATION PROCESS

7.1 A complete application must be submitted no later than each of the application due dates in order to be considered for selection, within the applicable competition. Application closing dates subsequent to Round 1 may be approximate depending upon availability of tax credits and uncertainty as to volume during the selection period.

a. The Chief Executive Officer of the local jurisdiction where the project applying for credit is located will be notified and provided reasonable opportunity for comment.

b. Projects selected and approved by the Minnesota Housing Finance Agency Board in each selection competition will be approved as eligible to proceed toward commitment/allocation. Projects not selected may, upon notification; choose to compete in subsequent competitions.

7.2 Eligible projects will be evaluated for the amount of Allocation pursuant to Section 42(m)(2)(B). Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project. The Agency will conduct three evaluations prior to awarding the Credit:

a. At the time of Initial Application/Reservation.

b. At the time of Commitment to Allocate Credits/Carryover Allocation.

c. At the time the building is placed in service.

d. Prior to each evaluation, the eligible applicant will be asked to submit the most recent financial information on the project. Any federal, state, or local subsidies anticipated must be certified. Misrepresentations of information will result in failure to award IRS Form 8609, debarment from participation in the Housing Tax Credit Program and possible criminal penalties.

e. Selected applicants failing to place a project in service in the allocation year for which the reservation was issued may be awarded a carryover allocation by submitting the required carryover application submissions detailed in the HTC Procedural Manual including the following documentation for approval by the Agency:

1. A written Attorney's Opinion Letter or Title Policy verifying the developer is the owner, for tax purposes, or evidence of continued site control of the land and depreciable real property that can be expected to be part of the project; and

2. A written Certified Public Accountant's Certification verifying the owner has incurred more than ten percent of the reasonably expected basis on the project by the later of the date, which is six months after the date that the allocation is made, or the close of the calendar year in which the allocation is made. The certification must include a statement of non-affiliation with the developer and/or owner.

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

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

# ARTICLE 8

## ADDITIONAL ADMINISTRATIVE PROCEDURES

8.1 No applications will be considered for existing projects that contain units that currently are subsidized by state or federal resources except for troubled projects as defined by the Agency, or projects that could convert to market rate units.

8.2 No individual application or project (for-profit or nonprofit) may receive more than $780,000 in annual tax credits. No developer or general partner may receive tax credits in excess of ten percent (10%) of the state's per capita volume in any calendar year. These limitations are subject to review and waiver by the Agency Board. Applicant must provide justification for exceeding this limit for consideration by the Agency.

8.3 No project may be divided into two or more projects during a single funding round to receive credits. Multiple applications, determined by the Agency to be one project, will be returned to the applicant and all fees forfeited.

a. The Agency will consider factors such as, but not limited to, ownership entities, general partnerships, sponsor relationships, and location of project, if contiguous site, to determine if a multiple application exists.

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

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

8.6 The Agency may consult with local communities, PHAs, HRAs, RD and HUD to determine the marketability of projects. If, in the opinion of the Agency, the issuance of the tax credits to a project could be detrimental to existing rental property, the Agency will not issue tax credits to the applicant. If necessary, the Agency may require a current market study and will evaluate it using the data from other sources, including tax credit saturation in a community.

8.7 The Agency reserves the right to adjust fees due to changing circumstances in order to cover its costs associated with producing and delivering Minnesota's Housing Tax Credit Program.

# ARTICLE 9

## CREDITS FOR BUILDINGS FINANCED BY TAX EXEMPT BONDS

9.0 Section 42 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 that:

a. Section 42 (m)(1)(D) 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 for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located. The Agency Qualified Allocation Plan shall apply to all projects for which the Agency is the issuer of the Bonds and all other projects for which the issuer is not located within the area covered by a suballocator allocation plan.

The tax credit-allocating agency (the Agency or appropriate suballocator) must make a determination that the above requirements are satisfied. Subsequent to this determination, the allocating agency will issue the appropriate determination letter. Application for this determination must be made to the appropriate allocating agency **prior to the issuance of the bonds**.

In order to qualify under the Agency's Qualified Allocation Plan, a developer must demonstrate that the project is eligible for not less than **40** points. The threshold requirements in Article 6 of the Qualified Allocation Plan and Chapter 5 (A) of the Housing Tax Credit Procedural Manual do not apply to tax-exempt bond financed projects using credits not counted in the state's volume cap.

**Important: In order to begin the above process, the developer must submit to the allocating agency all documents required for an application for tax credits as established by the allocating agency's QAP and Procedural Manual and any additional information requested by the allocating agency. If the Agency is the allocating agency, these documents are those required for an application for tax credits under Chapter 6 of the Housing Tax Credit Program Procedural Manual and any additional information required by the Agency. The developer must also submit to the allocating agency the required application fees identified in the agency's QAP / Manual.**

b. Section 42 (m)(2)(D) provides that in order for a project to receive an allocation of tax credits through the issuance of tax exempt bonds the governmental unit which issues the bonds (or on behalf of which the bonds were issued) must make a determination that the credit amount to be claimed does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period.

The determination by the issuer shall be made in a manner consistent with the tax credit allocating agency's (the Agency or appropriate suballocator) Qualified Allocation Plan and Housing Tax Credit Procedural Manual. Section 42 requires that the issuer evaluation must consider:

1. The sources and uses of funds and the total financing planned for the project;

2. Any proceeds or receipts expected to be generated by reason of tax benefits;

3. The percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries; and

4. The reasonableness of the developmental and operational costs of the project.

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

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

c. Section 42 provides that in order for a project to be eligible for tax credits, the taxpayer/owner must enter into an extended use agreement **(**Declaration of Land Use Restrictive Covenants**)**. Section 42(h)(6)(C)(ii) provides that the credit amount claimed for buildings financed by tax exempt bonds by the taxpayer/owner under Section 42 (h)(4) may not exceed the amount necessary to support the applicable fraction specified in the use agreement for the buildings.

d. Subsequent to the project being placed in service, the development must submit to the allocating agency an application and appropriate fees for Form 8609 meeting the requirements of the allocating agency's QAP/Manual. The developer must also submit to the allocating agency any other related fees identified in the allocating agency's QAP/Manual.

# ARTICLE 10

## PROCEDURE FOR PROJECT SELECTION

10.0 Applications must include the HTC Market Qualification Information form, Maintenance and Operating Expense Review and Underwriting Certification form. An application will not be accepted without this information. The Agency will evaluate this information as a part of project feasibility.

# ARTICLE 11

## PROJECT SELECTION

11.0 Minimum Points Requirement (Competitive Round Tax Credits): To be eligible for selection considerations of Agency administered tax credits from the State's volume cap under the Agency's Qualified Allocation Plan, a developer must demonstrate that the project is eligible for not less than 30 points as defined and included in the Self-Scoring Worksheet (HTC Form 10) (Exhibit A).

11.1 Selection Priorities: As defined and included in the Self-Scoring Worksheet (HTC Form 10) (Exhibit A).

11.2 Preference Priorities: As defined and included in the Self-Scoring Worksheet (HTC Form 10) (Exhibit A).

11.3 Tie Breakers:

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

a. First tie breaker: priority will be given to the project with the greater number of points in Preference Priority criteria; if a tie still remains;

b. Second tie breaker: priority will be given to a project located in a city that has not received tax credits in the last two years; if a tie still remains;

c. Third tie breaker: priority will be given to the project with the highest "Percentage of Funds Committed" as measured by the Selection Priority category of Readiness to Proceed; if a tie still remains;

d. Fourth tie breaker: priority will be given to the project with the lowest percentage of intermediary costs; if a tie still remains;

e. Fifth tie breaker will be by lot.

# ARTICLE 12

## MHFA COMPLIANCE MONITORING

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

12.1 Record keeping and Record Retention Provisions:

a. Record keeping Provision. The owner of a low-income housing project must keep records for each qualified low-income building (in the project) showing each year:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet);

2. The number of occupants in each low-income unit and the number of minors. Housing information concerning ethnicity, elderly or family household and student resident status, and type and amount of rental assistance;

3. The percentage of residential rental units in the building that are low-income units, models, offices, and management units;

4. The rent charged on each residential rental unit in the building (including utility allowance). Documentation including rent rolls, leases, and utility allowances per Internal Revenue Service Notice 94-60 issued June 1994;

5. The low-income unit vacancies in the building and the rentals of the next available units;

6. The annual income certification of each low-income tenant on an Agency Tenant Income Certification, HTC 14;

7. Documentation to support each low-income tenant's income certification. Anticipated income of all adult persons expecting to occupy the unit must be verified and included on a Tenant Income Certification **prior** to occupancy and **annually** recertified for continued eligibility. (i.e. Written third party verification is always preferred. Income verifications are sent directly to and returned by the source to management, not through the applicant. Specific forms of income verification are in the HTC Compliance Monitoring Manual.);

8. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project);

9. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

10. Any additional records necessary to verify compliance with additional restrictions included in the Carryover Agreement or Declaration.

b. Record Retention Provision. The owner of a low-income housing project must retain the records described in 12.1(a) for each building in the project for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

c. Inspection Record Retention Provision. Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety or building code violation reports or notices that were issued by the State or local government unit (as described in IRC 1.42-5 (c)(1)(vi)) for the Agency's inspection. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

12.2 Certification and Review Provisions:

a. Certification. The owner of a low income housing project must certify to the Agency that:

The project meets the minimum requirements of:

1. 20 - 50 test under Section 42(g)(1)(A) 0f the Code; or
40 – 60 test under Section 42(g)(1)(B) of the Code.

2. There has been no change in the applicable fraction (as defined in Section 42 (c)(1)(B) of the Code) for any building in the project.

3. The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy.

4. Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code.

5. No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.

6. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (l)(3)(B)(iii) of the Code).

7. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601 -3619, has occurred for this project. A finding of discrimination

includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.

8. Each Building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project.

9. There have been no changes in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since the last certification of submission.

10. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dyer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.

11. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having qualifying income.

12. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in the building was or will be rented to residents having a qualifying income.

13. An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).

14. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving “qualified nonprofit organizations” under Section 42(h)(5) of the Code and its nonprofit entity materially participated in the operation of development within the meaning of Section 469(h) of the Code.

15. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving “qualified non-profit organizations” under Section 42(h)(5) of the Code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.

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

b. Review. Under the review provision, a monitoring procedure must require:

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

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

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

12.3 Inspection Provision. The Agency has the right to perform an inspection of any low-income housing project at least through the end of the term of the Declaration of Land Use Restrictive Covenants. An inspection includes a physical inspection of any building(s) in the project, as well as a review of the records described in Article 12.1. The auditing provision of this paragraph is required in addition to any inspection of low-income certification and documentation under Paragraph 12.2(b).

12.4 Notification of Non-Compliance Provisions:

a. In General. The Agency will give the notice described in Internal Revenue Service Regulation Section 1.42-5(e)(2) to the owner of a low-income housing project and the notice described in Section 1.42-5(e)(3) to the Internal Revenue Service.

b. Notice to Owner. The Agency will provide prompt written notice to the owner of a low income housing project if the Agency does not receive the certification described in 12.2(a) or 12.3 or discovers in an audit, inspection, or review, or in some other manner, that the project is not in compliance with the provisions of Section 42.

c. Notice to Internal Revenue Service. When required, the Agency will file Form 8823, Housing Credit Agencies Report of Non-Compliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in 12.5, including extensions permitted). The Agency must check the appropriate box on Form 8823 indicating the nature of the noncompliance or failure to certify and indicating whether the owner has corrected the noncompliance or failure to certify. If the Agency reports on Form 8823 that a building has gone entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance.

d. Project owners shall provide to the Agency any evidence of noncompliance correction and correspondence to or received from the Internal Revenue Service with respect to any reported noncompliance.

12.5 Correction Period. The correction period shall be that period specified in the notice to the owner during which an owner will have the opportunity to supply any missing certifications and bring the project into compliance with the provisions of Section 42. The correction period will be set by the Agency and will not exceed 90 days from the date of the notice to the owner described in Paragraph 12.4(b). The Agency may extend the correction period for up to six months, but only if the Agency determines there is good cause for granting the extension.

12.6 Liability. Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's noncompliance.

# ARTICLE 13

## SUBALLOCATOR PROCEDURES

13.0 A city or county is eligible to receive a reserved portion of the state ceiling under this subdivision if it submitted a written request to the agency within 45 days after June 2, 1987, to act as a designated housing credit agency as provided in Section 42. A city or county may designate its housing and redevelopment authority as a suballocating agent to allocate low-income housing credits on behalf of the city or county. The city of Minneapolis or the city of Saint Paul may designate the Minneapolis/Saint Paul Housing Finance Board to allocate low-income housing credits on behalf of each city. The Agency will administer the tax credits for areas outside the jurisdiction of the suballocators.

13.1 The application deadline for the suballocating agencies in Round 1 will be the same as the Agency's. No allocating agency may award tax credits prior to the application closing date for Round 1. In Round 1, all applicants must meet minimum threshold requirements for their geographic area for selection consideration (see Article 6.2).

13.2 In Round 1, for-profit tax credits projects located within the jurisdiction of suballocating agencies will apply to the suballocator for tax credits. The Agency will not accept applications for projects located within the jurisdiction of suballocators in Round 1, except for the nonprofit set-aside as defined in Article 5.0.a.

13.3 Before the application deadline for Round 2, the suballocators shall return all uncommitted and unallocated tax credits to the Agency, along with copies of the tax credit application and allocation or commitment agreements for all selected projects.

13.4 If a suballocator determines at any time before Round 2, a project is no longer eligible for all or a portion of the housing tax credits committed or allocated to the project, the tax credits must be transferred to the Agency to be reallocated. If the tax credits for which the project is no longer eligible are from the current year's annual ceiling, and the suballocator maintains a waiting list, the suballocator may continue to commit or allocate the credits until no later than the date of application for the Round 2, at which time any uncommitted credits must be transferred to the Agency.

13.5 In Round 2, all unallocated tax credits will be combined into one unified pool for allocation by the Agency on a statewide basis. All Round 2 applications are submitted to the Agency. In Round 2 a suballocator may recommend one (1) of their partially funded projects for additional credits if more than one applicant applies to the Agency.

13.6 In order that all of a project's tax credits are allocated by a single Housing Credit agency, the Agency may apportion additional tax credits to a suballocating city or county for a project that has already received a commitment or allocation of tax credits from the suballocating agency, if all of the suballocator's tax credits have been committed or allocated. These supplemental tax credits must be used only for the selected project and must be allocated to the project by a carryover allocation or IRS Form 8609 before November 15 of the year in which the

selection was made. If at any time after the apportionment of the tax credits, a suballocator determines the project cannot use or is no longer eligible for all or a portion of the tax credits apportioned to the project, the credits must be returned to the Agency within 10 business days for reallocation.

13.7 Suballocators are responsible for the issuance of the IRS Form 8609 for all projects for which they have allocated tax credits. In instances where both a suballocator and the Agency have allocated credits to a project, the Tax Credit Agency that first allocated tax credits to the project will prepare the IRS Form 8609.

13.8 Before January 31, the suballocator will submit to the Agency an original completed IRS Form 8610 along with the original Allocation or Carryover Agreements and original IRS Form 8609s completed and issued to all (including tax exempt) projects selected since February 28th of the preceding calendar year. The Agency will prepare a comprehensive IRS Form 8610, incorporating all Carryover and 8609 allocations made in the state of Minnesota for filing with the IRS.

13.9 Suballocators are responsible for the monitoring of tax credit projects, for the term of the Declaration of Land Use Restrictive Covenants, in accordance with 42(m)(1)(b)(iii) (See Article 12) to ensure compliance with applicable federal, state and local requirements. Compliance records shall be available upon request to the Agency from the suballocator or its monitoring agent.

13.10 Before January 31, suballocators will submit to Agency compliance staff a comprehensive updated report listing all of the HTC projects that have been awarded tax credits by the suballocator. Items to be included in the report are project name, address, building identification numbers, ownership entity and tax identification number, total number of residential units, number of HTC units, year of allocation, amount of tax credits awarded and other information as needed. In addition, suballocators will submit a list of the projects that have been in noncompliance, the year of noncompliance, inspection date and type of noncompliance along with copies of the IRS Form 8823 and the report of noncompliance findings sent to the owner. Suballocators will also submit a copy of their monitoring requirements, procedural manual and forms, and, if applicable, a copy of the monitoring contract with an outside vendor.

13.11 A suballocator may elect to enter into a Joint Powers Agreement with the Agency. Under a Joint Powers Agreement the Agency shall perform certain functions related to the credit allocation and compliance monitoring. As a condition of the Joint Powers Agreement, the participating suballocator will apportion its entire annual tax credit distribution to the Agency to administer.

13.12 Suballocators are responsible for entering into an agreement with HUD to perform Subsidy Layering Reviews.

# ARTICLE 14

## AMENDMENTS TO PLAN

14.0 This plan is subject to modification or amendment at any time to ensure that the provisions conform to the requirements of the Code and applicable Minnesota law. The Agency may also make nonsubstantive changes to the plan to update population changes, dates, or minor updating through Agency Board action.

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 Agency's established priorities and selection criteria.

**This allocation plan has been prepared to comply with the regulations set forth in Section 42 of the Code. The allocation plan may be subject to amendment in order to conform to the Code and applicable state statute.**