

**MISSOURI HOUSING DEVELOPMENT COMMISSION**

**LOW-INCOME HOUSING TAX CREDIT**

**2005 QUALIFIED ALLOCATION PLAN**



**This plan, as amended, was approved and adopted by the  
Missouri Housing Development Commission  
Board of Commissioners  
on August 20, 2004**

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## I. GENERAL PROGRAM INFORMATION

### A. Purpose and Goals

The Missouri Housing Development Commission ("MHDC" or the "Commission") has been designated by the Governor of the State of Missouri (the "State") as the Housing Credit Agency for the State. This designation gives MHDC the responsibility of administering the Federal Low Income Housing Tax Credit Program ("LIHTC" or "Tax Credits") established by the Tax Reform Act of 1986 and codified as Section 42 of the Internal Revenue Code (the "Code"). The responsibilities of a Housing Credit Agency are defined in Section 42(m) of the Code, as amended.

One of the statutory duties of the Housing Credit Agency is to prepare a Qualified Allocation Plan (the "Plan"). The purpose of this Plan is to set forth the process that MHDC will use to administer the LIHTC program in Missouri.

MHDC's goal is to use the federal tax credits allotted under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), and state tax credits under Section 135.350 et seq. of Chapter 135 of the Missouri Revised Statutes (the "State Tax Relief Act"), to the maximum extent possible, as an additional financial incentive for the creation and maintenance of rental housing units for low and very low-income households in the State. The specific goals are as follows:

1. To create safe, decent and affordable rental units for households having the lowest incomes;
2. To maintain the affordability of the rental units for the longest period of time possible;
3. To assist in the provision of financially viable, market appropriate housing in the areas of greatest housing need in the State;
4. To assist in the provision of quality housing at a reasonable cost to meet a variety of needs, including family, elderly and special need populations;
5. To provide opportunities to a variety of qualified sponsors, both for-profit and non-profit, and for a variety of housing development sizes;
6. To allocate only the amount of credit that MHDC determines to be necessary for the financial feasibility of a development and its viability as a qualified low-income housing development throughout the credit period;
7. To allocate tax credits to rental housing developments which provide the greatest overall public benefits; and
8. To allocate tax credits to as many rental housing developments as possible, considering the cost, size, location, and the income-mix of proposals.

### B. Amount of Credit Available

The amount of annual Tax Credits allotted by the federal government to each state is determined by the state's population ("per capita credits"). The amount of 2005 "per capita" credit for the State is approximately \$10,000,000. The annual amount of state tax credit is equal to the amount of federal credits.

The total amount of federal tax credits available for allocation in any one year is the sum of the following components ("housing credit ceiling"):

1. **Per capita credits.**
2. **Carry forward credits** - Should MHDC be unable to allocate all allotted credits in any one year, the unused credits will be carried forward for allocation in the succeeding year.
3. **Returned credits** - Credits that are returned from developments that received an allocation in previous years may be made available for allocation in the year the credits are returned or the succeeding year if returned after September 30th.
4. **National pool credits** - If MHDC is able to allocate the entire amount of federal credits available in any one year, the State is then eligible to receive additional credits from a pool of credits returned unused by other states.

The state tax credits are also available for allocation as a result of the State Tax Relief Act. The legislation provides that any development that is eligible for an allocation of the federal tax credit is also eligible for an allocation of the state tax credit. Therefore, the contents of this Plan, except where otherwise noted, also apply to the allocation of state tax credits. The number or percentage of state credits in proportion to the Federal credits may be reduced by the State legislature, making any allocation subject to said change in the authorizing statute.

Tax-exempt private activity bond financed developments are eligible for federal and state tax credits without having to compete for an award from MHDC's annual housing credit ceiling. **However, these developments are subject to review by MHDC and are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for an allocation of federal credits under this Plan. Such developments are also subject to MHDC's compliance monitoring requirements.** The allocation of Federal credits does not guarantee an allocation of State credits.

**C. Maximum Credit Award**

The maximum amount of annual federal or state tax credits that may be awarded to any individual proposal is \$700,000. MHDC, in its sole discretion, may make exceptions on a case-by-case basis.

Tax exempt bond financed developments receiving allocations outside the housing credit ceiling cap will not be limited in the amount of federal tax credits awarded. However, any individual development is limited to \$700,000 in annual State tax credits. The Commission, in its sole discretion, may make exceptions on a case-by-case basis. The State credit is not an automatic credit, and approval is subject to Commission action.

**D. Eligibility Cycle Information**

Applicants wishing to receive credits from MHDC's annual housing credit ceiling must submit an application in accordance with the requirements of this Plan. MHDC will hold one eligibility cycle per allocation year. The eligibility cycle information for the 2005 allocation year is as follows:

A Notice of Funding Available (the "NOFA") will be published in August 2004 following the MHDC Commissioner's formal approval of the 2005 Plan and the proposed NOFA.

Application Submission Deadline – All applications **must** be physically received (no e-mails) in the Kansas City office of MHDC (3435 Broadway, Kansas City, MO 64111) **no later than 5 P.M. Central Time, October 18, 2004. Any applications received after that time will not be considered and will be returned to the applicant.**

Commission Selection of Applications – Selections of proposals to receive tax credits from the 2005 housing credit ceiling will be made at the Commission Meeting on December 17, 2004, unless changed by the Commission. This date may be changed without notice. Conditional reservations will not be granted / issued until January 3, 2005.

## **II. CONDITIONAL RESERVATION PROCESS**

**A. SET-ASIDES**

1. **Qualified Non-Profit Organization** - The Code requires that at least 10% of the annual housing credit ceiling be set-aside for projects involving a qualified non-profit organization. Section 42(h)(5)(C) of the Code defines a qualified non-profit organization as:
  - a. A 501(c)(3) or (c)(4) non-profit organization; and
  - b. Having an express purpose of fostering low-income housing; and
  - c. One that will own an interest in the development and materially participate in the development and operation of the development throughout the compliance period. Material participation is defined in Section 469(h) of the Code as "involved in the operations of the activity on a basis which is regular, continuous and substantial;" and
  - d. Is not affiliated with, nor controlled by, a for-profit organization.
2. **Rural Development financed developments** - 2% of the annual federal housing credit ceiling will be set-aside for projects financed by USDA/Rural Development. In the event the set-aside amount is not used, it will be returned to the general pool.
3. **Disaster Area** – Should any part of the state be officially declared a disaster area by the Governor, it may be necessary for MHDC to set aside a certain percentage of the annual federal housing credit ceiling or to give special consideration to a project that will assist in providing affordable housing to people affected by the disaster. This will be determined on a case-by-case basis by the Commission.
4. **Geographic** - As stated in the Purpose and Goals above, it is the Commission's objective to serve areas of greatest housing need in the State. An attempt will be made to distribute the tax credit across the State of Missouri on a population proportionate basis, with the state divided into the following areas:

SET-ASIDE PERCENTAGE	GEOGRAPHIC AREA
36%	<b>St. Louis Metro</b> [Franklin, Jefferson, Lincoln, St. Charles, St. Louis City, St. Louis and Warren Counties.]
20%	<b>Kansas City</b> [Clay, Cass, Clinton, Jackson, Lafayette, Platte and Ray Counties]
44%	<b>Balance of State</b> (All other counties)

The Commission reserves the right to classify specific developments as serving “Special Needs Areas”, which could allow for funding of said development(s) without regard to the targeted geographic set-aside. These developments may include housing financed, in part, by the federally funded HOPE VI program.

Note that the Commission will fund a maximum of one HOPE VI proposal per locality in any funding year with the 9% tax credit.

Any development approved by the Commission “subject to credit availability,” will be funded if sufficient credits become available.

## B. Threshold Review

MHDC has established criteria that must be met in order for the application to be considered for the competitive review stage. **Any application that fails to meet any one of the threshold criteria will be rejected. Please refer to the Checklist and Program Guidelines for complete details of the threshold criteria that must be met.**

The threshold review is a basic review of the application to determine that it (1) is complete; (2) includes all necessary forms and supporting evidence; (3) includes required fees; and (4) meets minimum code requirements.

The threshold criteria are as follows:

1. **Complete, Organized Application** – Applications must be submitted in a three-ring binder, and organized, using corresponding tabs, according to the checklist provided with the application. Applications must be complete, consistent and contain all supporting documentation. Applications that are incomplete, inconsistent, and/or illegible will be rejected.
2. **15 Year Pro forma** - A detailed 15 year pro forma operating budget must be included as part of the application.
3. **Program Compliance** – Any owner or general partner that is involved with a Section 42 project that is currently in noncompliance due to site audits or the failure to comply with owner’s reporting requirements will be denied participation in the eligibility cycle. In addition, any owner that is not in compliance or good standing with any other MHDC program will be similarly denied participation.
4. **Consistent with Section 42 Requirements** – The proposal must meet all the requirements set forth in Section 42 of the Code, and all relevant U. S. Treasury regulations, notices and rulings.
5. **Consistent with Fair Housing Requirements** – The submitted proposal must meet all the requirements of The Fair Housing Act of 1968, as amended.
6. **Internal Revenue Service Memorandum of Understanding** – MHDC and the IRS may execute a Memorandum of Understanding (“MOU”) to improve the administration of the LIHTC program. Under the terms of this MOU, all developers must complete IRS Form 8821 (Rev. 9-

98), Tax Information Authorization, as a condition of consideration for the allocation of LIHTC. An executed IRS Form 8821 must be included as part of the tax credit application. A copy of this form is included in the Developers' Packet.

- 7. Tax Credit Accountability Act** - MHDC may promulgate rules and procedures to implement the provisions of the Tax Credit Accountability Act (SB 1099) which was passed on 5/11/04. Under the provisions of this act all developers / sponsors must complete all necessary forms and reporting requirements necessary for MHDC, as the administering agent for the LIHTC, to comply with the provisions of the act. All developers must complete MDOR Form 8821 (Rev. 11-03), Missouri Department of Revenue Authorization For Release of Confidential Information, as a consideration for the allocation of LIHTC. An executed MDOR Form 8821 must be included as part of all tax credit applications.
- 8. Application Fee** – The required nonrefundable application fee of \$1,500 (\$750 for non-profit sponsors) must accompany each application.
- 9. Development Narrative** – Each application must contain a project narrative that summarizes the scope of the proposal and the roles of the development team. This narrative should include the following:
  - a. A description of the proposal, including its location(s), development type, unit mix and unit size.
  - b. Projected rents.
  - c. A description of need and the target market.
  - d. A description of special amenities and services.
  - e. A description of local support.
  - f. A summary of proposed construction and permanent financing.
  - g. Anticipated start and completion dates.
  - h. A discussion of the reasons why MHDC should consider the proposal.
- 10. Evidence of Site Control** – Both the buyer and seller must evidence site control. All site options/contracts, as applicable, must be also valid at the time of selection by the Commission on or about January 3, 2005. The following may be used as evidence of site control:
  - a. Executed and recorded deed.
  - b. Executed purchase option agreement.
  - c. Executed purchase contract.
  - d. Executed long-term land lease or option on a long-term lease.
  - e. Title Commitment.
  - f. Other Commitments / agreements approved by staff.
- 11. Zoning** – The applicant must demonstrate, by submission of a letter from the local government, that the zoning for each site on which the development will be located allows for the use(s) proposed by the applicant. In cases where the site is not yet zoned properly, MHDC may consider a site for which the local government has issued a letter endorsing the development and the specific zoning change necessary for the proposed development.
- 12. Local Needs** – The project must address local housing needs and priorities, as documented in the state or local Consolidated Plan. A current certification of consistency from the appropriate local governmental entity must be included as part of the application.
- 13. Market Study** – A complete and in-depth market study must be included as part of the application. A favorable statement of conclusions about the strength of the market for the proposed development does not operate to vest in an applicant or development any right to a reservation or an allocation of tax credits in any amount. The market study must:
  - a. Be prepared by an experienced market analyst, who is an independent third party, completely unaffiliated with the developer and/or owner of the proposed development.
  - b. Contain a statement by the analyst that:
    1. The report is in full compliance with MHDC's Market Study Guidelines. The MHDC Market Study Guidelines can be found at the MHDC website <http://www.mhdc.com>).

2. The information included is accurate and that the report can be relied upon by MHDC as a true assessment of the low-income housing rental market in the area of the proposed development.
3. The document is assignable to lenders and/or syndicators that are parties to the development's financial structure.
4. Acknowledge and agree that the market study will be shared with other parties that will assist MHDC in the analysis of the market study.
5. Justify the need for the type of rental housing and the number and size of units proposed.

**14. Affirmative Fair Housing Marketing Plan** – The applicant must complete the U. S. Department of Housing and Urban Development ("HUD") Form 935.2, Affirmative Fair Housing Marketing Plan. The form must contain a description of the outreach, marketing and advertising methods that will be used to affirmatively market the project.

**15. Development timeline** – The application must include a list of proposed dates for the completion of the following:

- a. All zoning and/or planning department requirements;
- b. Construction and permanent financing commitments;
- c. Commencement of construction; and
- d. Placement in service of the development.

**16. Preliminary Plans and Specifications** – Preliminary plans and specifications must be included as part of the application. This includes:

- a. Typical unit plan.
- b. Building elevation.
- c. Site Plan.
- d. Color photos of the site and area surrounding all sides.
- e. Clear "to scale" map identifying the exact location of the project site. If available, GPS coordinates are requested.
- f. For rehabilitation proposals, a detailed scope of work, and photos of the building (s).

**17. Conditional Financing Commitments** – A conditional commitment, on company letterhead, for all: (i) non-MHDC construction and permanent financing; (ii) grants and (iii) equity sources. The conditional commitments must contain, at a minimum:

- a. The financing or equity amount;
- b. The interest rate on the loan;
- c. The term and amortization of the loan;
- d. The debt service amount;
- e. The name, email address and phone number of the contact person; and
- f. The date the conditional commitment expires.

Applicants seeking funding from a local government, the Federal Home Loan Bank or other public or quasi-public funding source that does not issue a funding decision prior to the application deadline must substitute either a letter of application to, or a letter of intent from, the funding source.

**18. Utility Allowance Documentation** – Documentation of the utility allowance used in the application must be included as part of the application. The utility allowance must be consistent with the requirements of Section 42 of the Code. MHDC has established monthly minimum allowances for tenant paid utilities. The actual allowance used must be the greater of: (i) the minimum allowance listed below; or (ii) the allowance published by the local PHA for the corresponding unit size. The utility allowance must be recalculated on an annual basis.

Bedroom Size	Utility Allowance
1	\$50/month
2	\$60/month
3	\$70/month

- 19. Commission Underwriting Standards** – Applications submitted must follow the following underwriting standards:
- Sources and Uses – The development’s “sources and uses” must balance at the time of application.
  - Rents – The proposed rents must be within the Tax Credit requirements and reasonable for the immediate market area. Rents cannot exceed the 2004 HUD published rents.
  - Debt Coverage Ratio – The financial projections for the project must show a minimum debt coverage ratio of 1.20 using reasonable vacancy and expense assumptions for local market conditions.
  - MHDC, in its sole discretion, may determine:
    - Reasonable vacancy and expense assumptions for the local market conditions.
    - Maximum rents appropriate for market conditions and affordability;
    - The project’s feasibility;
    - The sufficiency of the proposed operating and replacement reserves;
  - Contractor and Developer Fees – MHDC will limit developer and contractor fees in calculating the amount of tax credits to be allocated to a proposed development as indicated below (a reduction in fees will result in a reduction of total project costs and eligible basis). HUD also restricts these fees for developments subject to the subsidy layering review.

**Aggregate Contractor Fees may not exceed  
18% of construction costs**

*\* Construction Costs do not include Builder’s Profit, Overhead, and General Requirements\*\**

*\*\* General requirements **must** include the cost of builder’s risk insurance and all bonding costs.*

**Aggregate Developer Fees, (including Overhead and Profit) and  
Consultant Fee Limits as a Percent of Certain Development Costs**

	MAXIMUM DEVELOPER FEE
Substantial Rehabilitation	<b>SUM OF</b> <b>8% of Acquisition Cost</b> <b>PLUS</b> <b>15% of the Balance of Total Replacement Cost</b> <b>(Total Replacement Cost (minus) total cost of acquisition)</b> <b>(Line 39 (-) Lines 37 &amp; 38) of MHDC form 2013)</b>
New Construction	<b>15% of Total Replacement Costs</b> <b>(Line 39 of MHDC form 2013)</b>

**Consultant Fee (in lieu of, or as part of the Developer Fee) is defined as a fee to A third party(ies) for performing tasks that a developer would normally perform e.g., prepare tax credit application and loan application, manage local government approvals, act as owner’s agent during project construction.**

- Project costs, Developer’s and Contractor’s fees will be taken into consideration during the underwriting process. MHDC, however, will not award tax credits based solely on the lowest development costs. The mission of MHDC is to provide high quality affordable housing with long-term viability that contributes to the community.



- 20. Public Notification** – The application must document that the below-listed officials of the jurisdiction have been notified of the intent to develop the proposed housing. The notification to these officials must be in writing and sent to them via certified mail, return receipt requested. Documentation may include: (i) copies of USPS receipts; (ii) actual letters of support from the contacted officials; or (iii) minutes of city/town council meetings. The officials that must be notified are as follows:
- a. Senior elected local executive official;
  - b. State Representative;
  - c. State Senator;
  - d. Aldermen or Councilmen of the Jurisdiction (ward or district) in communities of 20,000 or more;
  - e. Executive Director of the local Public Housing Authority; and
  - f. Superintendent of the school district in which the housing will be located (for newly constructed housing intended for families)

Note that any response to these notification letters, as well as other information from the officials, must be received by Commission staff before November 15, 2004. All correspondence and documentation received from the above listed officials is advisory.

**21. Additional Threshold Requirements**

- a. Proposals with Non-Profit Participation – The Non-Profit Certification Form must be completed and included, along with the organization’s IRS Letter of Determination, Articles of Incorporation and by-laws as part of the application.
- b. Proposals requesting acquisition credit – The Housing Credit Acquisition Form (MHDC form FIN 100) must be completed. MHDC requires, as a condition of the Carryover Allocation or prior to issuance of Private Activity Bonds **that the applicant provide a legal opinion that the property is eligible for the acquisition credit.**
- c. Rehabilitation projects seeking the 9% tax credit – Construction costs for rehabilitation must equal or exceed 40% of the total development costs.
- d. Tax Exempt Bond Financed Rehabilitation Developments - For developments located in rural (non-MSA) areas, the construction costs for rehabilitation must equal or exceed 15% of the total replacement costs. For developments located in urban (MSA) areas, the construction costs for rehabilitation must equal or exceed 25% of the total replacement costs.
- e. All Rehabilitation Developments – A capital needs assessment for the structure(s) must be included as part of the application. The assessment must be prepared by an experienced architect or engineer who is an independent third party, totally unaffiliated with the developer and/or the owner of the proposed development. The assessment may not be any older than 6 months prior to the application deadline or the Tax Exempt Application Submission Date. The assessment must include:
  1. An opinion as to the proposed budget for recommended improvements.
  2. An identification of critical building systems or components that have reached or exceeded their expected useful lives.
  3. A projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis.

**C. Jurisdiction Notification**

The Code requires that the State allocating agency notify the chief executive officer of the local jurisdiction where each proposed development is to be located. When an application satisfies the threshold requirements, a notification will be sent to the chief executive officer of the local jurisdiction, the state senator and state representative for the district of the proposed development, and the executive director of the local public housing authority. Those notified will be given an opportunity to comment on the proposed development. MHDC will consider the comments and may contact the local jurisdiction for additional information. MHDC will also publish a notice in a regional newspaper requesting public comment on the development. Public hearings will be held

in St. Louis, Kansas City, and Columbia to afford the public an opportunity to comment on developments proposed in a given region.

**D. Evaluation Factors**

All applications submitted will be evaluated by MHDC staff using the following federal preferences and selection criteria:

1. **Federal Preferences** – Section 42(m)(1)(B)(ii) of the Code requires that the following be given preference when allocating the housing credit ceiling:
  - a. Projects serving the lowest income tenants.
  - b. Projects obligated to serve qualified tenants for the longest periods.
  - c. Projects which are located in qualified census tracts (as defined by the HUD) and the development of which contributes to a concerted community revitalization plan.
2. **Selection Criteria** -
  - a. Project Location
    1. The site selected for the Project is crucial to the overall success of the development. Effort should be made to locate sites that are convenient to services and in neighborhoods that include a socioeconomic mix of households.
    2. Is the project located in a qualified census tract that qualifies for the 130% basis adjustment?
    3. Is it located in a low income county, defined as a county whose median income is below 80% (HUD definition of low income) of state's non-metropolitan area median income?
    4. If the development is located in a qualified census tract, does the development contribute to a concerted community revitalization plan?
    5. Is the project in a community demonstrating new employment opportunities and a corresponding need for additional housing, or in a "Development Ready" community as defined by the Missouri Department of Economic Development?
  - b. Housing Needs Characteristics:
    1. Does the market study indicate a need for the specific housing type that is proposed?
    2. Does this need correspond to the needs stated in the State's Consolidated Plan, or the needs identified by local officials?
    3. Are the unit sizes, unit mix and amenities suitable for the tenant population identified in the market study?
  - c. Project Characteristics:
    1. Is the size of the development appropriate for the need and demand in the community?
    2. Are the unit sizes and mix of units appropriate for the community and the site?
    3. Will the proposed development preserve existing affordable housing stock or historic buildings?
    4. Is the project intended for eventual tenant ownership?
    5. Does proposed development rehabilitate housing that is a part of a community revitalization plan?
  - d. Sponsor Characteristics:
    1. Has the applicant demonstrated the ability to proceed in an expeditious manner?
    2. Does the sponsor have previous favorable experience in developing affordable housing and a proven record with MHDC and/or other housing finance agencies ("HFA")? (Applicant must include a letter authorizing other HFAs to release information regarding their experience with the applicant.)
    3. Has the applicant demonstrated the experience and success of the proposed managing agent? This includes an excellent compliance record with MHDC and/or other HFAs. (Applicant must include letter authorizing other HFAs to release information regarding their experience with the managing agent.)
  - e. Tenant Populations with Special Housing Needs:
    1. Will the proposed development provide units for tenants with special needs such as:
      - a. Elderly persons, as defined by Section 42?
      - b. Persons with a physical disability?
      - c. Persons with a developmental disability?
      - d. Households that are very low income (below 50% of area median income)?

- e. Single parent families (especially parents with two or more children)?
- f. Homeless
- f. Public Housing Waiting Lists:
  1. Will the development provide units for persons on waiting lists for subsidized housing? Is this verified by the local PHA?
  2. Does the proposal leverage funds from Public Housing sources, such as Hope VI?
  3. Will the units be made available to persons with Section 8 Housing Choice Vouchers?
- g. Tenant Populations of Individuals with Children.
- h. Projects Intended for eventual tenant ownership.

### 3. Other

- a. Special Identified Needs Within the State:
  1. Preservation of existing affordable housing.
  2. Affordable housing for low-income single-parent households.
  3. Affordable housing for large low-income households.
  4. Affordable housing for elderly low income households
  5. Affordable housing for homeless persons and families
  6. Affordable housing for persons with a physical disability.
- b. Local Government Support
  1. Does the applicant have local government support for the proposed housing evidenced by a letter of support from the most senior elected official of the jurisdiction in which the development is located?
  2. Does the applicant have the support of local housing agencies, including the local housing authority, or service providers that are familiar with the tenants who will reside in the development?
  3. Has the applicant shown that the development is part of a larger neighborhood revitalization plan that has been in place for not less than six months prior to the approved date of the allocation plan?
  4. Does the development have a financial commitment from a federal or local unit of government?
- c. Special Support Services
  1. Does the development provide self-sufficiency assistance for residents such as job training, computer literacy training and/or training for obtaining a G.E.D?
  2. If there is a need, will there be a childcare facility for residents' children?
  3. Is there a plan for after school tutoring, study hall and/or computer lab?
  4. Is there a plan for other specially designed community space and/or facilities to accommodate supportive services?
  5. Are there plans for youth development activities?
  6. Does the proposal address other needs of individuals with children?
- d. Proposed Site
  1. Significant Location/Site Features.
  2. Accessibility (Ingress/Egress) of site.
- e. Architectural features
  1. Special features regarding universal design or accessible space.
  2. Accessibility of common/public areas.
  3. Number of units accessible to and/or adaptable for persons with physical disabilities.
  4. Internet accessibility. (high-speed connection)
- f. Total development cost of proposed development.
- g. Proposed rents of project in relation to area median income and market rents.
- h. Does proposed development fulfill statewide housing needs?
- i. Is the proposed development consistent with the needs and priorities of the local community?
- j. Does the proposed development contribute to the overall goals of the Commission?
- k. Is the proposed development preserving affordable housing stock?
- l. Is the developer of the proposed development familiar with and have experience in the community in which the development will be located?
- m. Overall feasibility of proposed development.

4. **Site Evaluation** – After review of the accepted applications, MHDC staff will conduct a site visit to determine general site suitability. Sites will be evaluated on the following:
  - a. Marketability
  - b. 24 CFR 941.201 Site and neighborhood standards
  - c. Suitability of site regarding slope, noise (e.g., railroad tracks, highways), flood plain or wetland issues.
  - d. Other Environmental issues or concerns.
  - e. Conformance with neighborhood character and land use patterns.
  - f. Proximity to public transportation.
  - g. Proximity to shopping.
  - h. Proximity to schools.
  - i. Proximity to medical services.
  - j. Proximity to parks/playgrounds.

**E. Development Standards**

1. **General** - Each development must satisfy the needs of the local area affordable rental market.
2. **Additional Requirements** - All housing projects must:
  - a. Comply with published MHDC design, submittal and construction standards (See #3 below).
  - b. Comply with applicable local, state and federal ordinances and laws.
  - c. Provide facilities, equipment and amenities appropriate for the intended occupants.
  - d. Be designed to meet the established construction budget.
  - e. Be designed to be economical to maintain.
  - f. For all developments with 12 or more units, regardless of funding source, a minimum of 5% of units must be designed in compliance with one of the nationally recognized standards for accessibility/adaptability to wheelchair users.
3. **Design** - MHDC adheres to the following standards in the design of all rental housing (See MHDC Architectural Procedures Manual dated February 21, 2003):
  - a. Construction codes as adopted by the governmental unit in which the development is located.
  - b. In the absence of locally adopted codes, the latest available edition of the International Building Code (2000), the International Plumbing Code, the International Mechanical Code, the National Electrical Code and/or the International Residential Code.
  - c. Local zoning ordinances.
  - d. The Fair Housing Act of 1968, as amended.
  - e. Proposals receiving federal, state, county or municipal funding may, in addition to the Fair Housing Act Guidelines, be required to comply with the Architectural Barriers Act of 1968, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, all as amended.
  - f. No part of any residential structure may be located within 30 feet of the outer boundary of a high-pressure gas and/or liquid petroleum transportation pipeline easement.
  - g. No part of any residential structure may be located within 100 feet (horizontal) of any high voltage transmission lines.
  - h. The **2000** International Energy Conservation Code (formerly the Model Energy Code) as published by ICC/CABO.
  - i. For the control of lead hazards: the Lead Paint Poisoning Prevention Act, HUD Guidelines for the Evaluation and Control of Lead Based Paint in Housing, and the MHDC Lead Based Paint Policy.
  - j. New and substantially rehabbed units wired for internet access.
4. **Additional Architectural Requirements** - Applicants that receive an allocation of tax credits (4% or 9%) are required to:
  - a. Submit one complete set of construction documents (plans and specifications) to the MHDC architectural staff **prior to** the start of construction.

- b. Provide the MHDC architectural staff an information sheet with a construction schedule, and the name and contact information of the project manager and project architect.
  - c. Notify the MHDC architectural staff, in writing, when construction has reached 90% completion.
  - d. Schedule a final inspection of all units/buildings with the MHDC architectural staff.
5. **Equal Opportunity Standard** - The Commission requires that occupancy of housing financed or assisted by MHDC shall be open to all persons regardless of race, color, religion, sex, familial status, disability, or national origin. Also, contractors and subcontractors engaged in the construction or rehabilitation of such housing shall provide equal opportunity for employment without discrimination as to race, color, religion, sex, familial status, disability, or national origin.

**F. Underwriting Standards**

MHDC has adopted minimum underwriting standards for all developments that wish to compete for tax credits under this Plan. **These minimum standards must be met at the time of application. Developments that do not meet the following minimum underwriting standards will not be considered for an allocation of tax credits.** Implementation of these standards does not constitute a representation of the feasibility or viability of the development.

The following standards will be used in the underwriting of all proposals, including proposals financed with tax-exempt bonds requesting tax credits outside of the housing credit ceiling. Underwriting conclusions and requirements will be reflected on the MHDC form 2013, attached to each Conditional Reservation, Letter of Determination, and/or Carryover and Final Allocation letters.

1. **Per Unit Cost** - The per-unit replacement cost of tax credit developments shall not exceed HUD Section 221(d)(3) limits, adjusted to reflect increases in construction costs since their adoption in 1992, and further adjusted by HUD's high cost factor to reflect differences in geographic areas. To be consistent with other housing programs, which are defined by SMA, the Commission will include Lincoln and Warren Counties in the St. Louis maximum cost limits and Lafayette and Clinton Counties in the Kansas City maximum cost limits. (MHDC, in its sole discretion, may make exceptions on a case-by-case basis.)
2. **Projects receiving HOME Funds** - Federally imposed limitations will apply (See 24 CFR 92).
3. **Projects receiving historic rehabilitation tax credit** will be allowed to deduct the residential portion of the historic tax credit from the project cost to allow for stricter rehabilitation standards. (If known, the actual cost of this historic rehabilitation should be deducted, instead.)
4. **Unique Development Characteristics** - The Commission may consider higher construction costs that can be attributed to unique development characteristics, and which are consistent with the needs and priorities identified in the appropriate Consolidated Plan.
5. **HUD Section 221(d)(3) Limits Variance** - The Commission will accept a variance of 140% of HUD's Section 221(d)(3) limits for the St. Louis and Kansas City Metro areas. (MHDC, in its sole discretion, may make exceptions on a case-by-case basis. If the per unit credit amount does not exceed \$10,000, no waiver of this policy will be required.
6. **Identity of Interest** - The application must list any identity of interest between the sponsor, the developer, the architect, the contractor and all subcontractors, suppliers and vendors. If any identity of interest is not disclosed in advance, the cost of that contract/subcontract will not be recognized at cost certification.
7. **Subcontractors and Suppliers** - All subcontractors and suppliers must add reasonable commercial value to the product/services furnished
8. **Developer and Contractor Fees** - MHDC will limit developer and contractor fees and overhead in calculating the amount of tax credits to be allocated to a proposed development as previously stated and reflected in this document.

**G. Minimum Underwriting Assumptions**

The following minimum underwriting assumptions will be used for processing the application. These are minimum requirements. Results of the market study may require different, more conservative assumptions.

1. **Rents** - Rents that are below prevailing market rents.
2. **Vacancy Rate** - A vacancy rate from 5% to 7% of gross rental income.

3. **Operating Expenses** - Per Unit Per Annum Operating Expenses (PUPA) of \$2,800 for rural developments and \$3,100 for metro developments (higher for developments that are providing additional services), with tax abatement. The following applies when calculating the PUPA operating expenses:
  - a. Minimum insurance expense of \$200 PUPA;
  - b. Minimum real estate taxes of:
    1. \$300 PUPA for rural developments; and
    2. \$500 PUPA for metro developments.
  - c. Minimum replacement reserves of \$300 PUPA;
  - d. MHDC **does not allow** an Asset Management fee in operating expense;
  - e. MHDC **does not allow** a syndicator or general partner fee in operating expense;
4. **Debt Coverage Ratio** – A minimum of 1.2 debt coverage for the aggregate of all amortized (hard) debt.
5. **Income Growth** - Annual Rental Income Growth of 2%
6. **Expense Growth** - Annual Operating Expense Growth of 3%

#### H. Determination of Tax Credit Amount

The Code and the State Tax Relief Act require that MHDC allocate to a development the amount of federal and state tax credits that MHDC determines is necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period. MHDC retains the right, in its sole discretion to: (i) reserve less than the amount requested on the application; (ii) reserve less than would result by using an applicable fraction of 100%; and to deny approval of any tax credit amount. MHDC will evaluate each proposed development, taking into account such factors as it determines relevant, including, but not limited to, the following items:

1. Project cost, including the reasonableness of cost per unit, developer fees and overhead, consultant fees, builder profit and overhead, and syndication costs;
2. Sources and uses of funds and the total financing planned for the development, including the ability of the development to service debt;
3. Project income and expenses, including a determination of the reasonableness of the proposed operating costs and the affordability of the proposed rents;
4. The proceeds or receipts expected to be generated by reason of the tax credit;
5. The percentage of the credit dollar amount used for project costs other than the cost of non-basis items;
6. The use of federal funds and other assistance (applicable HUD subsidies will be subject to a subsidy layering review based on HUD's most current subsidy layering review guidelines);
7. Other factors which may be relevant to the economic feasibility of the development, such as the area economy or the housing market; and
8. The determination of Total Development Costs and the balancing of Sources and Uses.
9. MHDC will arrive at the credit amount needed by using three calculation methods. The amount of credits reserved will be no greater than the smallest of the amounts resulting from the three calculation methods. MHDC retains the right to reserve less than the result of the three methods. The calculation methods are:
  - a. Method One: Qualified Basis Calculation;
  - b. Method Two: Funding Gap Calculation; and
  - c. Method Three: Cost Reasonableness Calculation
10. Assumptions used for calculations mentioned in #9 above - For evaluation purposes during the Eligibility Cycle, MHDC will select:
  - a. An applicable percentage based on current trends - The applicable percentage to be used for the current year will be reflected in the revised Fin 100; and
  - b. A tax credit equity factor based on current market trends - The tax credit equity factor that will be used for the current year will be announced in August 2004. This will establish the minimum equity factor that will also be used in the evaluation process at both Carryover and Final Allocation.
11. The 130% increase in basis allowed for developments located in any of the following areas.
  - a. Qualified Census Tracts
  - b. Difficult Development Areas
12. Based on its evaluation, MHDC will estimate the amount of tax credits to be reserved for the development. If there are changes in the sources and/or uses of funds or other material changes at various stages of processing, MHDC will, if necessary, adjust the tax credit amount

to reflect the changes (not to exceed the amount reserved or allocated), and the tax credit amount may be reduced. This determination is made solely at MHDC's discretion and is in no way a representation as to the actual feasibility or viability of the development.

13. The analysis to determine the tax credit amount necessary will be conducted at the following processing stages:
  - a. The time of preliminary application,
  - b. The time a carryover allocation is approved (if applicable); and
  - c. The time the development is placed in service (after all project costs are finalized and a third party cost certification has been completed) and requests issuance of IRS Form(s) 8609.

#### **I. Award of Conditional Reservation**

Developments that receive approval from the MHDC Board of Commissioners will be awarded a Conditional Reservation (the "Reservation") of tax credits. Reservations may be made subject to such conditions as MHDC determines necessary or appropriate to assure that the development will meet the goals of this Plan in a timely manner. This may include, but is not limited to, the development's progress toward completion and compliance with MHDC and federal and state tax credit requirements. Should MHDC learn that any principal involved with a proposed development has serious and/or repeated non-performance or non-compliance issues in Missouri or any other state at the time of application, the application will be rejected. The prior performance considered might include, but is not limited to, progress made with previous tax credit reservations, development compliance and payment of fees.

Each sponsor receiving a reservation of tax credits is required to reflect their acceptance by signing and returning one copy of the reservation to MHDC. Attached to and made a part of each reservation is the MHDC form 2013, which reflects MHDC's underwriting of the development (i.e. tax credit allocation, approved rents, total development costs, operating budgets, debt service and sources and uses). This underwriting in no way assures feasibility or viability of the development. It is the MHDC declaration of approved rents and credit allocation at a particular stage of processing.

**Reservations will expire on September 1, 2005. All projects receiving a reservation must apply for a carryover allocation prior to this expiration date.**

Initial monthly rents shall not exceed those MHDC approved rents as reflected on the MHDC Form 2013 attached to the Reservation, Carryover and Final Allocation letter. Any increase in the annual rents must be approved by MHDC.

#### **J. Revocation of Reservations**

A reservation is subject to revocation should the development sponsor fail to comply, in a timely manner, with the conditions thereof; including, but not limited to, failure to provide evidence, satisfactory to MHDC, of financial feasibility, sufficient progress toward placement in service or eligibility for a carryover allocation.

### **III. CARRYOVER ALLOCATION**

#### **A. Requirements for Carryover Allocation**

The Code allows an allocation of federal tax credits to a qualified building(s) that will not be placed in service in that year, provided that:

1. The building(s) is placed in service by December 31<sup>st</sup> of the second calendar year following the year of allocation; and
2. The taxpayer's basis in the building(s) is more than 10% of the reasonably expected basis in the building(s) as of December 31<sup>st</sup> of the second calendar year following the year the carryover allocation is made. The required basis amount must be achieved by the later of:
  - a. The close of the calendar year in which the allocation is made: or
  - b. Six months after the date of the carryover allocation.
3. To be considered for a carryover allocation, the Owner will be required to submit an application package that contains the following:

- a. An updated application.
  - b. A completed, signed (original signatures in blue ink) and notarized Low-Income Housing Tax Credit Carryover Allocation Owner Certification (MHDC Form 3342).
  - c. A copy of a Warranty Deed.
  - d. Copies of Firm Commitments\* for all Construction and Permanent financing sources - The copy of an enforceable commitment for all loans, grants, and/or owner equity that will be used for the construction and permanent funding of the project must be included as part of the application for carryover allocation.
4. The commitments must be on entity letterhead, dated, signed by an authorized official and contain the following information:
    - a. The financing or equity amount;
    - b. The interest rate of the loan;
    - c. The loan term and amortization period;
    - d. The debt service amount;
    - e. The name, email address, and phone number of the contact person; and
    - f. The date the Firm Commitment will expire.
  5. Copy of Firm Equity Commitment. A copy of the Firm Commitment from the equity provider must be included as a part of the application. The commitment must be on the equity provider's letterhead, dated, signed by an authorized official of the equity provider and contain the following information:
    - a. The anticipated credit amount;
    - b. The estimated equity amount;
    - c. The cents per equity dollar being paid for the tax credits;
    - d. The pay-in schedule;
    - e. The name, email address, and phone number of the contact person; and
    - f. The date the Firm Commitment will expire.
  6. MHDC defines Firm Commitment (for 4 and 5 above) as follows: The authorized body (Investment Committee, Loan Committee, Board, etc.) of the financing and/or equity source must have given approval and the commitment is subject only to those conditions which are totally under the control of the Owner to meet. The terms and conditions must be clearly identified in the commitment letter. Application and commitment fees must have been paid or must be required to be paid upon closing.
  7. Attorney's Opinion letter.
  8. An Independent Auditor's Certification of 10% expenditures, completed by an independent tax accountant, submitted on firm letterhead, dated and signed by the person performing the certification. MHDC Form 3343 provides required wording of the certification. Section 42(h)(1)(E)(ii) of the Code allows up to 6 months after the date of the Carryover Allocation to fulfill the requirement to expend more than 10% of the reasonably expected basis. MHDC has chosen the more restrictive language of requiring the 10% test to be completed by December 1<sup>st</sup> of the year the allocation is made to fulfill MHDC's IRS reporting requirements.
  9. Rehabilitation projects requesting acquisition credits must provide an opinion from an independent tax attorney confirming the project's eligibility under Section 42(d)(2)(B) of the Code.
  10. Evidence of all necessary Planning and Zoning approvals.
  11. A check for an amount equal to 4% of the annual credit amount requested in the Carryover application.
  12. An updated 15-year pro forma operating budget.
  13. Such other documents or certifications as MHDC determines necessary or useful in the determination that the development is eligible for a carryover allocation.

**B. Carryover Allocation Agreement**

Developments that satisfy the requirements for a Carryover Allocation of tax credits will be required to enter into a Carryover Allocation Agreement. This document will define the amount of tax credit allocated to the project, the low-income unit set-asides, the percentages of median income to be served, the special housing needs units committed to (if any) and any other such requirements as MHDC may apply. A Carryover Allocation is for a specific credit amount which **may be reduced, if warranted, at the time a final allocation is made.**



### C. Recapture of Carryover Allocations

MHDC retains the right to recapture a carryover allocation of credits to a development prior to the end of the two-year carryover allocation period allowed under the Code. Each carryover allocation will be subject to a written agreement that will contain conditions and deadlines that are precedent to a final allocation of tax credits by the Commission. Should the development or owner fail to comply with all such conditions and deadlines, MHDC may, in its sole discretion, rescind the carryover allocation and use the recaptured credits for other developments.

## IV. FINAL ALLOCATIONS

Developments that received a carryover allocation of federal credits must be placed in service by the end of the second year following the year of the allocation or the tax credits are subject to recapture. The placed in service date for new construction is the date on which the building is certified as being suitable for occupancy in accordance with state or local law. The placed-in-service date for rehabilitation is the close of the 24-month period over which the expenditures are aggregated and the rehabilitation process is certified as being complete.

MHDC will make final allocations of tax credits no later than the end of the year in which an eligible building or development which has received a reservation, a letter of determination or a carryover allocation is placed in service. The credit amount that will be allocated is based on MHDC's final determination of the qualified basis for the building or development based on an accountant's certification of final costs provided by the Owner and a final determination of the credit amount as outlined in Section II.H. **The final credit amount allocated may be less than the amount reserved or allocated previously.**

Owners may submit a request for a final allocation of tax credits at any time during the year, however, no later than December 10th. MHDC will establish a reasonable year-end deadline of December 10th for eligible developments that must be placed in service. The earlier deadlines enable MHDC to efficiently complete its reviews and documents prior to the IRS deadline of December 31st.

### A. Requirements for Final Allocation

Owners will be required to submit a request for Final Allocation, which must include the following items:

1. A completed and signed (**original signatures in blue ink**) Owner's Development Costs and Low-Income Housing Tax Credit Cost Certification (MHDC Form 3340).
2. A completed, signed (**original signatures in blue ink**) and notarized Tax Credit Addendum to the Owner's Development Costs and Low-Income Housing Tax Credit Cost Certification, including Table A (MHDC Form 3340-A).
3. An Independent Auditor's Report (**for the complete project**), completed by an independent tax accountant, submitted on firm letterhead, dated and signed by the person performing the audit. (MHDC Form 3340-B provides required wording.)
4. A completed Owner's Attorney's Opinion by an independent tax attorney.
5. A completed, signed (**original signatures in blue ink**) and notarized Low-Income Housing Tax Credit Development Financing Certification (MHDC Form 3341). A copy of the Note and recorded Deed of Trust must be provided for **each** source of financing.
6. A Certificate of Occupancy for each building in the project or a Certificate of Substantial completion for each rehabilitated building if the jurisdiction does not issue a Certificate of Occupancy for such units. MHDC will use the date on these documents as the placed in service date for the IRS Form(s) 8609.
7. Photos of the completed building(s) identified by address and Building Identification Numbers ("BINs"). For private activity bond-financed projects, MHDC staff will assign BINs.
8. A complete copy of the executed latest Partnership Agreement.
9. Rehabilitation projects requesting acquisition credits **must provide an opinion from an independent tax attorney confirming the project's eligibility under Section 42(d)(2)(B) of the Code.** (For projects that did not receive a Carryover Allocation).
10. A completed Partial Subordination to the Land Use Restriction Agreement **from every lien holder(s)** with **original signature in blue ink** (See Section IV.C).

11. A check for the final allocation fee (only if the project did not receive a carryover allocation).
12. Check for the compliance monitoring fee.
13. MHDC compliance training certificate for owner, representative, property manager and site manager.
14. A copy of the MHDC Final Inspection Report.
15. An updated 15-year pro forma operating budget.
16. A completed Plan Review Worksheet.

**Additional requirements for Developments Financed with Private Activity Bonds**

17. Election of Applicable Percentage.
18. Issuer Certificate including the date the Certificate was issued.
19. Designation of placed in service date for Gross Rent Floor effective date.
20. Agreement for Section 42(m)(2)(D) Determination.

**B. Cost Certification/Audit Requirements**

The MHDC criteria for cost certification and annual audit are as follows:

1. **For developments of 12 units or less**, the Commission will accept certification of costs from the development owner.
2. **For developments of 13 units or more**, owners must submit a cost certification, supported by an Audit Report of an independent Certified Public Accountant. Such Audit Report will be prepared in accordance with generally accepted auditing standards and MHDC Guidelines (MHDC Handbook 3300).
3. **For Rural Development projects**, the cost certification accepted by Rural Development must be submitted.
4. **For developments of 20 units or more**, owners must yearly submit an annual audited operating statement. For developments of fewer than 20 units, a compilation prepared by a licensed independent accountant, if certified true and correct by the owner, will be accepted.

**C. Land Use Restriction Agreement**

Section 42(h)(6) of the Code requires that a development be subject to "an extended low-income housing commitment". The Commission complies with these requirements by the execution and recording of a Land Use Restriction Agreement (the "LURA") at the time the development is placed in service. The LURA sets forth, as covenants running with the land for a minimum of thirty (30) years (or additional years if the development owner has committed to a longer use period), the low-income unit set-asides, the percentages of median income to be served, the special housing needs units committed to (if any), and any other such requirements as MHDC may apply based on the allocation plan.

The development owner will be required to have all lien holders of a development complete and sign a "Partial Subordination to the Land Use Restriction Agreement". Section 42(h)(6)(E)(ii) of the Code requires that even in the event of foreclosure, deed in lieu of foreclosure or unwillingness to maintain the low-income status of the project, that for a period of 3 years the following is not permitted: (i) The eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit; or (ii) The gross rent can not be increased for any low-income unit. The Partial Subordination to the Land Use Restriction Agreement will require all lien holders to honor those provisions of the LURA.

**D. Issuance of IRS Form 8609**

IRS Form 8609(s) will not be issued by MHDC until the following conditions have been met (**no exceptions will be made**):

1. Each building in the project (all buildings) is a qualified low-income building as defined by Section 42 of the Code. MHDC will not issue 8609(s) for any portion of an incomplete development.
2. The owner and the development are in compliance with the terms of the LURA.
3. The owner has provided, in a format provided by MHDC, a completed final application package (for the complete development).
4. The owner has provided a copy of the latest executed partnership or operating agreement.

5. The owner has paid the final allocation fee (if applicable) and the compliance monitoring fee.
6. The owner representative and the management agent have successfully completed a compliance training session conducted or approved by MHDC.
7. MHDC has completed its final inspection of the property.
8. MHDC has made its final determination of the credit amount and its final determination pursuant to Section 42(m)(2) of the Code.

## **V. DEVELOPMENTS FINANCED WITH TAX-EXEMPT BONDS**

Tax-exempt private activity bond financed developments are eligible for federal and state tax credits without competing for an award from MHDC's annual housing credit ceiling. That is the only requirement of this plan that does not apply. Unless otherwise stated, these developments must comply with all other provisions of this Plan.

Under Section 42(h)(4) of the Code, developments financed with tax-exempt bonds may be entitled to the 4% tax credits outside the federal housing credit ceiling. The bonds must have received an allocation of private activity bond cap pursuant to Section 146 of the Code, and principal payments on the bonds must be applied within a reasonable period to redeem the bonds. Tax credits are allowed for that portion of a development's eligible basis that is financed with the tax-exempt bonds. If 50% or more of a development's aggregate basis is so financed, the development is entitled to credits for up to the full amount of the qualified basis.

Developments financed with tax-exempt bonds are required by the Code to apply through the state credit agency for an allocation of tax credits and for a determination that the development satisfies the requirements of this Plan. The proposal does not have to compete in the competitive cycle, so Owners may submit an application at any time, but must meet all other requirements of the application process, including the Threshold requirements (See Section II.B).

The Owner must submit a request for LIHTCs to MHDC after the issuer of the bonds has approved an "inducement" for the development and after the development has been assured that private activity bond volume cap is available, and before rehab or construction begins. If the development is seeking mortgage insurance through the Federal Housing Administration (FHA), or credit enhancement from another source, the Owner should submit the request to MHDC after the credit enhancer has approved a preliminary mortgage amount.

MHDC is required by the Code to notify the Chief Executive Officer of the local jurisdiction where the proposed development will be located, of the tax credit application, and provide adequate opportunity for comment.

MHDC staff will review the application, determine whether the development is eligible and meets the requirements of this Plan, and make an initial determination of the development's tax credit amount. When MHDC has received verification that bonds have been issued, MHDC will issue Building Identification Number (s) (BIN)'s.

For mixed-income developments financed with private activity bonds, when feasible and practicable, MHDC requires that Low-Income units be distributed proportionately throughout each building, and each floor of each building, of the development and throughout the bedroom/bath mix and type. Both market rate and low-income units must have the same design regarding unit amenities and square footage. Amenities include, but are not limited to, fireplaces, covered parking, in-unit washer/dryers, etc.

If the development loan will be FHA-insured, MHDC will complete a HUD-required subsidy-layering review to assure that the development complies with HUD guidelines pursuant to Sec. 911 of the 1992 Housing and Community Development Act.

MHDC will provide the Owner and the bond issuer with a letter confirming that the development satisfies the requirements of the Plan and stating the preliminary amount of tax credits. At this time, MHDC will request that the issuer confirm MHDC's determination of the tax credit amount, as required by the Code. In the year in which the development is placed in service, the Owner must request a final allocation of credits. MHDC will provide an application package for final allocation requests. All allocation requests must be submitted by December 10th in order to permit timely review and preparation of documents.

Developments receiving credits in accordance with this section are required to follow the same final allocation application process as described herein and to enter into a LURA which will govern the low-income use and any other Plan requirements.

## **VI. OWNER ELECTIONS**

### **A. Applicable Credit Percentage for Federal Credits**

The applicable percentage (except for developments financed with tax exempt bonds) may be “locked in” at two points during the allocation process, (i) the month in which such building is placed in service, or (ii) at the election of the taxpayer, at the time of a carryover allocation. The Commission’s Carryover Allocation Agreement provides a space for such election.

For developments financed with tax-exempt bonds, the applicable credit percentage is established at either, (i) the month in which the building is placed in service, or (ii) at the owner’s election, the month in which the bonds are issued. If the latter is desired, the Election Statement (form provided by MHDC as exhibit to the Letter of Determination) must be signed by the owner, notarized and submitted to MHDC before the close of the fifth calendar day following the month in which the bonds are issued.

### **B. Gross Rent Floor**

Section 42(g)(2)(A) of the Code provides that a Low-Income unit is “rent restricted if the gross rent for such unit does not exceed 30% of the imputed income limitations applicable to the unit. Under Revenue Procedure 94-57, the effective date of the income limitation used to establish the gross rent floor is the time the Commission initially allocates a housing credit dollar amount to the development (that is, the date of a carryover allocation, or if no carryover allocation is made, the date of final allocation) unless the Owner designates a building’s placed in service date as the effective date for the gross rent floor. Such designation must be made by advising the Commission in writing no later than the placed in service date. The Carryover Allocation Agreement provides a space for such designation. The effective date used for the determination of the gross rent floor for developments not seeking a carryover allocation will be the date of final allocation, which normally follows the placed in service date.

For Developments financed with tax-exempt bonds, the effective date of the income limitation used to establish the gross rent floor is the date the Commission issues a Letter of Determination for the building, unless the Owner designates a building’s placed in service date as the effective date for the gross rent floor. Such designation must be made by advising the Commission in writing no later than the placed in service date.

The gross rent floor election does not replace the MHDC requirement that the initial monthly rents shall not exceed those MHDC approved rents as reflected on the MHDC Form 2013 attached to the Reservation, Carryover and Final Allocation letter. Any increase in the annual rents must be approved by MHDC.

### **C. Credit Period**

Section 42(f)(1) of the Code defines the credit period for federal tax credits as the ten (10) taxable years beginning with (i) the taxable year in which the building is placed-in-service, or (ii) at the election of the taxpayer, the succeeding taxable year. The state credit mirrors the federal credit requirements. If a qualified development is comprised of more than one building, the development shall be deemed to be placed in service in the taxable year during which the last building of the qualified development is placed in service.

## **VII. USE OF HOME or NAHASDA FUNDS**

The HOME Investment Partnership Act (HOME) and the Native American Housing Assistance and Self-Determination Act (NAHASDA) can be a valuable source to assist in the development of affordable housing. HOME and NAHASDA are considered by Section 42 of the Code as “federal funds”. Generally when these funds are used, they are provided to the development as either grants or low interest rate loans. A tax credit development **must** deduct the amount of a federal grant from the eligible basis. A low-interest rate loan of federal funds results in the development being classified as “federally subsidized” and, thus, ineligible for the 9% tax credit. However, Section 42(i)(2)(E)(i) of the Code provides that below-market loans, funded with HOME or NAHASDA dollars, will not result in a tax credit development being classified as “federally subsidized”, **if** the Owner contractually commits to having at least 40 percent of **all** the residential units in **every** building occupied by individuals whose incomes are 50 percent or less of area median gross income.

This commitment enables a development to therefore qualify for the nine-percent tax credit. Developments combining below market HOME or NAHASDA loans and the nine-percent credit are not eligible for the increase in eligible basis permitted for developments located in “qualified census tracts” and “difficult development areas”.

## **VIII. SUBSIDY LAYERING REVIEW**

Section 911 of the Housing and Community Development Act of 1992 and Section 102 of the Department of Housing and Urban Development Reform Act of 1989 have placed limitations on combining LIHTC with certain HUD and other federal programs. The limitations currently apply to a number of programs under the jurisdiction of the HUD Office of Housing, including but not limited to, Section 221(d)(3), 221(d)(4), 223(f) and 542(c) mortgage insurance, Flexible Subsidy, and project-based Section 8 assistance.

As part of a Memorandum of Understanding (MOU), dated May 8, 2000, between HUD and MHDC, developments combining federal Low Income Housing Tax Credits with these programs will be subject to a subsidy layering review by MHDC.

The MOU requires that HUD and MHDC share information on the developer’s disclosure of sources and uses of funds and on development costs for all developments financed with a combination of federal tax credits and HUD Housing assistance. This review is designed to ensure that such developments do not receive excessive federal assistance. The following standards will apply for those developments subject to subsidy layering review:

### **A. Development Fee Standard**

MHDC may consider a developer’s fee not to exceed 15%. Developer’s fee and overhead, including any consultant fees, may not exceed 15% of the total replacement cost (Line 39 of MHDC 2013). For acquisition and substantial rehabilitation development, the developer’s fee cannot exceed the sum of 8% of the acquisition cost plus 15% of the balance of the replacement costs. (See also Section II.B.19e.)

### **B. Builder’s Fee Standard**

MHDC will allow a maximum of 8% builder’s profit, 2% builder’s overhead and 6% general requirements. These percentages relate to the construction contract amount only (lines 1 through 6, Estimate of Replacement Cost, MHDC form 2013), excluding overhead, general requirements and profit.

## **IX. FEES**

### **A. Application Fee**

An application fee of \$1,500 (\$750 for Non-profit developers applying under the 10% Non-Profit set-side) is due when the Application is submitted. The fee is non-refundable and must be included with the application. Should a check be returned, for any reason, the application will be immediately rejected and returned to the applicant.

### **B. Reservation Fee**

When the development has received conditional approval, a reservation fee of 3% of the approved annual federal tax credit amount must be paid prior to the issuance of the Reservation Letter.

The fee amount is to be rounded up to the next whole dollar. The sponsor will have 30 days in which to pay the reservation fee. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.

**C. Allocation Fee**

At the time of Allocation (either Carryover or 8609, whichever is achieved first) an Allocation Fee of 4% of the requested annual federal tax credit amount will be due. This amount must be submitted with the Carryover or 8609 application (whichever is submitted first). The fee amount is to be rounded up to the next whole dollar. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced, or the tax credits are returned or unused.

**D. Recording Charge**

A recording charge of \$160 is to accompany the executed LURA when it is returned to MHDC for recording.

**E. Compliance Monitoring Fee**

A compliance monitoring fee will be assessed to cover the costs of the IRS-required compliance monitoring program. The fee is \$10 per low-income unit (including common units) multiplied by 15 years (the initial compliance period). This lump sum payment is to be included with the application for 8609(s). The 8609(s) will not be issued until the fee is paid in full. MHDC will not allow the compliance monitoring fee to be included in eligible basis.

**F. Developments Financed with Tax Exempt Bonds**

Developments Financed with Tax Exempt Bonds and applying for the 4% credit will pay the following described fees:

**Application Fee** – Same as A. above.

**Reservation and Allocation Fee** - Prior to MHDC issuing the 42M Determination Letter, a reservation and allocation fee of 7% of the approved annual Federal tax credit amount must be paid. 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.

Any increase in Federal credits from the amount reflected in the 42M Determination Letter (the original Allocation) must be requested in writing, and must be accompanied by a check reflecting the increased fee based upon the increased credit amount and the 7% fee.

**Recording Charge** – Same as D. above.

**Compliance Monitoring Fee** – Same as E. above.

## **X. SECTION 42 COMPLIANCE MONITORING**

Section 42(m)(1)(B)(iii) of the Code mandates that state housing credit agencies monitor all placed in service tax credit developments for compliance with the provisions of Section 42 of the Code. The Code also mandates that the Internal Revenue Service be notified, by the state housing credit agency, of any instance of noncompliance. In addition, MHDC will monitor developments for compliance with The LURA provisions which contain any additional owner commitments made in the development selection process, e.g. additional low income units or an extended low-income use period. MHDC will make available to development Owners a Compliance Manual (Low-Income Housing Tax Credit Program Compliance Manual, Rev. No 4, April 14, 2003, as may be amended from time to time) explaining the LIHTC monitoring process in detail. All owner representatives and their management agent representatives will be required to successfully complete a compliance training session conducted or approved by MHDC prior to the release of IRS Form 8609 for federal tax credits or the Eligibility Statement for state tax credits.

## **XI. MISCELLANEOUS**

**A. Status Reporting**

Developments receiving Reservations and Carryover Allocations will be required to provide monthly progress reports, in a format prescribed by MHDC. Information requested will be development specific and may include, but is not limited to, such items as zoning and other local development

approvals, firm debt, equity and/or gap financing and construction progress toward development completion. Owners of developments that will not be placed in service in the year that the reservation is given may also be required to provide information regarding the Owner's ability to meet Code and MHDC requirements to obtain a carryover allocation.

**B. Changes to Development**

A reservation of tax credits is based upon information provided in each development application. Until a development is placed in service, any material changes to the development, such as changes in the site, scope, costs, ownership or design, as submitted in the application, will require written notification to and approval by MHDC. Changes in development characteristics, which were the basis, in whole or in part, of MHDC's decision to reserve credits, may result in a revocation of the reservation, or a reduction in the amount of the tax credit award.

**C. Transfers of Reservations and Carryover Allocations**

Reservations, Carryover Allocations and/or state tax credit allocations are non-transferable, except to an entity in which the transferring holder of the Reservation or Carryover Allocation is the general partner or controlling principal, without MHDC's prior written consent. Because all representations made with respect to the sponsor, its experience and previous participation are material to the evaluation made by MHDC, it is not expected that MHDC's consent will be granted for transfers to an unrelated entity unless a new application is submitted and approved.

**D. Additional Credits**

Owners may apply for an increase in tax credit amounts in subsequent years if a development's eligible basis has increased. Additional credits may be awarded if:

1. There are additional credits available.
2. MHDC is satisfied that the additional amount is necessary for the financial feasibility and viability of the development; and
3. The increased amount of credits does not exceed MHDC's maximum for credit awarded or cost reasonableness limits.

**E. Administration of Plan**

MHDC reserves the right to resolve all conflicts, inconsistencies or ambiguities, if any, in this Plan or which may arise in administering, operating or managing the reservation and allocation of federal and state tax credits or the State's Low-Income Housing Tax Credit program and the right, in its sole discretion, to modify or waive, on a case-by-case basis, any provision of this plan that is not required by the Code. All such resolutions or any such modifications or waivers are subject to written approval by the Executive Director and are available for review, as requested, by the general public.

**F. Amendments to the Plan**

MHDC reserves the right to amend this Plan from time to time, pursuant to the Code, for any reason, including, without limitation:

1. To reflect any changes, additions, deletions, interpretations, or other matters necessary to comply with the Code or regulations promulgated hereunder.
2. To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Plan.
3. To insert such provisions clarifying matters or questions arising under this Plan as are necessary or desirable and are not contrary to or inconsistent with this Plan or the Code.
4. As to state tax credit matters, to comply with the State Tax Relief Act.
5. To facilitate the award of tax credits that would not otherwise be awarded.

All such amendments shall be fully effective and incorporated herein upon the Commission's adoption of such amendments. **This Plan also may be amended as to substantive matters at any time following public notice and public hearing, and approval by the Commission.**

**G. MHDC Discretionary Authority**

MHDC reserves the right, in its sole discretion; to

1. Carry forward a portion of the current year's housing credit ceiling for allocation in the next calendar year.
2. Under certain conditions, issue a reservation for a portion of the next year's housing credit ceiling, and

3. Under certain conditions, issue a binding commitment for some portion of the next year's housing credit ceiling.
4. MHDC also reserves the right, in its sole discretion, to limit the number of developments in a specific market or geographic area.
5. To award a reservation based on the amount of tax credits requested relative to the amount of funding available. This could result in awarding tax credits for a development that will fully utilize the amount available, while denying credit to a development which requested more credit than is available, without regard to location or ranking.
6. MHDC reserves the right to fund fewer than the number of units proposed in an application.
7. Section 42(m)(1)(A)(iv) of the Code requires MHDC to make available to the general public a written explanation for any exceptions made to the requirements of this Plan.

**H. Other Conditions**

In making reservations or allocations, MHDC relies on information provided by or on behalf of the sponsor. MHDC's review of documents submitted in connection with the tax credit allocation process is for its own purposes. In making reservations or allocations, MHDC makes no representations to the sponsor or other party as to compliance of the development with the Code, Treasury regulations, or any other laws or regulations governing federal tax credits or state tax credits.

No member, director, officer, agent or employee of MHDC shall be personally liable on account of any matters arising out of, or in relation to, the allocation of Low Income Housing Tax Credits.

MISREPRESENTATIONS OF ANY KIND WILL BE GROUNDS FOR DENIAL OR LOSS OF THE TAX CREDITS AND MAY AFFECT FUTURE PARTICIPATION IN THE TAX CREDIT PROGRAM IN MISSOURI.