

**MISSOURI HOUSING DEVELOPMENT COMMISSION**

**LOW INCOME HOUSING TAX CREDIT**

**2011 QUALIFIED ALLOCATION PLAN**



**First Draft – to be reviewed by the commissioners at the regular board meeting on 4/28.**

**Final Draft will be posted 4/29.**



**This plan, as amended, was approved and adopted by the**

**Missouri Housing Development Commission**

**Board of Commissioners**

**on \_\_\_\_\_, 2010**

**DRAFT**

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# I. GENERAL INFORMATION

## A. Purpose

The Missouri Housing Development Commission (“MHDC”) has been designated by the Governor of the State of Missouri as the “Housing Credit Agency” for the State. This designation gives MHDC the responsibility of administering the Federal Low Income Housing Tax Credit Program (“Federal LIHTC”) established by the Tax Reform Act of 1986 and codified as Section 42 of the Internal Revenue Code, as amended (the “Code”) and the State Low Income Housing Tax Credit Program (“State LIHTC”) under Section 135.350 et seq. of Chapter 135 of the Missouri Revised Statutes (the “State Tax Relief Act”). The responsibilities of a Housing Credit Agency are defined in Section 42(m) of the Code.

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 Federal and State LIHTC in Missouri.

MHDC’s goal is to use the Federal LIHTC and State LIHTC as a financial incentive for the creation and maintenance of quality market appropriate affordable housing that strengthens the communities and lives of Missourians.

## B. Developer’s Guide

MHDC has created the Developer’s Guide to MHDC Multifamily Programs (“Developer’s Guide”). The Developer’s Guide is a detailed resource regarding the principles and procedures governing all MHDC rental production programs, including but not limited to the State and Federal LIHTC. The Developer’s Guide is a complement to this Plan. Throughout the course of this Plan the Developer’s Guide is referenced as a source to gain more information regarding specific topics.

## C. Credit Types and Availability

### 1. Credit Types

- a. **9% Credit.** The total amount of federal tax credits available in any one year is known as the “State Housing Credit Ceiling” and is defined below. Developments which apply for an allocation under the State Housing Credit Ceiling receive what is commonly known as the “9% Credit.” The 9% Credit definition for purposes of this Plan includes any 70% present value credit and any 30% present value credit for qualified existing buildings which also will use the 70% present value credit.
- b. **4% Credit.** Developments financed with tax-exempt private activity bond volume cap (“Bond Developments”) are eligible for an allocation of federal and state tax credits without reducing the State Housing Credit Ceiling. For the purposes of this Plan Bond Developments are said to receive the “4% Credit.” This definition includes the 30% present value credit for federally subsidized buildings that feature eligible basis financed by any obligation the interest on which is exempt from federal tax and any 30% present value credit for the qualified existing buildings of Bond Developments.

### 2. Credit Availability

#### a. 9% Credit.

The amount of annual tax credits allocated by the federal government to each state is determined on a per capita basis. The anticipated amount of tax credits for Missouri will be announced in the Notice of Funding Availability to precede the application round.

The State Housing Credit Ceiling is the sum of the following components:

- i. ~~“Existing Housing Credits” which is the 2010 housing credit ceiling excluding Disaster Housing Credits, and which include:~~

- i. **Per Capita Credits.** The amount of credits that are allocated pursuant to the Code.
- ii. **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.
- iii. **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.
- iv. **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 the pool of credits returned by other states.

~~ii. **“Disaster Housing Credits”** which is the 2010 additional housing credit ceiling made available to the state as the result of the Emergency Economic Stabilization Act of 2008, Energy Improvement and Extension Act of 2008, and Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (“the Act”) which was signed into law on October 3, 2008. The Act provides for additional per capita credits for counties which were determined by the president of the United States on or after May 20, 2008, and before August 1, 2008, to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Act by reason of severe storms, tornados or flooding (“Midwestern Disaster Area”). Please consult [www.mhdc.com](http://www.mhdc.com) for a list of the eligible counties. The Disaster Housing Credits include:~~

- ~~(a) **Per Capita Credits.** The amount of credits that are allocated pursuant to the Act.~~
- ~~(b) **Returned Credits.** Credits that are returned from developments that received an allocation in 2010 may be made available for allocation prior to December 31, 2010.~~

~~Developments located in the Midwestern Disaster Area may receive either Existing Housing Credits or Disaster Housing Credits at the discretion of MHDC. Such allocation will apply to determination of applicable credit ceilings.~~

~~The State Tax Relief Act provides that any development that is eligible for a federal tax credit allocation is eligible for a state tax credit allocation. Therefore, the contents of this Plan, except where otherwise noted, also apply to the allocation of state tax credits. The amount of state credits in proportion to the federal credits may be reduced by the state legislature, making any allocation subject to change in the authorizing statute. MHDC in its sole discretion may choose to allocate no state tax credits or state credits in an amount up to 100% of the federal tax credits as it deems necessary for the financial feasibility of the development.~~

**b. 4% Credit.**

Bond Developments are subject to review by MHDC and shall be ranked pursuant to the priorities and selection criteria of this Plan. The commission will provide a recommendation to the Department of Economic Development for the allocation of private activity bonds. Such developments are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for an allocation of federal credits under this Plan and are also subject to MHDC’s compliance monitoring requirements.

The State Tax Relief Act provides that any development that is eligible for a federal tax credit allocation is eligible for a state tax credit allocation. Therefore, the contents of this Plan, except where otherwise noted, also apply to the allocation of state tax credits. The amount of state credits in proportion to the federal credits may be reduced by the state legislature, making any allocation subject to change in the authorizing statute. MHDC in its sole discretion may choose to allocate no state tax credits or state credits in an amount up to the imposed statutory limit as it deems necessary for the financial feasibility of the development.

**D. Notice of Funding Availability**

A Notice of Funding Availability (the “NOFA”) will be published in the summer of ~~2009-2010~~ following the MHDC commissioners’ formal approval of the ~~2010-2011~~ Plan and the proposed ~~2010-2011~~ NOFA. The NOFA will describe the types and amounts of funding available, as well as the due date for applications.

To be considered for a 9% Credit or 4% Credit allocation an application must be submitted in accordance with this Plan, the NOFA and the Developer’s Guide. MHDC shall have the right to consider any application for 4% Credits for a potential allocation of 9% Credits if the proposal meets the requirements and competes successfully with other 9% Credit applications in the evaluation process. Similarly, MHDC may consider any application for 9% Credits for a potential allocation of 4% Credits.

MHDC shall set forth the protocol and timing for the submission of applications in the Developer’s Guide as it may be amended from time-to-time. MHDC accepts applications for its main NOFA cycle once per allocation year followed by a second NOFA round for 4% Credit applications prior to the end of the fiscal year at the discretion of MHDC; ~~and~~ MHDC reserves the right to establish subsequent NOFAs and application rounds as is determined to be necessary.

An application is considered to consist of two tabbed three-ring binders with hard copies of the required documentation and one CD-R with the required electronic copies of certain exhibits as described below. All applications must be physically received in the Kansas City office of MHDC (3435 Broadway, Kansas City, MO 64111) according to the deadline established in the NOFA. Any applications received after the deadline will be returned to the applicant without consideration. This includes late arrivals for any reason including but not limited to courier or delivery error. Early submission is encouraged.

Approval for 9% Credit and 4% Credit reservations will be made at a regularly scheduled commission meeting as described in the NOFA. This date may be changed without notice. A Conditional Reservation Agreement that describes the amount(s) of funding approved and the MHDC requirements that accompany it will be issued simultaneously with a Carryover Allocation Agreement (for developments approved for 9% Credits) shortly after the formal commission approval.

## **II. STANDARDS**

### **A. Participant Standards**

All participants must be in good standing with MHDC. In addition to satisfactory previous performance, participants must be aware that:

1. All identities of interest between members of the development team must be documented to MHDC’s satisfaction. This includes, but is not limited to, identities of interest between any two or more development team members such as developer, general partner(s), syndicator(s), investor(s), lender(s), architect(s), general contractor, sub contractor(s), attorney(s), management agent, etc.
2. Any individual or entity which is awarded Missouri state and/or federal Low Income Housing Tax Credits (“LIHTC”) and does not buy and sell LIHTC from unrelated awardees cannot resell their ownership interest for an amount greater than their contribution to the development, unless the full gain from the sale directly benefits the development as reflected in the sources and uses. Any individual or entity which violates this provision may, in the sole discretion of MHDC, be barred from further participation in any rental production programs and from responding to future NOFAs.
3. Best efforts must be employed to use local vendors, suppliers, contractors and laborers when available and feasible.
4. On March 17, 2006, the MHDC passed the workforce eligibility policy (“WEP”). Furthermore, on May 2, 2006, MHDC passed the Policy for Bond Financed Multifamily Rental Developments (“Bond WEP”). Furthermore, on November 16, 2007, the MHDC passed a policy clarification memorandum which augmented the WEP and is represented in the 2009 Workforce Compliance Handbook as amended (“2009 WCH”) (The WEP, Bond WEP and 2009 WCH are collectively referred to as the

“MHDC Workforce Eligibility Policy”). To the extent there are any inconsistent provisions between the WEP, Bond WEP and the 2009 WCH, the 2009 WCH shall prevail.

All participants must agree to abide by the MHDC Workforce Eligibility Policy, as it may be amended from time-to-time.

5. 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.

## **B. Development Standards**

All MHDC-financed developments are required to:

1. Comply with the MHDC ~~Architectural~~Design/Construction Compliance Guidelines (MHDC Form 1200), as it may be amended from time to time.
2. Comply with all applicable local, state and federal ordinances and laws including but not limited to:
  - a. Local zoning ordinance.
  - b. The construction code utilized by the local government unit where the development is located. In the absence of locally adopted codes, the International Building Code (2006), the International Plumbing Code, the International Mechanical Code, the National Electrical Code (2005) and/or the International Residential Code must be used.
  - c. The Fair Housing Act of 1968, as amended. In addition, proposals receiving federal, state, county or municipal funding may 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.
  - d. If applicable, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”) and/or Missouri Revised Statute 523.205.
  - e. If applicable, 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.
3. All developments with 12 or more units are required to have a minimum of 5% of the units designed in compliance with one of the nationally recognized standards for accessibility to wheelchair users and an additional 2% of the units usable by those with hearing or visual impairments.
4. Provide facilities, amenities and equipment that are appropriate for the population being served by the development.
5. Be designed to meet the established construction budget and utilize construction materials that extend the longevity of the building, including materials, products and equipment that are more durable than standard construction materials. Products must clearly reflect upgrades from standard construction grades and be economical to maintain.
6. For all new construction developments, utilize sustainable building techniques and materials to produce quality, affordable and healthy housing. To meet this requirement, the applicant must:
  - a. Commit to meeting the standards of one of the following green building rating systems: Enterprise Green Communities, any of the current LEED rating systems or the NAHB National Green Building Standard.
  - b. Demonstrate at the time of application, firm submission and construction completion that the development will meet or has met the design and construction requirements for any certification level offered by the three accepted rating systems. The development does not have to undergo the formal certification process, but green building criteria utilized must be clearly documented for MHDC review and confirmation.

c. Have at least one development team member who is an accredited green building professional with proven experience in sustainable design and/or construction. The team member must be a LEED AP®, LEED Green Associate™ or a Certified Green Professional™.

d. Demonstrate how sustainability will be achieved from the pre-development period through development operations.

5.7. Pay at least federal prevailing wage to all laborers and mechanics employed in the construction of the development as determined and posted by the United States Department of Labor for the locality of the site and current within ten days of construction closing. Developments consisting of buildings with four or fewer floors must use the Davis-Bacon residential construction category, and developments consisting of buildings with five or more floors must use the Davis-Bacon building construction category.

### C. Underwriting Standards

MHDC has adopted the following underwriting standards for all developments that seek a tax credit allocation under this Plan. Meeting these standards does not constitute a representation regarding the feasibility or viability of the development and does not guarantee or imply that an allocation will be made.

The Developer's Guide provides a more detailed description of the underwriting standards and expectations of MHDC. Applicants should refer to and rely upon the Developer's Guide while completing an application under the NOFA. MHDC 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. MHDC staff reserves the right to adjust assumptions according to market conditions at the time of application.

1. **Rents.** The proposed rents must be reasonable for the population being served and appropriate for the market in which the development is located. Rents must meet the requirements of the various financing sources proposed in the application and at a minimum must meet the requirements of the Code in order to be eligible for a tax credit allocation under this Plan.
2. **Development Cost Minimums.** For rehabilitation developments seeking 9% Credit, the Total construction costs (from the FIN-100) must equal or exceed 40% of the total replacement costs (from the FIN-100). Bond Developments located in rural (non-MSA) areas must have total construction costs of at least 15% of the Total Replacement Costs. Bond Developments located in urban (MSA) areas must have total construction costs of at least 20% of the total replacement costs.
3. **Development Cost Maximums.** The maximum total replacement cost for a development cannot exceed the total replacement cost calculated using the most recent HUD 221(d)(3) limits. A variance of 125% is allowed for the eight Missouri Metropolitan Statistical Areas (MSA): Jefferson City MO, Columbia MO, St. Louis MO-IL, Springfield MO, Fayetteville-Springdale-Rogers AR-MO (McDonald County), Kansas City MO-KS, St. Joseph MO-KS, Joplin MO and for all historic rehabilitation developments. Historic rehabilitation developments are also allowed to add the residential portion of the federal historic rehabilitation credit to the 125% 221(d)(3) limit calculated. The total replacement cost for historic developments cannot exceed this sum. MHDC reserves the right to, on rare occasion, allow exceptions to the cost limit on a case-by-case basis, if unique development characteristics that meet or exceed the standards and goals of this Plan are to be incorporated into the proposal.
4. **Difficult Development Areas.** Proposals located in areas designated by HUD to be difficult to develop may be allowed to increase its qualified basis by an amount up to 30% in order to achieve financial feasibility. Pursuant to 42(d)(5)(B)(v) of the Code, MHDC may establish criteria to designate additional properties approved for 9% Credits to be treated as located in a difficult development area and therefore eligible to receive a similar increase. For purposes of this Plan, properties that meet the criteria must:

~~a. Be located in a Midwestern Disaster Area; or~~

~~b.a.~~ Be determined to meet the qualifications of the preservation priority; or

~~e.b.~~ Be determined to meet the qualifications of the service enriched housing priority; or

~~d. Receive actual certification or equivalent acknowledgement from one of the green building rating systems described in the sustainability priority (see the Developer's Guide for more detail); or~~

e.c. Be a family development located in a county whose median income is below the statewide median income of ~~\$58,300~~insert 2010 HUD limit when published and propose to set aside at least 20% of the total units to be occupied by households between 60% and 80% of the area median income, calculated using the appropriate income limits; or

f.d. Be a part of a larger mixed-use economic development area. For a development to qualify as part of a mixed-use economic development area, it must:

Be part of a mixed-use economic development area that includes different housing types for different household income levels, new retail/office/light industrial space that creates new permanent jobs, and new public space or activity centers designed for users of the area; or

Be part of a Transit Oriented Development ("TOD") plan as defined in the Developer's Guide. The TOD plan must be centered around and integrated with a transit stop. The plan must be mixed-use, mixed-income, pedestrian friendly and of appropriate density for a TOD.

MHDC will decide, in its sole discretion, what evidence and what types of development will qualify for ~~the 30%~~ increase in qualified basis for mixed-use economic development areas. An important factor is that the MHDC development is not the only development taking place and that it will enhance the overall plan, rather than be the overall plan. It is expected that the plan, of which the MHDC development is a part of, contemplates the development of multiple buildings over an area of reasonable size. This will not apply to a singular structure, regardless of location.

Further details concerning difficult development area requirements may be found in the Developer's Guide.

5. **Developer and Contractor Fee Limits.** Developer and contractor fees are limited as follows:

a. Developer Fee. For the purposes of the Developer Fee Limit, "Developer Fee" is defined as the sum of the developer fee, including overhead and profit, and any consulting fee paid for tasks normally performed by the developer.

i. **New Construction Developments:** are limited to the lesser of: (a) 15% of total replacement costs for the first \$4,000,000 of total replacement costs and 10% for any additional amount of total replacement costs, or (b) the per-unit calculation from the chart below.

ii. **Acquisition-Rehabilitation and Historic Preservation Developments:** are limited to the lesser of: (a) the sum of 8% of acquisition costs for the first \$2,000,000 of acquisition costs, 6% of any additional acquisition costs, 15% of the first \$4,000,000 of non-acquisition total replacement costs and 10% of any additional non-acquisition total replacement costs, or (b) the per-unit calculation from the chart below.

Per-Unit Developer Fee Maximum for i and ii above:

For units 1-40	\$20,000 per unit
For units 41-100	\$17,500 per unit
For units 101-150	\$15,000 per unit
For units 151+	\$12,500 per unit

The Developer Fee approved for a development at Conditional Reservation may not be increased for any reason without commission approval.

b. Contractor Fees. The sum of general requirements, overhead and builder's profit cannot exceed 16% of the total construction costs less the sum of general requirements, overhead and builder's profit. The builder's profit cannot exceed 8% of total construction costs less the sum of general requirements, overhead and builder's profit. General requirements must include the cost of builder's risk insurance, bonding costs and permits.

6. **Tax Credit Amount:** The Code and the State Tax Relief Act require that MHDC allocate to a development the tax credit amount that MHDC determines is necessary to ensure 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 reserve less than the amount requested on the application, reserve less than would result by using an applicable fraction of 100%, and deny approval of any tax credit amount. MHDC will evaluate each proposed development utilizing the selection criteria found below. The determination of the tax credit amount necessary will be conducted at the following processing stages:

- a. The time of application;
- b. The time the Carryover Allocation is issued;
- c. The time an approved Firm Commitment is issued and/or a Letter of Determination (also known as a 42(m) letter) is issued (if applicable); and
- d. 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.

7. **Maximum Credit Amount.** The maximum amount of annual federal 9% Credit that may be allocated to any individual development is ~~\$1,200,000~~\$900,000 for any development determined in MHDC's sole discretion to be eligible for a basis boost (see section III.C.4 above) or \$700,000 for all other developments. MHDC, in its sole discretion, may make exceptions on a case-by-case basis when justified by development size and feasibility. The annual state 9% Credit shall be limited to an amount necessary for the feasibility of the development, but in no event can it exceed \$700,000 without commission approval.

Bond Developments receiving 4% Credit allocations will not be limited, beyond what is dictated by the Code, in the amount of federal tax credits allocated. Bond Developments are subject to the \$700,000 cap in annual state credit. The commission, in its sole discretion, may make exceptions on a case-by-case basis when justified by development size and feasibility. The state credit is not an "as of right" credit, and approval is subject to commission action.

MHDC has the right to lower the maximum amount of annual state credit for purposes of application review and approval as a result of statutory changes.

8. **Additional Credit.** 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:
  - a. There are additional credits available;
  - b. MHDC is satisfied that the additional amount is necessary for the financial feasibility and viability of the development; and
  - c. The increased amount of credits does not exceed MHDC's Maximum Credit Amount.

9. **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 the 9% Credit and 4% Credit 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 rental assistance programs ("HUD Housing Assistance").

As part of a Memorandum of Understanding ("MOU"), dated May 8, 2000, between HUD and MHDC, developments using the Federal LIHTC with these programs are 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 for all developments financed with both the Federal LIHTC and HUD Housing Assistance. This review is designed to ensure that such developments do not receive excessive federal assistance.

10. **Use of HOME.** Funding from the HOME Investment Partnership Act ("HOME") is a resource that may be available to assist in the development of affordable housing. In order for a development with

HOME funding to qualify for the 9% Credit, the HOME funds must be structured either as a loan or as a grant that has been deducted from eligible basis.

### III. RESERVATION PROCESS

#### A. Housing Priorities

The following housing priorities have been established by MHDC to encourage the development of certain types of housing in certain locations. A more detailed description of the priorities and the requirements for consideration under the priorities is available in the Developer's Guide.

1. **Geographic.** An attempt will be made to allocate the 9% Credit across the state on a population proportionate basis adjusted annually, with the state divided into the following areas:
  - a. **St. Louis Region - 34%:** Franklin, Jefferson, St. Charles, St. Louis City and St. Louis counties.
  - b. **Kansas City Region - 19%:** Cass, Clay, Jackson, Platte, and Ray counties.
  - c. **Out State Region - 47%:** 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. ~~The commission has designated that any development located in the Midwestern Disaster Area may qualify as a project serving a Special Needs Area.~~ Parts of the state officially declared a disaster area by the Governor may be designated a Special Needs Area as determined on a case-by-case basis by the Commission in order to give special consideration to developments that assist in providing affordable housing to people affected by the disaster. In the event of such a determination by the Commission, a notice announcing the Special Needs Area designation will be posted with the Plan and the NOFA at [www.mhdc.com](http://www.mhdc.com).

2. **Nonprofit Involvement.** Pursuant to the Code at least 10% of the 9% Credit will be allocated to developments that involve a qualified nonprofit organization.

Section 42(h)(5)(C) of the Code defines a qualified nonprofit organization as:

- a. A 501(c)(3) or (c)(4) nonprofit 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.

Developments that wish to be considered for this priority must fully complete the applicable sections of the FIN-100 and provide the following items with their application:

- i. Nonprofit Organization's Certificate of Incorporation
- ii. Articles of Incorporation and By-Laws
- iii. Certificate of Good Standing
- iv. IRS Letter Evidencing Nonprofit Status
- v. ~~A narrative description of the non profit's role~~ MHDC Nonprofit Questionnaire. ~~The description questionnaire must include describe the organization's role in detail, including~~ how material participation pursuant to 469(h) will be met and what share of profits, losses and fees go to the nonprofit organization.

3. **Service Enriched Housing.** Developments that offer more than housing are strongly encouraged. Proposals that offer significant services tailored to the tenant population are a priority for MHDC.

To be considered under this priority a development must target a specific population. Examples include but are not limited to:

- a. Elderly households.
- b. Individuals with children.
- c. Formerly homeless individuals and families.
- d. Individuals with physical and/or developmental disabilities.
- e. Individuals with mental illness.

Developments that wish to be considered under this priority must fully complete the applicable sections of the FIN-100 and provide the following with their application:

- i. A detailed supportive services plan which meets the requirements for the population being considered as described in the Developer's Guide.
- ii. A services budget which includes a breakdown of both sources and uses.
- iii. Letters of intent from service providers anticipated to participate in the development's services program.

- ~~4. **Sustainable Housing.** MHDC encourages developments that use sustainable building techniques and materials to produce quality affordable and healthy housing for both tenants and the community.~~

~~To be considered for this priority a development must:~~

- ~~a. Utilize one of the following green building rating systems: Enterprise Green Communities, any of the current LEED rating systems, Green Globes or the NAHB National Green Building Program. Please note that Energy Star certified developments will be given extra consideration, but they will not qualify for the sustainable housing priority.~~
- ~~b. Have at least one development team member who is an accredited green building professional with proven experience in sustainable design and/or construction. The team member must be a LEED AP®, LEED Green Associate™ or a Certified Green Professional™.~~
- ~~c. Demonstrate how sustainability will be achieved from the pre-development period through development operations.~~

~~Developments that wish to be considered for this priority must include the following with their application:~~

- ~~i. A description of the rating system to be utilized and a thorough explanation of the features of that rating system that are going to be utilized in the design of the development.~~
- ~~ii. A resume for development team members with sustainable development experience and a thorough description of the developments they have worked on and their role in the process.~~
- ~~iii. A pre-development, development and operations plan that explains how sustainability will be addressed and what education will be given to employees and residents of the development.~~

- 5.4. **Preservation.** The preservation of existing affordable housing is strongly encouraged by MHDC.

To qualify for the preservation priority a development must meet at least one of the following:

- a. Have, and continue to use if possible, project-based rental assistance and/or operating subsidy.
- b. Have a loan made prior to 1985 from any of the following loan programs: HUD 202/811, 221(d)3 or (d)4, 236 or USDA RD 515.
- c. Participate in HUD's Mark-to-Market restructuring program.

- d. Have a previous allocation of low-income housing tax credits in which the first year of the credit period was ~~1995-1996~~ or earlier.

To be considered under this priority the following must be included with the application:

- i. Copies of all loan notes and regulatory agreements that encumber the property.
- ii. A copy of any project-based income or operating subsidy agreements and rent schedules.
- iii. ~~The most recent~~ Audited financial statements for the development covering the three most recent years.
- iv. A letter from HUD, RD or MHDC (for developments without HUD or RD financing) indicating the need for preservation.

5. **Property Disposition.** Applicants may compete for the purchase of real estate owned by MHDC as the result of the foreclosure of an MHDC loan. The application must propose an acquisition/rehabilitation transaction that will be evaluated on its merits according to the selection criteria and its ability to demonstrate potential long-term success as an operating affordable housing property.

To qualify for the property disposition priority the development must be listed publicly by MHDC as real estate owned and available for competitive bid.

To be considered under this priority the following must be included with the application:

- i. A signed option contract representing the applicant's offer to purchase the MHDC-held property on the MHDC option contract form. The MHDC form will be made available on the MHDC website in conjunction with any real estate owned that is publicly posted.
- ii. Any other certifications or documents which may be required by MHDC and made available on the MHDC website in conjunction with the listing of any MHDC-owned real property.

## **B. Selection Criteria**

All submitted applications which successfully make it to the competitive review stage will be evaluated by MHDC staff using the selection criteria described below. The selection criteria incorporate both the federal preferences and selection criteria as described in Section 42(m)(1)(B)(ii) and 42(m)(1)(C) of the Code.

### **1. Development Characteristics**

The following characteristics will be reviewed closely:

#### **a. Tenant Population**

It is important that MHDC fund developments that offer quality affordable housing to the populations that need it in the locations where it is needed. Items that will be given consideration with regard to the intended tenants include:

- i. Tenant populations with special housing needs such as persons with physical and/or developmental disabilities, homeless individuals and families, the elderly and other under served and/or at risk populations.
- ii. Individuals with mental illness.
- iii. Individuals on public housing waiting lists.
- iv. Tenant populations of individuals with children.
- v. Developments that serve the lowest income tenants.
- vi. The quantity, quality and suitability of services provided or offered to the tenants.

It is important that the rest of the development's characteristics are appropriate for the intended tenant population.

**b. Type**

The type of development being proposed is an important characteristic and affects how the other selection criteria are applied. Developments will be evaluated on how they contribute to the goal of this Plan and the mission of MHDC. Developments fall into at least one of the following types:

- i. New construction
- ii. Historic rehabilitation/adaptive reuse
- iii. Acquisition/rehabilitation of existing housing
- iv. Developments intended for eventual tenant ownership

Regardless of type, developments that obligate themselves to serve qualified tenants for the longest period are given extra consideration.

**c. Site**

Each site will be reviewed by MHDC staff to determine the overall suitability of the site for affordable housing and for the intended population. Sites reviews will consider:

- i. Marketability
- ii. Presence of environmental issues and concerns
- iii. Neighborhood characteristics and land uses
- iv. Proximity to appropriate amenities and services

**d. Design**

The design of each development will be examined closely to assess its appropriateness for the site, the market and the population being served. The following will be taken into account when evaluating the application:

- i. Access into and out of the site and parking for residents and employees
- ii. Placement of buildings on the site
- iii. Development amenities
- iv. Type and quality of materials to be used
- v. Energy efficiency and overall sustainability
- vi. Condition and suitability of structures being reused
- vii. Scope of work for rehabilitation or renovation
- viii. Design features that are population appropriate, for example universal design features, common space, storage space, accessibility, adaptability, etc.

**2. Market Characteristics**

The following will be analyzed for each proposal:

**a. Development Location**

Where a development is located affects almost all of the other selection criteria. Important considerations for location include:

- i. Location in a qualified census tract that will contribute to a concerted community revitalization plan.
- ii. Whether existing housing is used as part of a community revitalization plan.
- iii. Location in a community with demonstrated new employment opportunities and a proven need for workforce housing.
- iv. An area designated as a DREAM Initiative community.

- v. Infill of existing stable neighborhoods.
- vi. ~~A county designated as part of the Midwestern Disaster Area~~Commission-designated Special Needs Areas (see section III.A.1).

**b. Housing Needs**

Developments must address the affordable housing needs of the state, region and locality where they will be located. Important considerations regarding market need include:

- i. Number and growth of the intended tenant population in the market area.
- ii. Presence, condition, occupancy and comparability of other affordable housing developments in the market area.
- iii. Presence, condition, occupancy and comparability of market rate housing in the market area.
- iv. Capture rate for the proposed development.

~~Regardless of a proposal's eligibility to be considered for Disaster Housing Credits due to its location in the Midwestern Disaster Area, no~~No application proposing the delivery of new units will be approved if it is deemed by MHDC to adversely impact any existing MHDC developments, exist in a questionable market, or create excessive concentration of multifamily units.

**3. Development Team Characteristics**

The following development team members will be evaluated:

- a. Developer
- b. General Partner(s)
- c. Management Agent
- d. Syndicator(s)/Investor(s)
- e. Contractor
- f. Architect
- g. Consultants

Evaluations will assess the experience, performance, financial strength and capacity to complete the proposed development in a timely and efficient manner. A development team's experience with affordable housing, MHDC and the type of development being proposed is important.

Items considered will include, but are not limited to:

- i. Number of affordable developments completed.
- ii. Occupancy of developments owned and/or managed.
- iii. Number of developments in the planning and development stages.
- iv. Quality and condition of previously completed developments.
- v. Previous and outstanding compliance issues.
- vi. Performance of previously completed developments.
- vii. Performance regarding MHDC deadlines for previous funding awards.

The general partner, developer, and general contractor that are proposed as the development team for an application shall be assessed for their capacity to successfully manage the predevelopment, closing, construction, and lease-up of the proposed development in addition to previously-approved properties that are currently in those stages of development.

Development team members that are not in good standing with MHDC or its programs will not be approved for funding.

#### **4. Feasibility**

Applications will be evaluated to determine feasibility and viability throughout the credit period using the assumptions provided by the applicant. MHDC will evaluate:

##### **a. Sources**

All developments must demonstrate that sufficient sources are available to the project to assure feasibility. Non-MHDC sources must have a commitment letter from the proposed provider included with the application. The type of financing and the source of all financing will be taken into consideration.

##### **b. Uses**

Development costs must be reasonable for the type of development and location being proposed. Sources and uses must balance.

##### **c. Income**

Rents should be appropriate for the market and affordable for the intended population. Other sources of income that are undocumented may not be used to determine feasibility or the size of MHDC debt.

##### **d. Expenses**

Operating expenses must be adequate, reasonable and appropriate for the market and type of development being proposed.

##### **e. Long-Term Viability**

Operating projections must indicate that the development is viable for the greater of the entire credit period or the term of any MHDC financing.

##### **f. Timing**

The timing of due diligence, financing commitments and regulatory approvals will be considered when assessing an applicant's ability to proceed. Consideration will be given to applicants that demonstrate they can proceed in a timeframe consistent with the requirements of the Code or, for tax-exempt bond-financed proposals, the allocation process established by the Department of Economic Development.

##### **g. Investment Potential**

Proposals will be evaluated for their potential to attract investors for the federal tax credit based upon the potential amount of federal credits, the size of the proposed development, the market, the experience and strength of the development team, and financial feasibility. The strength and previous performance of all limited partner investors will be taken into consideration during the feasibility review.

MHDC will not allocate a credit amount that exceeds the amount necessary to assure development feasibility.

#### **5. Community Impact**

MHDC seeks to allocate funding to developments that appropriately and efficiently improve their communities. Impact will be influenced by:

##### **a. Community Support**

Support from elected officials and community members is important. Community support should highlight the importance of the development to the community and the impact it will have.

##### **b. Catalytic Effect**

There is a preference for developments that will successfully encourage further development or redevelopment in the community. Developments that are part of a larger community

redevelopment effort or part of a concerted community revitalization plan will also receive extra consideration.

**c. Community Needs**

How a proposal will address the needs of the population it intends to serve and the community it will serve is important. The existing stock of affordable housing and demographic trends in the area will influence the needs of the community and ability of the proposal to meet those needs. Applications that most clearly and adequately meet those needs will receive preference.

## C. Application Review

Applications will undergo each of the five staff review stages described below, unless the application is rejected during one of the stages. If an application is rejected during the Initial, Primary Documentation or Secondary Documentation Reviews, a written explanation will be provided to the applicant. The Developer's Guide contains additional information regarding the application review process. [An application checklist, application forms and program guides may be found at www.mhdc.com through the Rental Production link.](http://www.mhdc.com)

1. **Initial Review.** The Initial Review will be conducted to determine the applicant and the application's consistency or compliance with the following:
  - a. **Organized Application.** Applications must be submitted in three-ring binders, and organized with tabs according to the checklist provided with the application. Applications that are not organized will be rejected from further consideration. An application consists of one three-ring binder with all exhibits and original signatures where required, a second three-ring binder with a copy of all exhibits, and a CD-R with the applicable electronic exhibits. [MHDC staff has the right in its sole discretion to waive an exhibit requirement on a case-by-case basis upon the review of a formal waiver request submitted by an applicant prior to the NOFA deadline.](#)
  - b. **Good Standing with MHDC.** Any member of the development team that is the owner or general partner of a Section 42 development that is currently in noncompliance due to site audits or a failure to comply with the owner's reporting requirements will be denied participation in the NOFA. In addition, any development team member that is not in compliance or good standing with any other MHDC program will be similarly denied participation. 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 before or after the time of application, the application will be rejected. Prior performance considered might include, but is not limited to, progress made with previous tax credit reservations, development compliance and payment of fees, and/or violation of the MHDC Workforce Eligibility Policy.
  - c. **Consistent with Section 42 Requirements.** The proposal must meet all the requirements set forth in the Code, and all relevant U.S. Treasury regulations, notices and rulings.
  - d. **Consistent with Fair Housing Requirements.** The submitted proposal must meet all the requirements of The Fair Housing Act of 1968, as amended.
  - e. **Consistent with Internal Revenue Service Memorandum of Understanding.** MHDC and the IRS may execute a Memorandum of Understanding ("MOU") to improve the administration of the Federal LIHTC. 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 an allocation of 9% Credit or 4% Credit. An executed IRS Form 8821 for the developer, ~~owner,~~ and general partner entity must be included as part of the application. A copy of this form is included in the Developer's Guide.
  - f. **Consistent with Tax Credit Accountability Act.** Under the provisions of the Tax Credit Accountability Act (R.S.Mo. sections 135.800 to 135.830) all developers/applicants must complete all necessary forms and reporting requirements during the reservation process, the

allocation process and for a period of three years following the issuance of credits by MHDC, as the administering agent for the State 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 the State LIHTC. MHDC will obtain tax clearance regarding the developer/applicant from the Missouri Department of Revenue at the time of application. ~~A state tax delinquency may result in an application being rejected.~~

2. **Primary Documentation Review.** All primary documents must be complete, fully-executed and submitted by the application deadline. A missing primary document will result in the rejection of the application. Documents in draft form or missing signatures are not acceptable and will be considered a missing document. An exact list of the documents can be found on the FIN-125 and in the Developer's Guide; what follows below is a list of the primary document categories, some of which require multiple documents. The required primary document categories are:
  - a. **CD-R.** A CD-R with the required electronic documents is required as noted in the Developer's Guide and the FIN-125.
  - b. **Executed FIN-100.** A completed FIN-100 signed in the appropriate places must have the appropriate certifications and elections made.
  - c. **Application Fee.** A check for the appropriate application fee must be included. A check that is returned for any reason will result in a rejection of the application.
  - d. **Development Narrative.** Each application must include a narrative that meets the requirements explained in the Developer's Guide.
  - e. **Site Review Information.** MHDC needs multiple site information documents to conduct the site review described below.
  - f. **Applicant Site Control.** Applicants should refer to the Developer's Guide for more information regarding site control and a thorough description of the site control documents required and what will satisfy those requirements. The applicant site control documents, as described in the Developer's Guide, must be included as a primary exhibit.
  - g. **Market Study.** A market study that meets MHDC requirements and that is dated within six months of the application due date is required. If the market study is dated within 18 months of the application due date, an update letter must be provided. No market study older than 18 months will meet this requirement. Applicants seeking approval under the Property Disposition Priority are not required to submit a market study.
  - h. Financing Commitments. Commitments for all non-MHDC sources of financing must be included with the application, including commitments for any and all tax credit equity utilized by the development.
3. **Secondary Documentation Review.** All secondary documentation must be received in order for an application to receive consideration in the competitive review. If six or more secondary review documents are missing or incomplete at the time the application is submitted, the application will be rejected. ~~If five or fewer secondary documentation documents is-are missing or incomplete at the time the application is submitted, the applicant will be notified in writing of missing-deficient items and a date by which deficiencies must be cured ("Cure Date"). In addition, a fee of \$50 for each missing secondary document will be charged. If six or more secondary review documents are missing, the application will be rejected. If any missing secondary documents and any fees associated with them~~ If the requested documents are not received by the Cure Date the application will be rejected. The FIN-125 and the Developer's Guide contain an exact list and explanation of the secondary documentation required. Below is a list of the secondary documentation categories; some categories require multiple documents. The secondary documentation categories are:
  - a. **Seller Site Control.** Applicants should refer to the Developer's Guide for more information regarding site control and a thorough description of the site control documents required and what will satisfy those requirements. The seller site control documents, as described in the Developer's Guide, must be included as a secondary exhibit.

- b. **Public Official Contact Verification or Support Letters.** Proper evidence that the appropriate officials have been contacted is required. In the case of the chief elected official, state senator and state representative for the development location, a response letter from the official regarding the development is encouraged. Other letters or resolutions of support are not required but are welcome.
  - c. **Statutorily Required Documents.** Various state and federal statutes and regulations require that certain documents must be submitted by the developer/applicant at the time of application.
  - d. **Housing Priority Documentation.** Applications which seek consideration under one or more of the housing priorities listed above must provide certain documentation at the time of application to qualify.
  - e. **Zoning.** Evidence of proper zoning is required.
  - f. **Architectural Information.** Multiple documents regarding the design, cost and historic designation of the building are required.
  - g. **Sustainable Housing Information.** New construction proposals must provide documentation demonstrating how the development team and the property will achieve and maintain the green building standard to which they have committed.
  - ~~g.h.~~ **Relocation Information and Existing Multifamily Operations Data.** Multiple documents are required for proposals that have existing tenants who may be either temporarily or permanently relocated as a result of the proposed rehabilitation.
  - ~~h.i.~~ **Homeownership Information.** Developments interested in providing tenants ownership opportunities after the end of the compliance period must provide a homeownership proposal. Applicants proposing homeownership developments are required to waive their right to opt out at the end of the 15-year compliance period.
  - ~~i.~~ **Financing Commitments.** ~~Commitments for all non MHDC sources of financing must be included with the application, including commitments for any and all tax credit equity utilized by the development.~~
  - ~~j.~~ **PHA Approved Utility Allowance Schedule.** A copy of the PHA approved utility allowances for the location and type of development proposed which are in effect at the time of application must be provided.
  - ~~k.~~ **Developer-General Partner Information.** Information regarding the developer and any general partner(s) who are not affiliates of the developer is required.
  - ~~m.l.~~ **Management Agent Information.** Information regarding the proposed management agent must be included with the application.
4. **Site Review.** During the course of the application review process MHDC will conduct a review of the site(s) chosen for each proposal. The review will consist of a staff site visit and a determination regarding the feasibility, marketability, appropriateness of the site(s) for the intended population and assessment of any perceived environmental issues. The results of the site review play an important role in the Competitive Review.
5. **Competitive Review.** Once an application has gone through an Initial, Primary Documentation, Secondary Documentation and Site Review and is considered complete to MHDC's satisfaction, it will undergo a Competitive Review. The Competitive Review uses the established housing priorities and selection criteria to determine recommendations for funding. All factors are considered, and those applications deemed, at the sole discretion of MHDC, to best meet the goals of MHDC will be recommended to the commission for formal approval.

The Code requires that the Housing Credit Agency notify the chief executive officer of the local jurisdiction where each proposed development is to be located. When an application satisfies the Initial and Primary Documentation Review 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, Springfield, and Columbia to afford the public an opportunity to comment on developments proposed in a given region.

## **D. Conditional Reservation**

Applications that receive approval from the MHDC board of commissioners will be awarded a conditional reservation ("Conditional Reservation") shortly after the approval date. In the event MHDC holds more than one NOFA round, the approval and Conditional Reservation dates will be set in the subsequent round NOFAs and the Developer's Guide. A Conditional Reservation will describe the type, amount(s), terms and requirements applicable to the development in question. Conditional Reservations will be subject to the requirements that MHDC determines necessary or appropriate to assure that the development will meet the goals of this Plan in a timely manner. The Carryover Allocation Agreement will be issued simultaneously with the Conditional Reservation Agreement for developments approved for 9% Credits according to the process described in section IV.A.

All developments receiving a Conditional Reservation must submit a firm submission package no later than the date established in the Conditional Reservation Agreement.

Initial monthly rents shall not exceed the MHDC approved rents as reflected on the MHDC Form 2013 attached to the Conditional Reservation and Firm Commitment, and as determined at Final Allocation. Any increase in the annual rents must be approved by MHDC.

A Conditional Reservation is subject to rescission should the development fail to comply in a timely manner with the conditions thereof. This includes, but is not limited to, failure to provide evidence satisfactory to MHDC of financial feasibility or sufficient progress toward firm submission, closing and placement in service.

## **IV. ALLOCATION PROCESS**

### **A. Carryover Allocation**

For developments with 9% Credit reservations the Code allows an allocation of federal tax credits to a qualified building(s) that will not be placed in service in that year ("Carryover Allocation"), provided that:

1. The building(s) is(are) placed in service by December 31st 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 ("The 10% Test"). The reasonably expected basis is the expected basis of the building(s) as calculated on December 31st of the second calendar year following the year the Carryover Allocation is made.

Section 42(h)(1)(E)(ii) of the Code allows up to 12 months after the date of the Carryover Allocation to meet The 10% Test.

3. To receive a Carryover Allocation, the owner must execute the Carryover Allocation Agreement and return it with the executed, Conditional Reservation Agreement, the tax credit fee, and a certificate of limited partnership or certificate of incorporation for the ownership entity from the Missouri Secretary of State within the timeframe established in the Conditional Reservation Agreement. The Carryover Allocation Agreement defines 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. To successfully complete The 10% Test, no later than ~~twelve~~13 months after the date of the Carryover Allocation the owner must submit an application package containing all of the documentation requested in the Developer's Guide, take

ownership of the property, and admit the investor as the limited partner or member of the ownership entity. A detailed description of the carryover requirement can be found in the Developer's Guide. MHDC reserves the right to request additional documents or certifications as it deems necessary or useful in the determination that the development remains eligible for a Carryover Allocation.

The credit amount defined in the Carryover Allocation Agreement may be reduced if warranted.

MHDC retains the right to recapture a Carryover Allocation 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.

## **B. Final Allocation**

Developments with a Carryover Allocation that do not place in service by the end of the second year following the allocation year are subject to recapture of their tax credits. 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 a final allocation of tax credits ("Final Allocation") no later than the end of the year in which an eligible development as determined by MHDC is placed in service. The Final Allocation credit amount is based on MHDC's final determination of the qualified basis for the building(s) based on an accountant's certification of final costs provided by the owner and a final determination of the credit amount as described in II(C)(6) above. The final credit amount allocated may be less than the amount reserved or allocated previously.

Owners may submit a request for a Final Allocation at any time during the year. Developments must file a request for Final Allocation no later than six months after substantial completion. The owner must meet the Final Allocation requirement of the Carryover Allocation Agreement to successfully receive a Final Allocation. MHDC reserves the right to request additional documents or certifications as it deems necessary or useful in the determination that the development is eligible for Final Allocation.

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

1. Every building in the development is a qualified low-income building as defined by 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 Land Use Restriction Agreement.
3. The owner has provided a complete final application package (for the entire completed development) in a format provided by MHDC.
4. The owner has provided a complete copy of the executed limited partnership agreement or operating agreement and all executed amended and restated partnership agreement(s) or operating agreements with all exhibits and schedules.
5. The owner has paid the tax credit fee 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 and submitted proof of attendance in the form of compliance training certificates.
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.

The owner of the development must file with MHDC an executed copy of the 8609 for the first year in which credits are claimed and an executed copy of the Missouri Eligibility Statement or an accounting of state credits earned by March ~~15~~-31 of each and every year in which state tax credits are claimed.

### **C. Transfer of Reservations and Allocations**

Without MHDC's prior consent, Conditional 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. Because all representations made with respect to the applicant, 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. Owner Elections**

1. **Applicable Credit Percentage.** The applicable percentage (except for Bond Developments) may be locked 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 Carryover Allocation Agreement provides a space for such election. For 9% Credits the new construction/rehabilitation credit will not be less than 9.00% if the development is placed in service prior to December 31, 2013.

For Bond Developments, the applicable credit percentage is established at either, (i) the month in which the building is placed in service, or (ii) at the election of the taxpayer, the month in which the bonds are issued. If the latter is desired, the Election Statement (form provided by MHDC as an 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.

2. **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 that MHDC initially allocates a housing credit dollar amount to the development. This 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 MHDC in writing before 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 Bond Developments the effective date of the income limitation used to establish the gross rent floor is the date MHDC issues a Letter of Determination (also known as the 42(m) Letter) for the development, 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 MHDC in writing prior to the placed-in-service date.

The gross rent floor election does not replace the MHDC requirement that the initial monthly rents cannot exceed the MHDC approved rents from MHDC Form 2013 attached to the Conditional Reservation, Carryover Allocation Agreement and Final Allocation letter. Any increases in the annual rents must be approved by MHDC.

3. **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.

### **E. Land Use Restriction Agreement**

Section 42(h)(6) of the Code requires that a development be subject to “an extended low-income housing commitment.” MHDC complies with these requirements by the execution and recording of a Land Use Restriction Agreement (the "LURA"). The LURA sets forth 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 this Plan as covenants running with the land for a minimum of thirty years (or additional years if the development owner has committed to a longer use period). MHDC will use the information submitted in the firm submission to prepare the LURA. The LURA will be prepared, signed and sent to the development owner to review and sign. MHDC shall deliver it to a title company or county recorder of deeds for recording. The LURA must not be altered in any manner. The original recorded LURA is to be returned to MHDC.

The LURA shall be recorded prior to the filing of any deed of trust or other first lien encumbrance on the property. 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, for a period of three 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 cannot be increased for any low-income unit. The priority recording of the LURA ensures that all lien holders will honor those provisions of the LURA.

## **F. Bond Developments**

Under section 42(h)(4) of the Code, Bond Developments may be entitled to the 4% Credit. The development must have received an allocation of private activity bond cap pursuant to Section 146 of the Internal Revenue 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.

Bond Developments are required by the Code to apply through the Housing Credit Agency for an allocation of tax credits and for a determination that the development satisfies the requirements of this Plan. Although the proposal does not have to compete for credits from the State Housing Credit Ceiling applicants must submit an application during the ~~posted~~annual NOFA period and must meet all requirements of the reservation process and this Plan.

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. At the close of the NOFA period, the commission will approve the recommendation and ranking of successful applications for priority in the consideration for a private activity bond allocation by the Department of Economic Development (“DED”). Proposals that do not receive an allocation letter from DED before the end of the year they received their Conditional Reservation will be required to re-submit their application for tax credits in the next NOFA period if they want to be recommended and ranked for consideration of bond allocation in a subsequent year.

When MHDC has received verification that bonds have been issued, MHDC will issue Building Identification Number(s).

For mixed-income developments financed with private activity bonds, when feasible and practicable, MHDC requires that the affordable 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 affordable 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 bonds will be issued by a local Industrial Development Authority (IDA), MHDC as the State Housing Agency must perform an evaluation of the development according to the requirements of section 42(m) of the Code. The IDA must submit a request on original letterhead to MHDC no later than four business days prior to closing, asking MHDC to issue a determination letter~~evaluate the financing structure and to respond with a letter confirming that the development satisfies the requirements of the Plan and stating the preliminary amount of tax credits.~~ In the year in which the development is placed in service, the owner must request a final allocation of credits in the form of a complete and fully executed application package.

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.

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, non-performance, non-compliance, or failure to comply with established procedures and policies of MHDC, including the MHDC Workforce Eligibility Policy.

## V. 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 the Code. Developments approved for tax credits under this QAP must follow the HUD Multifamily Tax Subsidy Project (“MTSP”) income limits in effect for the metropolitan area or county in which the property is located at the time a household leases a tax credit unit. HUD income limits for the Section 8 and HOME programs will prevail as directed by HUD regulations for tax credit units that are also Section 8 or HOME-assisted units. 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 Monitoring Handbook, as may be amended from time to time, explaining the LIHTC monitoring process in detail. Developers must finalize and receive approval for the unit mix and on-site management requirements prior to requesting firm commitment or the Letter of Determination. 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.

## VI. OTHER INFORMATION

### A. Program Fees

MHDC may charge developments financed under the requirements of this Plan the fees listed below. This may not be an inclusive list of fees, and MHDC reserves the right to charge additional fees as it is deemed necessary in the course of administering the Federal and State LIHTC. Further discussion of applicable fees can be found in the Developer’s Guide.

1. **Application Fee.** All applicants for MHDC financing under this Plan and the NOFA must submit an application fee with their proposals. The application fee is non-refundable and if any check for an application fee is returned for any reason, the application will be rejected. The applicable fees are:
  - a. Nonprofit Priority Application Fee. Proposals that qualify for the Nonprofit Priority and request consideration under that priority owe a \$750 application fee. This does not include Bond Developments, which must pay the standard application fee.
  - b. Standard Application Fee. All applications that do not pay the nonprofit priority application fee owe a \$1,500 application fee.

Exception: Applicants submitting proposals under the Property Disposition Priority for a property that is listed publicly by MHDC as real estate owned and available for public bid are not required to submit an application fee.

- ~~2. **Secondary Exhibit Deficiency Fee.** A fee of \$50 for each secondary review exhibit that is missing from an application will be charged. If six or more secondary review exhibits are missing no fee will~~

~~be charged, but the application will be rejected. Failure to pay any secondary exhibit deficiency fee by the Cure Date will also result in rejection of the application.~~

~~3.2. **Tax Credit Fee.** A fee equal to 7% of the approved annual federal credit amount must be paid with the execution of a Carryover Allocation Agreement or, for Bond Developments, the issuance of the Letter of Determination. The fee amount is to be rounded up to the next dollar. The fee is non-refundable and will not be reduced or refunded if the final allocated credit amount is reduced or if the credits are returned or recaptured. If the final allocated credit amount is increased the increased amount is subject to the fee and must be received prior to the issuance of 8609s.~~

~~3. **Appraisal Fee.** MHDC may require an appraisal to confirm the fair market value of the land and improvements transferred between parties with an identity of interest or to calculate loan-to-value ratios for developments receiving an MHDC loan. MHDC shall order the appraisal and assess a fee of \$5,000 from the development at Conditional Reservation. The development will be either further assessed or refunded the difference if the actual cost of the appraisal is more or less than the flat fee. The appraisal fee is non-refundable once the appraisal services have been provided.~~

4. **Construction Inspection Fee.** A fee may be assessed to compensate either MHDC or a third-party inspector hired by MHDC for construction inspections. The amount of the fee will be based on the estimated length of the construction period ~~but for budgeting purposes should be estimated at \$7,500. Consult the Developer's Guide for guidance on estimated fees for budgeting purposes.~~

5. **Recording Fee.** The development will be responsible for the fee charged by the recorder's office at the time the LURA is recorded.

6. **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 30 years (the extended-use 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.

7. **Document Revision Fee.** A fee of \$100 per form will be charged for revisions to an 8609 or Missouri Eligibility Statement form when the revision is the result of an error caused by incomplete or inaccurate information provided by the developer during the allocation process. One form is filed per qualified building for each type of housing tax credit being allocated.

## **B. Status Reporting**

Developments receiving Conditional 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 made may also be required to provide information regarding the owner's ability to meet Code and MHDC requirements to maintain its Carryover Allocation.

## **C. Development Changes**

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 of 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.

## **D. Administration of the 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 Federal LIHTC and State LIHTC 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.

## **E. 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, public hearing, and approval by the commission.

## **F. MHDC Discretionary Authority**

MHDC reserves the right, in its sole discretion, to:

1. Carry forward a portion of the current year's 9% Credit for allocation in the next calendar year.
2. Under certain conditions, issue a Reservation for a portion of the next year's 9% Credit.
3. Under certain conditions, issue a binding commitment for some portion of the next year's 9% Credit.
4. Limit the number of developments in a specific market or geographic area.
5. 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. Fund fewer than the number of units proposed in an application.
7. Assert discretionary authority concerning all aspects of an application during the underwriting process.

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.

## **G. Other Conditions**

In making reservations or allocations, MHDC relies on information provided by or on behalf of the applicant. 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 applicant 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 Federal and State LIHTC.

**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.**