

TAX CREDIT ASSISTANCE PROGRAM (TCAP)

ASSET MANAGEMENT AND COMPLIANCE MONITORING MANUAL



Strength, Dignity, Quality of Life

MISSOURI HOUSING

DEVELOPMENT COMMISSION

REVISED: **March 2012**

1. INTRODUCTION

1.1 THE MISSOURI HOUSING DEVELOPMENT COMMISSION

The Missouri Housing Development Commission (“MHDC”) is charged with performing asset management functions on properties developed using tax credit assistance program (“TCAP”) funds authorized by Title XII of the American Recovery and Reinvestment Tax Act of 2009 to ensure compliance with Section 42 (“Section 42”) of the Internal Revenue Code (“Code”) and the long-term viability of such properties (American Recovery and Reinvestment Tax Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 HR (2009)) under the Home Investment Partnership Program heading, Section 2.3.2. The TCAP program includes allocations that were made by MHDC between October 1, 2006 through September 30, 2009.

1.2 LOW-INCOME HOUSING TAX CREDIT (LIHTC) RULES

Properties utilizing TCAP funds are required to comply with all requirements of Section 42. Owners/managers should reference the LIHTC Compliance Manual which can be found at www.mhdc.com for guidance on requirements not contained in this manual.

2. COMPLIANCE PERIOD

2.1 DEFINITION

Internal Revenue Code (IRC) Section 42(j)(1) defines the term “Compliance Period” as, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period.

2.2 GENERALLY

Properties utilizing TCAP funds are subject to the terms of the loan (“Compliance Period”). To enforce the TCAP requirements throughout the Compliance Period, a restrictive covenant (Land Use Restriction Agreement (“LURA”) and/or Regulatory Agreement) is filed with the Recorder of Deeds in the county in which the property is located.

2.3 WAIVER OF OPT OUT

The right to seek a qualified contract following the 15 year tax credit Compliance Period is waived for the term of the loan regardless of prepayment.

3. RESERVE & ESCROW ACCOUNTS

3.1 GENERALLY

MHDC is required to ensure the long-term viability of properties developed using TCAP funds (Section 1602). MHDC is authorized to collect a reasonable fee from TCAP fund recipients to cover expenses associated with the performance of its asset management duties.

At the time of conversion (closing) of the loan to permanent status, the owner is required to deposit \$45,000, in cash, with MHDC for an Asset Management Fee. For the first 15 years of the loan, \$3,000 shall be disbursed to MHDC annually from the Asset Management Fee Escrow Account. The first \$3,000 disbursement to MHDC shall be made at the time of the \$45,000 deposit.

3.2 OPERATING AND REPLACEMENT RESERVES

a. Operating Reserve

A separate operating reserve equal to six months of operating expenses, debt service and reserve for replacement deposits must be funded at conversion (closing) and held by MHDC for the duration of the loan. MHDC must approve all operating reserve releases.

Operating Reserve accounts are used to cover operational expenses that cannot be paid for by the property. Properties must be able to show need (i.e. operating shortfall) before operating reserves can be used. Properties will need to submit a request identifying the type of expenses to be covered, documentation of expenses, (i.e. invoices and cancelled checks) and a year-to-date internal balance sheet income statement before a request can be approved. Specific operating reserve guidelines can be found at http://www.mhdc.com/program_compliance/accounting/operating-reserves.htm.

All operating reserve release requests are required to be submitted online through MHDC's Asset Management Reporting System (AMRS) <https://amrs.mhdc.com>. A user name and password is required to access this system. MHDC will not accept mailed/e-mailed operating reserve release requests unless a property has 12 units or less.

b. Replacement Reserve

A separate initial replacement reserve balance of \$600.00 per unit must be funded at conversion (closing), with monthly installments during operations equivalent to \$300.00 per unit per year increased by 3% annually. All reserve for replacement funds are held by MHDC. MHDC must approve all reserve for replacement releases.

Replacement Reserve accounts are used to help ensure that the physical life of the buildings and structures will extend through the economic life of the property. Properties must be able to show need before replacement reserves can be used. Properties will need to submit the type of request, the item requested, documentation of expenses (i.e. invoices and cancelled checks), bids and a narrative of the work to be done. The Replacement Reserve Analysis Form is a resource that lists most major replacement reserve items, their estimated useful life and projected cost. Specific replacement reserve guidelines can be found at http://www.mhdc.com/program_compliance/accounting/reserves.htm.

All replacement reserve release requests are required to be submitted online through MHDC's Asset Management Reporting System (AMRS)

<https://amrs.mhdc.com>. A user name and password is required to access this system. MHDC will not accept mailed/e-mailed replacement reserve release requests unless a property has 12 units or less.

3.3 ASSET MANAGEMENT FEE ESCROW

- a. To pay the cost of expenses associated with the performance of MHDC's asset management duties, at the time of conversion of the loan to permanent status, the owner is required to deposit \$45,000, in cash, with MHDC for an Asset Management Fee. Said deposit will be held by MHDC in an interest-bearing escrow account, subject to disbursement by MHDC for the sole purpose of paying MHDC's annual Asset Management Fee. For the first 15 years of the loan, \$3,000 shall be disbursed to MHDC every January from the Asset Management Fee Escrow Account as established at conversion. The first \$3,000 disbursement to MHDC shall be made at the time of the \$45,000 deposit.
- b. Costs associated with asset management are considered administrative in nature and are not eligible to be paid with TCAP funds. Owners are directly responsible for paying the Asset Management Fee.

4. MANAGEMENT AGENT AUTHORIZATION

4.1 GENERALLY

MHDC must approve the owner designated management agent and the management agent fee. Owners must submit either *Exhibit A-2 Property Owner's/Management Agreement* or *Exhibit A-4 Property Owner's Management Agent Certification* for MHDC approval. The designated management agent will be required to manage the property in accordance with MHDC Management Handbook 2004-1, as posted on MHDC's web site at http://www.mhdc.com/program_compliance/LIHTC/documents/2004_Management_Handbook.pdf.

4.2 MANAGEMENT REMOVAL PROVISION

Any management contract entered into by the owner involving the property shall contain a provision that MHDC shall have the right but not the obligation, to terminate such contract, without penalty and with or without cause upon written request by MHDC addressed to the owner and the management agent. Upon receipt of such request the owner shall immediately move to terminate the contract within a period of not more than 60 days and shall make arrangements satisfactory to MHDC for continuing proper management of the property.

5. ON-SITE PHYSICAL INSPECTIONS AND RESIDENT FILE REVIEWS

- 5.1 MHDC will monitor TCAP-funded properties by performing on-site physical inspections and resident file reviews **annually**. The guidelines MHDC will follow when performing such inspections/reviews on TCAP properties are identical to those inspection/review guidelines set forth in the LIHTC Compliance Manual, as posted on MHDC's web-site (www.mhdc.com).

6. REPORTING

6.1 8609's

MHDC will issue the owner an IRS Form 8609 in connection with tax credits associated with the property. Within 90 days after MHDC issues the 8609, the owner must sign and return the completed 8609 to: MHDC, Attn: Asset Management Dept., 4625 Lindell, Suite 300, St. Louis, MO 63108.

Any property that does not return the signed and completed IRS Form 8609 within 90 days will be considered noncompliant and reported to the IRS on Form 8823 if applicable.

6.2 OCCUPANCY DATA

MHDC requires all properties to submit monthly occupancy reports through MHDC's Asset Management Report System (AMRS). The website address is <https://amrs.mhdc.com>. Properties will have until the 10th day of each month to submit the previous month's occupancy statistics (e.g., December occupancy reports should be received no later than January 10, of the following month). Failure to submit occupancy information by the 10th of each month will result in MHDC automatically placing the property in noncompliance status with the issuance of an 8823 to the IRS if applicable. The guidelines MHDC follows when performing occupancy reviews on TCAP properties are identical to the guidelines set forth in the Compliance Accounting Desk Guide. Properties have the capability to cure all non-compliance issues in AMRS.

6.3 BUDGETS

MHDC requires all properties to submit annual budget information through AMRS. MHDC requires all budgets to include the following information: "Statement of Profit/Loss" from the previous year audit; "Current Fiscal Year Expenses to Date"; and "Budget for the Next Fiscal Year". Significant variances are flagged by the AMRS system and require the property to provide appropriate explanation. All explanations are analyzed by MHDC's Compliance Accounting Department for reasonableness. Properties have until November 15th of each year to submit the budget. Failure to submit financial information will result in MHDC placing the property in noncompliance status, with an issuance of an 8823 to the IRS if applicable. The guidelines MHDC follows when performing budget reviews on TCAP properties are identical to the guidelines set forth in the Compliance Accounting Desk Guide.

6.4 FINANCIAL STATEMENTS

a. Monthly

MHDC requires all properties to submit monthly financial statement information through AMRS. Information is analyzed by MHDC's Compliance Accounting Department on a quarterly basis. Variance analysis is performed to isolate monthly/quarterly discrepancies from the property's approved budget. Properties have until the 25th day of each month to submit the previous month's financial information.

b. Annually

At year-end, MHDC requires audited financial statements to be submitted through AMRS. Properties have until March 31st of each year to submit audited financial statements. Annual financial statements must be prepared according to Government Auditing Standards. Government Auditing Standards require the auditor to report on internal control, submit a schedule of question costs and report on prior year findings. The guidelines MHDC follows when performing annual financial statement reviews on TCAP properties are identical to the guidelines set forth in the Compliance Accounting Desk Guide. Failure to submit financial statement information will result in MHDC placing the property in noncompliance status, with issuance of an 8823 to the IRS if applicable.

6.5 OTHER REPORTING REQUIREMENTS

In addition to the reporting requirements set forth above, owners must also comply with all reporting requirements set forth in the LIHTC Compliance Manual which can be found at http://www.mhdc.com/program_compliance/tax_credit/Tax_Credit_Manual_FINAL_Posted_11-2006.pdf. This reporting includes, but is not limited to, the reporting required in the *Event-Specific Reporting* and *Annual Reporting* sections of the LIHTC Compliance Manual.

7. AFFIRMATIVELY FURTHER FAIR HOUSING

7.1 AFFIRMATIVE FAIR HOUSING MARKET PLAN

In accordance with HUD requirements, the owner agrees to complete and submit a signed TCAP Affirmative Fair Housing Marketing Plan (AFHMP) Exhibit L HUD Form 935.2A for review and approval. The link to this form is <http://www.hud.gov/offices/adm/hudclips/forms>. Upon MHDC approval, the plan will be followed when marketing TCAP units.

AFHMP steps consist of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The owner agrees that the AFHMP requirements and procedures adopted will include:

- a. Methods for informing the public, owners and potential residents about Federal fair housing laws and the property's affirmative marketing policy;
- b. Requirements and practices the owner will adhere to in order to carry out the property's affirmative marketing procedures and requirements;
- c. Procedures to be used by owners to inform and solicit applications from persons in the housing market areas that are not likely to apply for the housing without special outreach. Special outreach includes but is not limited to, the translation of marketing material for persons who are limited in English proficiency; the placement of translated marketing material in minority owned media; and the provision of meaningful access to the property (e.g. providing translated information about application

procedures, residency and other property amenities);

- d. Records that will be kept describing actions taken by the property and by owners to affirmatively market units and records to assess the results of these actions; and
- e. A description of how the property will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

8. NONCOMPLIANCE

8.1 REPORTING REQUIREMENT NONCOMPLIANCE

Owners are given thirty (30) days after notification from MHDC to submit any missing, incorrect and/or incomplete report(s), information or documentation to MHDC.

8.2 8823's

IRS Form 8823 is filed with the IRS to report owner noncompliance. Upon an event of noncompliance, and after any applicable cure period(s), the form is submitted to the IRS and a copy provided to the owner.

8.3 GROUNDS FOR DEFAULT

Upon an act of default, MHDC shall give written notice to the owner. MHDC may, but is under no obligation to, notify the owner's limited partners by sending written notice to the appropriate limited partners of record. If such violation is not corrected to the satisfaction of MHDC within 30 days or within such time as MHDC determines necessary, MHDC may declare a default under the regulatory agreement and exercise any of the remedies afforded under the regulatory agreement. Such remedies include but are not limited to:

- a. Take possession of the property,
- b. Collect all rents and charges in connection with the operation of the property and use such collections to pay the owner's obligations and necessary expenses,
- c. Declare the whole debt immediately due and payable and proceed with the foreclosure and/or,
- d. Apply to any state or federal court for performance of the regulatory agreement.

If the property is unable to maintain compliance with code or the regulatory agreement, in any regard, MHDC reserves the right to sue for specific performance of any TCAP programmatic requirements.

Furthermore, the owner agrees that HUD and/or the tenants of the property have a right to enforce the provision of the regulatory agreement.

8.4 EXTENDED USE PERIOD

In addition to all other requirements set forth herein, during years 16-30 of the Compliance Period, the owner must comply with all rules and regulations governing the LIHTC Extended Use Period as set forth by Section 42 and MHDC. Guidance on such requirements can be found in the LIHTC Compliance Manual posted on our website at www.mhdc.com.

9. MISCELLANEOUS REQUIREMENTS

9.1 MHDC RIGHT OF FIRST REFUSAL

At any time during the term of the TCAP Regulatory Agreement, before the owner may sell the property to a third-party, the owner must first offer the property to MHDC. The offer to MHDC must be on the same terms and conditions as offered and conditionally agreed to by the third-party buyer (the only condition to the third-party buyer's contract shall be MHDC refusing to exercise its right of first refusal). If MHDC does not accept the offer within ninety (90) days, owner shall be free to accept the third-party offer.

If MHDC does not exercise its right of first refusal and owner does not close the transaction with the third party buyer within ninety (90) days, the owner's right to sell the property to such third-party shall expire and MHDC's right of first refusal is again applicable.

MHDC may freely assign its right of first refusal rights as outlined above.