

# MHDC DEVELOPER'S GUIDE

For Multifamily Programs



*Strength, Dignity, Quality of Life*

**MISSOURI HOUSING**

DEVELOPMENT COMMISSION

2017

# MHDC 2017 Developer’s Guide

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## Introduction

This Developer's Guide to MHDC Multifamily Programs ("Developer's Guide") is a reference document for developers, owners, and all development team members. Missouri Housing Development Commission ("MHDC") staff has compiled general and administrative guidance on MHDC's multifamily programs throughout the application, reservation/commitment, construction loan closing, construction, carryover allocation, final allocation, permanent loan closing, and operational stages. The Developer's Guide is a complement to the Qualified Allocation Plan ("QAP") and may be updated from time-to-time, at MHDC's discretion. Any term not defined herein shall have the definition given in the QAP.

MHDC's Rental Production Multifamily Programs encompass financing tools for the development of affordable housing which include federal low-income housing tax credit ("Federal LIHTC") and state low-income housing tax credits ("State LIHTC" and, collectively with the Federal LIHTC, "LIHTC"), HOME loan and grant funds, National Housing Trust Fund loan and grant funds, MHDC Fund Balance loans, and Risk Share Insurance coupled with tax exempt bonds. Developers may also utilize other MHDC programs such as the Affordable Housing Assistance Program and Missouri Housing Trust Fund for financing a development.

All MHDC forms or documents referenced in this Developer's Guide can be accessed at [http://www.mhdc.com/rental\\_production/index.htm](http://www.mhdc.com/rental_production/index.htm). If you cannot find a form or document please contact the Director of Rental Production or Senior Underwriter.

## Rental Production Cycle

Rental Production Multifamily Programs follow an annual funding cycle which starts with the issuance of the QAP. The QAP sets forth the program guidelines concerning the application review and approval process and the reservation and allocation of LIHTC. Following public hearings, the QAP is presented to the Commission for approval with a Notice of Funding Availability ("NOFA") which establishes the approximate amount of funding available for each program and the deadline for applications for such funding.

Applications received prior to the NOFA deadline are reviewed according to Primary and Secondary thresholds and selection criteria, as described in the QAP. Staff invites comment on each application through the notification of public officials soon after application receipt. Public hearings are held in four locations throughout the state. Evaluation criteria, underwriting review, and site inspection are utilized by staff to formulate a list of recommended applications. The Commission then reviews and approves a final list of proposals for funding.

Following Commission approval, an underwriter is assigned to each development and a Conditional Reservation for financing is issued within eight weeks of Commission approval ("Conditional Reservation") to establish the documentation required and timeline to proceed toward Firm Commitment. During this time, developers submit environmental reviews, finalize plans and specifications/scopes of work, receive construction bids, and prepare due diligence for MHDC staff's review and approval. Developers are encouraged to complete the Firm Submission process as early as possible to minimize the effects of inclement winter weather on construction progress. MHDC staff establishes a deadline for Firm Submission to assure the approved funding is being utilized and accessed in an expeditious manner. The Underwriting, Legal, Architecture, Mortgage Credit, Asset Management, HOME, Community Initiatives and Tax Credit teams examine the information submitted with Firm Submission



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and consolidate comments and requirements. Once a development has demonstrated firm and appropriate budgets, supplied all required documentation, showed a readiness to proceed, and received approval from each reviewing department, the underwriter issues a Firm Commitment and, if 9% Credits were awarded to the development, the tax credit department issues a Carryover Allocation Agreement. Once the Firm Commitment is fully executed, the development can proceed to closing. Pre-closing documentation is prepared and submitted by the development team. Upon the satisfaction of all MHDC closing requirements, the loan, tax credit, grant, and/or Risk Share Insurance documents, as applicable, are executed and the financing is closed.

During the construction phase, MHDC staff monitors construction progress through on-site reviews, the receipt of progress reports from developers, the receipt of architect field reports, and the processing of draw requests from developments receiving MHDC construction loan financing.

Developments receiving 9% Credits must complete certain steps to demonstrate progress and compliance with IRS-required deadlines. The Carryover Allocation process confirms the development continues to satisfy the requirements of Section 42 of the Internal Revenue Code ("Code") and can retain the reservation of 9% Credits. At the end of construction, all developments must file a cost certification with MHDC which certifies the actual costs of the development according to specific program guidelines. The certification is necessary to determine the final approved amounts of the Federal LIHTC, State LIHTC, and/or permanent MHDC financing. Developments with construction/permanent financing must submit final documentation to convert the loan from the construction phase to the permanent phase. Developments with a commitment for MHDC permanent-only financing must submit final documentation for approval and proceed to close on the permanent loan. Developments that received an allocation of tax credits must submit final documentation for approval to receive 8609(s) and Missouri Eligibility Statement(s), if applicable.

As lease-up commences and the construction phase transitions to the operating phase, each development begins a relationship with MHDC Asset Management. Critical to the long-term viability of a development is its success in leasing and retaining residents and complying with the various restrictions imposed by each financing program. At this point in the development stage, the Rental Production teams pass the oversight of the development to the Asset Management teams.

## MHDC Funding Sources

### *Low Income Housing Tax Credits*

The State of Missouri allocates two sources of LIHTC, State and Federal. There are two types of State LIHTC and Federal LIHTC available in Missouri, the "9% Credit" and the "4% Credit."

#### *9% Credit*

For purposes of this Developer's Guide and the QAP, the cumulative amount of both State and Federal 9% Credits MHDC can allocate for any calendar year shall be known as the "Annual 9% Credit Authority." Developments applying for an allocation under the Annual 9% Credit Authority receive what is commonly known as the 9% Credit. The 9% Credit includes any 70% present value credit and any 30% present value

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credit for qualified existing buildings which also will use the 70% present value credit.

The total amount of Federal 9% Credit available in any one year is specified by the Code in §42(h)(3)(C), and is known as the "State Housing Credit Ceiling." The State Housing Credit Ceiling is generally equal to the sum of the following:

- i. Per Capita Credits. Calculated based on the state population and the per capita rate set by the IRS.
- ii. Carry Forward Credits. Should MHDC be unable to allocate all allotted 9% 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 30.
- iv. National Pool Credits. If MHDC is able to allocate the entire amount of Federal 9% Credits available in any one year, Missouri may receive additional credits from the pool of credits returned by other states ("National Pool"), if available.

The State LIHTC was established by the State Tax Relief Act (§135.350 et seq. of Chapter 135 of the Missouri Revised Statutes) ("State Tax Relief Act") and provides that any development eligible for a Federal LIHTC allocation is eligible for a State LIHTC allocation. The amount of State LIHTC authorized for a development cannot exceed the Federal LIHTC amount and the amount of State LIHTC available in proportion to the Federal LIHTC available may be reduced by the state legislature, making any allocation subject to change in the authorizing statute. For any given development, MHDC, in its sole discretion, may choose not to allocate any State LIHTC or may choose to allocate State LIHTC in an amount up to the imposed statutory limit, as it deems necessary for the financial feasibility of the development.

The anticipated amount of the Annual 9% Credit Authority for Missouri will be announced in the NOFA to precede the application round.

## 4% Credit

Under §42(h)(4) of the Code, developments financed with tax-exempt private activity bond volume cap ("Bond Developments") may be eligible to receive the "4% Credit." The 4% Credit 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.

While the NOFA does not establish a ceiling or annual authority for the Federal 4% Credit, the amount of State 4% Credits available for Bond Developments is currently capped at \$6 million per fiscal year. Consistent with the 9% Credit, the amount of State 4% 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 4% Credits or may choose to allocate State 4% Credits in an amount up to the imposed statutory limit, as it deems necessary for the financial feasibility of the development.

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## *HOME Loans and Grants*

Each year, MHDC receives an allocation of federally funded HOME Funds which provide a financing source for several eligible activities that increase the supply of affordable housing for low and very low income persons ("HOME Funds"). These activities include the acquisition and rehabilitation or new construction of rental housing. As HOME Administrator for the State of Missouri, MHDC uses a portion of its annual HOME Funds allocation to finance rental production at a very low interest rate, which results in rents that are affordable to low-income families.

The amount of HOME Funds available for financing each year will be reflected in the NOFA that accompanies the QAP.

HUD published a Final Rule in the Federal Register on July 24, 2013 to amend the HOME Program regulations. These amendments to the HOME regulations represent the most significant changes to the HOME Program in seventeen (17) years. The Final Rule will be enforced on all MHDC projects funded with HOME funds as required by law. Information on the new HOME Rule can be found at: <https://www.onecpd.info/>. Additional guidance is on the MHDC website. Please refer to MHDC's HOME Program Guide for additional information.

## *National Housing Trust Fund Loans and Grants*

MHDC anticipates its first allocation of National Housing Trust Fund (NHTF) for the 2017 funding year. These funds will provide a financing source for several eligible activities that increase the supply of affordable housing for extremely low income households. These activities include the acquisition and rehabilitation or new construction of rental housing.

The amount of NHTF funds available for financing will be reflected in the NOFA that accompanies the QAP.

## *Fund Balance Loans*

MHDC, as part of its annual budgeting process, may allocate a portion of its Fund Balance to provide construction and permanent financing on tax credit developments ("Fund Balance"). The amount of Fund Balance available is determined annually and will be reflected in the NOFA that accompanies the QAP.

If Fund Balance is used as a loan, it must always be in a first position, have a minimum interest rate as reflected in the NOFA, and a 1% loan origination fee will be charged.

## *Risk Share Insurance*

Section 542(c) of the Housing and Community Development Act of 1992 offers a partnership between the Department of Housing and Urban Development ("HUD") and Housing Finance Agencies ("HFAs") to provide affordable housing opportunities for the housing needs of various communities ("Risk Share Insurance"). This program provides new independent insurance authority that is not under the National Housing Act.

Under this program the HFA enters into a Risk-sharing Agreement with HUD by contracting to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

There are three levels of HUD approvals for Risk-Sharing commitments (from HUD handbook 4590.01 Rev-1):

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## Level I

Approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards and loan terms and conditions, and assumes 50-90 percent of the risk (increments of 10 percent).

## Level II

Approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards and loan terms and conditions approved by HUD. There are two sub-levels under this level: one where the HFA assumes at least 25 percent of the risk, the other where the HFA assumes 10 percent or 25 percent, at the HFA's option, of the risk.

## Combined Levels I/II

For HFAs that plan to use Level I and Level II processing, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD, as described above.

MHDC has been approved by HUD at Level I with a 50/50 split of risk sharing for loss from any default.

The Risk-Share Insurance program provides credit enhancement to development proposals in a timelier manner than the regular Federal Housing Administration ("FHA") multifamily insurance programs. MHDC provides this program to Bond Development proposals, upon request, on a case-by-case basis after a review is made to determine the proposal's long term financial viability, among other salient factors.

If Risk-Share Insurance is used, such loan must always be in the first position. MHDC will charge a 1% loan origination fee on the entire construction loan amount and another 1% for the permanent loan amount. An upfront annual ½% Mortgage Insurance Premium ("MIP") per twelve (12) months of construction is due at initial loan closing. A ½% MIP is due on the outstanding mortgage balance after conversion and continuing throughout the term of the loan.

## *Tax-Exempt Bonds*

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

There is no minimum or maximum amount of Federal 4% Credits available each year. However, Bond Developments are required by the Code to apply through the Housing Credit Agency for an allocation of 4% Credits and for a determination the development satisfies the requirements of the QAP. Although the proposal does not have to compete for credits from the State Housing Credit Ceiling, applicants must submit an application during the posted NOFA period, are required by Section 42(m)(1)(D) of the Code to satisfy the requirements for an allocation of Federal LIHTCs under the QAP, and are also subject to MHDC's compliance monitoring requirements.

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MHDC staff will review the application, determine whether the development is eligible and meets the requirements of the QAP, and make an initial determination of the development's 4% 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 Missouri Department of Economic Development ("DED").

## *Affordable Housing Assistance Program*

The Affordable Housing Assistance Program housing production tax credit ("AHAP Credit") is used as an incentive for Missouri businesses and/or individuals to participate in affordable housing production. This state tax credit is earned by an eligible donor for the donation of cash, equity, services, or real/personal property to a non-profit community-based organization for the purpose of providing affordable housing assistance activities or market rate housing in distressed communities. The AHAP Credit is governed by Missouri Revised Statutes 32.105, 32.111, 32.112, 32.115, 32.120, and 32.125.

The AHAP Credit is a one-time credit that can be allocated to an eligible donor for up to 55% of the total value of an eligible donation. There are two types of AHAP tax credits: (1) Production credits for donations related to construction, rehabilitation, and rental assistance activities, and (2) Operating Assistance credits for donations that help fund the operating costs of the non-profit organization. The program offers \$10 million in Production credits and \$1 million in Operating Assistance credits annually. The amount of the credits available may be reduced by Legislative action.

## *Community Initiatives Funding*

The Community Initiatives Department is responsible for administering state and federal grant programs used for a variety of housing activities including, but not limited to, rental assistance, utility assistance, emergency assistance, operations, home repair and construction. Each program has its own unique eligibility criteria. For more information about how these programs can work collaboratively with affordable housing projects, please contact the Community Initiatives Manager.

## **Application Information**

This section explains the application process for MHDC funding, including MHDC's review process, application of underwriting standards, and priorities for funding. This section should be reviewed closely when considering or completing an application for funding.

## *Notice of Funding Availability*

There will be, at a minimum, one Notice of Funding Availability ("NOFA") for 2017. Any NOFA will indicate the funding types, funding amounts, and application deadlines for that particular round. The NOFA, the QAP, and this Developer's Guide describe and clarify the procedures, priorities and expectations for each application and applicant for MHDC funding. Should a question arise that cannot be answered by the NOFA, QAP, or Developer's Guide, please contact MHDC's Director of Rental Production or Chief Underwriter.

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## *The Application*

An "Application" for purposes of this Developer's Guide and the NOFA is defined as: (1) the FIN-100, (2) one tabbed, three-ring binder with all required exhibits and original signatures, where required, (3) digital media with electronic exhibits, and (4) the appropriate application fee. The MHDC FIN-125 will identify exhibits to be submitted in the three-ring binder and exhibits to be submitted digitally. Three-ring binder and digital media exhibit names must match the FIN-125 exhibit names.

Applicants requesting tax credits must indicate whether they are seeking the 9% Credit or the 4% Credit (for Bond Developments). MHDC reserves 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 and also reserves the right to evaluate a 9% Credit Application for 4% Credits. If you wish to have a proposal considered for both 9% Credits and 4% Credits, you must provide complete and separate Applications for each credit type, structured appropriately ("Dual Proposal"). A Dual Proposal is essentially a submission of two Applications for the same site(s). MHDC will not accept more than one Application for any site(s) utilizing the same type of tax credit. For example, a 9% Credit family proposal and a 9% Credit senior proposal for the same site(s) will not be considered. A 9% Credit senior proposal and a 4% Credit family proposal (or vice versa) will be considered. If more than one Application is received for a site or a collection of sites utilizing the same type of credit, the first Application received will be accepted and any subsequent applications will be rejected. For senior proposals, the Applicant must present a development that at all times complies with the requirements set forth under 42 U.S.C. § 3607 for housing intended for either (i) households where all residents are persons who are sixty-two (62) years of age or older ("62+ Developments") or (ii) households where at least one resident is a person who is fifty-five (55) years of age or older ("55+ Developments"). Applicants must select one test for a senior development. MHDC will not accept separate proposals for the same site to be utilized as a 55+ Development and a 62+ Development.

## *Application Deadline*

The Application deadline for 2017 Round 1 is September 6, 2016 and is subject to change should the NOFA need to be revised or modified. Round 2, if available, will be announced at a later date by issuance of a new NOFA. Applications received after the applicable deadline will not be considered, no exceptions will be made.

## *Submitting an Application*

The complete application and the required materials must be received at MHDC's Kansas City office located at 920 Main Street, Suite 1400, Kansas City, MO 64105 by the applicable NOFA deadline.

Due to the competitive nature of the funding programs, it is in the applicant's best interest to provide the most complete and accurate documentation possible. The Application gives staff a first impression of a proposed site. Poorly prepared Applications will not demonstrate a strong competitive proposal and may give staff reason to question the capacity or ability of the development team. Early submittals are encouraged but do not receive preferential treatment.

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## *Public Hearings*

In compliance with program requirements, MHDC staff will send notification 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 for all applications. Those notified will be given an opportunity to comment on the proposed development. MHDC staff will consider the comments and may contact the local jurisdiction for additional information.

MHDC staff will also publish a notice in a regional newspaper requesting public comment on each application. Public hearings will be held in St. Louis, Kansas City, Springfield, and Columbia to afford the public an opportunity to comment on proposed developments in a given region. Specific dates and times for such public hearings will be published in regional newspapers and on the MHDC website.

To be included in the evaluation process, all communication from the public must be received no later than the date of the final public hearing.

## **Housing Priorities**

MHDC has created housing priorities to highlight and encourage the types of development that will best meet the Commission's mission. The priorities are not a substitute for the selection criteria and Applications that qualify for one or more of the priorities are not assured approval. Applications are reviewed as a complete package and all selection criteria and review stages are considered. Applications that meet one or more of the housing priorities will be given extra consideration and are encouraged, but qualifying for a housing priority cannot overcome other deficiencies in the Application, such as a weak market or poor feasibility.

Qualification for any of the housing priorities is at the sole discretion of MHDC. Submitting the proper documentation will qualify an Application for consideration for priority. However, the quality of that documentation will determine if the Application meets such housing priority.

Applications seeking a priority under one or more of the priorities listed below must still satisfy all other selection criteria and successfully compete against other Applications.

### *Nonprofit Involvement Set-aside Priority*

Section 42(h)(5)(A) of the Code states that not more than 90% of the State Housing Credit Ceiling can be allocated to developments that do not involve a qualified nonprofit organization. This is commonly known as the "nonprofit set-aside" and applies only to the 9% Credit. MHDC will give priority to Applications that involve a qualified nonprofit until the 10% requirement has been met ("LIHTC Nonprofit Priority"). At its discretion, MHDC may continue to give priority to proposals that involve qualified nonprofits after the 10% requirement has been met.

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

1. A 501(c)(3) or (c)(4) nonprofit organization;

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2. Having an expressed purpose of fostering low-income housing (this purpose must be expressed in the organization's articles of incorporation; if it is not, the Application will not be considered for this priority);
3. 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 §469(h) of the Code as "involved in the operations of the activity on a basis which is regular, continuous and substantial."); and
4. Is not affiliated with, nor controlled by, a for-profit organization.

HOME regulations dictate that 15% of HOME Funds must be loaned or granted to qualified Community Housing Development Organizations ("CHDO") ("HOME Nonprofit Priority"; the LIHTC Nonprofit Priority and HOME Nonprofit Priority shall be referred to, collectively, as the "Nonprofit Priority"). Certain legal, organizational, and other requirements apply for a nonprofit organization to qualify for CHDO status (24 CFR Part 92.2). If the development is seeking HOME Funds under the CHDO set-aside, the nonprofit entity must be the sole general partner (in the case of a limited partnership) or sole managing member (in the case of a limited liability company) of the ownership entity to qualify.

Developments wanting to be considered for the Nonprofit Priority must fully complete the applicable Application sections and the FIN 100 Addendum and provide the following items with the Application:

1. Nonprofit organization's Certificate of Incorporation;
2. Articles of Incorporation and By-Laws, including all amendments (must describe the organization's purpose of fostering low-income housing);
3. Missouri Certificate of Good Standing dated within thirty (30) days of the application due date. An official certificate may be obtained from the Missouri Secretary of State web site for a nominal fee. A screen print of the search screen indicating the status of an entity is not a certification and is not an acceptable demonstration of good standing;
4. IRS letter evidencing nonprofit status;
5. MHDC Nonprofit Questionnaire completed, executed and including all relevant attachments, such as a list of the board members and the most recent audited financial statement; and
6. CHDO Recertification Form R-100 (if applying under the HOME Nonprofit Priority) with all attachments.

The nonprofit must be involved in the ownership as either a general partner or co-general partner and must materially participate (within the Internal Revenue Code Section 469(h)) in the development and operation of the housing development throughout the tax credit compliance period.

## *Special Needs Priority (eligible for up to 30% boost in eligible basis)*

The special needs priority is an incentive for developers to develop housing that is safe, decent, affordable, and targeted to the most vulnerable individuals and families. This is accomplished by providing a home for individuals and families with special needs combined with social services to stabilize them once in place. The desired outcomes of the special



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needs housing priority are for tenants to stay housed, have social and community connections, improve their physical and mental health, increase their income and employment, and to be satisfied with the services and housing.<sup>1</sup>

Developments providing housing opportunities for persons with special needs are strongly encouraged. Proposals committing to a special needs set-aside of no less than 10% of total units, up to a maximum of 100% of total units, will receive a preference in funding (“Special Needs Priority”). MHDC will endeavor to set aside 33% of Federal LIHTC and State LIHTC for 4% Credits and 9% Credits for developments containing units qualifying under the Special Needs Priority, outside of geographic region percentages, subject to the quality of the special needs proposals received and their ability to meet selection criteria and underwriting requirements described in the QAP. Please note that federal law requires that individuals with disabilities have access to housing that is truly integrated. This is of particular concern with respect to those developments electing a set-aside of 100% of total units in a proposed development, but may also impact those developments electing a smaller set-aside of special needs units. Developers are responsible for ensuring that any proposal complies with all applicable federal and state laws and regulations, particularly with respect to providing meaningful choice for individuals with disabilities. Developers with questions as to whether a proposal complies with applicable regulations are advised to seek independent counsel when preparing an application to MHDC.

Applications submitted with special needs units must include \$1,000 per special needs unit as a payment to the Special Needs Housing Reserve Fund which has been established by MHDC. This reserve will be funded at construction completion when other reserve funds are normally funded. These funds will be held by MHDC and used, as necessary, to temporarily assist special needs properties that have experienced unforeseen operational issues (for example, the loss of rental assistance). Deposits to the Special Needs Housing Reserve Fund are intended for use for all special needs properties and are intended to replace the need for each property to establish a separate special needs reserve. Guidelines for the Application and use of reserve funds are posted on the MHDC website.

A development with a special needs set-aside cannot give preference to potential residents based upon having a particular disability or condition to the exclusion of persons with other disabilities or conditions. Applicants must submit documentation demonstrating they have obtained commitments from a Lead Referral Agency which will refer special needs households qualified to lease targeted units and from local service agencies which will provide a network of services capable of assisting each type of special needs population defined below. A “Lead Referral Agency” is a service provider agency that will provide tenants and services to the community through the later of (i) the completion of the Compliance Period, (ii) the completion of the affordability period in conjunction with any MHDC loan (including any applicable HOME affordability periods). The Lead Referral Agency should demonstrate the ability to serve the targeted special needs population by offering services to stably house and enhance the lives of tenants of set aside units.

Developments wanting to be considered under the Special Needs Priority must fully complete the applicable Application sections and attach the following supplemental documentation with their Application:

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<sup>1</sup> Corporation for Supportive Housing, *Dimensions of Quality Supportive Housing: 2-3*.

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1. A draft referral and support agreement with the Lead Referral Agency. The agreement must include:
  - a. number of targeted units
  - b. responsibilities of the owner property manager, and Lead Referral Agency
  - c. duration of the agreement
  - d. signatures of all parties involved in the agreement;
2. Special Needs Marketing Plan Exhibit
3. Rental assistance commitment letters. This is not required, but strongly encouraged. Letters must include:
  - a. type of rental assistance or voucher
    - a. Number of vouchers or number of units to be subsidized by assistance
    - b. duration of the commitment
    - c. signature of authorizing official for agency

## Persons with Special Needs Definition

Persons with special needs are those whose condition or circumstances qualify under one of the following categories:

1. A person who has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions.
2. A person who suffers from mental illness.
3. A person who has a developmental disability, which is a severe, chronic disability that—
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - b. Is likely to continue indefinitely;
  - c. Results in substantial functional limitations in three or more of the following areas of a major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
  - d. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of lifelong or of extended duration and are individually planned and coordinated.
4. A person who meets the HUD definition of homeless, including survivors of domestic violence and sex trafficking, which can be found on HUD's Homeless Assistance website ([portal.hud.gov/hudportal/homeless](http://portal.hud.gov/hudportal/homeless)).
5. A youth aging out of foster care at the age of eighteen (18) or older when their foster care case closes. Foster care placements include: licensed foster family homes, relative provider homes, group homes, emergency shelters,

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residential facilities, child care institutions, pre-adoptive placements, or independent living placements.

“Youth” is defined as someone between the ages of eighteen (18) and twenty-four (24) or a legally emancipated minor. This includes youth that are homeless, have run away, aged out of the foster care system, and/or exited the juvenile justice system.

The special needs resident can be either an adult or youth who is a member of the household.

## Targeted Units Definition

Targeted units are those units set aside for tenancy by persons with special needs. Targeted units must be rented to households referred to the development by the Lead Referral Agency. In calculating the number of targeted units that must be made available, owners and managers must always round up to the next unit. Developments receiving a Conditional Reservation must submit and receive MHDC staff's approval of a final referral and support agreement and the Special Needs Marketing Plan with the Firm Submission process.

The Lead Referral Agency must be an agency that coordinates with a range of local social service agencies to develop a collective process for referring and making their services available to qualified residents. A Lead Referral Agency acts as the point of contact with property management through the later of (i) the completion of the Compliance Period, or (ii) the completion of the affordability period connected to any MHDC loan on the development, and represents the local services system in dealings with management of the development. The Lead Referral Agency might serve a particular special needs group but marketing and referrals must be inclusive of persons with all types of disabilities or special needs. The referral process must include soliciting and accepting referrals from service agencies that serve all types of special needs populations.

## Lead Referral Agency Role

A Lead Referral Agency will:

1. Designate a point of contact to receive notices from the property management company when a targeted unit is available.
2. Maintain a level of communication with other service providers and property management to ensure that tenancy issues are handled and supportive services are available to tenants.
3. Maintain and regularly update a list of eligible special needs households interested in applying for targeted units.
4. Help arrange tenant-based rental assistance for eligible special needs households who do not already have assistance through their case management services.
5. Upon notification a reserved unit is available, select the household at the top of the list waiting for that unit type and communicate to their service provider a targeted unit is available.

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6. Submit a standard letter of referral to property management, which will then process the referred household's application for tenancy using the same screening criteria applied to all other residents of the development.

## Development Owner Role

The development owner will:

1. Agree that any special needs housing commitment will be established, implemented, and kept in compliance with the Fair Housing Act, as amended, the Architectural Barriers Act of 1968, the Americans with Disabilities Act, and any other local, state, and federal nondiscrimination or accessibility laws, regulations, or requirements.
2. Agree that the targeted units will not be segregated within the property and that the targeted unit mix will depend on the needs of referred households.
3. Agree to provide reasonable accommodation for special needs households in the tenant application.
4. Assure that the targeted units remain available to eligible special needs persons through the referral process for the entirety of the compliance period.

## Property Management Company Role

The property management company will:

1. Notify the Lead Referral Agency of available targeted units within a timely manner. At initial lease-up, this notification must occur the earlier of ninety (90 days prior to certificate of occupancy or when marketing begins. . During ongoing operations, the manager will notify the Lead Referral Agency upon receipt of notice of intent to vacate a targeted unit.
2. Work with the Lead Referral Agency to coordinate the first contact with the special needs household and their services provider to initiate the application process.
3. Collaborate with the referred household's services provider, as appropriate and applicable, to address the household's needs for assistance at application, accessibility accommodations, or assistance during tenancy.
4. Use the Lead Referral agency as their main point of contact to ensure community supports are made available to tenants in the targeted units, however, tenancy will not be contingent on participation in services.
5. Notify the Lead Referral Agency in a timely manner of issues or concerns that may adversely affect the tenancy of the household.

Although the development's property manager may agree to assist the household in other ways, it is intended the household renting a targeted unit has the same rights and responsibilities as every other resident in the development.

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## Programmatic Requirements

Developments must meet the following criteria to be considered under the Special Needs Priority during Application evaluation and to maintain its commitment to special needs populations through the design, construction, and operations process:

1. The development cannot give preference to potential residents based on having a particular disability or condition to the exclusion of persons with other disabilities or conditions.
2. The development must meet the needs of targeted tenants through access to supportive services, transportation, proximity to community amenities, etc. If services are not provided on-site, transportation to off-site locations must be made available. Services must be provided and/or coordinated by local service agencies appropriate to the needs of persons with varied types of disabilities. Since service providers are often specialized, relationships should be cultivated with several types of agencies to ensure services will be available for the different types of special needs households that may reside at the property at one time. Service programs should be designed to stress residential stability and independence.
3. Special needs residents cannot be required to receive services from only one particular service provider nor can they be required to participate in supportive services as a condition of tenancy.
4. Special needs properties operated as transitional housing, nursing homes, life care facilities, or dormitories are not eligible for tax credits.
5. Developments meeting the criteria for the Special Needs Priority may be given "difficult development" status. This allows MHDC to increase the eligible basis by 30% if the developer can demonstrate that the property owner will provide services to enhance the residential stability and independence of special needs residents. The determination of the application's qualification to receive a boost will be determined in MHDC's sole discretion.
6. In mixed-population developments, targeted units cannot be segregated within the property or be distinguishable in any way from non-targeted units (beyond the presence of accessible features or assistive technology, if necessary).
7. The development is encouraged to include community space appropriate to the needs of the populations being served.
8. Rehabilitation developments with special needs set-aside units, the number of units designed and constructed in accordance with universal design principles must be equal to or greater than the percentage of special needs units.
9. In order for Rehabilitation developments with services already in place to qualify as a special needs development, the proposal must either demonstrate how services will be expanded and promote residential stability and independence or how the current services meet the needs of the Special Needs tenants

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10. Some special needs households may have disabilities that require an accessible unit, while others may have disabilities that are not physical in nature. Similarly, some households that are independent and apply for non-targeted units may need an accessible unit. Therefore, accessible units are not required to be held open during lease-up in mixed-population developments but should be made available whenever possible to any household requiring accessibility.
11. The roles of owner and property manager should be separated from the role of Lead Referral Agency/primary service provider, as each type of entity has an expertise relative to the LIHTC program in the case of the former and to the service of special needs populations in the case of the latter. However, entities that have an exemplary history of functioning in all three roles in the context of a similarly-situated LIHTC development may be considered by MHDC staff at their discretion.
12. Persons with special needs must be referred to the property by the Lead Referral Agency to be eligible to be qualified for a targeted unit. Such persons must have a relationship with the Lead Referral Agency at the time they apply for housing.
13. Rents should be as affordable as possible to special needs households. Affordability can be accomplished through project-based or tenant-based subsidies. Residents should pay no more than 30% of their income towards rent plus utilities or they will be considered rent burdened. The Lead Referral Agency is responsible for coordinating tenant-based rental assistance with service providers or governmental agencies, whenever necessary and possible. In the absence of project-based or tenant-based assistance, the owner should consider other methods to ensure rents are affordable to special needs households below 50% AMI. The proposal must identify the strategies that will ensure residents are not paying more than 30% of their income towards rent plus utilities.
14. A property with mixed populations must screen all referred special needs applicants using screening criteria established for all applicants at the development according to state and federal Fair Housing laws.
15. Leases for residents of LIHTC developments must meet the minimum lease period and other requirements prescribed by the LIHTC program and any other applicable federal or state funding programs. Leases for special needs residents in mixed-population developments cannot be more restrictive than leases executed with other residents of the same property.
16. During and after lease-up, Lead Referral Agency referrals must be moved in first regardless of chronological order of the general waiting list until all targeted units are occupied with referrals. Management cannot have a preference for referrals with a Section 8 voucher. During lease-up, properties which are not 100% special needs are required to hold the number of designated special needs units for a period of ninety (90) days for leases to persons with special needs. After the ninety (90) day period these units can be leased to the general population meeting the properties leasing criteria. As target units become vacant, they must be held open for a period of thirty (30)

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days or until the number of required special needs units have been leased. After the thirty (30) day period they may be leased to other qualified tenants.

17. For preservation properties and other developments occupied during construction, the owner is not required to displace any current residents but is required to comply with the targeted unit commitment as units turn over and become available for vacancy, so long as such compliance does not cause an event of noncompliance under other applicable laws or regulations under which a development is operated or is receiving federal subsidy.
18. The LIHTC LURA will incorporate the number of special needs units committed at application and will be reviewed for compliance throughout the later of (i) the completion of the Compliance Period, (ii) the completion of the affordability period connected to any MHDC loan on the development, (iii) the completion of the HOME affordability period (if applicable), (iv) the completion of the NHTF affordability period (if applicable).

Questions regarding a proposal's eligibility under the Special Needs Priority should be directed to the MHDC Director of Rental Production and MHDC Community Initiatives Manager prior to the application deadline.

## *Service-Enriched Housing Priority (eligible for up to 30% boost in eligible basis)*

Service-Enriched Housing enhances the connection between affordable housing and supportive services. MHDC recognizes the advantages of supportive housing to individuals, communities and on public resources. To encourage more comprehensive housing environments for vulnerable populations, proposals offering significant services tailored to the tenant population will receive a preference in funding ("Service-Enriched Priority"). The desired outcomes of the service enriched priority are for tenants to stay housed, have social and community connections, improve their physical and mental health, increase their income and employment, and to be satisfied with the services and housing<sup>2</sup>. To be considered under this priority, a development must target a specific population. Examples include, but are not limited to:

1. Senior households;
2. Individuals with children;
3. Formerly homeless individuals and families;
4. Individuals with physical and/or developmental disabilities;
5. Individuals diagnosed with mental illness: and/or
6. Children of Tenants.

The applicant should demonstrate it has extensive experience with providing social services for the population in question. If the applicant does not have experience with the specified population, it should have commitment(s) from a service provider(s) that does have the necessary experience. Any commitments should run until the later of (i) the completion of the Compliance Period, (ii) the completion of the affordability period connected to any MHDC

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<sup>2</sup> Corporation for Supportive Housing, *Dimensions of Quality Supportive Housing: 2-3*.

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loan on the development (including any HOME and NHTF affordability periods). Failure to deliver on expectations will impact future funding decisions and could result in termination of reservations or commitments. If the owner determines a particular program offered as part of the committed services is not meeting the needs of the resident population, the owner must replace it with another appropriate service.

Developments wanting to be considered under this priority must fully complete the applicable Application sections in the FIN-100 and attach the following supplemental documents with the Application:

1. A detailed supportive services plan explaining the type of services to be provided, who will provide them, where they will be provided, how they will be accessed by tenants, and how they will be funded, signature of representative for primary service provider. The plan should also include, but is not limited to, a description of how the development will meet the needs of the tenants, including assessments, access to supportive services, transportation, and proximity to community amenities. It is preferable services be onsite or near the proposed development;
2. Letters of intent from service providers anticipated to participate in the development's services program. Letters should include:
  - a. Name of the service or program
  - b. The nature of the services or program
  - c. Service delivery plan
  - d. Duration of commitment
  - e. Primary contact person with signature
3. Service Coordinator job description

Depending on the population served, additional information may be required. MHDC reserves the right to request further documentation before determining if a particular application qualifies for the Service-Enriched Priority.

To qualify for the Service-Enriched Priority, a proposal must have a defined population, demonstrate the services are adequate for the population, and have a source of funding. Services need to be substantial and not typical of a standard development. For example, a senior development which offers transportation to residents for shopping once a week and a monthly potluck dinner is encouraged, but it is not sufficient to qualify for the priority. Proposals will be looked at more favorably if they offer an extensive menu of services that address the desired program outcomes previously mentioned.

The Service-Enriched Priority designation will be determined in the sole discretion of MHDC. The expectations and level of services necessary for qualification for the priority are high. However, MHDC encourages services be provided to tenants of all developments.

9% Credit developments that qualify for the Service-Enriched Priority are eligible for designation as a difficult-to-develop area. This designation allows an increase in eligible basis of 30%. The designation will only be made if necessary for financial feasibility and within all requirements of the QAP and the Code.

Applicants seeking designation under the Service-Enriched Priority must provide substantial resident services appropriate to the population served by the development. The property must employ staff dedicated to providing social services (service coordinator) or contract



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with a service agency to provide a service coordinator. The purpose of the service coordinator is to direct the service program, provide coordination of services with agencies and other service providers, and work with residents to identify programmatic needs. MHDC looks favorably at service coordinators that work at the property and have office hours available to meet the needs of the residents.

The supportive service plan, application and supplemental documentation must demonstrate the applicant's commitment to provide a significant number of services and activities appropriate to the resident population. The supportive service plan must detail the service delivery plan to specifically address how the applicant plans to engage the resident population in support services for the duration of the compliance period. All services must have an identified service provider evidenced by a commitment letter from that provider and must demonstrate how the property will continue to fund the service program through the Service Enriched Priority Term. Sources of funding in future years may include income from operations or verifiable public grants and funds. The services must be provided on site and on a regular schedule. Below are examples of services from which the developer can select. The more services provided that are tailored to the needs of the target population will reflect more favorably on the Application's supportive service commitment.

MHDC, in its sole discretion, will determine whether the number and type of services proposed are significant enough for the application to meet the requirements of the Service-Enriched Priority. Proposed services should address physical, mental, social, and overall well-being.

1. Family properties – example of services:
  - a. regularly-held resident meetings;
  - b. After-school programs for children;
  - c. Financial literacy courses for adults;
  - d. Parents as Teachers program offered through the local school district;
  - e. Credit and/or budget counseling;
  - f. Life skills and employment services;
  - g. Nutrition and cooking classes;
  - h. Domestic violence survivor support and counseling;
  - i. Computer lab or computer check-out program;
  - j. Food pantry;
  - k. Daycare services;
  - l. College preparation counseling;
  - m. Clothes closet;
  - n. Library;
  - o. Back to school programs;
  - p. Youth sports activities;
  - q. Teen support groups; and

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- r. Good neighbor and tenant rights classes.
2. Senior properties – example of services:
- a. regularly-held resident meetings;
  - b. transportation to shopping and medical appointments;
  - c. tenant rights and good neighbor classes;
  - d. nutrition and cooking classes;
  - e. enrichment classes such as seminars on health issues, prescription drugs, Medicare, the internet;
  - f. coordination with an agency that provides assistance with paying bills and balancing checkbooks;
  - g. monthly or annual health screenings;
  - h. assistance preparing a Vial of Life;
  - i. exercise program such as the Arthritis Foundation Exercise Program;
  - j. monthly community activities (i.e., pot luck dinners, holiday events, bingo);
  - k. access to fitness equipment;
  - l. food pantry or access to a mobile food pantry if available;
  - m. housekeeping;
  - n. grand parenting classes;
  - o. Volunteer opportunities; and
  - p. computer lab or check-out program.

Services provided to seniors must be mindful of the varied needs and desires of an independent senior population as compared to a more elderly and fragile population. Such services should also be tailored to reflect whether the senior development is intended to be a 55+ Development or a 62+ Development. Service providers should plan to evaluate tenant needs and interests on a regular basis as well as have a process in place to measure the impacts of the service plan.

The Application must include the proposed annual budget. MHDC staff will approve the annual budget at Firm Commitment.

## *Preservation Priority (eligible for up to 30% boost in eligible basis)*

The preservation of existing affordable housing will receive a preference in funding (“Preservation Priority”).

To qualify for the Preservation Priority a development must meet at least one of the following and, if receiving Federal Historic Credits and/or State Historic Credits, must waive the right to opt out of the LIHTC program for an additional fifteen (15) years beyond the Compliance Period.

1. Have and continue to use, if possible, project-based rental assistance and/or operating subsidy;

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2. 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;
3. Participate in HUD's Mark-to-Market restructuring program; or
4. Have a previous allocation of LIHTCs in which the first year of the Credit Period (as defined in §42(f)(1) of the Code) was 1999 or earlier and be in or have completed the final year of the Compliance Period for all buildings in the development.

To be considered under the Preservation Priority, the following must be included with the Application:

1. Copies of all loan notes and regulatory agreements encumbering the property, including any modifications thereto;
2. A copy of any project-based income or operating subsidy agreements and rent schedules, including both original and modified subsidy agreements or contracts;
3. Audited financial statements for the development covering the three most recent years;
4. If the development has HUD or MHDC financing or is subject to a LIHTC LURA or an MHDC Regulatory Agreement, a letter from HUD or MHDC indicating the need for preservation (If the proposed preservation development has a RD loan, please see '5.' below);
5. If the proposed development includes USDA-RD financing, the application must include a letter addressed to MHDC from the RD State Office stating (1) RD support for the proposal, and (2) that the applicant has met with either the RD State Office or Area Specialists prior to preparing/submitting the application to MHDC. The purpose of the meeting is to go over the entire structure of the proposal with RD, including, but not limited to, a discussion of the proposed scope of work, Capital Needs Assessment ("CNA"), financing structure, rents charged, operating budget, the potential amount of additional RD required Replacement Reserves, and any other unique feature or complexities pertaining to the development proposal. It is recommended that applicants supply RD with a copy of the "as-is" CNA prior to this meeting; and
6. A physical needs assessment (or for RD proposals, an "as-is" CNA that meets USDA-RD requirements).

If a development does not have a HUD or RD loan or project-based rental assistance and requires a letter from MHDC indicating the need for preservation, a letter will be granted only after an inspection of the property by MHDC. Requests for the letter and inspection must be made to the Director of Asset Management. Any applicant seeking a letter is encouraged to make the request as soon as possible in the application preparation process.

Developments not eligible for the Preservation Priority but that do contemplate the acquisition and rehabilitation of existing housing are encouraged and given extra consideration.

## *Minority-Owned Business Enterprise ("MBE")/Women-Owned Business Enterprises ("WBE") Priority*

This priority is only available to developments with more than six units.

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A preference in funding (“MBE/WBE Priority”) will be given to an application that reflects:

- a) A MBE/WBE developer, a developer group that includes a MBE/WBE, and/or a Developer Mentor/Protégé relationship (as defined below); or
- b) MBE/WBE participation percentages significantly greater than the MBE/WBE Participation Standard (as defined below) for both hard and soft costs.

The Mentor/Protégé Relationship must be designed to support, promote, and develop the knowledge, skill, and ability of the MBE/WBE protégé in a manner intended to assist in the growth and development of the MBE/WBE as a developer.

Applicants seeking a preference under paragraph a) above must provide a comprehensive utilization plan signed by the owner/developer detailing the role of, and functions to be performed by, the MBE/WBE. The roles and functions of the MBE/WBE must be those typically performed by the owner/developer. Applicants must also submit proof of MBE/WBE certification with the application. Applicants seeking a preference under paragraph b) above must provide a comprehensive utilization plan signed by the owner/developer detailing how the applicant intends to significantly exceed the MBE/WBE Participation Standard.

Applicants seeking the MBE/WBE Priority must include a history of MBE/WBE participation with the Application.

## *Property Disposition Priority*

Applicants may compete for the purchase of real estate owned by MHDC (“Property Disposition Priority”). 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 affordable housing development. The Application serves as both the competitive bid to purchase the asset and the application for financing to fund the property’s acquisition and renovation. Therefore, multiple Applications for the same property may be submitted by different development teams competing for the opportunity to purchase it.

To qualify for the Property Disposition Priority, the property must be listed publicly by MHDC as real estate owned and available for competitive bid. Application fees and market study requirements will be waived for applicants submitting proposals under this priority.

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

1. 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 MHDC-owned real property that is publicly posted.
2. Any other certifications or documents required by MHDC and made available on the MHDC website in conjunction with the listing of any MHDC-owned real property.

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## *Compliance Period and Affordability Priority*

MHDC encourages developments providing quality housing with low affordable rents for an extended period of time. As a result, a preference in funding will be given to applications that agree in advance to waive the right to opt out of the LIHTC program at the end of the fifteen (15)-year Compliance Period and maintain the development as affordable housing for a minimum of 30 years ("Extended Use Priority"). This priority is not available to developments with historic credits or single-family homes.

## *50% AMI Priority*

A preference in funding will be given to applications that set aside at least 25% of total units to households earning less than or equal to 50% of area median income ("50% AMI Priority"). Rents for households earning less than or equal to 50% of area median income must be at least 15% less than rents actually charged to households earning up to 60% of area median income. This priority is not available to developments with project-based rental assistance.

## *Workforce Housing (eligible for 30% boost in eligible basis)*

Developments in counties with a median income less than the 2015 statewide median income (as established and published by HUD) are eligible for the basis increase, provided that 20% of the total units in the development are set aside for households earning between 60% and 80% (workforce units) of the area median income. Rents in the 60%-80% units should be different than tax credit rents in the development. The intent is to capture the households that are just over the tax credit income limits but still have a need for quality affordable housing. The published income limits for each development's county still apply and must be used for determining resident eligibility.

## *Transit Oriented Development (TOD) (eligible for 30% boost in eligible basis)*

The following criteria will be considered in the determination of a development's ability to meet the definition of a TOD:

- a. The development must be located within 1,750 feet of a transit stop.
- b. Transit service at the stop must be frequent (every 15-30 minutes).
- c. The transit service must offer increased mobility choices and good transit connections.
- d. The development must include a mix of transportation choices, including biking and walking
- e. The master development plan must include a balanced mix of uses, providing residents the ability to live, work, and shop in the same neighborhood.
- f. The master development must include significant retail development.
- g. The master development must include a mix of housing choices (rental and for-sale, affordable and market-rate).

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## *Redevelopment Plan*

Applications which are a part of a redevelopment plan which has been approved/adopted by a local government will receive a preference in funding. The application must include a letter from the local authorizing official that development in the application is a part of the redevelopment plan.

## *Opportunity Area*

MHDC encourages affordable housing developments in -opportunity areas by targeting communities that meet the following criteria: access to high-performing school systems, transportation and employment; as well as being located in a census tract with 15% or lower poverty rate. **Family developments** that meet these criteria will receive a preference in funding. Family developments proposed in opportunity areas are required to include an affirmative marketing plan that proactively reaches out to families currently living in census tracts where the poverty rate exceeds 40%. The plan must include a Special Marketing Reserve to assist in initial relocation expenses for families with children. Note that the minimum unit size for a family development in an opportunity area is two-bedroom. Developments that apply under this priority must also apply under the Service Enriched Priority. MHDC will, on a case by case basis with reasonable and well documented justification, allow flexibility for meeting all four criteria for qualification. Please refer to the Market Study Guidelines which specifies how data on each of these criteria is to be collected. Below are examples of services for this type of family development:

- a. Regularly-held resident meetings
- b. After-school programs for children
- c. Financial literacy courses for adults
- d. Credit and/or budget counseling
- e. Life skills and employment services
- f. Computer lab or computer check-out program
- g. Daycare services
- h. College preparation counseling
- i. Library
- j. Back to school programs
- k. Youth sports activities
- l. Teen support groups
- m. Good neighbor and tenant rights classes

## **Selection Criteria**

While the housing priorities above list the types of developments that receive extra consideration, the selection criteria below indicate what factors are used in making funding recommendations. The selection criteria incorporate both MHDC priorities and the federal preferences and selection criteria described in §42(m)(1)(B)(ii) and §42(m)(1)(C) of the Code. Because not every development fits into the same category or serves the same population, certain characteristics have different meanings and have different influence on the overall evaluation of each proposal. Despite this inherent difficulty presented by the varied applications received, MHDC strives to apply the selection criteria in the most consistent and rational way possible.

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## *Geographic Region*

An attempt will be made to allocate the State Housing Credit Ceiling across the state on a population proportionate basis adjusted annually, with the state divided into the following areas:

1. St. Louis Region - 33%: Jefferson, St. Charles, St. Louis City and St. Louis counties.
2. Kansas City Region - 19%: Cass, Clay, Jackson, Platte, and Ray counties.
3. Out State Region - 48%: All other counties.

MHDC will make its best effort to reserve LIHTCs in the above-listed manner, but given the needs of individual deals and the strength of applications in each region, it may not be feasible for final approvals to achieve the exact geographic distribution. MHDC is not obligated to approve 100% of the Federal LIHTCs available if it deems there are not enough worthy applications competing for the credits. Parts of the state officially declared a disaster area by the governor may be designated a Targeted Area, as determined on a case-by-case basis by the Commission, permitting MHDC 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 Targeted Area designation will be posted with the NOFA at [www.mhdc.com](http://www.mhdc.com).

The above percentages do not apply to Bond Developments.

## *Development Characteristics*

The following characteristics will be reviewed closely:

### *Tenant Population*

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

1. Tenant populations with special housing needs, such as persons with physical and/or developmental disabilities, homeless individuals and families, seniors, and other under-served and/or at-risk populations. This list is not an exhaustive list of special needs populations. Applicants that feel they are serving a special tenant population should explain so in the development narrative;
2. Individuals with mental illness;
3. Individuals on public housing waiting lists;
4. Individuals with children;
5. Youth aging out of foster care;
6. Developments serving the lowest-income tenants; and
7. The quantity, quality, and suitability of services provided or offered to the tenants. Services need to be population-appropriate, and applicants should make clear what services will be offered.

It is important the rest of the development's characteristics are appropriate for the intended tenant population. The intended population will impact how the other

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selection criteria are evaluated and should always be kept in mind when structuring any MHDC development.

## Development Size

All applications submitted for consideration are limited to fifty (50) affordable units in a proposal. Exceptions may include, but are not limited to, applications proposing a:

1. Mixed-income development;
2. Development to replace existing public housing and/or subsidized housing
3. Development where at least 25% of the units are set aside as Special Needs housing units;
4. Development that includes serviced enriched housing features;
5. Development that preserves existing affordable housing;
6. Development that is part of a municipal redevelopment plan; or
7. Senior housing development (both 55+ Developments and 62+ Developments).

## 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 the QAP and the mission of MHDC. Developments fall into at least one of the following types:

1. New construction;
2. Historic rehabilitation/adaptive reuse. Any development that will utilize the Federal and/or State Historic Rehabilitation Credit will be considered to be a historic deal. Developments that will use the historic credit and are currently being used as housing will be considered both historic deals and acquisition/rehabs. Developments that feature historic rehabilitation and some additional new construction will generally be considered historic deals but will be evaluated on a case-by-case basis;
3. Acquisition/rehabilitation of existing housing. Acquisition/rehabilitation includes both preservation developments and any other housing development that features existing tenants; or
4. Developments intended for eventual tenant ownership. For the purposes of this Developer's Guide and the 2017 NOFA, developments intended for eventual tenant ownership applies to single-family homes and duplexes with fire separation walls.

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

## 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. Site reviews will consider:

1. Marketability, or the likelihood that the site and improvements will be accepted by the target population;
2. Presence of environmental issues and concerns;



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3. Neighborhood characteristics and land uses;
4. Proximity to appropriate amenities and services;
5. Need for rehabilitation, if applicable; and
6. Access into and out of the site and parking.

A development may include multiple buildings if it has similarly constructed units, is located on the same or contiguous tracts of land, is owned by the same federal taxpayer and is financed pursuant to a common plan of financing. A development with multiple buildings that is proposing a mixed income structure must have low-income units in each building of the development. Scattered site buildings on noncontiguous tracts of land may also qualify if the development meets all of the other requirements described above and the development is 100 percent rent and income restricted, however, costs associated with the development of a separate community building may not be eligible for Tax Credits unless the building contains a residential rental unit.

## 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: Placement of buildings on the site;

1. Development amenities;
2. Type and quality of materials;
3. Energy efficiency and overall sustainability;
4. Condition and suitability of structures being reused;
5. Scope of work for rehabilitation or renovation;
6. Population appropriate design features (for example, interior and exterior common spaces, storage space, accessibility, adaptability, etc.);
7. Exterior design aesthetics that blend well with the surrounding area; and
8. Universal Design Features

## Market Characteristics

It is important the development's characteristics are appropriate for the market in which it is located. Please refer to the Market Study Guidelines for further guidance. The following will be analyzed for each proposal:

### Development Location

Where a development is located affects almost all of the other selection criteria. Important considerations for location include, but are not limited to:

1. New construction and conversion proposals must meet the following criteria:
  - a. The development shall not be located where the total of publically subsidized housing units (as defined in the Market Study Guidelines) equal more than 20% of all units located in the census tract where the

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development will be located. Note: The proposed units are not included in the 20% threshold only the units that presently exist;

- b. If the proposed development is located in the Kansas City or St. Louis Region, it shall not be located within a one (1) mile radius of any development that:
  - (a) has been approved for State LIHTC, Federal LIHTC, HOME, or Fund Balance funding through MHDC within the previous two (2) fiscal-year funding cycles; and (b) is less than 90% leased-up at the time of application submission.

Exceptions to the previous two criteria may include, but are not limited to, applications proposing a:

- Mixed-income development;
  - Development to replace existing public housing and/or subsidized housing;
  - Development where at least 25% of the units are set aside as Special Needs housing units;
  - Development that includes serviced enriched housing features;
  - Development that preserves existing affordable housing;
  - Development that is part of a municipal redevelopment plan; or
  - Senior housing development.
2. Location in a qualified census tract that will contribute to a concerted community revitalization plan;
  3. Whether existing housing is used as part of a community revitalization plan;
  4. Location in a community with demonstrated new employment opportunities and a proven need for workforce housing;
  5. Infill of existing stable neighborhoods; and
  6. Commission-designated Targeted Areas.

## Housing Needs

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

1. Number and growth of the population and intended tenant population in the market area;
2. Comparability, condition, rents, and occupancy of other affordable housing developments in the market area;
3. Comparability, condition, rents, and occupancy, of market rate housing in the market area;
4. Capture rate for the proposed development, calculated by dividing the number of proposed units by the number of qualified households; and
5. Housing needs of the special needs population.

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No application proposing the delivery of new units will be approved if it is deemed by MHDC to adversely impact any existing MHDC development(s), exist in a questionable market, or create excessive concentration of multifamily units.

## *Development Team Characteristics*

A development team's experience with affordable housing, MHDC, and the type of development being proposed are important. The following development team members will be evaluated: developer(s), general partner(s), management agent, syndicator(s)/investor(s), contractor, architect, sustainable design team, consultant(s), Lead Referral Agency for special needs housing, and service provider for service-enriched housing.

Evaluations will assess the experience, performance, financial strength, and capacity to complete the proposed development in a timely and efficient manner.

Items considered will include, but are not limited to:

1. Number of affordable developments completed;
2. Occupancy of developments owned and/or managed;
3. Number of developments in the planning and development stages;
4. Performance, quality, and condition of previously-completed developments; and
5. Previous and outstanding compliance issues.

The proposed general partner, developer, and general contractor will be assessed for their capacity to successfully manage the predevelopment, closing, construction, and lease-up of the proposed development, in addition to previously-approved developments currently in those stages of development.

Development team members not in good standing with MHDC or its programs will not be approved for funding. 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, subcontractor(s), attorney(s), management agent, etc.

## *Financial Feasibility*

Applications will be evaluated to determine financial feasibility and viability throughout the Compliance Period using the assumptions provided by the applicant ("Feasibility and Viability Determination"). MHDC will evaluate:

### *Sources*

All developments must demonstrate sufficient sources are available to assure feasibility. For non-MHDC sources, a commitment letter from the proposed provider indicating the amount and terms of financing must be included with the application. The type of financing and the source of all financing will be taken into consideration.

### *Uses*

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

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## Income

Rents must be appropriate for the market and affordable for the intended population. 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 to be eligible for a LIHTC allocation under the QAP. Normally, tax credit rents should be at least 15% less than market rents for the same unit type. In rare instances, area market rents may be depressed due to deteriorating conditions. Therefore, area market rents could be less than tax credit rents. If a development includes both tax credit and market units, the tax credit unit rents must be at least 15% lower than market unit rents. This does not apply to special needs housing properties. Other sources of income that are undocumented may not be used to determine feasibility or the size of MHDC debt.

## Expenses

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

## Long-Term Viability

Operating projections must indicate the development is viable for the greater of (i) the entire Compliance Period, or (ii) the term of any MHDC financing.

## 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 time-frame consistent with the requirements of the Code or, for Bond Developments, the allocation process established by the Missouri Department of Economic Development.

## Investment Potential

Proposals will be evaluated for their potential to attract investors to the Federal LIHTC and State LIHTC, if applicable, based on:

1. The potential amount of Federal LIHTC and State LIHTC, if applicable;
2. The size of the proposed development;
3. The market;
4. The experience and strength of the development team; and
5. Financial feasibility.

The strength and previous performance of all investors will be taken into consideration during the feasibility review.

MHDC will not allocate a credit amount exceeding the amount necessary to assure development feasibility. Guidance for what may be considered appropriate can be found in the underwriting standards below.

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## *Community Impact*

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

### *Elected Official and Community Support*

Community support should highlight the importance of the development to the community and the impact it will have.

### *Catalytic Effect*

Developments that will successfully encourage further development or redevelopment in the community are encouraged. This includes developments that are part of a larger community redevelopment effort or part of a concerted community revitalization plan.

### *Community Needs*

How a proposal will address the needs of the population and community it intends to 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.

## **Application Review**

Unless an application is rejected during one of the stages, applications submitted in response to a NOFA will undergo each of the five staff review stages described below. If an application is rejected during the Initial, Primary Documentation, or Secondary Documentation Review, a written explanation will be provided to the applicant. An application checklist, application forms, and program guides can be found at [www.mhdc.com](http://www.mhdc.com) (through the Rental Production link).

### *Initial Review*

The Initial Review will be conducted to determine if the applicant and its application meet the following requirements:

#### *Organized Application*

Each Application must be submitted in a three-ring binder and organized with tabs according to the MHDC FIN-125. Applications that are not organized will be eliminated from further consideration. A complete application consists of (1) a FIN-100, (2) one tabbed, three-ring binder with all required exhibits and original signatures, where required, (3) digital media containing electronic exhibits, and (4) the appropriate application fee. The MHDC FIN-125 will identify exhibits to be submitted in the three-ring binder and exhibits to be submitted digitally. Three-ring binder and digital media exhibit names must match the FIN-125 exhibit names. Acceptable forms of digital media include, but are not limited to, a CD-R, DVD, or a USB flash drive. 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 applicable NOFA deadline.

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## Good Standing with MHDC

Any member of the development team that is the owner or general partner of a LIHTC development 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 not in compliance or good standing with any other MHDC program will be similarly denied participation. If MHDC learns 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 may include, but is not limited to, progress made with a previous Conditional Reservation Agreement, Firm Commitment, closing, cost certification, development compliance, payment of fees, and/or violation of the MHDC Workforce Eligibility Policy.

Please contact MHDC staff prior to submittal if you are unsure whether you or your development team members are in good standing.

## Consistent with Code Requirements

The proposal must meet all the requirements set forth in the Code and all relevant U.S. Treasury regulations, notices, and rulings.

## Consistent with Fair Housing Requirements

The submitted proposal must meet all the requirements of The Fair Housing Act of 1968, as amended.

## Consistent with Internal Revenue Service Memorandum of Understanding

MHDC and the IRS have executed a Memorandum of Understanding ("IRS MOU") to improve the administration of the Federal LIHTC. Under the terms of this IRS MOU, all developers must complete IRS Form 8821 (Rev. 8-2008), 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 and all key principals of the developer and general partnership must be included as part of the application.

## Consistent with Tax Credit Accountability Act

Under the provisions of the Tax Credit Accountability Act (R.S.Mo. 135.800-135.830), 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 State LIHTC by MHDC to comply with the provisions of the State Tax Relief Act. All developers must complete MDOR Form 8821 (Rev. 11-2007), 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 for the developer/applicant from the Missouri Department of Revenue at the time of application. Should the developer, general partner, or any key principal be found to have outstanding tax liens or delinquent taxes, for federal or state taxes, the related application will be rejected.

The Initial Review will be performed in conjunction with the Primary and Secondary Documentation reviews (described below). If at a later date it is discovered that an

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application does not meet one of the Initial Review requirements, it will be rejected or, if funds have been reserved, that reservation may be terminated.

## *Primary Documentation Review*

All primary documents must be complete, fully executed, and submitted by the applicable application deadline. An exact list of documents can be found on the MHDC FIN-125. A missing primary document, documents in draft form, or documents missing signatures will result in Application rejection.

MHDC may be forced to allow corrections to primary documentation but this will be allowed only in rare circumstances. Applicants should expect that if they turn in an Application missing primary documentation, it will be rejected.

## *Secondary Documentation Review*

Secondary documentation must be submitted by the application deadline to receive further consideration. If six or more secondary review documents are missing or incomplete at the time the application is submitted, the application may be rejected. If five or fewer secondary documents are missing or incomplete at the time the application is submitted, the applicant will be notified in writing of deficient items and a date by which deficiencies must be cured ("Cure Date"). If the requested documents are not received by the Cure Date, the application will be rejected. The FIN-125 contains an exact list of the required documentation and the exhibit discussion below further explains the requirements.

It is expected, but not guaranteed, that notification regarding secondary documentation deficiencies and the Cure Date will be emailed within ten (10) business days of the application due date established in the applicable NOFA.

If the Initial, Primary Documentation, and Secondary Documentation reviews are successfully passed, an application is deemed complete and will be considered for further review.

## *Site Review*

During the application review process, MHDC staff will conduct a review of each proposed site(s). Each proposed site location must have a sign posted on it. The sign must be at least 2' X 3', include the developer's name, and state it is a MHDC proposed project. The sign must face a road surrounding the site and the font size must be easily readable from the road. The site selected for the development is a critical component of the application. MHDC evaluates the following items:

1. Ingress and egress;
2. Visibility for marketing purposes;
3. Proximity to groceries, pharmacies, restaurants, public parks, etc.;
4. Potential noise concerns from nearby highways, airports, etc.;
5. Potential flood plain issues;
6. Existence of wetlands areas;
7. Potential habitat for endangered species;
8. Competition with other housing developments in the immediate area; and

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## 9. Need for rehabilitation, if applicable.

These site considerations are not a substitute for an environmental report but are meant to alert MHDC staff to potential concerns, and the results play an important role in the Competitive Review.

Vacant land presents a challenge in identifying the location of a proposed site, particularly in rural areas and pre-construction phase subdivisions. MHDC requires applicants place a sign on the property clearly marking the location. Subject to timing and availability, staff reserves the right to contact applicants to meet them at the site for a physical inspection. Contact with an applicant does not indicate either a favorable or negative response to the application or choice of a site.

If a rehabilitation proposal, MHDC staff expects to be able to enter existing buildings to inspect proposed scope of work.

## *Competitive Review*

Once an application has gone through the Initial, Primary Documentation, Secondary Documentation, and Site Review stages and is considered complete to MHDC staff's satisfaction, it will undergo a Competitive Review ("Competitive Review"). The Competitive Review uses the established Housing Priorities, selection criteria, and underwriting standards 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.

## **Application Forms, Exhibits, and Digital Media**

Each applicant is required to submit the exhibits applicable to the type of development it is proposing. Questions as to whether an exhibit is applicable to a specific Application must be asked prior to the applicable NOFA deadline.

If you have questions about Application exhibits, especially if you are not sure whether an exhibit applies to your particular development, please contact the Director of Rental Production or Chief Underwriter. Any item that may serve to satisfy the requirements of multiple exhibits should be copied and included in each applicable exhibit tab. For example, a letter of support from the city that also confirms the zoning for an application must be included both in the Public Official Contact Verification and Support Letters exhibit and the Zoning Letter exhibit.

If an exhibit is required but you feel there is a reason it should not be applicable for your application, you may request a waiver of that exhibit requirement. Please note, waiver requests must be submitted on the MHDC waiver form and submitted and approved prior to the Application due date. Waivers will only be granted in rare circumstances with a rational explanation and proper justification.

A completed and executed FIN-100 with appropriate certifications and elections made, digital media, application fee, development narrative and questionnaire, site review information, applicant site control, market study, and financing commitments constitute the Primary Documentation. Acceptable forms of digital media include, but are not limited to, a CD-R, DVD, or a USB flash drive. All remaining exhibits listed on the FIN-125 constitute the Secondary Documentation. MHDC staff may contact applicants for clarification or questions



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regarding any submitted exhibit. However, such contact does not indicate anything other than a request for information.

The MHDC FIN-125 will identify which exhibits the digital media must contain. Digital media exhibit names must match the MHDC FIN-125. The MHDC FIN-125 specifies exhibit format.

The required digital media documents are important in the application review process and must be included with the Application. Please test the digital media after loading the documents to ensure the files open properly and every required document is included in the required format.

## *Rental Housing Programs Application*

### **FIN-100**

The FIN-100 must be filled out completely, accurately and must be executed in the appropriate places. The FIN-100 in the original binder must have original signatures. Please utilize the FIN-100 provided for the 2017 NOFA round. Submitting the application on a previous FIN-100 form will not be acceptable, as changes are made from years-to-year to reflect QAP revisions and new MHDC requirements.

### **FIN-100-Addendum**

The FIN-100-Addendum must be filled out completely and accurately with the certification executed by all reporting parties. The FIN-100-Addendum in the original binder must have original signatures. If you have any questions when completing the FIN-100-Addendum, please contact MHDC staff.

## *Application Fee*

The check for the applicable application fee must be included in the binder and the development name must be written on the check submitted.

### **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.

### **Standard Application Fee**

All applications that do not qualify for the Nonprofit Priority owe a \$2,000 application fee.

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

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## *Project Description*

### *Narrative Description*

The narrative description should present any information you feel is necessary to understand your development and is not adequately described in the rest of the Application. The narrative is your opportunity to argue for and convince MHDC why your development is important and why it should be funded. The narrative should include a brief description of the following items:

1. **Development Characteristics:** describe the type of development, population served, amenities, and services of the development.
2. **Market Characteristics:** describe the rent structure and how those rents compare with other affordable and market rate properties in the area. Also discuss how the Application will address the relevant housing needs.
3. **Development Team Characteristics:** explain the key development team members and highlight experience with similar development types.
4. **Financial Feasibility:** provide a description of anything unusual regarding feasibility that may not be obvious from looking at the rest of the submitted information.
5. **Community Impact:** explanations of the level of local support, catalytic effect and how the Application will address the needs of the community.
6. **Other Salient Information:** provide any information or description of the development that explains any unique or important characteristics that would help MHDC better understand what you are trying to accomplish.

The development narrative is intended to be the applicant's chance to address MHDC's selection criteria. Any information that can help illuminate and distinguish an application is encouraged. Please be clear and concise when creating the narrative and keep the stated purpose in mind.

### *Development Questionnaire*

The questionnaire must be completed. The questionnaire is a complement to the narrative description and the narrative description need not cover items discussed in the questionnaire.

### *Exhibit A to Form 2013*

Applicants should utilize the Exhibit A to provide more information on costs or circumstances related to the project that is important to evaluation of the project, which is not otherwise captured in the Application.

#### *Furniture, Fixtures & Equipment (FF&E)*

If costs in excess of \$30,000 have been submitted for the FF&E line item, a breakout of the items and costs that comprise the FF&E must be provided in the Exhibit A to Form 2013.

#### *30% Basis Boost*

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If applicant will be utilizing a Basis Boost, an explanation on why the additional tax credits are necessary should be included.

## *Site Review Information*

MHDC's site reviewers use the information in the site review exhibit to properly evaluate the proposed site and proposal. The following site review information must be included in the Application:

### *Development Location Maps*

Two maps must be submitted: (i) a community-wide map clearly identifying the site with respect to the town as a whole or, for large metropolitan areas, its proximity to the intersection of two major thoroughfares; and (ii) a more detailed map showing the property within the context of a five- to ten-block area with site boundaries clearly demarcated. Please provide an appropriate amount of information so a person completely unfamiliar with the community can find the property based on the maps provided, including clearly marked street names. Detailed directions are welcome, especially with respect to vacant ground.

### *Site Photographs*

Color photos of the site, including landmarks and surrounding properties.

### *Site Plan or Subdivision Map*

If a proposal is for single-family homes in a subdivision, a subdivision map with the lots for the application. All other proposals are required to provide a site plan that identifies the footprint of the building(s) and site amenities. Please include distances from the property perimeter to the building locations or other references that will assist site inspectors in identifying the proposed footprint on vacant ground.

### *FEMA Flood Map*

A copy of the FEMA flood map panel that covers the application site. Clearly mark the subject property boundaries. Include the panel number if it is not printed on the maps. FEMA maps can be found at: <https://msc.fema.gov/portal>.

## *Market Study*

### *Existing Reports*

The market study must be dated within six months of application and address the property in question. If the market study is dated within eighteen (18) months of the application due date, an update letter must be provided. No market study older than eighteen (18) months will be accepted.

### *Form 1300*

This must be completed by the market analyst and included as both an exhibit on its own and as part of the narrative market study. When submitted as part of the application, this Form must be a separate document.

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## Market Study Narrative

A favorable statement of conclusions about the strength of the market for the proposed development does not vest in an applicant or development any right to a reservation or an allocation of MHDC financing (including, but not limited to, LIHTC) in any amount.

The market study must:

1. Be prepared by an experienced market analyst shown on MHDC's approved provider list (not an affiliated company), who is an independent third party and completely unaffiliated with the developer and/or owner of the proposed development.
2. Contain a statement by the analyst that:
  - a. The report is in full compliance with MHDC's Market Study Guidelines. The MHDC Market Study Guidelines can be found at [http://www.mhdc.com/rental\\_production/market\\_study/index.htm](http://www.mhdc.com/rental_production/market_study/index.htm).
  - b. The information included is accurate and the report can be relied on by MHDC as a true assessment of the affordable housing rental market in the area of the proposed development.
  - c. The document is assignable to lenders and/or syndicators that are parties to the development's financial structure.
  - d. Acknowledges and agrees the market study will be shared with other parties that will assist MHDC in the analysis of the market study.
  - e. Lists the support, if any, that may justify the need for the proposed units by type, size, number, and location.
  - f. The analyst has compared the proposed rents to those found in the subject's PMA, and
  - g. The analyst's opinion of the market's need, if any, for the proposed development.

Nonprofit entities applying for HOME CHDO funds to develop eight or fewer units can submit a self-prepared market analysis in lieu of engaging a market analyst to perform a full market study. Applicants seeking approval under the Property Disposition Priority are not required to submit a market study.

## *Preliminary Financing Commitments*

All non-MHDC sources of debt and equity must be evidenced by a commitment or acceptable documentation in lieu of a commitment. All preliminary commitment letters must include the information required by the MHDC Guidelines for Preliminary Financing Commitments which can be found at [www.mhdc.com](http://www.mhdc.com). At a minimum, there should be commitments for the following types of funds, where applicable:

1. Federal LIHTC Equity. If one syndicator/investor is purchasing all housing and historic tax credits, one commitment meeting the requirements for each type of credit is acceptable. If the syndicator/investor is also providing a bridge loan, that commitment can be included in the equity commitment if it contains all of the terms of the bridge loan.

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2. State LIHTC Equity
3. Federal Historic Rehab Credit Equity
4. State Historic Rehab Credit Equity
5. Other Non-MHDC Financing. All debt and grant financing must have a commitment letter included with the application, including any construction loans.

If the application involves rehabilitation with existing tenants, include an income from operations during construction calculation.

If the application involves rehabilitation, identify whether the seller or buyer receives the replacement reserve balance at closing.

All commitment letters must include the contact information for the person writing the commitment. MHDC may contact the author of a commitment to discuss the development and their commitment.

MHDC requires a preliminary commitment letter at the time of Application for all non-MHDC sources of financing. Updated commitment letters are required at the time of Firm Submission for approved applications.

## Debt/Grant Commitments

1. Any debt or grant funds that will be part of the development's financing must have a commitment letter or a letter stating an application has been received for the source in question. Commitment letters must indicate the following:
  - a. Loan or grant amount. If using tax-exempt bonds, specify if bonds are draw down bonds.
  - b. Loan term and amortization. The minimum acceptable term for permanent loans is eighteen (18) years.
  - c. Interest rate. Permanent loans must have a fixed interest rate throughout the loan term.
  - d. Fees associated with the loan or grant.
  - e. Reserve requirements.
  - f. Lien position of the loan.
  - g. Relevant requirements that may affect other financing sources or the operations of the property.
  - h. Contact information for the person providing the commitment and to whom MHDC's questions can be directed.

Commitment letters are required for both construction and permanent sources.

If a loan is going to be assumed or an existing loan is to be restructured, include a copy of the note, current note balance, and a letter from the lender stating the loan can be assumed and details of the terms and conditions of any assumed or restructured note. This is of particular applicability to HUD- and RD-financed developments being preserved.

If a loan/grant has been applied for or will be applied for from a competitive source (e.g., city funds, Federal Home Loan Bank), a letter is required that either

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acknowledges the funds have been applied for or verifies a funding round is coming up and the applicant is eligible to apply. The letter should indicate the amount of funds requested and the timing for funding decisions. Applicants should be prepared to explain alternative plans if not successful in any non-MHDC competitive funding rounds.

An updated commitment letter must be provided with the Firm Submission and should update the information from any commitment(s) provided at Application.

## Equity Commitments

If all the various types of tax credit equity are to be provided by the same syndicator, one commitment letter meeting all the requirements below will be sufficient.

Any development with tax credit equity listed as a source must include a preliminary commitment letter or letter of interest stating:

1. The ownership percentage and amount of annual credits to be purchased by the equity provider.
2. The price per dollar of annual credit purchased. Investors taking more than a de minimis share (i.e. 1% or greater) of ownership interest must provide a capital contribution (at the same price as the primary investor) in exchange for their share of Federal LIHTC.
3. The total amount of capital contributions.
4. The amount of equity paid during the construction period.
5. Any fees, such as an asset management fee, that must be paid during the Compliance Period.
6. Any reserve requirements.
7. For historic rehabilitation tax credit equity, the eligible basis calculated for both the State and Federal Historic Tax Credits.
8. For developments committing to special needs housing units, evidence the investor(s) is aware of the special needs housing commitment being proposed.
9. Contact information for the person providing the commitment and to whom MHDC's questions can be directed.

At Firm Submission (defined hereinafter), commitments for tax credit equity must update all the information provided with the Application and also include the following:

1. Capital contribution timing and amounts, including the dates or milestones when equity will be contributed to the partnership. MHDC requires a minimum contribution of 10% of Federal LIHTC and State LIHTC equity invested at construction closing with at least another 10% of Federal LIHTC and State LIHTC equity invested by 50% construction completion.
2. Description of development costs attributed to the limited partner, including syndication costs.

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If a bridge loan is to be provided by the equity investor, the terms and conditions of that loan can be included with the equity commitment and do not need to be presented in a separate commitment letter.

## Timing Requirements

All equity commitments must be signed by the provider of the commitment and dated within forty-five (45) days of the Application deadline or Firm Submission date, as applicable.

## Site Control

### Seller Site Control

The applicant must demonstrate seller site control in the form of:

1. A vesting deed (e.g. a warranty deed); or
2. Title policy that clearly indicates the current owner.

For transactions in which there is an identity of interest between the seller and the buyer or between the seller and a member of the development team, the applicant must include a copy of the seller's contract or settlement statement from the last arm's length transaction if the transaction took place within the last fifty (50) years. If an identity of interest relationship exists between the buyer and seller of real estate a limitation of developer fee will result. Please see the Developer Fee + Consultant Fee section for more information.

### Applicant Site Control

Evidence of applicant site control must clearly link the current owner to the eventual ownership entity and be in the form of:

1. Executed purchase option agreement. MHDC will not accept a purchase contract;
2. Executed long-term land lease or option on a long-term lease; or
3. Other commitments/agreements approved by staff prior to the Application deadline.

Applicants that already own the ground as evidenced by a vesting deed need only provide a copy of that recorded deed for the applicant site control. Applicants will also need to provide the identity of interest transaction information in the seller site control section described above. Due to certain restrictions ("Choice Limiting Actions") imposed by HUD on all developments requesting HOME Funds or other HUD financing, all applications requesting HOME Funds must have 100% site control of all application sites and the form of site control document must be a purchase option, not a real estate contract. All developments not requesting HOME Funds or other HUD financing must demonstrate proper site control for at least 50% of the sites listed in the Application. For developments that do not evidence 100% site control, a description of how site control will be obtained is mandatory. Failure to provide such description will result in Application rejection. The use of eminent domain to obtain site control of any sites not under control at the time of Application may be deemed acceptable by MHDC if at least 50% of the total parcels making up the

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development site are under control at the time of Application. Applicants who do not clearly have acceptable site control should contact MHDC prior to the Application deadline. MHDC approval of site control prior to the Application is advisable.

## FIN 305: Seller Certification

The FIN-305 is required for every application with existing tenants and/or requesting a loan from MHDC. If no loan is requested but MHDC ultimately awards a loan, the FIN-305 must be completed and submitted prior to the execution of any Conditional Reservation.

## Legal Description

A legal description of the proposed development site must be included as a separate exhibit. The legal description must match what is included in the site control section. If the site(s) being purchased is larger than the development site(s), a narrative description of how much of the site is for the development and a breakdown of the costs attributable to the development's site is required. For multiple-parcel single-family proposals, clearly label the legal descriptions, contracts/options, and any other documentation related to the various sites so staff can match the documentation to the proposed parcels.

## *Public Official Contact Verification or Support Letters*

Public officials should be contacted via certified mail or some other manner that can be proven to have been received by the official. Public official contact letters must include the population being served, the number of units proposed, and any other relevant information demonstrating the official has received a sufficient description of the proposed development. The following public officials must be contacted prior to Application submission:

1. Chief Elected Official. Provide evidence the local legislative body (for example, city council members) and chief elected official of the local jurisdiction (for example, mayor) have been informed the applicant is submitting an application to MHDC.
2. State Senator
3. State Representative
4. City Councilperson or Alderman
5. Public Housing Authority Executive Director or local Community Action Agency (if applicable)
6. School Superintendent (new construction and historic conversion family developments only)
7. Head of Local Law Enforcement
8. City Council or County Board Resolution of Support, if possible

Scattered site developments must contact public officials for each locality/jurisdiction in which the sites are located.

You must submit either (a) a copy of the letter sent to the official and evidence the letter was received, or (b) a copy of a letter of support from the official. MHDC recommends using certified mail and obtaining the returned receipt card to prove the letter was received, but other proof is acceptable if discussed in advance with MHDC staff. MHDC strongly encourages



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letters of support from public officials required to be contacted. Letters should clearly reference the development being supported. Resolutions of support from municipal or county boards are not required but strongly encouraged. All letters and resolutions should be included.

The Commission places great importance on the demonstration of need for the proposed development and a key indicator of its potential and perception may be found in the opinions expressed by the public officials. In municipalities and counties from which MHDC has received multiple applications, staff reserves the right to contact mayors and county executives to request a prioritization of the applications.

While support letters are not required from other officials, community groups, neighborhood partners, current residents, or citizens at the time of application, all correspondence is welcome. Letters may be included in the application or sent directly to MHDC (c/o Rental Production).

## *Statutorily Required Documentation*

Various federal and state regulations require applicants provide certain information at the time of application. The following required documents must be filled out properly and executed.

### *IRS Form 8821*

In accordance with the IRS MOU, IRS Form 8821, Tax Information Authorization, must be submitted for the developer, all key principals of the developer and ownership entity, and all general partners that are not affiliates of the developer. Please fill out only Section 1 and sign Section 7.

### *Missouri Form 8821*

In accordance with the Tax Credit Accountability Act, MDOR Form 8821, Authorization for Release of Confidential Information, must be submitted for the developer, all key principals of the developer and ownership entity, and all general partners that are not affiliates of the developer. Please fill out only the top section and sign the authorization below.

### *FIN-109 Legal Employment Practices Certification*

In accordance with § 285.025, RSMo, MHDC requires all applicants to certify they do not employ illegal aliens/undocumented workers in compliance with federal, state, and local hiring laws.

### *Evidence of Consistency with Consolidated Plan*

Developments requesting financing from MHDC and located in a jurisdiction with a consolidated plan filed with HUD are required to provide certification the proposed development is in compliance with such plan. If a jurisdiction does not have a consolidated plan, a certification the proposed development is consistent with the comprehensive plan must be submitted.

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## *Housing Priority Documentation*

Applications requesting consideration under one or more of the established Housing Priorities must include the applicable required documentation with the Application (please see the discussion of the required documentation in the Housing Priorities section above). If the required documentation is missing or does not fulfill the applicable requirement(s), the Application will not be considered for the desired priority, but it will still be considered for funding.

## *Zoning Letter*

The zoning letter submitted must be an original, on the letterhead of the local governmental unit responsible for zoning, and must clearly indicate:

1. The zoning designation with a brief description of such designation;
2. Density requirements/limits; and
3. Description of any conditional use restrictions or overlay regulations that further restrict the property.

If the site is not properly zoned, include a letter from the appropriate governmental body describing what needs to be done to be in compliance and the time frame for achieving such compliance.

If there is no zoning in a jurisdiction, a letter from the locality stating no zoning exists is acceptable in lieu of a zoning letter.

## *Architectural Items*

Elevations, floor, and unit plans included as exhibits in the Application cannot be larger than 11" x 17" and must be drawn to scale when possible. The following architectural items must be included with each Application:

### *Elevations (new construction) or Photos (rehabilitation/conversion)*

You must provide color photos instead of schematic elevations for existing buildings being rehabbed or converted.

### *Floor Plans*

You must provide floor plans for each floor. If one or more floors have identical plans, it is acceptable to show one plan with the number of each floor with that plan highlighted.

### *Unit Plans*

You must provide a plan for each unit type being proposed. In the case of historic conversions, at a minimum one plan for each bedroom number category being proposed is required. If there are large square footage differences within a bedroom number category, include an example near the extremes and a typical unit in that category. Unit plans must have the square footage for the unit listed.

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## Development Characteristics Worksheet

The Development Characteristics Worksheet must be filled out and fully executed. The development characteristics described or chosen must be adhered to by the owner. Failure to do so may result in the termination of any Conditional Reservation or Firm Commitment.

## Scope of Work

For rehabilitation developments, provide a detailed scope of work describing what is being contemplated/completed by the project architect or general contractor. The scope of work should be in narrative form or a list broken down by Construction Specification Institute (CSI) divisions or another easily understood indexing system for organizing construction data with sufficient detail to comprehend what will be done.

## Physical Needs Assessment or Capital Needs Assessment

For rehabilitation developments, provide a Physical Needs Assessment ("PNA"). The PNA must follow the requirements found in MHDC Form 1201, Physical Needs Assessment Guidelines. The Assessment should not be performed by an entity that has an Identity of Interest with the developer or contractor.

For applications that include both MHDC and USDA-RD financing, a CNA prepared within six months of the application deadline according to USDA guidelines is required. Applicants must follow the USDA requirements for an "as-is" CNA and should contact the state USDA office for more details.

Applicants proposing a gut rehab of the building(s) are not required to provide a PNA but an assessment of the structural condition of the building is required, as detailed below.

## Structural Letter

For historic developments that involve a gut rehab of the building, a letter from a third-party structural engineer or equally qualified professional unrelated to the developer certifying the building has been inspected and is structurally sound for the intended use must be submitted in lieu of a PNA.

## Historic Approval

For proposals structured with historic tax credits, include the status of the Federal and State Historic Tax Credit review. Required information includes:

1. Historic Designation. Either (a) the Federal Register publication demonstrating the property is listed individually on the National Register of Historic Places, (b) the Part 1 approval confirming the property continues to be certified as contributing to the significance of a certified historic district listed on the National Register of Historic Places, or (c) the Eligibility Assessment performed by the State Historic Preservation Officer, accompanied by a timeline for the review and approval of the nomination for national register designation by the Missouri Advisory Council on Historic Preservation and the National Park Service.

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2. State Historic Tax Credit Approval. A copy of correspondence or other documentation showing the developer has discussed with the Missouri Department of Economic Development the submission of the development for approval of state historic tax credits.

MHDC reserves the right to contact the Missouri Department of Economic Development regarding the status of historic tax credit applications.

## *Sustainable Housing Information*

All new construction proposals must meet the current standards for the certification level of choice for one of the following green building rating systems: Enterprise Green Communities, any of the LEED rating systems, or the National Green Building Standard. Any certification level of these systems is acceptable, but the development team must indicate in the Development Characteristics Worksheet the rating system and certification level to which they are committing. All new construction Applications must provide documentation demonstrating how the development team and property will achieve and maintain the selected green building standard. New construction applications must also include:

1. The criteria and features being incorporated from the chosen green building rating system accompanied by the applicable checklist:
  - a. Enterprise Green Communities – Green Communities Criteria Checklist;
  - b. LEED – LEED Checklist;
  - c. National Green Building Standard – Designer's Report from the Green Building Scoring Tool;
2. Resumes for development team members with sustainable development experience, proof at least one team member is a LEED AP®, LEED Green Associate™ or a Certified Green Professional™, and a description of the development(s) they have worked on and their role in the process. If the development is not being formally certified, the development team member must document the pledged green building standards with pictures, a signed and scored scoring tool, and brief narrative during the construction process; and

New construction developments must demonstrate at Application, Firm Submission, and construction completion that the development has been designed and built to meet certification under the chosen system. Formal certification by a certified third-party is welcome but not required. Failure to provide the sustainable housing promised at the time of Application may result in the recapture of funding and will reflect poorly on future applications. For rehabilitation proposals, the green building requirement is highly encouraged but optional; however, rehabilitation developments that will achieve and maintain a green building standard should also provide the aforementioned documentation.

If a development contains more than twelve (12) units and involves rehabilitation, applicants are required to conduct pre-development testing and energy audits of existing buildings to identify energy savings opportunities. The minimum standard for energy audits is ASHRAE Level 1. The analysis can be a stand-alone document, or incorporated in either the Physical or Capital Needs Assessment reports provided it is in a separate section by itself, and must be prepared by an assessor/rater certified through the Building Performance Institute (BPI), Residential Energy Services Network Home Energy Ratings Systems (RESNET), or ENERGY STAR. The energy audit will be submitted with the initial application for the project.

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## *Relocation and Existing Multifamily Operations Data*

For developments requesting HOME Funds and requiring temporary or permanent relocation of existing residential or commercial tenants, the owner must comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ("URA"). For developments requesting all other types of MHDC financing and requiring temporary and permanent relocation of existing residential or commercial tenants, the owner must comply with the requirements of § 523.205, RSMo. Each of the exhibits below is required, regardless of the type of financing.

### Current Tenant List

Tenant list must include the names of the leaseholder, the number of persons in each household, the start date of each lease, the amount of rent charged, the amount of rent paid, income of each household, and race/ethnicity information. Subsidies being provided to residents should be noted. For properties that are currently market-rate, if household income cannot be provided, indicate to the best of your knowledge which households may be permanently displaced by the proposed financing restrictions.

### Relocation Plan

The relocation plan must include the following: (i) a brief description of the type of relocation anticipated and how it will be handled, (ii) a list of all buildings (with addresses) currently occupied by renters or owner-occupants of residential or commercial buildings being renovated or demolished as a part of the proposed development, (iii) a breakdown of the relocation expenses expected to be incurred (which reflect the number used in the development budget), (iv) a description of services provided during the relocation period, (v) how records will be maintained, and (vi) a relocation timeline. If an identity of interest exists between a member of the development team and the firm hired to perform the relocation planning and execution, the profit for relocating tenants will be limited to a maximum of 20% of the relocation costs.

MHDC reserves the right to require a cost certification of relocation costs for any development that has a relocation expense. MHDC is likely to exercise this right when an identity of interest exists, as described above.

### General Information Notice (GIN)

A copy of the General Information Notice (GIN) required by the Uniform Relocation Act (URA) for application purposes must be provided. At minimum, this must include a copy of the proposed GIN to be distributed to tenants if MHDC funding is approved.

### Acceptance of MHDC Relocation Policy

You must provide a signed statement acknowledging you have read and accepted the MHDC Relocation Policy (available at [www.mhdc.com](http://www.mhdc.com)).

### Annual Financial Statements

You must provide a copy of the property's annual financial statements for the last three years. If the applicant is related to the current ownership entity, any unaudited financial statements must be accompanied by a certification from an authorized

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representative of the owner the information is true and accurate to the best of their knowledge.

## *Homeownership Plan*

For developers proposing the construction of single-family homes and duplexes for purchase by the residents following the completion of the Compliance Period, a homeownership plan detailing the timeline, proposed sale prices, tenant discounts, and resident homeownership training must be provided. Duplexes, with fire separation walls, may also be proposed as homes for purchase by the residents following the completion of the Compliance Period. The proposed homeownership plan is expected to mirror the structures described in the MHDC Homeownership Policy (available at [www.mhdc.com](http://www.mhdc.com)). Developers proposing homeownership are required to waive the right to opt out after the Compliance Period for an additional fifteen (15) years.

## *PHA Approved Utility Allowances*

Provide the most current utility allowance schedule from the local public housing authority. The utility allowance used in the application should match the PHA-approved allowance for the property type. If using less than or more than the PHA amount, an explanation of the difference must be provided. On the utility allowance schedule circle or highlight the appropriate utility amounts. The utility allowance schedule must be dated within twelve (12) months of the applicable NOFA deadline. If the provided schedule is more than twelve (12) months old, a letter from the issuing authority stating the included allowance is the most recent must be included.

## *Developer and General Partner Information*

The following exhibits, if applicable, must be included for the developer. If the developer and general partner are unaffiliated entities, information for each entity must be provided. If a developer is a newly-formed entity made up of principals from other companies/individuals with housing experience, the information must be provided for each entity/individual.

### *FIN-105 Experience Summary for Developer(s)*

If the developer/applicant wishes to utilize a form different than the FIN-105, the report provided must, at a minimum, include all the information requested on the FIN-105.

### *FIN-107 Developer Qualifications*

The purpose of this form is to illustrate the financial and operational capacity of the developer.

### *Developer Financial Statements*

Financial statements for the developer entity and its principals must be sent or delivered under separate cover to the attention of the Director of Rental Production prior to the applicable NOFA deadline. Submitted audited financial statements must have been issued in the last twelve (12) months. If the document provided is not an audited financial statement, it must be dated within the past ninety (90) days and must be accompanied by a certification executed by an authorized representative of

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the entity or the principal stating the statement is true and correct, to the best of their knowledge.

## FIN-105 Experience for General Partner(s)

If there is a general partner that is not an affiliate of the developer, a FIN-105 for that entity is required.

## *Management Company Information*

### Experience Summary (FIN-105)

If the management company chooses to utilize a form different than the FIN-105, the report provided must, at a minimum, include all the information requested on the FIN-105.

## *Management Company Certification*

### Management Company Certification Process:

All existing and/or new management companies seeking to manage properties in Missouri are required to submit an application to be approved as a "Certified Property Management Agent." The application addresses a number of items relative to the management agent, its principals, the company's operations, the qualifications of its management staff; and agent's performance in managing multifamily properties.

Once a management company is approved as an MHDC "Certified Management Agent," MHDC staff will indicate the length of time for the certification, and will place the property on an approved "Certified Property Management Agent" list that will be made available on MHDC's website at [www.mhdc.com](http://www.mhdc.com). Certifications will be valid for up to a three-year period. Actual certification period length will be determined by MHDC's Asset Management Committee. Certified Agents must reapply prior to their existing agreement expiring to be considered and approved for re-certification.

All management companies applying to manage properties in Missouri for the first time will be restricted to a one-year certification. After the first year, the management company must reapply prior to their existing agreement expiring to be considered and approved for re-certification; and if approved, approval is conditional annually for the next two years. The management company will receive full certification after its second conditional year.

All properties must be managed by an agent listed on MHDC's Certified Property Management Agent Listing. A full description of the management certification process and relevant forms are located at [www.mhdc.com](http://www.mhdc.com).

MHDC staff will maintain a list of all MHDC Certified Property Management Agents, together with date of certification on the MHDC website at [www.mhdc.com](http://www.mhdc.com). Interested parties are encouraged to review the list to ensure that the chosen management agent is included, as the list may change periodically.

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## Application Underwriting Standards

In order to conduct the Feasibility and Viability Determination described above and in accordance with the QAP, the Code, Missouri state law, and other applicable federal laws, MHDC has created the underwriting standards listed below. The standards are based on recognized underwriting practices and MHDC's own experience with the various affordable housing programs and developments. Due to the changing economic and market dynamics of the affordable housing industry, MHDC reserves the right to deviate from these standards when appropriate and reasonable. MHDC recognizes the unique nature of each Application and will consider a development's individual situation but will not apply the standards in a capricious manner.

### Sources

When reviewing the sources contemplated by any application, MHDC will apply the following standards:

#### Debt

All sources of debt, with the exception of MHDC debt, must have a commitment letter. Please see the application exhibit section above for more information on what is required in the commitment letters.

1. **Debt Service Coverage.** All hard MHDC debt must show initial debt service coverage ("DSC") between 1.20 and 2.00. If the DSC falls below 1.15 during the Compliance Period, the applicant must explain how deficits will be dealt with. For developments utilizing non-MHDC debt, MHDC will use the DSC ratio indicated by the lender in its preliminary financial commitment. If the DSC falls below the lender's standard during the Compliance Period, the applicant or its lender must explain how deficits will be dealt with. MHDC reserves the right to underwrite to the standard for MHDC debt regardless of the source. If no explanation is provided for DSC ratios below the standards listed above, MHDC may underwrite a debt-service reserve into the development. If a development does not have a loan or only has cash-flow contingent loans, the development must demonstrate that the ratio between income and expenses is greater than 1.00 for the entire Compliance Period. MHDC staff will not recommend a development for funding if the DSC is below 1.00 at any point during the Compliance Period.
2. **Interest Rate.** For MHDC debt, the appropriate rate for the applicable funding source will be used. Please consult the latest MHDC term sheets for the appropriate rates on MHDC debt. For non-MHDC debt, the interest rate described in the lender's preliminary commitment will be used. MHDC will not accept permanent loan interest rates that float or are reset at any point during the first eighteen (18) years of operations.

MHDC debt terms may be changed during underwriting to better suit the needs of the development and MHDC.

#### Construction Loans

If the loan is an MHDC HOME Funds loan in second position during construction, the term will be equal to that of the first position construction loan. If the MHDC



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HOME Funds loan is the only construction loan, the term will be determined at Firm Commitment but will generally not exceed eighteen (18) months.

Applications must clearly state whether or not they are requesting a participation loan. Developments requesting MHDC Fund Balance participation loans must provide a preliminary commitment letter from such preferred lender which states (i) the lender is willing to take a co-first lien position with MHDC, and (ii) the lender is willing to accept the MHDC Participation Agreement. Otherwise, MHDC reserves the right to determine appropriate loan financing for the proposal. If the loan is an MHDC participation construction loan, the construction loan term will be eighteen (18) months. An application may request a participation construction loan term of twenty-four (24) months; provided, however, a twenty-four (24)-month term will increase the construction period interest rate. Such a request must be made in writing and is most appropriately made in the development's narrative.

MHDC will require recourse on the entire construction loan during the construction period. Exceptions to this recourse may be granted for Nonprofit and CHDO applicants.

If using tax-exempt bonds, the applicant must specify if they are draw down bonds.

## Permanent Loans

MHDC hard permanent loans will feature a twenty (20)-year term, with the exception of loans for single-family homeownership developments, which will feature an eighteen (18)-year term. Soft loans from MHDC will generally have the same term as the hard first mortgage; if there is no hard first mortgage, it will have a thirty (30)-year term.

Non-MHDC debt will be underwritten with the term described in the preliminary commitment letter. MHDC will not accept any permanent loan term less than eighteen (18) years.

## Amortization

Hard permanent loans from MHDC will amortize over thirty (30) years for all developments except single-family homeownership developments, which will amortize over twenty-five (25) years. Soft loans will not amortize, but will require an annual payment equal to 50% of available cash-flow unless MHDC staff determines there is not sufficient cash-flow available. The definition of "cash flow" and the priority of payment will be set forth in the Firm Commitment. Non-MHDC loans will be underwritten with the amortization described in the lender's preliminary commitment letter.

## Deferred Developer Fee

In cases where MHDC is providing a loan dependent on cash flow for repayment, deferred developer fee should be structured as a note and its position in the distribution of cash flow clearly indicated in the owner's partnership agreement or operating agreement, as applicable. MHDC reserves the right to create, eliminate, or adjust the deferred developer fee to efficiently utilize resources and appropriately underwrite each deal. Deferred developer fee in excess of 50% of

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the total developer fee should be avoided and will be allowed only in rare circumstances. It must be demonstrated that the deferred developer fee can be paid back from cash flow. Preferably, this repayment will take place within the first ten (10) years.

## Income from Operations during Construction

Income from operations during construction must be included as a source of funds.

## Equity

### Eligible Basis

Certain basis-eligible line items of the development budget may not be underwritten as 100% eligible. These line items include construction loan interest and bond-related costs. If 100% of these line items are included in eligible basis, a reason why or a calculation of how you arrived at 100% of the cost being eligible must be provided.

To calculate the maximum amount of credits for which the proposed development is eligible use the applicable percentage as detailed below:

- **9% Credit – New and Rehabilitation** – 9% fixed applicable percentage.
- **9% Credit – Acquisition** – use IRS-issued 30% present value low-income housing credit applicable percentage in effect at the time of application.
- **4% Credit – New, Rehabilitation and Acquisition** - use IRS-issued 30% present value low-income housing credit applicable percentage in effect at the time of application.

MHDC staff has the right to adjust the applicable percentage to a rate in effect for subsequent months during the underwriting process. Please note that MHDC will allocate the credit amount based on the need of the project and not on eligible basis.

Developments located in a Qualified Census Tract or in a Difficult Development Area, as defined below, may be eligible to increase eligible basis by 30%.

- Qualified Census Tract. Developments located in areas designated by HUD as Qualified Census Tracts.
- Difficult Development Areas. Developments located in areas designated by HUD to be difficult to develop.
- State Designated Difficult Development Areas. 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. For purposes of this Plan, to qualify for such an increase, properties must meet at least one (1) of the following criteria:
  - Be determined to meet the qualifications of the Preservation Priority;

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- Be determined to meet the qualifications of the Special Needs Priority and demonstrate the property owner will incur direct costs in addition to costs covered by third parties in the provision of services to enhance the residential stability and independence of special needs residents;
- Be determined to meet the qualifications of the Service Enriched Priority;
- Be a family development located in a county whose median income is below the 2015 statewide median income, as established and published by HUD, and propose to set aside at least 20% of the total units to be occupied by households earning between 60% and 80% of the area median income (workforce units), calculated using the appropriate income limits; or
- Be 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. The TOD plan must be centered around and integrated with a transit stop and the proposal must be located within 1,750 feet of a transit stop. The TOD 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 an increase in eligible basis for mixed-use economic development areas. An important factor is that the MHDC development is not the only development taking place and the MHDC development will enhance the overall plan, rather than be the overall plan. It is expected 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.

## Credit Pricing

MHDC staff may use the price outlined in the preliminary financial commitment to underwrite the development, provided the price reasonably reflects current market conditions. However, MHDC staff reserves the right to underwrite developments at credit prices different than outlined in the preliminary financing commitment(s).

All developments must meet the MHDC-required minimum contribution of 10% of Federal LIHTC and State LIHTC equity invested at construction closing with at least another 10% of Federal LIHTC and State LIHTC equity invested at or before

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50% construction completion. These thresholds must be met by both the Federal LIHTC and State LIHTC equity investors independently unless the Federal LIHTC investor and State LIHTC investor are the same entity or are controlled by the same entity. Only if the Federal LIHTC investor and State LIHTC investor are the same entity (or controlled by the same entity) will the equity be considered in the aggregate. In no event may AHAP contributions count towards these required equity thresholds. If HUD is providing loan insurance, equity contributions must meet or exceed current HUD guidelines. Investors taking more than a de minimis share (i.e. 1% or greater) of ownership interest must provide a capital contribution (at the same price as the primary investor) in exchange for their share of Federal LIHTC.

Given the changing landscape of the Federal and State LIHTC equity market, MHDC will determine a reasonable net price floor for the Federal and State LIHTC at the time of application review. MHDC reserves the right to adjust and update how equity pricing is underwritten.

MHDC staff may contact any person or entity providing a preliminary financing commitment for tax credit equity to discuss the development and/or its level of activity and/or interest in investing in Missouri.

## Historic Credits

Please indicate in the application whether a master tenant/lease pass-through structure will be utilized on historic developments. Failure to indicate such will result in MHDC staff assuming no such structure is being utilized, and the historic credit will be deducted from eligible basis. The pricing and amount of historic credit equity listed in the application must be the net amount provided to the ownership entity, excluding special reserves and costs taken from the gross price for put and call options, syndicator bridge financing, etc.

## AHAP Credits

If an applicant is planning to use the AHAP credit, be sure to indicate whether the donation will be structured as a loan, an equity contribution, or some other method. If it will be a loan, the terms must be detailed in the commitment letter.

## Uses

The standards listed below should be used when determining appropriate numbers for development budget line items.

### Maximum Development Cost

The maximum total development cost for a development cannot exceed the current Maximum Development Cost Limits published on the MHDC website. Maximum Development Cost Limits are determined using the HUD method of calculating the 221(d)(3) total replacement cost limits. MHDC reserves the right, on rare occasion, to 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 the QAP are incorporated into the proposal.

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## Contractor Fees

MHDC will limit contractor fees to the following:

1. Aggregate Contractor Fees (defined as builder's profit, builder's overhead and general requirements) cannot exceed 14% of total construction contract costs, minus builder's profit, overhead, and general requirements. General requirements must include the cost of builder's risk insurance.
2. Builder's profit may not exceed 6% of total construction contract costs minus builder's profit, overhead, and general requirements.

Bonding costs and permit costs shall not be included in the calculation of contractor fee limits for general requirements, overhead, and builder's profit.

All general requirement items in the FIN-115 must be included in the calculation of the maximum amount for general requirements, regardless of the party who pays for the items.

## Developer + Consultant Fees

MHDC will limit the fee paid to the developer and to consultants performing work typically completed by the developer. The following expenses must be paid through the developer fee:

1. Developer overhead including, but not limited to, postage, copying costs, staff travel to site, and meals;
2. Developer profit;
3. Costs incurred for the submission of applications in years prior to the round in which tax credits or loans were awarded;
4. Consultant fees, including, but not limited to, the following types of consultants: development and/or credit, application, historic, MBE/WBE, and Section 3 consultants;
5. Real estate brokerage fees and loan brokerage fees paid to a related party; and
6. Compensation for any construction management oversight provided by the developer.

The Conditional Reservation Agreement approved developer fee cannot be increased without Commission approval.

Development costs paid for by a previous owner are not considered when calculating developer fee, even if the cost of the previous work is included in the sales/purchase contract.

The developer fee + consultant fee for new construction developments is limited to the lesser of: (a) 15% of the first \$4,000,000 of total replacement costs plus 10% of any total replacement costs over \$4,000,000; or (b) the per-unit calculation from the chart below. Only 25% of the developer fee (excluding deferred amounts) may be payable at closing, with an additional 25% permitted at 50% completion. MHDC staff reserves the right to further restrict the amount of developer fee payable during construction.

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The developer fee + consultant fee for acquisition/rehab and historic preservation developments is 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.

- i. The developer + consultant fee for acquisition/rehab development where an identity of interest relationship exists between the seller and the buyer of real estate is limited to the lesser of: (a) the sum of 3% of 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. NOTE: This does not apply to entities or individuals who meet either one of the following criteria: (1) the developer has owned the property for less than four (4) years; or (2) the developer has submitted an unsuccessful LIHTC rehabilitation application for the property within four (4) years of acquisition and has not owned the property for more than six (6) years.

| <b>Total Units</b> | <b>Per Unit Limit</b> |
|--------------------|-----------------------|
| First 40 Units     | \$20,000              |
| Units 41-100       | \$17,500*             |
| Units 101-150      | \$15,000*             |
| Units 151+         | \$12,500*             |

\* Please see the Development Characteristics section under Selection Criteria for additional information on developments which contain more than fifty (50) affordable units.

ii. An identity of interest is defined as, any relationship which give(s) or would give the owner or its agent control or influence over the price paid to an individual or business supplying goods and/or services to the project. An identity of interest is construed to exist when any of the situations listed below exist:

(a) When (1) the Development owner or their agent; or (2) any officer or director of the Development owner or their agent; or (3) any person who directly or indirectly controls 10 percent or more of the voting rights, or directly or indirectly owns 10 percent or more of the Development owner or their agent; is also (1) the syndicator, architect, attorney, contractor, subcontractor, supplier or materialman; or (2) a person who directly or indirectly controls 10 percent or more of the syndicator's, architect's, attorney's, contractor's, subcontractor's, supplier's or materialman's voting rights, or directly or indirectly owns 10 percent or more of the syndicator, architect, attorney, contractor, subcontractor, supplier or materialman; or,

(b) When (1) the Development owner; or (2) any officer or director of the Development owner; or (3) any person who directly or indirectly controls 10 percent or more of the voting rights, or directly or indirectly owns 10 percent or more of the Development owner; is also (1) an officer or director of the management agent; or (2) a person who directly or indirectly controls 10 percent or more of the management agent's voting rights or directly or indirectly owns 10 percent or more of the management agent.

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For purposes of this definition, the term "person" includes any individual, partnership, corporation, or other business entity. Any ownership, control or interest held or possessed by a person's spouse, parent, child, grandchild, brother or sister shall be attributed to such person.

## Example 1:

A fifty (50)-unit new construction deal with total replacement costs of \$8,250,000 would be eligible for the lesser of:

$$\text{Per Unit} = (40 \times \$20,000) + (10 \times \$17,500) = \$975,000$$

$$\text{Cost Calculation} = \$4,000,000 \times 15\% = \$600,000 + (\$4,250,000 \times 10\% = \$425,000) = \$1,025,000$$

Therefore, the maximum allowable developer + consulting fee = \$975,000

## Example 2:

A 120-unit rehab deal with acquisition costs of \$3,000,000 and non-acquisition total replacement costs of \$4,200,000 would be eligible for the lesser of:

$$\text{Per Unit} = (40 \times \$20,000) + (60 \times \$17,500) + (20 \times \$15,000) = \$2,150,000$$

$$\text{Cost Calculation} = (\$2,000,000 \times 8\%) + (\$1,000,000 \times 6\%) + (\$4,000,000 \times 15\%) + (\$200,000 \times 10\%) = \$840,000$$

Therefore, the maximum eligible developer + consulting fee = \$840,000

## Example 3 (Identity of Interest):

Developer A, who has owned Project X for 10 years and is the GP, brings in an application for Project X to MHDC for acquisition / rehab using LIHTCs. The purposed new ownership of Project X has Developer A as the GP. The developer fee would be limited to the above guidelines.

## Example 4 (Identity of Interest):

Developer A, who has owned Project X for 3 years and is the GP, brings in an application for Project X to MHDC for acquisition / rehab using LIHTCs. The purposed new ownership of Project X has Developer A as the GP. Their developer fee would not be limited to the above guidelines.

## Example 5 (Identity of Interest):

Developer A, has owned Project X for 5 years and is the GP. Developer A, 1 year after originally acquiring Project X, submitted an application to MHDC for acquisition / rehab using LIHTCs. The purposed new ownership of Project X has Developer A as the GP. Developer A and was not approved for funding at that time. Developer A, 4 years later (5 years after originally acquiring Project X), brings in an application again for Project X to MHDC for acquisition / rehab using LIHTCs. The purposed new ownership of Project X has Developer A as the GP. The developer fee would not be limited to the above guidelines.

## Example 6 (Identity of Interest):

Developer A, has owned Project X for 7 years and is the GP. Developer A, 1 year after originally acquiring Project X, submitted an application to MHDC for acquisition /

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rehab using LIHTCs. The purposed new ownership of Project X has Developer A as the GP. Developer A was not approved for funding at that time. Developer A, 6 years later (7 years after originally acquiring Project X), brings in an application again for Project X to MHDC for acquisition / rehab using LIHTCs. The purposed new ownership of Project X has Developer A as the GP. The developer fee would be limited to the above guidelines.

## MHDC Loan Fees

MHDC fees vary by the type of loan being issued; the following is a rough estimate, subject to change.

MHDC Fund Balance Construction and Permanent Loans: 1% of principal amount

HOME Loans: No fee is charged

NHTF: No fee is charged

Participation Loans - Construction: 0.75% of principal amount

Participation Loans - Permanent: 0.5% of principal amount

Risk Share (Tax-Exempt Bonds Only) 1% of principal amount

\*Please see above for further information on a development which contains more than fifty (50) affordable units.

## Construction Inspection Fee

MHDC will charge a fee of \$10,000 to perform, or hire a third-party to perform, periodic inspections of the construction progress for all developments ("Construction Inspection Fee").

## Appraisal

MHDC will require an appraisal on all developments to confirm, at a minimum, the market value of the land and improvements at acquisition (without consideration of any value contribution that may be created by the proposed tax credits or favorable financing); the market value at project completion and stabilization using both market rents and restricted rents; and the contributory value of the proposed LIHTCs, if any. If the proposed purchase price is not supported by the MHDC appraisal, the purchase price may be reduced to the appraised value. MHDC will order the appraisal and assess a fee of \$6,500 from the development at Conditional Reservation. The appraisal fee is non-refundable.

If the subject is an operating Section 8 property MHDC appraisal guidelines will require the as-is value to be based on market rents and expenses per HUD Multifamily Accelerated Processing (MAP) underwriting guidelines. Any value created by Section 8 rents that exceed market rents ('overage' or 'overhang') will not be considered.

## Construction Cost Analysis

MHDC will assess a fee of \$5,000 for an independent third party report to provide an upfront construction cost analysis for all approved developments in excess of six units. This fee will be due with the Firm Submission. If a third party analysis is also



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required by a lender or investor on the property, MHDC staff will endeavor to work with that party to avoid duplicate costs.

If applicable, this analysis would be performed after the Firm Submission documents (plans and specs) have been submitted. The purpose of any such analysis would be to have a third party review the proposed costs and the plans and specs. If it is determined the costs submitted are either excessive or deficient, MHDC may adjust the amount of LIHTCs or loan funds allocated to the development. This review would also include a replacement reserve analysis for all proposed rehab, preservation, or conversions (except for RD properties).

## Construction Labor Costs

Owners are required to 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. The construction budget submitted with the Application must utilize the appropriate Davis-Bacon wage determination in effect at the time of the Application. For properties with four or fewer floors, use the "residential" decision. For properties with five or more floors, use the "building" decision. Wage determinations can be found at <http://www.wdol.gov/>.

## Construction Loan Interest

The amount of construction loan interest calculated and the amount included in eligible basis should be carefully considered and you should be able to explain how you arrived at each amount. MHDC staff may underwrite a reasonable construction loan into any application that shows LIHTC equity as its only significant source during construction.

## Contingency

Contingency should be 4%-7.5% of the total construction costs for new construction and 6.5% to 10% for acquisition/rehabs. Numbers outside of those ranges require an explanation. MHDC does not distinguish between hard cost contingency and soft cost contingency.

## Tax Credit Fee

The fee will be equal to 7% of the annual Federal LIHTC amount awarded to the development.

## Tax Credit Monitoring Fee

The fee is equal to \$300 per tax credit unit (including employee units) and workforce housing unit (occupied by households between 60% and 80% of the area median income).

## AHAP Fee

The AHAP fee is equal to 0.5% of the AHAP credit amount, plus the \$100 application fee.

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## Syndication Costs

The fees paid by the developer for syndication-related expenses will be reviewed for competitiveness. Investor due diligence including architectural review, bridge loan fees, and interest should not be reflected in the development budget. Syndication cost must be explained in the Application.

## Operating Reserve

The operating reserve must reflect at least six months of operating expenses and debt service. Amounts less than six months must be accompanied by an explanation.

## Replacement Reserve

The initial replacement reserve should be \$600 per unit. Any other amount will require an explanation.

## Debt-Service Reserve

If the development cannot maintain the DSC described above, a debt-service reserve, in addition to the operating reserve, may be required.

## Other Uses

All uses will be examined for their competitiveness and reasonableness and may be questioned during the Application review. Developers should be able to explain how they arrived at any particular line item, but it will be in the sole discretion of MHDC whether to accept an explanation or the cost for any line item. Any costs incurred for submission of applications in years prior to the development being awarded MHDC funds shall be repayable to the developer only as part of the developer fee.

## *Project Income*

The following standards should be considered when structuring the development and completing the Application.

### 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 in the Application and, at a minimum, must meet the requirements of the Code to be eligible for a LIHTC allocation under the QAP. Tax credit rents should be at least 15% less than market rents. In rare instances, area market rate rents may be depressed due to deteriorating conditions. Therefore, area market rate rents could be less than tax credit unit rents. If a development includes both tax credit and market rate units, the market rate unit rents must be at least 15% higher than tax credit rents. This does not apply to special needs housing properties.

### Other/Commercial Income

All other income must be fully explained. MHDC staff, in its sole discretion, will determine the amount of other/commercial income that will be recognized.

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Other/commercial income may or may not be recognized for LIHTC amount and/or loan sizing purposes.

## Income Trending

For purposes of the fifteen (15)-year pro forma, MHDC staff will use a 2% inflation factor for all sources of income.

## Vacancy

Family developments will be underwritten with a rental income vacancy factor of 7%. Both 55+ Developments and 62+ Developments will use a rental income vacancy factor of 5%. Recognized commercial income may use a lower or higher vacancy rate depending on the type of income. MHDC staff will also look at how higher vacancy rates affect the development and what is the break-even vacancy rate. MHDC staff reserves the right to use different vacancy rates than those shown above based on actual vacancy rates in the market.

## *Maximum Income / Maximum Rents*

MHDC no longer publishes the Maximum Income/Maximum Rent Schedule for Missouri counties. Income limits and maximum rent levels can be determined by accessing Novogradac & Company LLP's Rent & Income Limit Calculator©. The [Rent & Income Limit Calculator©](#) will calculate IRC §42(i)(3)(A) LIHTC rent and income limits for every Missouri county and MSA. The determination of maximum income and rent limits is complex and the use of a compliance professional is highly recommended.

## *Operating Expenses*

Because of the different types of developments and the variances in operating costs found in the different regions of Missouri, with the exception of replacement reserves, MHDC will not provide minimum or maximum operating expense requirements. Each development will undergo a detailed review and will be compared with existing developments of similar type, location, and design. MHDC is interested in funding proposals demonstrating feasible, yet competitive and reasonable, expenses that will assure long-term operating stability and quality. The presence of a full-time manager is strongly encouraged.

## Expense Trending

For purposes of the fifteen (15)-year pro forma, MHDC staff will use a 3% inflation factor for annual increases in operating expenses.

## Replacement Reserves

MHDC requires all developments to fund an annual replacement reserve equal to \$300 per unit, increased annually by 3%. If a different amount is required by a lender or syndicator, please clearly indicate that in the Application. However, such indication will not necessarily result in MHDC waiving its stated policy.

## Security

For development proposals in areas where the market study reports a crime index above two times the current state index of 8.86 as reported in the

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[neighborhoodscout.com](http://neighborhoodscout.com) data, such proposals must address security needs in the development and operating budgets, or provide a detailed explanation why such measures will not be necessary.

**NOTE:** The state and local factors from [neighborhoodscout.com](http://neighborhoodscout.com) change annually in the late fall of each year; therefore any market study update submitted for consideration must include updated crime statistics.

## Application Approval

### *Standards of Conduct*

The MHDC Standards of Conduct, adopted on July 31, 2009, contains the following requirements concerning contact with commissioners and staff during the application process:

#### Definitions:

##### Commissioner

All appointed and ex officio members of MHDC, including all proper designees of any member which are authorized to vote on behalf of the member they represent.

##### Competitive Matter

Any matter which shall be put to the Commission for a vote where two or more Interested Parties could benefit from an outcome of the vote including, but not limited to, the award of any MHDC controlled or administered resources and any Commission approved contracts for services.

##### Director

The Executive Director of MHDC.

##### Disclosure Period

The period of time after an Interested Party submits a proposal, application, bid or response in a Competitive Matter.

##### Employee

The Director and all employees of MHDC.

##### Interested Party

Any person or entity (or anyone acting at their direction or on their behalf) whom submits a proposal, application, bid or response to a solicitation, request, notice or invitation to do so vis-à-vis a Competitive Matter.

##### Quiet Period

The period consisting of seven days prior to a scheduled vote by the Commission on a Competitive Matter.

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Commissioners and Employees may at any time and for any legal purpose initiate contact with anyone, including Interested Parties or agents of Interested Parties, in the course of investigating any Competitive Matter.

If an Interested Party initiates communication, in any form, with a Commissioner or Employee regarding a Competitive Matter following submission of the Interested Party's proposal, application, bid or response, the Interested Party shall follow the following disclosure procedure:

Within twenty-four (24) hours of contacting a Commissioner or Employee, the Interested Party must file a written notice of the contact with MHDC staff. The written notice will include a written description of any oral communication from the Interested Party to the Commissioner or Employee, and the written notice will include copies of any written or recorded materials provided to the Commissioner or Employee. In addition, within twenty-four (24) hours of filing the notice of contact with MHDC, the MHDC staff will deliver, either in person, by facsimile, or electronic mail or through overnight courier, a copy of the notice (including any attachments) to each and every other Interested Party.

During the Quiet Period, Interested Parties shall not initiate contact with Commissioners or Employees.

Failure to honor the provisions set forth herein regarding the Disclosure Period and/or Quiet Period shall result in the disqualification of the Interested Party's proposal, application, bid or response.

The complete version of the Standards of Conduct may be found on the MHDC website.

## *Commission Approval*

Staff will provide the Commissioners with available application data, staff review comments, and public hearing results. Staff will submit a list of Applications recommended for approval to the Commissioners no later than seven days prior to the regularly scheduled Commission meeting at which approvals are scheduled to be made. Recommendations may include the revision of budgets, unit counts, rents, and tax credit and loan amounts as a result of the underwriting process.

At the approval meeting, the Commissioners have the right to inquire further about the Applications, to approve the list as recommended, or to add Applications to or delete Applications from the list. Following the Commission's approval of the final list of applications for LIHTCs, HOME Funds, and/or other MHDC-administered financing, staff will proceed with the Conditional Reservation process.

When the potential for a conflict of interest or the appearance of a conflict of interest exists, MHDC Commissioners and staff will identify such situations, disclose the potential conflict, and take whatever steps may be warranted by the situation, up to and including recusing themselves from decision-making or action pertaining to the situation.

## **Pre-Conditional Reservation**

Approval letters are generally sent to developers of all approved proposals the week after Commission approval. The approval letter identifies the stages of underwriting from environmental submission/review through Firm Commitment and identifies the underwriter

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assigned to each development. Attached to this letter, and provided below, is a generic checklist of documents needed to prepare the Conditional Reservation Agreement (“Pre-Conditional Reservation Items”):

## *Ownership Entity Organizational Documents:*

1. A copy of the letter from the Department of the Treasury or other documentation demonstrating the Employee Identification Number assigned to the ownership entity.
2. A copy of the certificate of limited partnership, certificate of organization, or certificate of incorporation, as applicable, from the Missouri Secretary of State's office. NOTE: The owner entity must be organized in the state of Missouri. The only instance in which MHDC will consider a waiver of this requirement is if the owner entity has presented a compelling reason that precludes it from being organized in Missouri and only when the owner entity is receiving only low-income housing tax credits and no loan funds from MHDC. Any such waiver request will be considered on a case-by-case basis.
3. A copy of the initial limited partnership agreement or operating agreement, or for nonprofit organizations, a copy of the bylaws.
4. A Missouri certificate of good standing for the entity if it has been in existence for more than one year. A certificate may be obtained electronically at the Secretary of State's website for a nominal fee. A screen print of the search screen with a description of the entity's standing is not acceptable.
5. A draft of the signature block for the ownership entity. Please note, if the development was approved for 9% Credits from the nonprofit set-aside, the nonprofit entity must be one of the signers, even if it is not the sole general partner or member.
6. A resolution authorizing the individual, general partner, manager, or managing member to sign on behalf of the owner entity.

## *General Partner/Member Organizational Documents*

Please provide for every tier of the general partner or member entities that are not individuals.

1. A copy of the letter from the Department of the Treasury or other documentation demonstrating the Employee Identification Number assigned to the general partner/member entity(ies).
2. A copy of the certificate of limited partnership, certificate and articles of organization, or certificate and articles of incorporation from the Missouri Secretary of State's office. If the general partner entity is not a Missouri entity, MHDC staff will also require a certificate of foreign registration evidencing that the general partner is registered to do business in Missouri.
3. A copy of the initial limited partnership agreement, operating agreement, or bylaws.
4. A resolution authorizing the individual to sign on behalf of the general partner or member entity(ies).
5. A Missouri certificate of good standing for the entity if it has been in existence for more than one year. A certificate may be obtained electronically at the Secretary of

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State's web site for a nominal fee. A screen print of the search screen with a description of the entity's standing is not acceptable.

## *Property Information*

1. A site plan accurately identifying the land which comprises the development which includes the following detail:
  - a. Each building numbered (1, 2, 3, etc.). MHDC staff will utilize the numbers to create the building identification numbers.
  - b. The names of the streets which border the property.
  - c. The boundaries of the property clearly marked.

## **Conditional Reservation**

All applications receiving approval from the Commission will be awarded a conditional reservation agreement ("Conditional Reservation") shortly after MHDC staff receives, reviews, and approves the Pre-Conditional Reservation Items. The Conditional Reservation will describe the type, amount(s), terms and requirements applicable to the development. Conditional Reservations will be subject to the requirements MHDC staff determines necessary or appropriate.

All developments receiving a Conditional Reservation must submit a Firm Submission package no later than the date established in the Conditional Reservation.

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 staff of financial feasibility or sufficient progress toward Firm Submission, closing, and placement in service.

## **Firm Commitment**

All applications awarded a Conditional Reservation must be issued an MHDC Firm Commitment ("Firm Commitment") for construction closing to occur. The Conditional Reservation includes a deadline for submission of the Firm Commitment review checklist items and this deadline must be met to receive a Firm Commitment. All Firm Submission items must be sent to the attention of the assigned underwriter.

For HOME and federally-insured developments, Vapor Encroachment Conditions (VEC) must be addressed using ASTM E 2600-10 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions. If a Tier 1 Screening identifies potential VEC problems, these must be investigated to determine if they are a recognized environmental condition (REC). Developments not requiring a Phase I Environmental Report developed by an environmental professional (EP) must engage an EP to conduct a vapor encroachment investigation.

Initial monthly rents cannot exceed the rents reflected in the Firm Commitment unless MHDC staff determines, in its sole discretion, a different rent is necessary and appropriate. Initial monthly rents cannot increase until at least one (1) year after the last unit is placed in service.

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## *Firm Commitment Exhibits*

Each approved development is required to submit a firm submission package ("Firm Submission"). The firm submission will include: (1) an electronic version of the Firm Submission (a link will be provided on MHDC's website), (2) one tabbed three-ring binder with required exhibits, and (3) digital media with required electronic exhibits. Depending on the type of financing, some individual exhibits may not be applicable but all developments must submit a Firm Submission package. Questions as to whether an exhibit is applicable to a specific development must be asked prior to the Firm Submission deadline.

If you have questions about Firm Submission exhibits, especially if you are not sure whether an exhibit applies to your particular development, please contact the Director of Rental Production or the Chief Underwriter. Any item that may serve to satisfy the requirements of multiple exhibits should be copied and included in each applicable exhibit tab.

If an exhibit is required for your type of development but you feel there is a reason it is not applicable, you may request a waiver of that exhibit. Waiver requests must be submitted on the MHDC waiver form and submitted and approved prior to the Firm Submission due date. Waivers will only be granted in rare circumstances with a rational explanation and proper justification.

A Firm Commitment will be issued after a review of the Firm Submission package has been completed and it is clear to MHDC staff all MHDC requirements have been or will be met prior to closing. Developments with reservations of HOME Funds or Risk Share Insurance will not receive a Firm Commitment until HUD's Authorization to Release Grant Funds has been received by MHDC staff.

If the Firm Submission package reflects changes to the numbers and assumptions from what was in the Conditional Reservation, the amount of financing committed to the development may change. MHDC staff reserves the right to terminate any Conditional Reservation and/or require a development to go back before the Commission for reconsideration at a regularly-scheduled meeting if the changes presented materially affect MHDC's understanding of the development.

### *Digital Media*

The Firm Submission checklist will identify exhibits to be submitted in the three-ring binder and exhibits to be submitted digitally. Digital media must include the required electronic documents in the proper form. Each document should be properly labeled and should be checked to make sure it opens properly. Do not put files into subfolders.

### *MHDC Form FIN-101: Identity of Parties*

The FIN-101 must be filled out with contact information for the listed members of the development team. The FIN-101 will be an exhibit to the Firm Commitment and must be as accurate as possible.

### *Signature Blocks*

Signature blocks must be provided for the architect, general contractor, title company, and Federal LIHTC and State LIHTC investors in the forms in which they should appear in any MHDC legal documents. If there has been any change to the ownership entity signature block since Conditional Reservation, an updated version



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must be submitted. It is highly recommended that the developer's attorney help to prepare and/or review the signature blocks before sending them to MHDC staff.

If the project does not have an MHDC loan, only the signature block for the ownership entity must be provided.

## Organizational Documents

Those documents that were already submitted for the Conditional Reservation do not need to be provided again.

### Ownership entity:

Provide a Certificate of Limited Partnership or Certificate of Limited Liability Company, as applicable (must be a Missouri entity, unless there is no MHDC loan and the development has obtained a waiver from MHDC);

Provide a draft Amended and Restated Limited Partnership Agreement (including MHDC-required limited partnership agreement language) or Amended and Restated Operating Agreement (including MHDC-required operating agreement language), as appropriate for the owner entity's type of legal structure. The most current Partnership/Operating Agreement language required by MHDC may be obtained at [http://www.mhdc.com/rental\\_production/2016\\_fy\\_items/legal\\_department\\_for\\_ms/index.htm](http://www.mhdc.com/rental_production/2016_fy_items/legal_department_for_ms/index.htm).

### General Partner(s) or Managing Member:

Provide a Certificate of Incorporation or Certificate of Limited Liability Company, as applicable;

Provide an Operating Agreement or Articles of Incorporation and Bylaws, as appropriate for the type of legal structure.

### Federal and State LIHTC Syndicator or Investor:

Provide a Certificate of Incorporation or Certificate of Limited Liability Company;

Provide a Limited Partnership Agreement, Operating Agreement, or Articles of Incorporation and Bylaws, as appropriate for the type of legal structure.

## Financial Statements

Financial statements for the below entities must be provided. Audited financial statements submitted must have been issued in the last twelve (12) months. If the document provided is not an audited financial statement, it must be dated within ninety (90) days, and must be accompanied by a certification executed by an authorized representative of the entity stating the statement is true and correct to the best of their knowledge.

1. Developer entity. If the entity is a newly-created and/or single-purpose entity, the financial statement for the parent company is also required.
2. General partner/member entity (unless it is the same entity as the developer). If the entity is a newly-created and/or single-purpose entity, the financial statement for the parent company is also required.

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### 3. Federal LIHTC and State LIHTC syndicator and investor entity(ies).

Financial statements for all entities/individuals **must** contain a complete listing of all contingent liabilities.

#### Certificates of Good Standing

A Missouri certificate of good standing must be provided for the following development team entities: architect, general contractor, title company, management company, surveyor, and environmental firm. A certificate may be obtained electronically at the Missouri Secretary of State's web site for a nominal fee. A screen print of the search screen with a description of the entity's standing is not acceptable.

#### Site Control

Evidence of valid site control by the ownership entity must be included. Any initial options and all subsequent amendments or extensions, if applicable must be provided. A purchase option will not provide sufficient evidence of site control if the date by which the option must be exercised, or by which the closing must occur, has already lapsed or will lapse on a date before which a closing can realistically be expected to occur. Therefore, all such documentation for site control provided with the Firm Submission must allow for at least sixty days to close from the date the Firm Submission is submitted to MHDC staff.

#### Title Commitment

A lender's title commitment is required to be provided for every development. The commitment must be on form 2006 ALTA Loan Policy (6/17/06) and MHDC must appear as the proposed insured, with the amount of the MHDC loan, if any, on Schedule A. All title commitments and pro forma title policies must be signed by a representative of the title company and the legal description must be identical to the legal description shown on the survey. Full and complete guidance regarding MHDC's policies on acceptable title insurers, title commitments and pro forma title policy requirements may be accessed on MHDC's web site ([http://www.mhdc.com/rental\\_production/2017\\_fy\\_items/legal\\_department\\_forms/index.htm](http://www.mhdc.com/rental_production/2017_fy_items/legal_department_forms/index.htm)). Each developer is encouraged to access and share this information with its respective title company in order to adequately ensure that all MHDC title policy requirements are satisfied.

For developments requesting a loan from MHDC, copies of exception documents relating to all exceptions reflected on Schedule B of the title commitment must also be provided.

#### Survey

A full-size draft of the survey and surveyor's report, Form HUD 92457 A-M, must be submitted. Although a draft survey is required for Firm Commitment consideration, the final survey must be updated within ninety (90) days of closing and the surveyor's report must be updated within thirty (30) days of the closing. The legal description must be identical to the legal description shown in the title commitment/pro forma policy. Full and complete guidance regarding MHDC's policies for surveys and survey reports may be accessed on MHDC's web site ([http://www.mhdc.com/rental\\_production/2017\\_fy\\_items/legal\\_department\\_forms](http://www.mhdc.com/rental_production/2017_fy_items/legal_department_forms)

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/index.htm). Each developer is strongly encouraged to access and share this information with its respective surveyor in order to adequately ensure that all MHDC survey requirements are satisfied. Please note that the HUD surveyor's report has recently changed. The current form is included in MHDC's survey requirements.

## MHDC Form 3345: Plan Review Worksheet

An executed plan review worksheet that accurately breaks down the unit information by building must be submitted. The unit and square footage data must agree with the firm submission and the plans and specifications. Please provide both the Excel workbook and a PDF copy with signatures on the digital media.

## Plans and Specifications

A complete set of construction drawings and specifications (or project manual) must be provided. For detailed requirements, see MHDC Form 1200, Design/Construction Compliance Guidelines dated August 1, 2009, as may be amended from time-to-time.

### Plans:

An e-file and two full-size paper copies of architectural /engineering drawings, including a schedule of units and square footage must be included.

### Specifications:

Two sets must be submitted. Please note, (a) HOME-financed developments with twelve (12) or more HOME-assisted units must include the current edition of the "General Conditions of the Contract for Construction" (AIA Document A201-2007), as amended, and the "Federal Labor Standards Provisions" (form HUD-4010); and (b) developments receiving Risk Share Insurance must include the current edition of the "General Conditions of the Contract for Construction" (AIA Document A201-2007), as amended, and the "Supplementary Conditions of the Contract for Construction" (form HUD-2554).

## Development Characteristics Worksheet

A new Development Characteristics Worksheet with original signatures from the developer, owner, and architect must be provided. If no information has changed since the original submitted with the Application, reprint the original Excel file and execute with updated signatures. This worksheet codifies the development team's commitment to provide the amenities described. Any revisions during the design and construction process must receive the approval of MHDC staff.

## Sustainable Housing Documentation

All new construction developments must provide detailed information regarding what features and techniques have been incorporated into the design of the development. This information should be in the form of the checklist or scoring system associated with the chosen green building program. Rehabilitation developments obtaining green building certification must submit the documents listed in the Sustainable Housing Information section above.

## Termite Inspection Report or MHDC Termite Certification

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If the development consists of existing buildings, a termite inspection report must be provided by a licensed Pest Control Company. If termite infestation is found in the report, the scope of work must include what steps will be taken to eliminate the problem. The scope of work must be updated during construction if additional damage is found.

All developments must execute and submit the MHDC Termite Certification form.

## Owner-Architect Agreement

A copy of the Owner-Architect Agreement (AIA B108-2009 with executed MHDC Amendment indicating the number of site visits per month) must be submitted. If this agreement does not include all required architectural and engineering disciplines, then copies of all consulting contracts should be also be included. All amendments to the standard AIA form must be clearly and conspicuously reflected within the body of the agreement and will be subject to approval by MHDC staff. An Additions and Deletions Report should also be submitted.

## Contractor Due Diligence

The following contractor due diligence items must be provided:

1. Contractor's Qualification Statement (AIA A305);
2. Contractor's Audited Financial Statement;
3. MHDC Form FIN-116, Credit Summary with contractor's tax I.D. number;
4. MHDC Form FIN-105, Experience Summary and a company resume; and
5. Construction Contract (if MHDC is not the first lien position lender). If using the AIA form of construction contract, you must use the AIA A102. The A102 must be amended to incorporate all MHDC required language for the construction contract. This required language may be obtained at: ([http://www.mhdc.com/rental\\_production/2016\\_fy\\_items/legal\\_department\\_forms/index.htm](http://www.mhdc.com/rental_production/2016_fy_items/legal_department_forms/index.htm)). Further, all amendments to the standard AIA form must be clearly and conspicuously reflected within the body of the agreement and will be subject to approval by MHDC staff. If MHDC is the first lien position lender, the MHDC form construction contract must be used, and will be circulated with the MHDC loan documents.

## Equal Employment Certification (HUD Form 92010)

Include an executed Equal Employment Opportunity Certification (HUD Form 92010) for the owner (for developments with HOME Funds) or the general contractor (other financing).

This exhibit is not required for tax-credit only developments.

## MHDC Form FIN-115: Contractor's/Mortgagor's Cost Breakdown

The cost breakdown properly completed with the division of labor and materials on form FIN-115, executed by both the owner and contractor, must be provided. The FIN-115 will be updated prior to construction closing to reflect any changes in the closing plans and specifications.

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## MHDC Form FIN-150: Construction Draw Schedule

Only developments with a construction loan from MHDC must complete and provide Form FIN-150. Questions regarding the FIN-150 should be directed to the assigned MHDC project underwriter.

## Updated Financing Commitments

### Debt/Grant Commitments:

All construction and permanent debt/grant sources of financing listed in the Firm Submission, other than those provided by MHDC, must have a commitment letter from the financing provider. If a commitment letter was previously provided, an updated letter must be given at Firm Submission. The commitment letter(s) must include the terms and fees associated with the financing. Permanent loan terms must be at least eighteen (18) years. If reserves are being assumed, a letter from the current lender must be provided indicating the reserves can be assumed by the new ownership entity. MHDC also requires a statement indicating the current balance of such reserves. For acquisition/rehabilitation proposals with existing tenants, construction period income must be included as a source and a calculation of construction period income should also be included.

### Equity Commitments:

All sources of tax-credit equity listed must have a commitment letter. If a commitment letter was previously provided, an updated letter must be given at Firm Submission. The commitment letter(s) must include the amounts, timing of capital contributions, reserve requirements, terms, and fees associated with equity contributions. MHDC requires a minimum of 10% of Federal LIHTC and State LIHTC equity be invested in the development at closing and again by 50% of construction completion.

## Management Agent Documentation

The following management company documentation, executed with original signatures, as applicable, must be submitted. All properties must be managed by an agent listed on MHDC's Certified Property Management Agent Listing. A full description of the management certification process and relevant forms are located at [www.mhdc.com](http://www.mhdc.com).

MHDC staff will maintain a list of all MHDC Certified Property Management Agents, together with date of certification on the MHDC website at [www.mhdc.com](http://www.mhdc.com). Interested parties are encouraged to review the list to ensure that the chosen management agent is included, as the list may change periodically.

If you are unable to fill out all the documents in their entirety for a new construction development, please indicate that. Any incomplete or missing documents will be required to be submitted to MHDC Asset Management immediately once the management company and site staff are in place.

1. Articles of incorporation.
2. MHDC Form FIN-116, Credit Summary including tax I.D. number.
3. Audited financial statement.

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4. MHDC Form FIN-105, Experience Summary and company resume. If the development will receive Risk Share Insurance, also include Form HUD-2530, as filed electronically with HUD.
5. Exhibit A-2: Project Owner's Management Agent Certification.
6. Exhibit A-5, Certified Property Management Application. If a management company is an MHDC certified management company a copy of the approval letter will suffice.
7. Exhibit J, Authorized Representative Designation.
8. Exhibit J-1, Management Authorized Representative Designation.
9. Exhibit L, Property Information Sheet.

## Affirmative Fair Housing Marketing Plan

Provide an executed and complete HUD Form 935.2A (Multifamily)/ HUD Form 935.2B (Single Family) Affirmative Fair Housing Marketing Plan.

## PHA Approved Utility Allowance Information

Provide the most recent utility allowance schedule from the local housing authority available for the development type and geographic area in question. On the utility allowance schedule, circle or highlight the appropriate utility amounts. If the schedule provided has an effective date that does not use the current year, a statement from the housing authority which says the estimate is still valid must be provided.

## Management/Maintenance Plan

A management/maintenance plan that describes, in detail, the operation, management, and maintenance of the development must be submitted. The plan should be customized to meet the needs of the development.

## Proposed Lease Agreement

A copy of the proposed lease agreement to be used by the development, accompanied by the appropriate HOME and/or LIHTC lease addendum must be provided.

## Lease-Up Narrative and Budget

### Narrative:

A lease-up narrative describing, in detail, the marketing plan and lease-up projections for the development must be provided.

### Budget:

MHDC Form FIN-117 should be used to show occupancy and expense projections for the lease-up period.

## Service-Enriched Housing Documentation

If you indicated you would be providing social services in the Application or if you plan to include them as the development goes forward, an executed supportive

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services plan and finalized service provider letters of intent must be submitted for approval.

## Special Needs Housing Documentation

If you indicated you would be providing housing opportunities for persons with special needs, an executed referral and support agreement, marketing plan and final rental assistance commitment letters must be submitted for approval.

## Relocation Documents

All developments subject to MHDC's Relocation Policy are required to submit the stage 2 documentation applicable to its type of financing.

## Section 3 Plan

Developments subject to the Section 3 Requirement (as defined below) are required to provide a signed Section 3 plan for their development. Please see the Section 3 guidelines below for details.

## Tax Abatement/PILOT Information

Any development receiving tax abatement or entering into a PILOT agreement must provide a detailed description of the percentage, length, and terms granted to the development. A copy of any agreement or ordinance granting the tax relief must be included. If that document covers more than the development in question, a description of what is applicable to the MHDC-financed development is required. If the tax relief does not cover the entire Compliance Period, a description of what steps will be taken to cover the cost of full taxes must be provided.

## Homeownership Plan

Developments that have indicated they will offer single-family homes for sale to qualified residents at the end of the Compliance Period must provide a homeownership plan that details such intent. The plan must reflect the structure required in the MHDC Homeownership Policy (available on the MHDC website). Developments must waive the right to opt out of the LIHTC program for an additional fifteen (15) years beyond the Compliance Period.

## Legal Description

Provide the legal description in Microsoft Word format.

## MBE/WBE Utilization Plan

Provide the updated and signed Utilization Plan (as defined below) and updated Schedule of Participation. The plan should also include a detailed listing of MBE/WBE firms to be utilized.

Once a complete Firm Submission package is received by MHDC staff, loan closing requirements and a closing checklist will be forwarded to the developer. A closing date will not be determined until a Firm Commitment is issued. Tax-credit only developments are also required to provide information to MHDC staff prior to closing.

If the development necessitates the assignment of a HAP contract, the developer must receive the paperwork from the seller required for such assignment at least six weeks prior to

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closing. This should allow adequate time for MHDC contract administration staff and HUD to review and approve any transfer.

## Carryover Allocation

9% Credit developments that receive a conditional reservation of tax credits must sign a Carryover Allocation Agreement ("Carryover Allocation") to allow the development an additional two years to complete construction and/or rehab and place the development in service, otherwise the development must be completed, placed in service, and receive 8609s no later than December 31 of the year the Conditional Reservation is received. The Carryover Allocation will be prepared and issued in conjunction with the Firm Commitment. As a requirement of the Carryover Allocation, a 10% Test (as defined below) must be completed and submitted to MHDC staff.

### *Carryover Allocation Agreement*

The owner should carefully review the Carryover Allocation.

#### *Applicable Credit Percentage*

The applicable credit percentage for New Construction and Rehabilitation credits is permanently fixed at 9%. For Acquisition credits, IRC Section 42(b)(A) requires the developer choose when the applicable credit percentage will be established. The choices are:

1. The month of allocation (the effective date of the Carryover Allocation); or
2. The month the building is placed in service.

The owner will indicate its preference in Section 8 of the Carryover Allocation.

#### *Owner Signature*

The owner needs to sign the Carryover Allocation in blue ink, have it notarized, and return to MHDC, Attn: LIHTC Department, 920 Main Street, Suite 1400, Kansas City, Missouri 64105.

#### *Deadlines*

The Carryover Allocation must be in the office of MHDC at least five business days before the end of the month in which the owner signed the Carryover Allocation. The Carryover Allocation must also be signed by MHDC in the same month if the applicable credit percentage is for the month of allocation.

If a Carryover Allocation is not signed by the owner and MHDC within the same calendar year of the Conditional Reservation, the owner must place the buildings in service, cost certify, and receive the 8609s within the calendar year of the Conditional Reservation.



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## 10% Test

The owner must complete the 10% test no later than twelve (12) months after the date of the Carryover Allocation or the LIHTCs will be returned to MHDC ("10% Test"). The 10% Test should be submitted as soon as the test has been met. The 10% Test is not required if a development is able to place the development in service, provide the cost certification to MHDC, and receive 8609(s) in the same year the Conditional Reservation is received.

### *10% Test Required Documentation*

- Original MHDC Form 3341, Development Financing Certification;
- Original MHDC Form 3342, Exhibit B with supporting documentation;
- Original MHDC Form 3343, Carryover Allocation 10% Letter;
- Electronic (non-pdf) version of MHDC form 3342, Exhibit B;
- A copy of the recorded warranty deed/lease;
- A copy of the signed amended and restated partnership agreement, or amended and restated operating agreement, as applicable; and
- A copy of the note(s) and copies of recorded deed of trust(s) for all non-MHDC loans.

Scan and email the above to [lihtc@mhdc.com](mailto:lihtc@mhdc.com) (or include on a CD/flash drive and submit with the required original documents).

### *10% Test Deadline*

The 10% Test must be met no later than twelve (12) months after the effective date of the Carryover Allocation. All documentation evidencing the 10% Test has been met must be submitted to MHDC staff by the end of the 13th month after the Carryover Allocation effective date. Early submission is encouraged.

## Construction Loan Closing Guidance

MHDC's legal department is charged with the role of overseeing and coordinating closings on all developments receiving loan funds and/or LIHTCs from MHDC. This process includes the receipt and review of all required due diligence items, drafting and negotiation of all MHDC loan and/or tax credit documents, review of all loan documents from other lenders, if any, providing loan funds to the transaction, as well as reviewing and approving all other collateral documentation germane to the development. This section provides an overview of MHDC's construction loan closing process, including certain specific requirements to be fulfilled and key timing issues relevant to the process.

### *Key Milestones in the Construction Loan Closing Process*

Within MHDC's construction loan closing process there are eight notable stages.

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## Firm Submission

While there are multiple steps that occur with regard to underwriting and environmental requirements prior to a borrower providing a Firm Submission to MHDC staff, the Firm Submission itself is the first key milestone in the loan closing process. When the Firm Submission documentation is provided to MHDC staff, MHDC's legal department will assign a closing attorney to spearhead the transaction on behalf of MHDC. This is the initial point at which MHDC's legal department generally becomes involved in a development. Once MHDC's legal department has assigned a closing attorney, the borrower should begin including MHDC's attorney in all conference calls and correspondence related to the development.

## Review of Firm Submission Due Diligence

All appropriate departments within MHDC involved in the Firm Submission review process will conduct reviews of their respective due diligence items from the Firm Submission. Upon completion of their respective reviews, each department will identify all comments or concerns related to its respective items from the Firm Submission due diligence items and will prepare a memorandum to MHDC's underwriting department listing all issues each respective department has identified in the Firm Submission materials which must be addressed by the developer. The Firm Commitment cannot be issued until all reviewing departments are satisfied with the Firm Submission materials. The lone exception is the MHDC legal department, which will provide its comments in the form of a closing due diligence checklist which will be circulated to the developer under separate cover.

## Firm Submission Comments and Closing Checklist Circulated

Upon completion of all departmental reviews, the Firm Submission review memorandums will be compiled by the MHDC underwriter and attached to the firm commitment. In addition, with respect to the MHDC legal department review, the closing attorney will circulate comments to pertinent Firm Submission items, along with MHDC's complete construction loan closing due diligence checklist. This checklist provides a projected comprehensive list of all items which the borrower will be required to submit and which MHDC staff will have to approve before the construction loan closing can occur. However, the content of the loan closing due diligence checklist is subject to change throughout the course of the due diligence process as facts and circumstances evolve which may require the addition or modification of requirements reflected on the initial closing checklist. If the borrower has not already started including the MHDC closing attorney on all conference calls and correspondence prior to this stage, it is imperative that the borrower immediately begin including MHDC's attorney at this point. Failure to do so is likely to cause several issues which will inevitably slow down the closing process, such as failure to properly submit or correct issues with required items on MHDC's loan closing checklist.

## On-Going Loan Closing Due Diligence Submission and Review

Once all MHDC departments have circulated comments to the Firm Submission items and a copy of MHDC's closing checklist has been sent out, it is incumbent upon the borrower to work diligently to submit all items on the closing checklist for MHDC staff's review and approval. As items are received, MHDC staff will review due

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diligence and provide comments on any deficiencies, as necessary. It is the borrower's responsibility to address such deficiencies in a timely manner.

## Issuance of Firm Commitment

The Firm Commitment issued to the owner by MHDC staff contains all of the key terms of the business deal being agreed to between MHDC and the owner as it pertains to the loan funds and/or tax credits being issued by MHDC. Once the Firm Commitment is issued, MHDC's closing attorney can begin drafting MHDC documents and working with the owner to establish a closing timeline and projected closing date.

## Draft and Circulation of MHDC Loan Documents

After the Firm Commitment has been issued, MHDC's closing attorney will draft proposed documents and will then circulate draft documents to all necessary parties for review.

## Finalization of Loan Closing Due Diligence and MHDC Loan Documents

Subsequent to the MHDC documents being circulated, in addition to continuing to receive and review due diligence items from MHDC's closing checklist, MHDC's closing attorney will field and review any comments to MHDC's documents. It is important to note that, while MHDC attempts to be reasonable in addressing legitimate concerns or requested changes to MHDC's documents to properly and accurately reflect the business deal MHDC has agreed to, MHDC generally will not make material changes to its documents.

## Execution of MHDC Documents and Release of Funds

Once all items on MHDC's closing checklist have been submitted to MHDC staff and approved by the appropriate parties, and all parties to the transaction have approved the MHDC documents, the transaction will be cleared to close and fund. MHDC staff generally requires all due diligence be submitted in final form and approved by MHDC staff at least seven days prior to the scheduled closing date. Likewise, MHDC staff generally requires all MHDC documents be fully negotiated and agreed to at least three days prior to the scheduled closing date. Unless MHDC's closing attorney specifically approves an alternative arrangement, MHDC will require the closing of an MHDC loan take place in MHDC's Kansas City office.

## *Loan Closing Checklist Due Diligence Requirements*

All MHDC legal and closing forms can be accessed on MHDC's website.

MHDC's closing checklist indicates all due diligence which must be submitted to and approved by MHDC staff before closing on an MHDC loan. MHDC will not close on or fund a construction loan prior to the satisfaction of all items on the MHDC loan closing checklist. The purpose of this section is to highlight some of the key due diligence issues which should be top of mind to all borrowers when working toward a closing on an MHDC loan. However, please note this is not an all-inclusive list of required items. Also, in reviewing that checklist, please keep in mind every loan closing involves a unique set of facts and circumstances. Therefore, depending on the specifics of a given development, some items noted on the form checklist may be rendered inapplicable and additional items not shown on the checklist may be added.

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## Title Insurance Requirements

For all developments receiving an MHDC loan, MHDC will require a lender's title insurance policy be provided. The title insurer issuing the lender's policy must have an acceptable A.M. Best or Demotech rating for the policy to be acceptable. MHDC requires the title insurer issue to MHDC a pro forma lender's title policy prior to the closing date. This pro forma policy should be in a final form, acceptable to MHDC staff at least seven days prior to the date on which the MHDC loan is scheduled to close. A full explanation of MHDC's title insurance requirements may be obtained at: [http://www.mhdc.com/rental\\_production/other\\_resources.htm](http://www.mhdc.com/rental_production/other_resources.htm).

## Organizational Documents

MHDC requires all pertinent organizational documents be submitted to MHDC staff for each tier of the ownership entity. Among the pertinent organizational documents which must be submitted are all documents required to be filed with the Missouri Secretary of State to validly organize the entity, any governing documents of the entity which may not be filed with the Secretary of State (e.g., Operating Agreements, Partnership Agreements, By-Laws, etc.), and a Certificate of Good Standing for each entity dated within thirty (30) days of the date of closing the MHDC loan.

In order to ensure project closing is not unduly delayed, MHDC recommends including your MHDC closing attorney in all discussions and negotiations regarding the ownership entity's Amended and Restated Limited Partnership/Operating Agreement at the earliest possible juncture. MHDC staff reviews this document in depth to ensure the business agreement between the general partner/manager and the investors comports with the business terms as underwritten by MHDC staff. Among the specific requirements MHDC imposes on the Amended and Restated Limited Partnership/Operating Agreement ("A&R LPA/OA") are the following:

1. All equity pricing and pay in amounts must match the amounts set out in MHDC's Firm Commitment.
2. In the event that more credits are delivered than amount set forth in MHDC's Firm Commitment, the pricing on the upward adjuster must be greater than or equal the credit pricing at Firm Commitment.
3. For developments with an MHDC loan, at least ten percent of the Federal LIHTC and State LIHTC equity must be paid in at closing and at least an additional ten percent of Federal LIHTC and State LIHTC equity must be paid in by fifty percent completion of the development. AHAP donations will not count towards these thresholds and each investor must independently meet this requirement unless the investors are related parties, in which case the amounts may be aggregated.
4. Any partner/member receiving one percent or more of the Federal LIHTC and/or State LIHTCs must pay for its respective share of such LIHTCs at the same pricing as the federal and/or state investor, as applicable.
5. The amounts and timing of all equity installments must be sufficient to adequately fund all escrows/reserves and pay down all construction loan debt when due.
6. MHDC's required language must be incorporated into the A&R LPA/OA verbatim, along with the partner/member information schedule (this

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language may be obtained on MHDC's web site at [http://www.mhdc.com/rental\\_production/2016\\_fy\\_items/legal\\_department\\_forms/index.htm](http://www.mhdc.com/rental_production/2016_fy_items/legal_department_forms/index.htm)).

## Survey Requirements

All developments receiving a MHDC loan are required to submit a survey in form and substance acceptable to MHDC staff. Each survey must follow the ALTA/ACSM 2011 Minimum Standard Detail Requirements and must further comport with all MHDC survey requirements. In addition, the surveyor must provide a completed Surveyor's Report on form HUD-92457 A-M. The full explanation of MHDC's survey and survey report requirements can be found on MHDC's website at [http://www.mhdc.com/rental\\_production/2016\\_fy\\_items/legal\\_department\\_forms/index.htm](http://www.mhdc.com/rental_production/2016_fy_items/legal_department_forms/index.htm)

## Site Control Documents

The site control documents provided to MHDC staff must adequately document the transfer of the development from the current owner of record to the anticipated ownership entity. The conveyance documents must convey an unencumbered fee or leasehold estate. No reversionary interests or reverter clauses contained in the conveyance documents will be acceptable. To the extent any such clauses exist, they must be expressly subordinate to any MHDC loans on the property. In the event the estate being conveyed to the anticipated ownership entity is a leasehold estate, the ground lease must be for a term of at least fifty-five (55) years and must meet all MHDC requirements.

## Completion Assurance Requirements

As a condition of providing loan funds to a development, MHDC requires the general contractor to provide adequate completion assurance. The completion assurance is allowed to take one of two forms: (i) the general contractor can provide a deposit in the form of cash or an unconditional, irrevocable, non-documentary letter of credit for an amount equal to 15% of the value of the construction contract, or (ii) the general contractor may provide a performance and payment bond for 100% of the value of the construction contract.

## MHDC Loan Documents

MHDC generally requires the same set of loan documents for all developments in which it holds a loan (though the contents of the documents may vary depending on the type of loan funds involved). However, in instances where MHDC is to hold a first position loan during the construction phase of the development, there are certain notable documents which MHDC requires, including:

1. MHDC form Construction Contract-Cost Plus (in lieu of the AIA A102 form construction contract);
2. If a payment and performance bond is being used for completion assurance, MHDC form Performance and Payment Bond (in lieu of the AIA form of bond); and
3. Assignment of Capital Contributions.

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The Assignment of Capital Contributions is intended to secure MHDC's ability to enforce the investor partners'/members' obligations to make capital contributions when due to the extent necessary to pay down the MHDC construction loan to the permanent loan amount. This requirement is imposed on all investors and cannot be waived. However, in the event an investor prefers not to execute the assignment document, MHDC will accept alternative security in the form of an unencumbered first position security interest in the investor's interest in the owner entity, including its interest in the LIHTCs to be generated by the development.

Where MHDC is in a subordinate loan position during the construction phase of the development, the Assignment of Capital Contributions is not required and MHDC will allow the owner entity to utilize the standard AIA forms for construction contracts and performance and payment bonds provided that all MHDC requirements with regard to the content in each of these documents are met. Outside of these exceptions, all other MHDC loan documents are required regardless of the priority of MHDC's loan.

In all instances where MHDC is providing a loan to a development (other than a risk share loan), the general partner entity and its underlying principals will be required to execute a Guaranty Agreement to MHDC in relation to such loan personally guaranteeing the repayment of the loan during the construction phase of the development. This Guaranty Agreement will only be in effect during the construction phase, with such guaranty terminating and the MHDC loan shifting to a non-recourse loan upon conversion of the MHDC loan to a permanent loan. In instances where the borrower is utilizing Risk Share Insurance with MHDC as the bond issuer, an unconditional, irrevocable, non-documentary letter of credit for the full amount of the buy down amount of the bonds at conversion is required in lieu of a guaranty.

With the exception of changes to MHDC's loan documents necessary to adequately reflect the deal terms agreed to by MHDC staff and the ownership entity, MHDC generally will not make material changes to its form loan documents. However, MHDC staff will attempt to accommodate reasonable requests where possible, provided the MHDC loan documents should be in final form and not subject to any further comment (outside of corrections for errors) at least three days prior to the scheduled closing date of the MHDC loan.

## Construction Phase

The Construction Phase of a property development begins with a Notice to Proceed, issued by the architect to the general contractor, indicating all the pre-construction requirements have been met by the development team. A copy of the properly executed Notice to Proceed must be provided to the MHDC-designated construction inspector.

Construction shall be in accordance with the approved drawings and specifications which have been prepared by the development's architect of record and approved by MHDC staff and any local governing agencies. The drawings and specifications and subsequent work must always comply with local building codes, zoning ordinances, and other government regulations. Copies of permits the contractor has obtained must be provided to MHDC staff.

Any changes in the construction requirements of these documents must be presented for consideration on an AIA Document G701 ("Change Order"). After review of the proposed changes, this Change Order must be signed by the architect, the contractor, and the owner before it will be considered a Contract Change in Cost or Time. Absolutely no work to which

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a Change Order pertains will be allowed to begin prior to the proper execution and approval of that particular Change Order.

Any changes in the line items of the schedule of values as they appear on FIN 115 must also be accompanied by a properly executed Change Order, showing how each and every line item will be changed if the Change Order is approved. Because this type of Change Order does not affect the total cost of the project, it is referred to as a "Zero Cost Change Order." This request may be submitted as a part of any other Change Order or as a standalone document, but it must be approved and executed by the four parties as with a Change Order for cost increases/decrease or time increases/decreases.

During the course of construction, everyone entering or working on the development work site must strictly adhere to the standards set by the Occupational Safety and Health Act ("OSHA") and its latest revisions (see section "Worksite Safety and OSHA Training" below). Everyone performing work on the job must have an OSHA-10 card showing successful completion of a ten (10)-hour training program.

## *Pre-Construction Conferences*

Before any actual physical work can be performed on the development, MHDC requires a Pre-Construction Conference take place. Although certain elements of the construction phase are requirements of MHDC and should be included on the agenda, Pre-Construction Conferences are guided and scheduled by the general contractor.

## **Construction Loan Disbursements**

### *Requesting the Initial Advance of Mortgage Proceeds*

The initial Advance of Mortgage Proceeds must be submitted to the MHDC Construction Disbursement Department at least seven working days prior to the date of the initial loan closing, and should include the following:

1. two originals of the Application for Advance of Mortgage Proceeds (MHDC Form 2420 or, if bond financing, MHDC Form 2420-2);
2. two originals of the Application and Certification for Payment (AIA Document G702-1992™);
3. two originals of the Continuation Sheet (AIA Document G703-1992™) which must match the FIN-115 submitted with firm submission;
4. copies of all paid receipts and/or invoices to support the request;
5. contractor list (MHDC Form 2502) with all appropriate columns completed;
6. copies of all subcontracts, if any have been signed as of request submission date; and
7. copies of all bids, if not previously submitted.

All documentation to support the requested disbursement must be included. All documents must be complete and be signed in blue ink. Incomplete documents may be returned to the mortgagor for completion.

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## *Requesting Advance of Mortgage Proceeds during Construction*

The Advance of Mortgage Proceeds must be submitted to the MHDC Construction Disbursement department and should include the following:

1. two originals of the Application for Advance of Mortgage Proceeds (MHDC Form 2420 or if bond financing, MHDC Form 2420-2);
2. updated construction Disbursement Schedule (MHDC Form 2430) reflecting the current actual costs along with any revised projects of future payment requests, including the architect fee for supervision;
3. two originals of the approved Contractor's Advance Form 2440 reflecting the builder's overhead, general conditions, and profit in an amount not to exceed the percentage of completion;
4. two originals of the Application and Certification for Payment (AIA Document G702-1992™);
5. two originals of the Continuation Sheet (AIA Document G703-1992™) which must match the Contractor's/Mortgagor's Cost Breakdown (MHDC Form FIN-115) submitted with Firm Submission;
6. two originals of the Change Order (AIA Document G701-2001™);
7. copies of all paid receipts and/or invoices to support the request;
8. contractor's Prevailing Wage Certificate (MHDC Form 2450);
9. contractor list (MHDC Form 2502), with all appropriate columns completed;
10. copies of any subcontracts not previously submitted; and
11. copy of a current Certificate of Good Standing issued by the Missouri Secretary of State's office for the general contractor and all subcontractors (one-time submission for subcontractors).

All documents must be complete and be signed in blue ink. Incomplete documents may be returned to the mortgagor for completion. MHDC will not release any funds until the MHDC construction inspector has approved the request.

## *Processing the Advance of Mortgage Proceeds during Construction*

If the draw request and all supporting documentation are complete, MHDC staff will begin its review. Once MHDC staff approves the draw request, it will fund the draw. MHDC staff strives to disburse all draws within five working days from the date the complete request package is received. In the event HOME Funds or loan funds from a participating lender are being disbursed, it could take up to seven to ten working days to complete the disbursement. MHDC staff will send the disbursement package to the title company which will include the following:

1. Letter of instructions;
2. Application of Mortgage Proceeds (Form 2420) approved by MHDC staff;
3. Disbursement Schedule (Form 2430) approved by MHDC staff;
4. Contractor's Advance (Form 2440) approved by MHDC staff;



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5. Supporting documentation; and
6. MHDC's funding check or documentation showing information for a wire transfer of funds

MHDC staff will also send a copy of items 1-4 above to the owner, general contractor, and the architect.

## *Construction Retainage*

Subject to the approval of MHDC staff, the contractor shall be entitled to payment of an amount equal to the total value of classes of work acceptably completed, plus, the value of materials and equipment incorporated in the work, less a 5% holdback or "retainage" (or acceptable substitute security, as required by §436.306-309, RSMo) and less prior payments. The remainder of the retainage will be released upon MHDC staff's receipt and approval of all required due diligence to convert construction loan to permanent status and issue 8609s, if applicable.

## *Stored Materials*

Stored materials must be approved by MHDC staff. Stored materials must be stored in a secure, bonded warehouse or on-site trailer within a twenty-five (25) mile radius of the development. The stored materials must have the appropriate insurance and security. A copy of the material invoices and the Certificate of Insurance shall be provided.

## *Change Orders*

Any adjustments made to previously approved Contractor's/Mortgagor's Cost Breakdown (Form 115), the construction contract, or line items must be made by a Change Order. Two Change Orders with original signatures in blue ink, along with copies of drawings, specifications or other supporting documentation must be submitted to MHDC staff.

Savings in line items after the final advance of mortgage proceeds is calculated will not be advanced to the owner. At the discretion of MHDC staff, any savings in line items may result in a reduction of LIHTCs or the mortgage note amount. HOME program regulations require any undisbursed funds be returned to HUD.

## *Escrows*

Releases from escrows held by MHDC require the submission of a Request for Release of Escrow Funds (Form 2460). Please submit two original copies of Form 2460 (with original signatures) in blue ink with any supporting documentation to substantiate release from the escrow.

## *Requesting the Final Advance of Mortgage Proceeds*

The final Advance of Mortgage Proceeds must be submitted to the MDHC Construction Disbursement department and should include the following:

1. two originals of the Application for Advance of Mortgage Proceeds (MHDC Form 2420 or if bond financing, MHDC Form 2420-2);
2. application and Certification for Payment (AIA Document G702-1992™);
3. continuation Sheet (AIA Document G703-1992™);

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4. copies of all paid receipts and/or invoices to support the request; and
5. escrow funds.

Please include all documentation to support the requested disbursement. All documents must be complete and signed in blue ink. Incomplete documents may be returned to the mortgagor for completion.

## *Latent Defects*

MHDC requires the general contractor escrow a sum equal to 2.5% of the construction contract amount for a period of time to ensure any faulty construction will be cured. This can be accomplished by (a) submitting a letter of credit for said sum, or (b) reducing an existing letter of credit placed in escrow for completion assurance to 2.5% at the time the MHDC construction loan converts to permanent status. The latent defect escrow will be held for fifteen (15) months from the date of substantial completion, which date is established by the architect, owner, and general contractor and approved by MHDC staff. In the first nine (9) months of the fifteen (15) month period, an MHDC inspector will visit the property and any findings will be reported in writing. If there are no findings, the inspector will authorize the release of the latent defect escrow. A fee of \$50/hour will be charged if the inspector must return to verify unrepaired deficiencies discovered during a Latent Defect Inspection. Please refer to the Design/Construction Compliance Guidelines (MHDC Form 1200, Exhibit F) for additional information pertaining to the latent defect period.

## **Conversion/Permanent Loan Closing**

All of the forms and documents referenced in this section can be accessed on MHDC's website.

Just as MHDC's legal department is in charge of overseeing and coordinating MHDC construction closings on all developments receiving construction loans and/or tax credits from MHDC, it is equally responsible for overseeing and coordinating the conversion of all MHDC construction loans to permanent status and the closing of all permanent MHDC loan financing. This section provides an overview of the requirements which must be met to convert an MHDC construction loan to permanent status. In addition, this section provides an overview of the permanent loan closing process, including certain specific requirements to be fulfilled and key timing issues relevant to the process.

PLEASE NOTE: For developments receiving only tax credits and no loan funds from MHDC, MHDC's legal department is not involved in the conversion of those developments. As such, the conversion of tax credit only developments is not covered in this section.

## *Conversion Requirements*

MHDC requires all of its construction loans be converted to permanent status by the date specified in the MHDC loan documents. In order to convert a construction loan to permanent status, the owner must fulfill all requirements set forth on MHDC's conversion checklist. The purpose of this section is to highlight some of the key requirements which must be fulfilled prior to MHDC staff approving final conversion of its construction loan. However, please note that this is not an all-inclusive list of required items. Also, in reviewing that checklist, please keep in mind, that every loan closing involves a unique set of facts and circumstances. In any given construction loan closing, there may be outstanding issues which cannot be addressed prior to the beginning of construction (e.g., relocation of easements based on movement of

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utility lines, removal of existing encroachments, etc.). All such items of this nature will be required to be completed as part of the conversion checklist upon closing the MHDC construction loan and must be finalized in order for conversion to occur and 8609s to be issued, if applicable.

There are key due diligence items which all ownership entities receiving MHDC construction loans should be mindful of when working toward the conversion of the construction loan to permanent status. One requirement for conversion is submission of a chattel list that lists all chattel in each unit. This chattel list is compared to the Development Characteristics Worksheet submitted prior to construction. MHDC expects that the chattel list reviewed at conversion will match exactly what was set forth in the Development Characteristics Worksheet. Please note that if MHDC grants a development permission to deviate at all from the Development Characteristics Worksheet that a revised Development Characteristics Worksheet should be submitted as part of the conversion process. Also, before an MHDC construction loan can be converted to permanent status, the title insurer must provide MHDC staff with a final original date-down endorsement increasing the insured amount under MHDC's lender policy to the full amount of MHDC's construction loan, evidencing that no unapproved exceptions have been added to MHDC's lender policy, and otherwise meeting all requirements for MHDC title policies. In the event the MHDC construction loan was fully disbursed prior to the final disbursement of funds for construction, MHDC will still require a date down endorsement to the date of the final disbursement evidencing that no unapproved exceptions have been added to MHDC's lender policy since the date of the last disbursement of MHDC loan funds. In addition, the title insurer must provide the final ALTA 3.1 endorsement to MHDC's lender policy. MHDC staff must be provided with a final ALTA/ACSM survey meeting all MHDC requirements. If the development is a rehab of an existing development, an "as-built" survey may be provided in lieu of an ALTA survey provided (i) the building footprint has not changed, and (ii) no new easements need to be shown on the survey. Finally, the cost certification documenting the actual costs of construction of the development must be fully completed and approved by MHDC staff.

## *Permanent Loan Closing Process and Requirements*

Where MHDC is providing only permanent financing to a development and no construction period financing, the MHDC loan is closed subsequent to completion of the development. However, while the MHDC staff loan closing itself does not take place until after construction completion, MHDC must be included in the construction loan closing process. MHDC staff must review and approve much of the same due diligence prior to the closing of the construction loan closing as it would were it providing the construction financing itself. The due diligence items MHDC staff must review and approve prior to the closing of the construction loan include the status of the title, all conveyance documents, construction.

## **Final Allocation/Cost Certification**

For any development receiving funding from Missouri Housing Development Commission ("MHDC"), the owner must complete the Development and Contractor's Cost Certification ("Cost Certification") as detailed below. Funding means any loan or Low-Income Housing Tax Credits ("LIHTC"). MHDC must review and approve the Cost Certification prior to:

1. Loan conversion;
2. Permanent loan closing; and/or
3. Issuance of 8609(s) and Missouri Eligibility Statement(s) (if applicable).

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MHDC will evaluate all funding sources and costs and determine the maximum mortgage amount (if receiving an MHDC mortgage), and will evaluate the reasonableness of costs and uses before determining the final amount of LIHTCs, if applicable. MHDC reserves the right to ask for additional information to provide clarification to the Cost Certification submitted.

Please refer to the Qualified Allocation Plan in the fiscal-year the development was approved in for limits on contractor fees, developer fees, or other requirements.

The forms posted on MHDC's website are the most up-to-date forms. A revision may be made to correct any errors in the form or to make changes to comply with regulatory, statutory, or any other necessary changes. Any forms revised will be posted with a revision date. Developments are required to use the most up-to-date version when preparing the Cost Certification.

## *Required Final Allocation Documentation*

DEVELOPMENTS WITH MHDC LOAN ONLY (NO LIHTC), provide the following:

1. Contractor Cost Certification (two original hard copies):
  - a. Contractor's Certificate of Actual Cost Independent Auditor's Report
  - b. Contractor's Cost Certification Workbook (Submit completed Excel workbook to: [costcert.questions@mhdc.com](mailto:costcert.questions@mhdc.com)):
    - i. 3320, Contractor's Certificate of Actual Costs
    - ii. 3320-I, Itemized List of all Contractor's cost with subtotals
    - iii. 3320-A, Identity of Interest Worksheet
    - iv. 3320-II, Itemized List of Contractor with Identity of Interest
2. Development Cost Certification (two original hard copies):
  - a. Development Cost Certification Independent Auditor's Report – MHDC Loan
  - b. Development Cost Certification Workbook (Submit below completed Excel workbook to: [costcert.questions@mhdc.com](mailto:costcert.questions@mhdc.com)):
    - i. 3335, Development Cost Certification
    - ii. 3335-A, Itemized Cost Detail
    - iii. 3335-E, Owner Certification
  - c. Financial Statements (compilation acceptable) Balance Sheet and Income Statement

DEVELOPMENTS WITH LIHTC provide two originals hard copies of each Cost Certification and email electronic versions of the noted documents of the following:

1. Contractor Cost Certification (two original hard copies):
  - a. Contractor's Certificate of Actual Cost Independent Auditor's Report
  - b. 3320, Contractor's Certificate of Actual Costs
  - c. 3320-I, Itemized List of all Contractor's cost with subtotals
  - d. 3320-A, Identity of Interest Worksheet
  - e. 3320-II, Itemized List of Contractor with Identity of Interest
2. Development Cost Certification (two original hard copies):
  - a. Development Cost Certification Independent Auditor's Report – Tax Credit
  - b. Development Cost Certification Workbook (submit completed Excel workbook to: [LIHTC@mhdc.com](mailto:LIHTC@mhdc.com)):
    - i. 3335, Development Cost Certification
    - ii. 3335-A, Itemized Cost Detail

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- iii. 3335-B, Applicable Fraction – Building Detail
  - iv. 3335-C, Qualified Basis and Maximum Credit Calculation
  - v. 3335-C Supplement, Allocated Credit Amount Basis Reduction
  - vi. 3335-D, Contact Information
  - vii. 3335-E, Owner Certification
  - viii. 3341, Low-Income Housing Tax Credit Development Financing Certification
  - c. 3345, Plan Review Worksheet – Updated (submit updated version in Excel to [LIHTC@mhdc.com](mailto:LIHTC@mhdc.com))
3. HTC-E (two copies) If development is receiving historic tax credits in addition to LIHTCs.
  4. Tax-Exempt Bond Developments In addition please submit the below additional documentation:
    - a. Recorded Warranty Deeds (submitted hard-copy or at [LIHTC@mhdc.com](mailto:LIHTC@mhdc.com))
    - b. Note(s) and recorded Deed(s) of Trust for non-MHDC loans

## When to submit

The cost certification should be submitted to MHDC no later than the last day of the second full month following the date of substantial completion for the last building in the development.

For example, if substantial completion of the last building is May 15, the cost certification should be submitted no later than July 31.

## Where to submit

If MHDC is providing any type of permanent financing, submit the hard-copy Cost Certification package to:

MHDC  
Legal Department  
920 Main Street, Suite 1400  
Kansas City, MO 64105

If MHDC is not providing any type of permanent financing, submit the hard-copy Cost Certification package to:

MHDC  
Tax Credit Department  
920 Main Street, Suite 1400  
Kansas City, MO 64105

## Compliance Reporting

### *Annual Reporting*

All compliance and asset management forms and documents referenced in this section can be accessed at [www.mhdc.com/docs/compliance](http://www.mhdc.com/docs/compliance).

Annual reporting allows MHDC to monitor compliance issues and verify adherence to the program requirements associated with development operations. These requirements are unique to the programs in use at the given development. MHDC Asset Management staff has

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compiled general and administrative guidance on compliance reporting that includes program information and the type of reporting required of each program.

## The Tax Credit Program

Congress has delegated LIHTC administration to state housing agencies to assure good, quality housing will be available where it is most needed. This is the role MHDC fulfills. MHDC is charged not only with the allocation of LIHTC, but also with assuring compliance with the regulations. This includes the performance of a physical inspection of the property and a review of management and occupancy procedures during the Compliance Period and the Extended Use Period.

Under the provisions of the Tax Credit Accountability Act, all developers/applicants must complete all necessary forms and reporting required during the Application and allocation process and for a period of three years following the issuance of State LIHTCs by MHDC.

## Tax Credit Program Reporting Requirements

LIHTC reporting requirements consist of Certification On-Line Reporting ("COL") and submission of the Owner's Certificate of Continuing Program Compliance (Exhibit A). COL is an internet-based data-tracking system that has been designed for owners, agents, and managers to upload annual tenant activity on-line. Owners must establish a username and password. Information regarding occupancy, rent and income limits, utility allowances, and applicable fractions is entered and various reports can be compiled from entered data.

The owner's Certificate of Continuing Program Compliance must be printed from COL, signed by the owner, notarized and mailed to MHDC. Upon submission, this specific Exhibit A is stored virtually at MHDC and is used thereafter for all pertinent business.

## The HOME Program

MHDC Asset Management is responsible for ensuring the ongoing compliance of rental housing that has been financed by MHDC using HOME Funds. This includes ensuring owners of such housing are complying with the income limits, rent restrictions, physical condition standards, and other compliance issues specified by federal HOME guidelines to meet the housing needs of low and very low income Missouri households.

## HOME Program Reporting Requirements

The Home Program reporting requirements for rental housing financed with only HOME Funds differ from the requirements of a property financed with both HOME Funds and LIHTCs.

For developments financed with HOME Funds without LIHTCs, the reporting consists of submission of the Annual Certification of Continuing Program Compliance (Exhibit K) and the Annual Occupancy Report (Exhibit H). A hard copy of Exhibit H must be submitted to MHDC each year no later than close of business on March 31. In addition, an accurate, current utility allowance is required to be updated and submitted to MHDC on an annual basis in conjunction with these annual reports.

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The annual reporting requirement for developments financed with HOME Funds and LIHTC must be done through COL, in accordance with the Seasonal Reporting Schedule which is based on the year the last building is placed-in-service. The original, executed copy of the Annual Certification of Continuing Program Compliance (Exhibit K) must still be provided in the hard copy format along with an accurate, current utility allowance.

(Seasonal Reporting Schedule)

| <b>SEASONAL REPORTING SCHEDULE</b>             |                                |                            |                                   |
|--|--------------------------------|----------------------------|-----------------------------------|
| <b>Placed-In-Service Date</b>                  | <b>Activity Period Covered</b> | <b>COL Report Due Date</b> | <b>Exhibit A &amp; K Due Date</b> |
| 1990, 1991, 1992, 1993, 2006, 2010, 2014, 2018 | April 1 – March 31             | April 15                   | April 30                          |
| 1994, 1995, 1996, 1997, 2007, 2011, 2015, 2019 | July 1 – June 30               | July 15                    | July 31                           |
| 1998, 1999, 2000, 2001, 2008, 2012, 2016       | October 1 – September 30       | October 15                 | October 31                        |
| 2002, 2003, 2004, 2005, 2009, 2013, 2017       | January 1 – December 31        | January 15                 | January 31                        |

In some instances, this could cause reporting for a partial year in order to catch up to the appropriate schedule.

## Asset Management

MHDC administers a wide array of affordable housing programs and monitors these developments for compliance from inception, through the Compliance Period, including the Extended Use Period. As administrator of the affordable housing programs for Missouri, MHDC is your direct source for assistance and guidance regarding specific program requirements and obligations.

As a function of monitoring compliance with our programs, Asset Management will ensure all parties are aware of and in compliance with the Suspension/Debarment Guidelines (4 CSR 170 8.010-8.160, as may be amended from time-to-time).

Suspension and debarment actions protect MHDC from doing business with individuals and companies who pose a business risk to the integrity and resources of the programs MHDC administers. All applicants and participants must be in good standing and compliant with all MHDC requirements. In making suspension and debarment decisions, MHDC relies on information provided by and on behalf of the applicant, portfolio reviews, and physical and file inspections. MHDC staff's review of documents, assurances and certifications will be submitted in connection with the suspension and debarment process.

Events that will result in suspension/debarment recommendations:

1. General partner/managing member/sole stockholder that has been removed from the ownership entity of a previous development due to poor performance/malfeasance. Subject to verification of circumstances surrounding removal.

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2. Uncured event of default per section 1602 of Tax Credit Assistance Program.
3. Fair Housing Act violations involving a finding of discrimination by an adverse final decision from a federal court or a judgment enforcing the terms of a consent decree.
4. Civil Rights Act violations involving a finding of discrimination by an adverse final decision from a federal court or a judgment enforcing the terms of a consent decree.
5. Foreclosure involving loss of units to the affordable housing stock or failure to notify MHDC of foreclosure (including deed in lieu of foreclosure transaction).
6. Claiming tax credits by submitting falsified IRS Form(s) 8609 to the IRS.
7. Misrepresentation of eligibility items.
8. Failure to fulfill commitments made in the initial application.
9. A pattern of uncorrected 8823s based on a review of the portfolio for the participant and the timeframe of the issuance of the 8823s
10. Portfolio has a history over the past three years of occupancy below 85%.
11. Portfolio has a history over the past three years of unacceptable inspection ratings.
12. General partner/managing member/sole stockholder is on HUD's debarred list or has received a limited denial of participation in the past five years.
13. General partner/managing member/sole stockholder is currently or has been on any state housing agency's debarred list in the past five years.

The initial set-up for each development is a very important aspect of ensuring compliance for participating owner/agent entities. Proper set-up allows for open and direct communications with MHDC and ensures information regarding the property's compliance and program obligations can be relayed and maintained. The following outlines the steps for initial property set-ups.

## *Lease Up*

Providing accurate and current contact information for your development and owner/management entity along with filing the various required authorization forms allowing MHDC to request and conduct business is vital. Once initial authorization forms are submitted, the initial lease-up information must be submitted. This information allows MHDC staff to establish the timeframe for monitoring compliance moving forward.

### *Credit Period Start Date*

In order to claim the LIHTC, all developments receiving a LIHTC allocation since 1987 must comply with all eligibility requirements for the Compliance Period which begins with the first taxable year of a building's Credit Period. The Credit Period for a building begins in either the year it is placed in service or the first year after, as declared in Part II of the IRS Form 8609.



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## 8609 Requirement Date

To enable MHDC staff to determine a property's final year of LIHTC program compliance, MHDC staff must be provided with a copy of the First Year Certification Part II of IRS Form 8609, as executed by the owner and filed with the IRS. MHDC staff must also be provided with a copy of the First Year Certification Part II of the Missouri Eligibility Statement. If these documents are not provided, MHDC will require the development to remain in the program through December 31<sup>st</sup> of the sixteenth year, for credit allocations made in 1990 and thereafter.

## Establish Username and Password for MHDC Asset Management Reporting Systems (AMRS)

The MHDC Asset Management Reporting System is a monitoring tool that is designed to determine if the development is in compliance with federal and state regulations and with MHDC policies. Once lease up commences, the property must request a username and password. All properties will receive an occupancy and financial username and password.

## Latent Defect Inspections

Each new construction and substantial rehabilitation development with an MHDC construction loan is subject to Latent Defect Inspection ("LDI") upon completion of construction. MHDC staff will establish an LDI date and notify all parties. The LDI will be performed by MHDC representatives in conjunction with the architect, general contractor, and property manager. The owner/management agent entity will be responsible for notifying residents with the proper inspection notifications, per program guidelines. The LDI inspection has the specific parameters as set forth below.

### Timeframe for LDI Inspections

Each development must be inspected for latent defects within nine months from the reported final construction date. Any alterations to this date must be properly reported to MHDC so alterations in the LDI timeframes can equally reflect those changes. Failure to report and verify changes are the responsibility of the owner/agent and their general contractor. Prior to a representative's visit, MHDC staff will provide official notice of the LDI via the Latent Defect Inspection Appointment Letter (Exhibit D).

### Deficiency Resolutions and Penalties for Non-Compliance

The LDI will be conducted with respect to the scope of the project and all construction rehabilitation requirements established in the original Application. Any defects observed during the LDI will be reported in detail and supported by photographs by the architect and provided to the owner/agent of record, with copies provided to the general contractor, as applicable. From the date of the inspection report, the owner/agent or designated representative has forty-five (45) days to return certification and documentation supporting the mitigation of the deficient items or conditions cited in the LDI report. Failure to submit proper documentation supporting correction of each item cited will result in the issuance of a Form 8823 to the IRS reporting an action of non-compliance by the owner/agent in question.

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## *Program Compliance Inspections*

All program compliance forms and documents referenced in this section can be accessed at [www.mhdc.com/docs/compliance](http://www.mhdc.com/docs/compliance).

MHDC is responsible for conducting operational management audits and physical inspections for our participating developments. These assignments consist of occupancy reviews, tenant file management (for initial participant eligibility and continued eligibility), physical asset management, and general program compliance.

The physical inspections component is based on the UPCS Code, as provided by HUD and the application of federal, state, and local building code enforcement. Inspection cycles vary depending on the programs in effect. MHDC must conduct these assessments adherent to the most restrictive program in effect at a given development. The inspection cycle frequency may be increased, depending on the conditions of the physical asset and overall program compliance as observed during the site review.

### *Frequency of the Required Inspection and Management Reviews*

For developments layered with several affordable housing programs MHDC must conduct the inspection consistent with the most restrictive regulations applicable to the development.

1. Mixed MHDC Fund Balance or HOME Funds (25 units or more) with LIHTCs – inspections are conducted annually.
2. HOME Funds (5-24 units) with LIHTCs – inspections are conducted every two years.
3. HOME Funds (1-4 units) with LIHTCs – inspections are conducted every three years.
4. LIHTC-only – inspections are conducted every three years.
5. Developments with Special Needs Units – inspections are conducted annually.

### *AHAP Program Inspections*

Prior to the inspection, a MHDC Compliance Officer will provide the owner/agent a document package which includes an Appointment Letter-Exhibit (AHAP-1). This package will also contain Exhibits C-3A, C-4, C-5, and information regarding the inspection process. Owners/agents participating in the AHAP program should complete all forms and information, and return to MHDC staff ten (10) days prior to the inspection date shown on the Appointment Letter. Once the inspection is complete, MHDC staff will provide the owner/agent the audit report within thirty (30) days via Exhibit AHAP-12 (Physical Inspection and Management Review Form). The owner/agent then has thirty (30) days to respond to all findings cited in the report. Once verification has been received, MHDC staff will provide the owner/agent an AHAP C-28 Form closing the inspection process for that period.

### *HOME Program Inspections*

Prior to the inspection, an MHDC Compliance Officer will provide the owner/agent a document package which includes an Appointment Letter (Exhibit HOME C-1A). This package will also contain Exhibits C-3A; C-4, C-5, and information regarding the inspection process.

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Additionally, HOME program regulations require a HUD Form 9834 Addendum B Part A be completed for each development. This form collects data regarding demographics. Once the inspection is complete, MHDC staff will provide the owner/agent the audit report within thirty (30) days via Exhibit C-12 (Physical Inspection and Management Review Form). The owner/agent then has thirty (30) days to respond to all findings cited on the report. Once verification has been received by, MHDC staff will provide the owner/agent a C-28 Form closing the inspection process for that period.

## LIHTC, TCR, and TCAP Program Inspections

Prior to the inspection, a MHDC Compliance Officer will provide the owner/agent a document package which includes an Appointment Letter (Exhibit C-1 LIHTC). This package will also contain Exhibits C-3A; C-4, C-5, C-15, C-16 (as applicable), and information regarding the inspection process. Once the inspection is complete, MHDC staff will provide the owner/agent the audit report within thirty (30) days via Exhibit C-12 (Physical Inspection and Management Review Form). The owner/agent then has thirty (30) days to respond to all findings cited on the report. Once verification has been received, MHDC staff will provide the owner/agent a C-28 Form officially closing the inspection process for that period.

## Deficiency Resolutions and Penalties for Non-Compliance

Failure to submit proper documentation supporting correction of each finding cited in the Physical Inspection and Management Review Form may result in the issuance of a Form 8823 to the IRS reporting an action of non-compliance by the owner/agent in question. In addition, MHDC reserves the right to assess a monetary penalty for noncompliance.

## Non-Compliance Fees

A non-compliance fee will be assessed for the period of time a property, specific building, unit, or management agent is failing to satisfy program requirements. The amount of the fee varies based on the type of non-compliance. Instances of non-compliance include, but are not limited to, physical and/or file deficiencies, failure to submit required documentation, change in partnership or management agent without prior approval from MHDC, failure to submit a timely Certified Management Agent application, and failure to report casualties in a timely manner. The detailed non-compliance fee notice is located at [www.mhdc.com](http://www.mhdc.com).

## *Affordable Housing Assistance Program (AHAP)*

All AHAP forms and documents can be accessed at [www.mhdc.com/docs/AHAP](http://www.mhdc.com/docs/AHAP).

The AHAP Credit is a Missouri state tax credit codified in §§32.105-32.115 and 32.120-32.125, RSMo, as amended (“AHAP Statutes”), authorized by MHDC, and issued to business firms that engage in providing affordable housing assistance contributions to non-profit neighborhood organizations. Terms not defined in this section shall have the meaning given to them in the AHAP Statutes.

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## AHAP Operating Assistance Credits

Operating Assistance credits are allocated to donors who provide eligible donations to agencies for general operating assistance. The agency must specify the projected use of the donation with respect to its operating expenses and demonstrate both need for the donation and leverage with additional sources. Qualified operating expenses include salaries, office supplies/equipment, office rent/mortgage payments, utilities, taxes, insurance, maintenance/repairs, and professional services incurred by the agency. Donations may be received from one or multiple donors.

## AHAP Production Credits – Multi Family Rental Properties

Production credits are allocated to donors who provide eligible donations to agencies for the following affordable housing assistance activities: acquisition, acquisition/rehabilitation, rehabilitation only, new construction, new construction/rehabilitation, and rental assistance.

## Annual Reporting

AHAP program regulations require the owner/agent provide certain information annually for a ten year period (“AHAP Restriction Period”). This information must be provided on the specific forms outlined below.

### AHAP-355 - Owner's Certificate of Continuing Compliance

Owner/agents must provide MHDC staff with the Owner's Certificate of Continuing Program Compliance within ninety (90) days of the end of the calendar year.

### AHAP-356 - Occupancy Report

Owner/agents must provide MHDC staff with the Annual Occupancy Report within ninety (90) days of the end of the calendar year.

### AHAP-350 - Agency Affordable Housing Activities Reporting

Emergency shelters/transitional housing developments must submit reports of affordable housing assistance activities and actual count and composition of population served (listed by month) annually for each year of operation during the AHAP Restriction Period.

### AHAP 370 - Homebuyer Income Certification

Individuals applying to purchase an AHAP home should be advised early in their initial visit to the property that there are maximum income limits that apply to the units. Management should explain to the qualified AHAP buyers that the prior income of all persons expected to occupy the unit must be verified and included on an application and income certification form prior to occupancy.

### AHAP-371 -Home Sale Certification

Owner must submit this form certifying to MHDC that the cost of the unit (mortgage payment, mortgage and casualty insurance, and property taxes) is

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projected to be in compliance with the corresponding rent limits for the household.

## [AHAP-372 - Single Family Notice of Change of Ownership](#)

### [AHAP Production Credit – Rental Assistance](#)

As part of the monitoring requirements, MHDC's accounting department reviews the records of payments for assistance compared to occupancy reports that denote the amount of assistance granted to each resident.

## [AHAP-320 - Rental Assistance Calculation Worksheet](#)

Owners of developments outside MSAs must complete this form for each resident receiving rental assistance when they first begin receiving assistance and at re-certification each year thereafter.

## [AHAP-325 - Rental Assistance Annual Review](#)

Owners of AHAP developments in MSAs must submit documentation to MHDC staff no later than March 31 annually (for as long as funds are available) to confirm or adjust the amount of rental assistance based on the property's operating budget and current market conditions.

## [AHAP-330 - Schedule of Rental Assistance Payments Due](#)

Copies are due thirty (30) days from the end of each quarter. This includes escrow agreement with the property receiving assistance, annual income certifications of residents receiving assistance, monthly requests for payment, and monthly bank statements detailing account activity.

## [AHAP-350 - Agency Affordable Housing Activities Annual Reporting Form](#)

For emergency shelters/transitional housing, reports of available affordable housing assistance activities and actual count and composition of population served (listed by month) for each year of operation during the AHAP Restriction Period must be submitted.

## *[Management Company Set-up at Application/Firm Commitment](#)*

All management company/compliance forms can be accessed on MHDC's website.

The initial step for participation in one or more of the affordable housing programs administered by MHDC is providing specific contact, communication, and owner authorization information so MHDC staff can begin an assessment of the proposed owner/management company. MHDC requires certain documentation be submitted. The documentation required is dependent on the MHDC-administered program(s).

## *[Ownership Change/Transfer of Physical Assets \(TPA\)](#)*

Changes to the development as submitted in the Application require written notification to and approval of MHDC staff. These changes may include changes in ownership, general partner, and/or limited partner. The forms required to be submitted in requesting approval

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of a change in ownership, general partner, and/or limited partner can be obtained at [www.mhdc.com/docs/compliance](http://www.mhdc.com/docs/compliance).

## Two Primary Types of TPA Transfers:

### 1. Modified TPA Transfers

A modified TPA is a change in either a general partner or limited partner from what was represented in the final organization documents of the ownership entity at the time of closing on the loan and/or LIHTCs with MHDC. Such transfers require written notification to and approval by MHDC staff prior to the occurrence of the transfer. Transfers of this nature generally require a review time of 15-30 days from the date all documentation required by MHDC is submitted in a form acceptable to MHDC staff. However, in instances where the modified TPA is being requested on a development in which MHDC has an existing loan that is not being paid off in conjunction with the transfer, the review time may be thirty (30) days. Any party seeking approval of a modified TPA request should allow for a sufficient review period by MHDC staff in determining when to submit its request for approval.

### 2. Full TPA Transfers

A full TPA is a change in the actual ownership entity from what was represented in the final organizational documents of the ownership entity at the time of closing on the loan and/or LIHTCs with MHDC. Such transfers require written notification to and approval of MHDC staff prior to the transfer. Transfers of this nature generally require a review time of forty-five (45) days from the date all documentation required by MHDC is submitted in a form acceptable to MHDC staff. However, in instances where the full TPA is being requested on a property in which MHDC has an existing loan that is not being paid off in conjunction with the transfer, the review time may be 30-45 days. Any party seeking approval of a full TPA request should allow for a sufficient review period by MHDC staff in determining when to submit its request for approval. **NOTE: In instances where a full TPA is being requested for a development where MHDC has an existing loan that is not being paid off in conjunction with the transfer, the entity assuming ownership of the property must satisfy all requirements necessary to qualify as an "Approved Mortgagor" under 4 CSR 170-3 (including, but not limited to, the requirement the ownership constitute a single purpose, single asset entity).**

## Year End TPAs

MHDC understands that in some instances approvals of modified or full TPAs are desired prior to the end of a given calendar year for various tax or other business purposes. MHDC staff makes every effort to process and approve all TPA requests to meet any such deadlines. However, in order to ensure complete review of a TPA request prior to the end of a specific calendar year, that TPA must be submitted to MHDC no later than November 1 of the year in which the approval is sought. Provided a TPA request needing approval prior to the end of a calendar year is submitted on or prior to November 1 of the year in question, it will receive top priority for processing, and provided further that all requisite documentation subsequently requested by MHDC staff is provided in a form acceptable to MHDC staff in a timely manner, all such transfers submitted on or prior to the November 1 deadline will be fully reviewed prior to the end of that calendar year. If, however, an

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owner misses the November 1 deadline, its TPA request will be placed behind all TPA requests meeting the November 1 deadline and MHDC cannot guarantee that such TPA will be fully reviewed prior to the end of that calendar year.

## *Management Company Change*

MHDC must be notified of any management changes. However, prior approval is not needed if the prospective management company is a certified MHDC management company. Failure to use a certified MHDC management company may lead to MHDC staff denying the change, and ownership having to make another change and possible assessment of non-compliance fees. The forms for submission of a management change can be accessed at [www.mhdc.com/docs/compliance](http://www.mhdc.com/docs/compliance). The following Exhibits for a management change must be submitted Exhibit L: Property Information Sheet

Exhibit J: Authorized Representative Designation

Exhibit J-1: Management Authorized Representative Designation

Exhibit A-2: Project Owner's Management Agent Certification

HUD 935-2A: AFHMP (Multifamily)

HUD 935-2B: AFHMP (Single Family)

## *Management Company Fee Increase*

Requests for management fee increases must be submitted between October 1 – December 31. Increases are not automatic. Decisions are based on overall property financial health, management compliance, and inspection ratings. The forms for submission can be accessed at [www.mhdc.com/docs/compliance](http://www.mhdc.com/docs/compliance).

## *Occupancy Data Submission Guidelines*

MHDC is required to collect data regarding the development's occupancy for monitoring on a monthly basis. Owner/agents are required to submit their monthly occupancy activity through MHDC's AMRS system by the tenth of each month.

## *Annual Financial Statement Submission Guidelines*

Annual financial statements are due within ninety (90) days of each property's fiscal year-end. All developments with ten (10) units or more are required to submit their financial statements through MHDC's AMRS system. Financial statements must be prepared using MHDC's Chart of Accounts and must include all schedules required by MHDC. Developments with twenty-four (24) or more units must file audited financial statements that follow Generally Accepted Auditing Standards and Government Auditing Standards (only if HUD, RD, or HOME assistance is received). Development's with 10 – 23 units may file reviewed or compiled financial statements that follow the Statement on Standards for Accounting and Review Services.

## *Budget Submission Guidelines*

Budgets are required for all MHDC-financed and LIHTC developments with thirteen (10) units or more (excluding developments mostly covered by a Project Based HAP contract). Developments are required to submit their budgets through MHDC's AMRS system annually by November 15.

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## *Rent Increase Guidelines*

MHDC staff sets the rents for all developments involved in the MHDC Fund Balance, LIHTC, and HOME programs. The window for submitting a rent increase each year is October 1 – December 31. All rent increase requests submitted outside this window are not processed. MHDC staff does not accept mailed rent increase requests unless the development contains twelve (12) or less units. Rent increase requests must be submitted online through MHDC's AMRS system which is accessible at <https://amrs.mhdc.com>. A user name and password is required to access this system. It is important to note that a rent increase request cannot be submitted until the development has successfully submitted the annual budget. The effective date of a proposed rent increase must be at least one year after the effective date of the development's last approved rent increase. Existing residents must be given a thirty (30) day notice before implementing any rent increase. The owner/management is required to post for public viewing MHDC Exhibit A-21 (Notice to Residents of Management's Intention to Submit a Rent Increase to MHDC staff for approval) prior to submitting the rent increase request to MHDC. The Exhibit A-21 notice should have a thirty (30) day comment period for residents to respond to MHDC.

The maximum rent increase allowed for a family designated development is 7%, and the maximum rent increase allowed for 55+ Developments and 62+ Developments is the previous year Social Security COLA adjustment. All MHDC-approved rent increases are issued on Form Schedule II.

### *Budget-Based Rent Increases*

All developments that have more than a LIHTC-only relationship with MHDC (i.e. MHDC or HOME loan) have their rent increases tied to an MHDC-approved budget. Since rents are tied to the budget, it is imperative the development submit a realistic, itemized operating income and expense budget. MHDC staff analyzes the revenue proposed under the rent increase and compares it to expenses approved in the budget to determine if the development is projecting a surplus/shortfall. The two main performance indicators MHDC looks at when approving rent increases are cash flow and Debt Service Coverage Ratio (DCR). MHDC considers a healthy development one that maintains a 1.20 DCR. Developments that project a DCR that exceeds a 1.20 may have the rent increase request reduced or denied. Higher DCRs may be allowed for developments to achieve agreed upon owner distributions, to re-pay surplus cash notes, and/or to pay remaining deferred developer fees. In any event, MHDC staff will not approve an increase that is more than 7% of the current approved rent or the previous year's Social Security COLA adjustment, as applicable.

### *Required Items for a Budget-Based Rent Increase:*

1. Financial Statement and Budget
2. Current Rent Roll
3. Three comparable rents in the area for each bedroom type
4. Current Utility Allowance
5. Occupancy at the development for the past six (6) months



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6. Indication current residents have been notified of a proposed rent increase

## Tax Credit Only Rent Increases

MHDC staff's approval for LIHTC-only rent increases is not based on the development's approved budget. LIHTC-only rent increase approvals are compliance based. To approve the request, MHDC staff ensures the development is in good standing (i.e., inspections are closed, noncompliance issues are resolved, etc.), the request does not exceed 7% of the current approved rent or the previous year's Social Security COLA adjustment, as applicable, the increase meets Code requirements, and at least twelve (12) months have passed since the last rent increase.

### Required Items for a LIHTC-Only Rent Increase:

1. Current Utility Allowance
2. Indication current residents have been notified of the proposed rent increase
3. Current Rent Roll

## Workforce Eligibility

### Policy

The MHDC Workforce Eligibility policy was adopted by the Board of Commissioners on September 17, 2010, and reads as follows:

The Missouri Housing Development Commission ("MHDC") hereby establishes a workforce eligibility policy. This policy replaces any and all prior MHDC policies regarding workforce eligibility, including the Workforce Eligibility Policy (passed on March 17, 2006), the Policy for Bond Financed Multifamily Developments (passed on May 2, 2006), the Workforce Eligibility Policy clarification memorandum (passed on November 17, 2007) and all Workforce Compliance Handbooks.

This policy is applicable to all business entities who receive funding from the MHDC in the form of a grant, tax-credit(s) or loan(s) for the purpose of developing rental housing developments (collectively "Resources"). This policy does not extend to the Missouri Housing Trust Fund, any single family program and the affordable housing assistance program.

Any Business Entity receiving Resources shall:

- a) Provide MHDC with an original sworn affidavit which affirms, under penalty of perjury, that the Business Entity is enrolled and actively participating in a federal work authorization program and that the Business Entity does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services;
- b) Require their General Contractor to provide MHDC with an original sworn affidavit which affirms, under penalty of perjury, that the General Contractor is enrolled and actively participating in a federal work authorization program, that the General Contractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and that the General Contractor's employees are lawfully present in the United States;

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- c) Require that their General Contractor obtain, and make available for inspection by MHDC, from each subcontractor of any tier, an original sworn affidavit which affirms, under penalty of perjury, that the subcontractor is enrolled and actively participating in a federal work authorization program, that the subcontractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and that the subcontractor's employees are lawfully present in the United States;
- d) Provide MHDC with documentation which shows to the satisfaction of MHDC that the Business Entity and their General Contractor have enrolled in a federal work authorization program. An example of a provision of documentation which meets this requirement is a copy of the E-Verify memorandum of understanding;
- e) Require their General Contractor to obtain, make available for inspection by MHDC, and provide copies as requested, from each subcontractor of any tier, documentation which shows to the satisfaction of MHDC that the subcontractor has enrolled in a Federal Work Authorization program.
- f) Require a provision which stipulates that "the Contractor shall comply with all applicable federal, state and local labor laws and is not Knowingly in violation of §285.530(1), RSMo, and shall not henceforth be in such violation" to appear in its contract with the general contractor, in contracts between the general contractor and subcontractors, and contracts between subcontractors of any tier.
- g) Require a provision which stipulates that the Contractor shall comply with §285.230, §285.233, §285.234, §285.500 – 285.515, and §285.550, RSMo.
- h) Require a provision which stipulates that the Contractor for the purposes of construction of an MHDC project and any subcontractor to such contractor shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees who have not previously completed the program are required to complete the program within sixty (60) days of beginning work on such construction project.

The terms capitalized herein shall have the following meaning:

**Business Entity** - any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

**Contractor** - a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor,

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independent contractor, contract employee, project manager, or a recruiting or staffing entity.

Employees - any person performing work or service of any kind or character for hire within the state of Missouri.

Federal Work Authorization Program - any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603.

Knowingly - a person acts knowingly or with knowledge.

Unauthorized Alien - an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

## *Compliance Guidance*

On September 17, 2010, MHDC passed a Workforce Eligibility policy. The purpose of the Workforce Eligibility Compliance Handbook (WECH) is to provide guidance for Contracting Parties in connection with MHDC funded developments.

MHDC requires that all Contracting Parties adhere to all applicable labor laws and specifically prohibits the use of undocumented workers in the construction of any MHDC-approved Development. In addition, MHDC requires that all Contracting Parties compel all subcontractors, mechanics, third party contractors, agents or other parties providing construction related labor on a development to likewise adhere to all applicable labor laws and requirements set forth by MHDC. Noncompliance with the requirements set forth may result in very serious sanctions including but not limited to suspension and revocation of funding, rescission of tax credits, and suspension and debarment from MHDC programs.

MHDC encourages the submission of required documentation in an electronic format via email or CD-R. All documentation should be in PDF format. The CD-R or emailed files should be clearly labeled with the development name and development number assigned by MHDC. In the event it is impossible or impractical to submit documentation in an electronic format, hard copies may be submitted. Email submissions should be sent to tbeer@mhdc.com. All CD-R or hard copy submissions should be mailed to MHDC's Kansas City office and clearly labeled "Workforce Eligibility."

Audits of construction sites will be conducted on a periodic basis. Each construction site must have present at all times an individual designated to assist with the audit process.

## *Compliance Requirements*

### *Contract Language Required*

Specific language is required for all construction contracts executed in conjunction with MHDC-approved developments. The specific language required is included in the following section and is available in electronic Word or PDF format. The required language must be included verbatim in every contract with Contracting Parties.

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## Use of E-Verify

Each Contracting Party who has or will have employees that perform labor on site must enroll and actively participate in E-Verify.

## Workforce Eligibility Affidavit

Prior to commencing work or providing labor in connection with any MHDC-approved Development, each contracting party must complete and submit Form MHDC-2507, Workforce Eligibility Affidavit. The Affidavit and proof of E-Verify are submitted with the certified payrolls.

## Proof of Using E-Verify

All employers must submit a copy of the employer's Department of Homeland Security Memorandum of Understanding as proof of enrollment in E-Verify.

## Compliance with Missouri Statutes and Transient Employers.

Each contracting party must comply with all applicable federal, state and local labor laws including but not limited to §285.530(1), 285.233, 285.234, 285.500 – 285.515, and 285.550, RSMo.

## OSHA training.

Within sixty (60) days of commencing work, any person performing construction labor on any MHDC-approved Development must have completed an OSHA construction safety training program or the equivalent of such program as detailed in the Workforce Eligibility Policy. Proof of completion of such training must be made available on site during periodic audits conducted by MHDC.

## *Contract Language*

The following language shall be included in all construction contracts and subcontracts including, but not limited to, those between the Owners, Contractors, Subcontractors, or independent contractors in conjunction with projects which benefit from any Missouri Housing Development Commission (MHDC) administered funding sources including, but not limited to, loans, MHDC issued bonds, and Low Income Housing Tax Credits:

“The contracting parties acknowledge and agree to be bound by the MHDC Workforce Eligibility Policy. If there is a violation of the MHDC Workforce Eligibility Policy, as may be amended from time to time, the contracting parties are subject to sanctions by MHDC. The imposition of sanctions will include, but is not limited to, suspension or revocation of funding provided by MHDC, rescission of credits, and suspension and debarment of the contracting parties.

The contracting parties agree that in order to adhere to the MHDC Workforce Eligibility Policy, each party to this agreement shall comply with the following:

The contracting parties agree that all contracts and subcontracts and down the line contracts and subcontracts entered into as a part of this development shall include the language of this Exhibit 1 verbatim.

The contracting parties agree to enroll and actively participate in the Department of Homeland Security's E-Verify program (E-Verify) for the purpose of verifying the

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workforce eligibility of employees and to provide a sworn affidavit affirming that the party is enrolled in and actively participating in E-Verify, that the party's employees are lawfully present in the United States, and that the party does not knowingly employ any person who is an unauthorized alien. The parties further agree to provide written documentation showing proof of enrollment in E-Verify in a form acceptable to MHDC such as a copy of the Memorandum of Understanding entered into with Department of Homeland Security. In the event a contracting party is not an employer and is therefore unable to use E-Verify, such party, in lieu of enrolling and participating in E-Verify and providing the above listed documentation, shall provide a sworn affidavit stating that the party is unable to participate in E-Verify because the party is not an employer and does not have employees, that all independent contractors paid by such party are properly classified as independent contractors and should not be classified as employees, that all such independent contractors are lawfully present in the United States, and that any such independent contractors are not unauthorized aliens.

The contracting parties shall comply with all applicable federal, state and local laws, including but not limited to, RSMo §285.530(1), 285.230, 285.233, 285.234, 285.500-285.515, and 285.550.

The contracting parties shall require participation in or provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees and independent contractors which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees and independent contractors are required to complete the program within sixty days of beginning work and shall make documentation proving completion of the program available for inspection.

The contracting parties agree to permit site access to MHDC for the purpose of conducting Workforce Eligibility Policy compliance reviews and shall cooperate in providing requested documentation congruent with the terms of this agreement.”

## Worksite Safety and OSHA Training

Safety on construction sites is of the utmost importance. Management commitment is the key factor to success of any safety program and adherence to safety standards must be modeled and enforced by the general contractor.

Pursuant to the Workforce Eligibility policy, any person performing construction labor on any MHDC-approved development must have completed an OSHA construction safety training program or the equivalent of such program within sixty (60) days of commencing work. Proof of completion of such training must be made available on site during periodic audits conducted by MHDC.

MHDC staff provides periodic OSHA training. MHDC provided training is available to any person who is or will be performing labor on an MHDC-approved development free of charge, except for a nominal charge for training materials. The cost of materials may be waived for non-profit organizations and small emerging businesses including MBE/WBE/DBE and Section 3 businesses. Contact MHDC staff to request a waiver of the materials fee.

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## Transient Employer Requirements

MHDC's Workforce Eligibility policy requires compliance with transient employer laws. Transient employer means an out-of-state employer, as defined by the Missouri statutes. Out-of-state employers who temporarily transact any business within the state of Missouri are defined as transient employers and are required to register, file a bond, and remit withholding tax to the Missouri Department of Revenue.

Some out-of-state employers are exempt from the transient employer bonding requirement. Employers who meet all three of the following criteria are not required to file a bond with the Missouri Department of Revenue:

- a) The principal place of business of the out-of-state employer must be in a county which borders the state of Missouri; and
- b) The employer must have been under contract to perform work in the state of Missouri for at least sixty (60) days each year for the past two calendar years; and
- c) The employer must obtain a tax clearance issued by the department stating that the employer has complied with the tax laws of this state and with the provisions.

Employers required to comply with the transient employer bond requirements must submit proof of compliance prior to commencing work on an MHDC approved development.

## Prevailing Wage

### *Introduction*

The Davis-Bacon Act of 1931 and additional laws known as the Related Acts are a collection of United States federal laws which established the requirement for paying prevailing wage on certain public works or publicly funded projects. These laws require all contractors and subcontractors pay some of their employees particular wage rates depending on the type of work each employee performs.

Davis-Bacon laws do not apply to all developments. Only certain circumstances will trigger the applicability of Davis-Bacon such as the use of HOME Funds for twelve (12) or more units.

While Davis-Bacon only applies to some developments, the MHDC 2017 QAP includes a provision requiring payment of prevailing wage on all MHDC approved developments, regardless of whether Davis-Bacon is required by law. Because of this provision, MHDC requires weekly certified payrolls be submitted for all developments.

### *Workers*

Prevailing wage will apply to any person performing construction labor on the construction site. Persons performing construction labor are listed as laborers and mechanics and contractors are required to pay those laborers and mechanics a minimum of the locally prevailing wage rates and fringe benefits paid on projects of a similar character.

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## Working Foremen

Foreman or supervisors that regularly spend more than 20% of their time performing construction work must be paid prevailing wage under the corresponding worker classification.

## *Wage Rates and Payroll Processing*

Wage rates are set by following the wage determinations published by the Department of Labor for Davis-Bacon. Under Davis-Bacon laws, all contractors and subcontractors must pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects within the area.

## Wage Determinations

The Wage and Hour Division of the Department of Labor ("Division") issues communications known as Wage Determinations (sometimes referred to as Wage Decisions). A Wage Determination is a listing of wage rates and fringe benefit rates for different classifications of laborers and mechanics in a given area for a particular type of construction.

The Division issues its Wage Determinations by publication of a notice in the Federal Register. Wage Determinations are effective from the date of notice and have no expiration date. Wage Determinations are continually updated and change frequently. However, only one Wage Determination will be applicable to a development. The Wage Determination that will apply to a development will be the Wage Determination in effect on the date the construction loan documents are signed. The Wage Determination of that date is "locked in" and subsequent updates or modifications to Wage Determinations will not affect the wage rates on the development.

In the event a development uses construction financing through a source other than MHDC, the developer is required to notify MHDC staff within ten (10) days of the construction loan closing date and provide a copy of the executed construction contract to MHDC.

Within the body of each Wage Determination a listing of classifications (laborers and mechanics) will be found. Accompanying those classifications will be basic hourly wage rates and fringe benefit rates that have been determined to be prevailing for the same type of construction within the geographic area covered by the Wage Determination.

## Classifications

Some classifications may include a subclass or group number. Common examples include Operator, Truck Driver, and Painter. Subclasses or groups may have different pay rate requirements so detailing the subclass on the certified payrolls is important.

## Wage Amounts

All developments with buildings that are four or fewer stories will be required to comply with the "Residential" Wage Determinations. All developments that have

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buildings with five or more stories must comply with the "Building" Wage Determinations.

Wage rates are based on classification of the worker. The classification is determined based on the type of work actually being performed by the worker during the pay period. It is important to note, the prevailing wage for each classification must be paid to a worker in the classification regardless of the worker's skill level. For example, if a worker is performing duties normally performed by a carpenter, that worker must be paid prevailing wage for the classification of carpenter, even if the contractor does not consider the worker to be fully trained.

In the event a worker performs duties in more than one classification, the employer may pay wage rates separately provided the employer maintains accurate time records showing the amount of time spent in each classification of work. If time records are not available, the employer must pay the worker the higher of the wage rate of the classifications for the duties performed.

Wages can be calculated by various methods such as piecework. Regardless of the method used to calculate wages, the total wages must be converted to an hourly rate for submission on the certified payroll reports and such hourly rate must meet the minimum prevailing wage rates.

## Apprentice Rates

Apprentices may be paid less than the Wage Determination rate, provided the person employed is individually registered in a bona fide apprenticeship program registered with the Department of Labor.

Usually, the apprentice wage rate is expressed as a series of percentages tied to the amount of time spent in the program. Documentation detailing the wages rates should be submitted to MHDC staff. For example, an apprentice of less than six months would receive 65% of the journeyman's wage rate, while an apprentice who has been in the program between six months and one year would receive 70%, etc.

An apprenticeship certification from the Department of Labor's Office of Apprenticeship must be provided to MHDC staff. If no apprenticeship certification is provided, the worker must be paid the prevailing wage for his or her classification. An approved apprenticeship program will regulate the ratio of apprentices to journeymen. The maximum number of apprentices on the development cannot exceed the ratio allowed in the approved program. MHDC requires submission of a copy of the apprenticeship ratios schedule for each class of apprentice performing labor on the site. If no ratio information is available, MHDC staff will default to a 1:1 ratio.

## Payroll

All workers must be paid weekly.

Overtime must be paid to all covered workers who work in excess of forty (40) hours during a work week. The overtime rate must be at least 150% of the Wage Determination basic rate plus 100% of any applicable fringe benefit rate.

Fringe benefits are included in some Wage Determinations and usually are listed as an hourly fringe rate. If the Wage Determination includes a fringe benefit rate for a classification, the fringe benefit rate must be added to the basic hourly rate unless the



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employer provides bona fide fringe benefits for employees. Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave, as well as contributions to training funds. Fringe benefits do not include employer payments for contributions required by Federal, State, or local laws such as the employer's contribution to FICA.

The total hourly wage rates may be no less than the total of the basic wage plus the fringe benefit wage. If the value of provided fringe benefits is less than the fringe benefit rate stated in the Wage Determination, the difference must be added to the basic wage rate. Likewise, if an employer provides fringe benefits with a value higher than required, the employer may offset the excess amount against the basic rate. Employers should submit additional documentation in this case.

When a lower basic rate is paid due to an offset of fringe benefits, the overtime rate must be calculated based on the basic rate as stated on the Wage Determination and not on the basic rate actually paid. Based upon the previous example, when the Wage Determination requires a basic wage of \$15/hour and a fringe rate of \$5/hour, the total wage rate including overtime would be \$27.50/hour ( $\$15 \times 150\%$ ) + ( $\$5 \times 100\%$ ). In the event the employer provides fringe benefits valued at \$7/hour and, therefore, pays a basic rate of \$13/hour, the employer must nevertheless calculate overtime based on the Wage Determination rate of \$15/hour rather than the \$13/hour that is actually paid.

## Reporting

MHDC requires the submission of certified payroll on a weekly basis. Each certified payroll report submitted must be the original report with an original signature. Photocopies will not be accepted.

### Form

Use of Form WH-347 (published by the Division) is recommended. Form WH-347 and accompanying instructions may be obtained at <http://www.dol.gov/whd/forms>. It is also available on MHDC's website. Use of the most recent revision of the form is important.

Reports are not required to be submitted on Form WH-347 and many software packages produce certified payroll reports. Substitute forms are acceptable, provided the substitute form includes all of the information required by Form WH-347, including the certification language and signatures. In the event a substitute form is used, the proper certification language must be attached. The certification language is available for download on MHDC's website.

### Contents

Regardless of which form is used, certified payrolls must be complete, legible, properly executed, and dated. The certified payroll reports should contain the name of the development and the name of the contractor or subcontractor for identification purposes.

If fringe benefits are included in the Wage Determination, paragraph (4) of the certification must be completed by checking box (a) to indicate fringe benefits are paid into an approved plan or by checking box (b) to indicate fringe benefits are paid

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in cash. If the employer offsets part of the basic wage due to the value of fringe benefits, MHDC requires a letter from the employer itemizing the benefit plans with the respective amounts paid to each plan and certifying fringe benefits were paid on behalf of the employees.

All deductions not required by law or are part of a collective bargaining agreement must be authorized in writing by the employee. The written authorization for the deductions should be included with the first payroll. For court-ordered deductions, MHDC will accept the court ordered letter.

## Numbering

Certified payroll reports should be numbered sequentially. The sequential numbering of reports helps MHDC staff identify whether any reports are missing and relieves the contractor from having to submit reports when no work was performed on the site. The last report to be filed should be labeled "Final Payroll".

A separate certified payroll report with the accompanying payroll certification must be submitted for each payroll for each weekly pay period. Providing one certification for multiple pay periods is prohibited.

## Classifications

A job classification must be listed for each worker on each payroll submitted. The job classification listed must show the current classification for the type of work the person is actually performing during the pay period. Only classifications listed on the applicable Wage Determination can be used. If an additional classification is required, contact MHDC staff for assistance in determining which classification to request.

If a job classification has an associated subclass or group number, such subclass and group number should be included on the report.

## Owner Operated Subcontractors

When a company is operated only by its owner(s), the workers must be listed on the certified payroll of the "upper-tier" contractor.

When an owner of a company works with his or her employees, the owner is only required to list his or her name and work classification, along with a notation of "Owner" and the total hours worked. Owners are not required to report the amount of pay.

## Inspections

MHDC will conduct periodic on-site inspections which will include interviews with persons performing labor on the construction site. Interviews with workers are confidential and MHDC will attempt to conduct the interviews in a manner causing as little disruption as possible.

## Postings

A copy of the Wage Determination must be displayed at the site of the work in a prominent and accessible place where it can be easily seen by employees.

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## Records

Employers are required to maintain payroll records, including back up documentation such as timecards, for a minimum period of three years after the construction development is completed. General contractors must maintain a copy of the records of all subcontractors for the same period of time.

## *Underpayments and Corrections*

In the event MHDC staff discovers any prevailing wage compliance deficiencies, the contractor will be notified immediately. The general contractor is responsible for ensuring all underpayments are corrected within thirty (30) days. The general contractor must provide MHDC staff with:

- a) An amended certified payroll report showing the corrections and labeled as "Restitution Payroll", and
- b) A copy of the check(s) making the restitution, and
- c) A signed statement from each of the underpaid worker(s) stating they have received the required restitution without threat of repercussions.

## *Additional Information and Guidance*

Additional information about Davis-Bacon and the Related Acts may be obtained at the United States Department of Labor website.

The following documents are used or provide additional information:

- a) Davis-Bacon Labor Standards – This HUD publication provides guidance that specifically relates to Davis-Bacon. MHDC Prevailing Wage requirements mirror Davis-Bacon.
- b) Form WH-347 – The certified payroll form provided by the Department of Labor. This form is available in a fillable pdf format and can be downloaded from the website of the Department of Labor.
- c) Form WH-347 Instructions – Guidance provided by the Department of Labor with specific instructions for completing Form WH-347.
- d) HUD-4010 – Information provided by HUD regarding Labor Standards (the terms and conditions of this form must be incorporated into the construction contract).
- e) LR-96-01 – This letter ruling issued by HUD provides clarification regarding how prevailing wage applies to owners.
- f) Form WH-1321 – The employee rights poster provided by the Department of Labor.
- g) Form WH-1321-SP – The Spanish version of the employee rights poster provided by the Department of Labor.
- h) Payroll Deduction Authorization – This form should be completed by the employee to verify that deductions are authorized.
- i) Form HUD-2554 – This document must be used when the development includes Risk Share financing.

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## Homeownership

MHDC is dedicated to strengthening communities and the lives of Missourians through the financing, development, and preservation of affordable housing. Section 42 of the IRS Code supports homeownership opportunities for residents of single-family homes and duplexes with a fire separation wall developments by allowing the owners to sell the homes to the residents following the completion of the Compliance Period. Converting LIHTC rental properties into single-family homeownership properties can prove to be beneficial to both resident and owner. The opportunity of homeownership has proven to be a major incentive to residents. This incentive allows the resident the potential of homeownership which might otherwise be out of reach, as well as encouraging them to remain in place, adhere to the lease, and care for the condition of their future home. MHDC has established the Homeownership Policy to guide developers and owners in the planning, development, and eventual conversion of rental/homeownership developments ("Homeownership Policy").

This section details the rules that must be adhered to when converting LIHTC rental properties into single family homeownership properties at the end of the Compliance Period. Additional restrictions may apply depending on what other type(s) of financing is involved in the development. Developers and owners of affordable, single-family rental developments who want to convert the properties into homeownership opportunities for the residents must establish a plan for the timing and terms of sales to residents and qualified low-income households at the end of the Compliance Period ("Homeownership Commitment"). Every Homeownership Commitment will differ. MHDC realizes there are many options for determining the sales price besides what are outlined in this section and encourages the use of creativity within the Homeownership Commitment. Above all, a Homeownership Commitment must remain true to the LIHTC program by ensuring the opportunity for homeownership is directed at low-income households at an affordable price. The Homeownership Commitment must be proposed at Application, approved by MHDC staff at Firm Commitment, and attached to each resident lease.

The following issues apply to and must be addressed in each Homeownership Commitment, in the implementation of the conversion for all single-family rental/homeownership developments proposed with the FY2008 NOFA and thereafter, and all Homeownership Commitments filed.

1. Any development submitted to MHDC and reviewed as a single family homeownership development must waive the right to opt out of the LIHTC program for an additional fifteen (15) years beyond the Compliance Period. In other words, the owner will not be allowed to "opt-out" of the LIHTC program at the end of the Compliance Period. This period is assigned on a building-by-building basis and begins with the first year that the credits are claimed. The LIHTC Initial Compliance Period ends on December 31 of the 15th year of the period for that particular building.
2. Before offering a Right of First Refusal ("RFR") to any resident, the development must have fully completed the Compliance Period on ALL units. This will avoid confusion by allowing the owner, residents, and MHDC staff to all be on the same time table.
3. Owners must ensure the purchase price of each home complies with the minimum purchase price required in Section 42(i)(7)(B) of the Code ("Minimum Price"). This is defined as an amount equal to the sum of the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the

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- five (5)-year period ending on the date of the sale to the residents) and all federal, state, and local taxes attributable to such sale.
4. To preserve affordability, MHDC sets the maximum sales price at an amount such that the monthly housing payment of principal, interest, property taxes, and property and mortgage insurance ("PITI") plus tenant-paid utilities does not exceed the maximum LIHTC rent based on bedroom size (assuming a 95% mortgage, thirty (30)-year amortization, interest rate equivalent to MHDC's First Place loan program, and typical insurance premium available to low-income households) less a 1% discount for each year the resident has leased the unit ("Maximum Price").
  5. The sales price can be determined by a number of methods, but it must be crafted with the intention of being affordable to low-income households at the time of conversion. A discount off the sales prices for years of tenancy is highly encouraged. The chosen method must be established in the Homeownership Commitment and must result in a sales price not less than the Minimum Price and not more than the Maximum Price. Several illustrative methods for setting the sales price are described below.
  6. The owner will offer the RFR within twelve (12) months of the end of the Compliance Period. This will be a set date and cannot be changed because of market conditions, high interest rates, or other factors which affect the salability of the houses. MHDC will call this date the "Conversion Date".
  7. Each lease will contain an addendum which contains a copy of the Homeownership Commitment. Because it is important for the residents to be aware of the Conversion Date so they know when the houses will be offered for sale to them, the Conversion Date must be referenced in the lease addendum. The Homeownership Commitment should also define the term "Right of First Refusal" and because homes will only be offered to residents in good standing, the Homeownership Commitment should also define the term "good standing." The owner does not have to outline specific discounts that will be offered to the resident as related to the sales price of the homes. However, they should, in general terms, indicate the plan for pricing the homes. The addendum should also state the homes cannot be sold at a price lower than the minimum sales price as set forth in §42(i)(7)(B) of the Code.
  8. The owner must provide information about homeownership training to the resident by way of a notice or a brochure five (5) years before the Conversion Date. The developer will have an agent or plan with a homebuyer credit counselor (this will usually be in the form of a nonprofit agency). This information must be provided to the resident in an addendum to the lease for all properties leased after the date which is five (5) years prior to the Conversion Date.
  9. The owner should address the issue of how potential homeowners will be educated concerning home maintenance. Some suggestions are: have the property maintenance person work with potential homeowners while doing routine maintenance and minor repairs to units, and enlist the help of nonprofit organizations which promote homeownership opportunities.
  10. One year before the offering of the RFR, the owner must distribute to all residents information detailing the dates, timeline, and information contained within the Homeownership Commitment.

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11. Each resident will be given up to six (6) months after the Conversion Date to decide whether to accept the RFR offer from the owner. Any resident who is in “good standing” at the time of the offering of the RFR shall have the right to exercise the RFR. The resident will exercise its RFR by tendering an offer to buy the property. Within this offer there should be a date set for closing.
12. After the six month period mentioned in #11 above, the owner has several options in reference to any unsold units:
  - a. The owner can choose to sell the remaining units in the development to a nonprofit partner or another entity that will continue to operate the units as affordable housing in accordance with the LIHTC LURA. The sale must include 100% of the remaining rental units, not a portion thereof.
  - b. The owner can choose to maintain the remaining units in the development as rental units, adhering to all MHDC Extended Use Period guidelines. The remaining units after this initial six month selling period may at any time be offered for sale to the current or subsequent qualified residents.
  - c. The owner can offer vacant units for sale to a buyer whose household income does not exceed 80% of the area median income. A potential purchaser who qualifies under this income restriction is not required to lease the unit before they purchase it.
13. At the sale of each home, MHDC staff will execute a partial release of the LIHTC LURA for that particular unit.
14. If MHDC holds a mortgage on the development, the owner must contact MHDC's Loan Servicing department just prior to the Conversion Date to determine the payoff amount for the sale of each home. The required payoff will be calculated over 75% of the homes in the development to accelerate the pay down and potentially ease the burden on any remaining unsold homes. The owner can then utilize this figure in calculating the Minimum Price of the home.
15. The payoff amount for each home will be equal to the principal balance of the loan as of the Conversion Date divided by .75 divided by the number of homes in the development. The title company assisting in the transaction must contact MHDC's Loan Servicing department for the payoff prior to the sale of the home and transfer the payoff to MHDC as part of the closing transaction. The loan will be re-amortized following each pay down. An example would be:
  - a. The principal balance of a loan on the Conversion Date of a development is \$500,000. There are thirty (30) homes in the development. The required payoff per home sold would be \$22,222.22 ( $\$500,000 / .75 / 30$ ). If the owner sells and closes on 12 homes in the 5th month following the initial RFR, MHDC will receive a total pay down of \$266,666.64 ( $12 \times \$22,222.22$ ) from the 12 closing transactions. The loan will then be re-amortized based upon the \$266,666.64 pay down. If then in the 10th month following the initial RFR, the owner closes on 3 more homes, MHDC shall receive a total pay down in the amount of \$66,666.66 ( $3 \times \$22,222.22$ ) and re-amortize the mortgage accordingly.
16. As each home sells and contributes the required pay down of the mortgage, MHDC staff will execute a partial release of the deed of trust for that home. If full repayment of the loan occurs, the deed of trust will be released for all remaining unsold homes.

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17. Each house to be sold to a resident under the RFR must pass a Housing Quality Standards (“HQS”) inspection. It must also undergo a physical needs assessment performed by an MHDC-approved inspector following MHDC prescribed standards. Any deficiencies described in the physical needs assessment must be addressed by the owner before the Conversion Date. The HQS inspection and/or physical needs assessment cannot be used in place of subsequent inspections.
18. The owner should address the issue of replacement reserves in the Homeownership Commitment. MHDC intends that any excess reserves after repairs and replacements, as determined on a pro rata portion for the unit(s) at the time of sale, will benefit the development and the new homeowner. Some suggestions are to put the unused pro rata portion of the reserves into an account to be used by the neighborhood homeowner’s association, use the unused pro rata portion of the reserves for additional down payment assistance to the homeowner, discount the sales price by an amount equal to the unused pro rata portion of the reserve amount, and establish a reserve account for the new homeowner from the pro rata portion of the reserve amount.
19. The purchaser must agree to occupy the home as their principal residence.
20. If the current resident refuses to buy the property or is unable to buy the property, they cannot be asked at any time to vacate the property except for reasons specified in the lease.
21. A resident in good standing cannot be relocated or evicted to expedite the sale of a unit. When renting a unit, a potential resident may not be discriminated against because they do not wish to purchase the unit they are requesting tenancy in.
22. If a household has had an increase in income since moving into the development, this will not disqualify them from buying the property. If a household qualifies to move into the unit as a resident, they are income-qualified as a potential buyer (an exception to this occurs if HOME Funds are involved – see below).
23. To ensure all parties are prepared to begin selling the homes as outlined in the Homeownership Commitment, the owner will meet with staff at MHDC in the 14th compliance year to discuss the above items along with any other topics deemed necessary. The owner must contact MHDC’s Asset Management department to begin this process.
24. The ownership entity may offer the first right of refusal to the nonprofit partner at the end of the Compliance Period, with the nonprofit commencing sales of the units to the residents and qualified buyers thereafter if the following requirements have been met:
  - a. The limited partnership agreement or operating agreement, as applicable, governing the ownership entity has granted a first right of refusal to the nonprofit partner or member;
  - b. The nonprofit entity is a qualified nonprofit for purposes of the LIHTC. That is, it is a tax-exempt organization formed with the express purpose of fostering affordable housing, is not controlled by a for-profit entity or subsidiary, and has been materially involved in the operations of the development;

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- c. The nonprofit has filed a Homeownership Commitment that has been approved by MHDC staff and attached to resident leases; and
- d. The nonprofit transacts the sales of the homes under the terms of the MHDC-approved Homeownership Commitment and follows all MHDC rules and guidelines applicable to homeownership conversion when the right of first refusal is offered to the residents.

## *Determining Sales Price*

To extend the opportunity for homeownership to existing LIHTC residents, the houses must be affordable for people who are at or below 60% of median income for the area.

Residents who buy the houses should replace their rent payment with a house payment comparable to what they were paying in rent. This is considered the "Equivalency Principle". To achieve maximum affordability, the monthly mortgage payment including principal, interest, property taxes, property and mortgage insurance (PITI) should not significantly exceed the monthly rents in year fifteen (15). As stated previously, the sales price of the homes to existing residents or qualified buyers must fall between the Minimum Price and Maximum Price.

Discussed below are three possible options for determining the sales price of the property at the Conversion Date.

### *Existing Obligation plus Profit*

Section 42(i)(7)(B) of the Code defines the minimum purchase price for a LIHTC property at the end of its Compliance Period to be the sum of (i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the five (5)-year period ending on the date of sale), and (ii) all federal, state, and local taxes attributable to such sale. We also understand the property will need to have repairs done to it before it is sold and the developer will desire a profit from each sale.

MHDC has taken the above into consideration and suggest the property be sold for the following amount: [(((the payoff of the entire note) + Exit Taxes + Amount to make any and all repairs deemed necessary to bring the building up to excellent condition)/# of units in the project) + (An amount of profit the owner chooses to add for the sale of each home)]. The resident will then receive a discount off the sales price for each year they have occupied the property within the development, specified by the owner.

Sample assumptions:

Fifteen (15)-home development

Remaining mortgage of \$200,000

Exit taxes estimated by limited partner at \$150,000

Repairs necessary = \$180,000 (in addition to replacement reserves)

Profit requested by owner = \$20,000/home

Resident discount = 1% per year of tenancy



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A resident who has rented the home for 7 years would pay a purchase price of \$51,460 or  $((\$200,000 + \$150,000 + \$180,000)/15) + \$20,000 \times 93\%$

## Equivalency Principle Approach

The following procedure will occur on the Conversion Date and will be used to decide the sales price for the houses. This price will be used as the sales price for all the houses until all the houses are sold, regardless of the income level of the buyer. The sales price will be determined using the following guidelines based on a monthly housing payment equal to the current rent being charged for the units assuming a 95% mortgage, 30-year amortization, and an interest rate equal to that used by the MHDC First Place program. Existing residents are offered a 1% discount for each year of tenancy.

1. Current monthly rent = \$550
2. For argument sake, insurance and taxes = \$150 per month
3. Mortgage payment is then = \$400 per month
4. Using an estimated MHDC MRB interest rate = 6.3%, the mortgage amount would be \$64,623
5. Assuming a 95% mortgage, the sales price would be \$68,024
6. If the resident leased the unit for four years, a 4% discount would reduce the sales price to \$65,303

## Maximum Price Approach

The following application of the Maximum Price calculation will be based on the maximum LIHTC rent in affect at the time the home is sold, regardless of the income level of the buyer. The sales price will be determined using an amount such that the monthly PITI payment plus tenant-paid utilities does not exceed the maximum LIHTC rent based on bedroom size (assuming a 95% mortgage, thirty (30)-year amortization, interest rate equivalent to MHDC's First Place loan program, and typical insurance premium available to low-income households) less a 1% discount for each year the resident has leased the unit.

An example would be:

1. Current maximum LIHTC rent for a 3-bedroom house in Springfield = \$801
2. For argument sake, insurance and taxes = \$150.00 per month; tenant-paid utilities = \$125 per month
3. This allows for a total of \$526 P&I that this family can afford/qualify per month for a house payment with a thirty (30)-year term
4. First place program MRB rate is 6.3%
5. The maximum loan amount would then be \$84,980
6. Assuming a 95% mortgage, the sales price would be \$89,452
7. If the buyer happens to be a resident who has lived in the project for four (4) years, they would receive a 4% discount off the \$89,452 figure for a sales price of \$85,874.

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## *Additional HOME Rules*

HOME Funds utilized for new construction rental housing carry an affordability period of twenty (20) years ("HOME Affordability Period"). The HOME Affordability Period includes income and rent restrictions set forth in the HOME Regulatory Agreement encumbering the development ("HOME Regulatory Agreement"). HOME regulations allow for rental units to be sold during the HOME Affordability Period but the following rules apply for units designated as HOME-assisted units. These are in addition to the homeownership rules listed above:

1. During the HOME Affordability Period, all purchasers of HOME-assisted units must have a household income at or below 80% of area median income. This includes both resident purchasers and any subsequent purchasers involved in a resale transaction. The actual income limit is dependent on the household size and the area in which the property is located.
2. For the term of the HOME Affordability Period, some type of deed restriction will need to be recorded against the property to help assure the new homeowner adheres to HOME rules throughout the HOME Affordability Period. This will be put in place by the original owner. This document will expire on the date the original HOME Affordability Period for the development ends. This deed restriction should address resale provisions associated with the unit(s). Although the resident purchaser must adhere to these deed restrictions, the original owner is ultimately responsible for compliance with the HOME rules and regulations. The deed restrictions may outline repayment terms by the resident purchaser if the home is sold to someone who does not income-qualify under HOME rules. Violations of affordability restrictions may result in recapture of a pro rata portion of the funds by HUD, at which time MHDC will look to the seller's repayment and the original owner to provide the amount of recapture requested.
3. The owner must be involved with future resale of the units, specifically in qualifying the incomes of subsequent purchasers and reporting to MHDC compliance with regulations regarding the resale of units occurring during the HOME Affordability Period.
4. The housing must be considered modest in that the purchase price for the type of single-family housing does not exceed 95% of the median purchase price for the area.
5. The sales price must be affordable to the purchaser. MHDC defines affordability as a transaction in which no more 35% of the purchaser's income can be used to pay monthly PITI payments.
6. The initial homeowner who sells the unit during the HOME Affordability Period must receive a "fair return" which is defined by MHDC as the return of the homeowner's initial investment.
7. The buyer(s) must occupy the property as its principal residence and must occupy such property as its principal residence for no less than eleven (11) months of each calendar year. The property cannot be rented during the HOME Affordability Period.
8. The only exception to the twenty (20)-year term of the HOME Affordability Period is if the homebuyer receives HOME Funds directly as down payment assistance or subordinate financing. In that case, the affordability period associated with the direct subsidy to the homebuyer commences and the twenty (20)-year period associated with the development subsidy (from the initial construction of the property) is

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terminated. MHDC does not currently offer HOME Funds for purchase assistance and if it did, it cannot be targeted only to residents of specific developments. The owner may wish to help its residents obtain direct HOME subsidies from Participating Jurisdictions to ease the restrictions on the homebuyer, but the availability of funds in the future cannot be completely assured.

## Community Housing Development Organizations

Pursuant to 24 C.F.R. §92.2, HUD has established specific criteria an entity must satisfy to qualify as a Community Housing Development Organization ("CHDO"). These criteria generally fall into three categories: (i) the entity's formation and structure, (ii) the entity's relationship (if any) to for-profit entities, and (iii) the entity's capacity to comply with and perform under HUD's HOME program.

### *Formation and Structure*

In order to qualify for CHDO status, an entity must be validly incorporated under applicable state and/or local laws, and must be a non-profit corporation holding a tax exemption ruling from the Internal Revenue Service pursuant to either §501(c)(3) or (4) of the Code. In addition, it must meet all of the following requirements, all of which must be clearly set forth in the entity's organizational documents:

1. No part of the non-profit corporation's net earnings may inure to the benefit of any of its members, founders, contributors, or individuals related to the non-profit corporation.
2. The non-profit corporation must have among its stated purposes set forth in its Articles of Incorporation the "provision of safe, decent, affordable housing to low-income and moderate-income persons."
3. At least 1/3 of the non-profit corporation's Board of Directors must be comprised of residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations.
4. No more than 1/3 of the non-profit corporation's Board of Directors may be comprised of public sector officials/employees and/or appointed by board members who are public sector officials/employees.
5. The non-profit corporation must provide a formal process which allows low-income program beneficiaries to advise the corporation on its decisions regarding the design, siting, development, and management of affordable housing projects. The non-profit corporation's organizational documents should not only note the existence of such a process, but also provide a description of the process itself.

### *Relationship to For-Profit Entities*

A CHDO may be sponsored or created by a for-profit entity. However, HUD places certain restrictions on the relationship that can exist between the non-profit corporation and the related for-profit entity. Specifically, the following restrictions apply:

1. The non-profit corporation must not be controlled by, nor under the direction of, any individual or entity that seeks to attain monetary profit or any other gain from the non-profit corporation.

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2. The for-profit entity must not have among its stated purposes the development or management of housing. Therefore, non-profit corporations sponsored or created by entities such as contractors, housing developers, and real estate management firms would not qualify for CHDO status.
3. The for-profit entity cannot have the power to appoint more than 1/3 of the non-profit corporation's Board of Directors and the directors appointed by the for-profit entity are prohibited from having the authority to appoint any of the director positions comprising the other 2/3 of the board of the non-profit corporation.
4. The non-profit corporation must be completely free to contract for goods and services from vendors of its own choosing.

## *Capacity/Compliance*

In order to qualify as a CHDO, the non-profit corporation must be able to demonstrate its ability to comply with all HOME rules, as well as the capacity to successfully develop low-income housing. Specifically, there are three components each non-profit corporation must be able to demonstrate:

1. The non-profit corporation must be able to demonstrate a general capacity to carry out activities for which the HOME program was created. Under the FY 2013 HUD Appropriations Law, CHDO's must have staff with demonstrated development experience. Engaging a consultant will no longer suffice.
2. The non-profit corporation must demonstrate has a history of serving the community in which it intends to develop housing assisted with HOME Funds. Usually, the non-profit corporation must show it has served the community in question for at least one year before HOME Funds will be allocated to it.
3. The non-profit corporation must demonstrate it utilizes appropriate accounting methods and controls. Specifically, the non-profit corporation's standards of financial accountability must conform to those set forth in 24 C.F.R. §84.21.

## *MHDC Certification Requirements*

In order to obtain certification as a CHDO from MHDC, a non-profit corporation must submit a CHDO application to MHDC staff for review. The application package must include a completed original of the MHDC CHDO Certification/Recertification Form (Form CHDO R100) with all of the following supporting documentation:

1. A copy of the Articles of Incorporation for the non-profit corporation. The copy provided should be a copy of the fully executed Articles filed with the Missouri Secretary of State.
2. A copy of the non-profits By-Laws. The copy provided should be signed by the non-profit corporation's Secretary and certified as being the most current version of the By-Laws approved by the non-profit corporation's Board of Directors.
3. A Certificate of Good Standing from the Missouri Secretary of State for the non-profit corporation. The Certificate of Good Standing must be dated within thirty (30) days of the date the CHDO application was submitted to MHDC staff.

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4. A copy of the non-profit corporation's tax exemption ruling from the IRS (i.e., letter from the IRS evidencing the non-profit's 501(c)(3) or 501(c)(4) status).
5. Copies of the non-profit corporation's most current financial documentation, including:
  - a. Its current annual operating and capital budget;
  - b. Its current statement of income and expenses;
  - c. Its current budget variance report; and
  - d. Its most current annual audit(s) (if the non-profit applying for CHDO status is a first time applicant or more than two years has lapsed since the non-profit last applied for and received CHDO designation, the non-profit must provide copies of its most recent three (3) years of annual audits; however, if the non-profit has applied for and received CHDO status from MHDC within the last two fiscal years, the non-profit need only supply its most recent annual audit).
6. Evidence the non-profit corporation's accounting processes and procedures maintain compliance with the requirements set forth under 24 C.F.R. §84.21. The evidence of such compliance may consist of either of the following:
  - a. A letter from the Certified Public Accountant performing the non-profit corporation's audit which certifies the non-profit corporation is in compliance with 24 C.F.R. §84.21; or
  - b. A signed and notarized statement from the President, Executive Director, or Chief Financial Officer of the non-profit corporation attesting his/her belief the non-profit corporation complies with the rules and requirements of 24 C.F.R. §84.21, and a completed financial questionnaire in the form required by MHDC. If this form of evidencing compliance with 24 C.F.R. §84.21 is utilized, MHDC staff will review the questionnaire and all supporting documentation and will determine, in its sole discretion, whether the non-profit corporation has adequately evidenced its compliance with 24 C.F.R. §84.21.
7. A copy of the non-profit corporation's current organizational chart.
8. A copy of the non-profit corporation's current list of Board Members (clearly noting the sector each Board Member represents).
9. A list of all paid staff members of the non-profit corporation.
10. Copies of resumes and job descriptions describing the experience of all key staff members of the non-profit corporation.
11. A copy of the non-profit corporation's most recent strategic plan.

Once MHDC staff has reviewed all required documentation, the applying non-profit corporation will be notified by MHDC staff as to whether it has successfully qualified for CHDO designation or whether there are inadequacies in its application. No loans or LIHTCs allocated by MHDC to a development, which allocation is predicated on the non-profit corporation's ability to qualify as a CHDO, may be closed or funded until MHDC staff has designated the non-profit corporation as a valid CHDO.

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## MBE/WBE Initiative

MHDC has established a MBE/WBE Initiative to encourage the involvement of businesses that are Minority-Owned Business Enterprises (“MBE”) and/or Women-Owned Business Enterprises (“WBE”) (“MBE/WBE Initiative”).

This section is the guidance for MHDC’s administration and supervision of the process and its components that are paramount to MHDC’s effort to achieve diversity, to increase support, and to sustain MBE/WBE involvement in MHDC rental property production.

The MBE/WBE Initiative is applicable to all developments with more than six (6) units.

### *MBE/WBE Definitions*

**Bid** - A written quotation, proposal, or offer by a bidder or contractor to perform or provide labor, materials, equipment, supplies, or services for a price submitted in response to a competitive bidding solicitation.

**Business Enterprise** – A legal entity existing for the purpose of engaging in business including, but not limited to, a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private, legally recognized entity.

**Certification** – The process by which MBE/WBEs verify their status to be considered an MBE or WBE certified company.

**Certifying Agency** – The Office of Equal Opportunity for the State of Missouri (OEO) or other certifying agency, as deemed appropriate by MHDC in consultation with the OEO.

**Commercially Useful Function** – Real and actual service in the discharge of any contractual endeavor, including the execution of an element of work by actually performing work, in accordance with normal business practices, when the entity receives compensation for the work performed and such work performed is bona fide real and actual services necessary and a part of the development.

**Compliance** – The condition or status of an owner/developer that demonstrates it complies with the goals of the Participation Standard or MBE/WBE Priority.

**Contract** – Any and all agreements, regardless of what they may be titled, for the procurement of supplies, services, or construction in connection with the development of affordable housing.

**Contractor** – Any business enterprise that has entered into a contract in connection with construction of a development funded or approved by MHDC, including general contractors and sub-contractors.

**Excluded Costs** – These are costs associated with a development not used in calculations to determine rates of MBE/WBE participation such as the cost of permits, licenses, public sector financing, bond issuance costs, construction interest, and similar costs.

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**Hard Costs** – Costs associated with a development for the actual, physical costs of construction including, but not limited to, general contracting, grading, excavation, concrete, paving, framing, electrical, carpentry, roofing, masonry, plumbing, painting, asbestos removal, trucking, landscaping, and similar activities or services.

**Mentor/Protégé Relationship** – A relationship in which a more experienced or more knowledgeable non-MBE/WBE developer (the Mentor) helps a less experienced or less knowledgeable MBE/WBE (the Protégé) designed to support, promote and develop the knowledge, skill, and ability of the Protégé as a developer. The Protégé must perform a Commercially Useful Function.

**Minority Business Enterprises (MBE)** – A business which is at least 51% owned by one or more minority members; or, in the case of a publicly-owned business, one which has at least 51% of its voting stock owned by one or more minority group members, and whose management and daily business operations are controlled one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Asian Indian Americans. The term “minority worker” shall include representations of all the previously stated minority groups.

**MBE/WBE Initiative Coordinator** –MHDC official assigned the responsibility for managing, implementing, evaluating, and promoting the MBE/WBE Initiative.

**Non-Compliance** – The status of an owner/developer that fails to comply with the MBE/WBE Initiative.

**Optional Costs** – Costs associated with a development that can be used, but are not required to be used, in calculations to determine rates of MBE/WBE participation, such as developer fee.

**Owner/Developer** – The individual or entity submitting an Application for the award of MHDC-owned or controlled resources or that receives approval for an award of MHDC-owned or controlled resources, including LIHTC, loans, or other funding through a competitive application process, including each general partner, member or other type of ownership interest within the owner/developer entity reduced to the principal level irrespective of the number of entity layers which may be present for any entity.

**Participation Standard** – 10% participation of MBEs in hard costs, 10% participation of MBEs in soft costs, 5% participation of WBEs in hard costs, and 5% participation of WBEs in soft costs.

**Participation Rate** – The actual percentage of MBE/WBE participation in costs associated with a development.

**Principal** – Any human being who has any interest in an entity identified as an owner/developer.

**Professional Services** – Services which involve predominantly mental or intellectual labor and skills including, but not limited to, architects, engineers, surveyors, attorneys, and accountants.

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Schedule of Participation – A document reflecting how the Participation Standard will be achieved, including a list of all MBE/WBEs proposed to perform work for the development.

Soft Costs – Costs associated with a development for planning, architectural, relocation, legal, accounting, environmental, engineering, surveying, consulting fees, title company, disbursing company, market study, appraisal, soils report, and similar activities or services.

Utilization Plan – The document showing the plan to meet the Participation Standard or justify a Priority.

Women Business Enterprise (WBE)--- a business which is at least 51% owned by one or more women members; or in the case of a publicly owned business, one which at least has 51% of its voting stock owned by one or more women members, and whose management and daily business operations are controlled by one or more of such individuals.

## *Purpose*

The MBE/WBE Initiative is created and administered for the following purposes:

1. To facilitate, promote, and achieve equal opportunity to participate in rental property development activities;
2. To monitor and assess the utilization of MBE/WBE in rental property development activities;
3. To monitor and assess compliance by owners/developers and contractors on all MHDC-funded rental property developments;
4. To identify MBE/WBE and promote awareness of MHDC rental property;
5. To provide assistance and training to MBE/WBE;
6. To ensure non-discrimination in the awarding of MHDC funds; and
7. To provide a narrowly-tailored program in accordance with applicable laws.

## *Summary of Program*

The MBE/WBE Initiative consists of two components: (a) Participation Standard; and (b) MBE/WBE Priority. Applications disqualified due to an incomplete submittal will not be reviewed for compliance with the Participation Standard or qualification for the MBE/WBE Priority.

## *Participation Standard*

MHDC's Participation Standard is 10% hard costs and 10% soft costs for MBE, and 5% hard costs and 5% soft costs for WBE. Applications submitted under 9% Credit and 4% Credit NOFA(s) are expected to meet the Participation Standard.

An MBE/WBE must be certified to count toward the Participation Standard. A Utilization Plan signed by the owner/developer must be submitted with the application indicating the plan for MBE/WBE participation, including the scope of work and compensation. All certifications for MBE/WBEs performing soft cost items must be included in the Application and certification for MBE/WBEs providing hard cost items must be provided no later than Firm Submission. An outreach plan for successfully securing MBE/WBEs to provide hard cost and soft cost items must be submitted with the Application.



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The final Utilization Plan signed by the owner/developer and the general contractor with all certifications must be submitted to MHDC staff prior to construction loan closing. The Participation Standard can be satisfied by MBE/WBEs providing competitively-priced services and/or materials in the following categories:

1. Hard costs for the actual physical costs of construction which include, but are not limited to, general contracting, grading, excavation, concrete, paving, framing, electrical, carpentry, roofing, masonry, plumbing, painting, asbestos removal, trucking, and landscaping. Extensive environmental abatement services may be considered hard costs. When calculating hard costs, general requirements, overhead, bond costs, permits, and contractors profit should be excluded. Calculations are based on the contractor who actually performs the scope of work as required.
2. Soft costs which include, but are not limited to, planning, architectural, relocation, legal, accounting, environmental study, engineering, surveying, developer fee, consulting fees, title company, disbursing company, market study, appraisal, and soils report. In the calculation of soft costs, the developer fees may be, but are not required to be, included in the calculation of participation levels. Calculations are based on the contractor who actually performs the scope of work as required.

Additionally, development costs that do not include actual services or materials, such as public sector financing fees, reserves, and land acquisition shall not be included in the calculation.

## *MBE/WBE Priority*

A preference in funding will be given to applications that reflect:

- a. A MBE/WBE developer, a developer group that includes a MBE/WBE, and/or a Developer Mentor/Protégé relationship; or
- b. MBE/WBE participation percentages significantly greater than the Participation Standard for both hard and soft costs.

Applicants seeking the MBE/WBE Priority under paragraph (a) above must provide a comprehensive Utilization Plan signed by the owner/developer detailing the role of, and functions to be performed by, the MBE/WBE. Such roles and functions of the MBE/WBE must be those typically performed by a developer. A Mentor/Protégé Relationship shall be designed to support, promote, and develop the knowledge, skill and ability of the MBE/WBE protégé in a manner intended to assist in the growth and development of the MBE/WBE as a developer.

Applicants seeking a preference under paragraph (b) above must provide a comprehensive Utilization Plan signed by the owner/developer detailing how the applicant intends to significantly exceed the Participation Standard.

Applicants seeking the MBE/WBE Priority must include in the Application a history of MBE/WBE participation, as well as evidence of MBE/WBE certification.

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## *Certification/Definition of MBE/WBE Companies*

Each MBE/WBE must be certified by the State of Missouri or other certifying agency, as deemed appropriate by MHDC in consultation with the Office of Equal Opportunity for the State of Missouri (OEO).

## *Application for MHDC Funding*

A Utilization Plan signed by the owner/developer detailing how the applicant intends to meet the Participation Standard must be included in the Application. Evidence of MBE/WBE participation and certification for soft cost firms will be required at application. Evidence of MBE and WBE proposals and certifications for hard cost firms will be required as part of the Firm Submission.

## *Firm Submission*

When submitting the Firm Submission package, the signed Utilization Plan with any updated information, copies of any contracts or proposals entered into with MBE/WBE along with copies of the MBE/WBE certification must be included. Early submittal of the MBE/WBE package is encouraged.

As you receive and accept proposals from MBE/WBEs after the Firm Submission has been delivered to MHDC, please forward to MHDC staff for review. MHDC staff must perform a complete review of the proposed Utilization Plan, and all supporting documentation, contracts, proposals, bids, and certifications prior to the closing of the construction loan.

## *Good Faith Efforts*

All efforts to include MBE/WBE must allow sufficient time for the MBE/WBE to effectively and professionally participate in the bidding process. It is important for the contractor to have evidence of meetings held, written notifications by email or facsimile, or certified letters so the contractor has proof of outreach. To achieve maximum effectiveness, outreach to MBE/WBE should be done at the time of Application for firms performing soft cost work and during submission/approval of architect drawings for hard costs. Good faith efforts to achieve the Participation Standard must be demonstrated by the general contractor. Examples of such efforts include, but are not limited to, the following:

1. Efforts made to select portions of the work proposed to be performed by MBE/WBEs to increase the likelihood of achieving the Participation Standard, including the breaking down of contracts into economically feasible subcontracts to facilitate MBE/WBE participation. When soliciting an MBE/WBE, you should be specific regarding scope of work.
2. Giving written notification at least fourteen (14) calendar days prior to the opening of bids soliciting MBE/WBE as a subcontractor or a supplier. This should also include agencies and organizations providing assistance in recruitment and placement of MBE/WBEs.
3. Providing equal access to plans and specifications to all prospective contractors, including MBE/WBE contractors.
4. Advertising bidding opportunities in general circulation media, trade and professional association publications, small and minority business media, and minority and women's business organizations.

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5. Efforts made to negotiate with MBE/WBEs for specific work shall include evidence of the following:
  - a. Names, addresses, telephone numbers of the MBE/WBEs contacted, the dates of initial contact, and whether initial solicitations of interest were followed-up on by contacting the MBE/WBE to determine, with certainty, whether the MBE/WBE is interested,
  - b. A description of the information provided the MBE/WBE regarding the plans and specifications and estimated quantities for portions of the work to be performed,
  - c. A statement why additional agreements with MBE/WBE were not reached, and
  - d. Documentation of each MBE/WBE contacted but rejected, and the reasons for the rejection.
6. Efforts made to assist an MBE/WBE needing assistance in obtaining bonding, insurance, or lines of credit required by the contractor.
7. Documentation indicating a qualified MBE/WBE is not available or not interested in bidding.
8. Attendance at meetings scheduled by MHDC staff or other agencies or organizations to encourage better contractor-subcontractor relationships and MBE/WBE utilization opportunities (pre-bid conferences, workshops, etc.).
9. Efforts to effectively use the services of available community organizations, contractor's groups and other organizations and agencies providing assistance in recruitment and placement of MBE/WBEs.
10. Sending information to certifying agencies for distribution of bidding opportunities to MBE/WBEs on their listing.

## *Calculation of Participation Rate*

The method by which the MBE/WBE Initiative Coordinator will calculate the Participation Standard shall include the following:

1. Any tier of MBE/WBE contractors and subcontractors to be utilized in connection with a development shall be counted.
2. Any owner/developer who is an MBE/WBE can count contractor work or professional services performed by the owner/developer, including developer fees.
3. Any contractor who is an MBE/WBE can count contractor work or services actually performed by the contractor, including general requirements, builder profit, and overhead. NOTE: When the MBE/WBE is not performing the work but is the named contractor, credit will be given for twenty percent (20%) of the contract amount.
4. The MBE/WBE must perform a Commercially Useful Function.
5. Calculation of the Participation Standard shall be completed for both hard and soft costs as follows:
  - a. Total costs associated with the development will be reduced by any Excluded Costs; then
  - b. Total costs associated with the development may be, but are not required to be, reduced by any Optional Costs; then

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- c. Remaining total costs shall be separated into Hard Costs and Soft Costs; then
  - i. The total dollar value of the amount expended as payment to the MBE/WBE for work or services performed pursuant to the Firm Submission and Firm Commitment in connection with Hard Costs will be divided by the total dollar amount of funds expended in connection with all Hard Costs for each classification; and
  - ii. The total dollar value of the amount expended as payment to an MBE/WBE for work or services performed pursuant to the Firm Submission and Firm Commitment in connection with Soft Costs will be divided by the total dollar amount of funds expended in connection with all Soft Costs for each classification.

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## *Cost Categories*

The following items shall be considered Hard Costs:

1. Earthwork
2. Site Utilities
3. Roads and Walks
4. Off-Site Work
5. Concrete
6. Masonry
7. Structural Metals
8. Rough Carpentry
9. Finish Carpentry
10. Cabinets
11. Waterproofing
12. Insulation
13. Roofing Systems
14. Siding
15. Gutters & Downspouts
16. Doors & Hardware
17. Windows
18. Drywall
19. Flooring
20. Carpet
21. Painting
22. Signage
23. Bathroom & Closet Accessories
24. Appliances
25. Window Coverings
26. Plumbing
27. Fire Sprinklers
28. HVAC
29. Electrical
30. Fire Alarm Systems
31. Special Equipment
32. Landscaping
33. Accessory Building
34. Demolition
35. Sheet Metal
36. Site Work
37. Extensive Environmental Abatement

The following items shall be considered Soft Costs:

1. Architect & Engineering Fee-Design
2. Architect Fee – Supervision
3. Soils Report
4. Survey
5. Engineering
6. Environmental Study
7. Market Study
8. Appraisal
9. Title, Recording & Disbursing
10. Title, Recording & Disb (Permanent)
11. Legal Fees (Construction)
12. Legal Fees (Permanent)
13. Legal Fees (Organization)
14. Legal Fees (Acquisition and Recording)
15. Cost Certification
16. Accountant Fees
17. Relocation
18. Furniture, Fixtures and Equipment
19. Third Party Inspection
20. Historic consultant
21. Green or NGBS Certification Consultant
22. Consultant Fee
23. Construction Period Insurance

The following items shall be considered Optional Costs:

1. Developer Fee (calculated as a Soft Cost when included)
2. General Requirements (calculated as a Hard Cost when included)
3. Builder Overhead (calculated as a Hard Cost when included)
4. Builder Profit (calculated as a Hard Cost when included)
5. Consultant Fee included in Developer Fee (calculated as a Soft Cost when included)

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The following items shall be considered Excluded Costs

1. MHDC Approved Impact Fees
2. Construction Loan Interest
3. Construction Period R.E. Taxes
4. MHDC Rental Production Application Fee
5. MHDC Construction Loan Fee
6. MHDC Construction Inspection Fee
7. Other Construction Inspection Fee
8. MHDC Permanent Financing Fee
9. Other Permanent Financing Fee
10. Prepaid MIP
11. Contingency \*
12. Historic Credit Fees
13. Land Acquisition and Recording Fees
14. Acquisition Costs of Buildings
15. Land Lease
16. Tax Credit Allocation Fee
17. Tax Credit Monitoring Fee
18. AHAP Application and Reservation Fee
19. Bond Related Costs
20. Debt Service Reserves (escrow)
21. Syndication Costs
22. Operating Reserves (escrow)
23. Replacement Reserves (escrow)
24. Social Services Reserves (escrow)
25. Lease up and Marketing\*\*

\*Based on how contingency is expended, it may be included in the costs at the time of certification.

\*\*Lease-up or marketing related to lease-up can be considered an eligible cost if performed by a MBE/WBE not associated with the management company and under separate contract assisting in the lease-up/marketing of the property.

## *MBE/WBE Compliance Responsibilities*

The owner has the compliance responsibility for each development approved by MHDC. The owner may direct, as necessary, the responsibility of compliance to other team members (i.e., contractors or consultants) however, the ultimate responsibility for compliance is with the owner.

1. Throughout the construction or rehabilitation, MHDC staff will monitor the cumulative Participation Standard for each development. The owner must review the Schedule of Participation each month and report to MHDC staff any actual or perceived deficiencies in participation dollar amounts and the Participation Standard.
2. At construction loan closing, all Soft Cost payments will be reviewed against contracts signed. If Soft Costs are provided throughout construction, the payments will be monitored for compliance with the contract until the end of the construction period. Hard Cost contracts will be reviewed against the Schedule of Participation, the general contractor's vendor payment listings, and other documents, as MHDC staff deems necessary, to ensure timely payment to MBE/WBEs. The owner must provide all contracts or intent to perform documents to MHDC staff.
3. If the contract is awarded on less than the full Participation Standard, such award will not relieve the owner of the responsibility to continue reasonable good faith efforts to provide participation opportunities to MBE/WBEs throughout the life of the contract. The owner will be required to document good faith effort to utilize MBE/WBE subcontractors and/or suppliers prior to entering into a contract with a non-MBE/WBE.
4. When the owner is awarded funds through MHDC, it will be required to sign the Conditional Reservation which indicates its commitment to reach the

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stated Participation Standard outlined in its Utilization Plan. At construction completion, both the contractor and owner will certify the percentage and the amount of MBE/WBE participation, along with a listing of those MBE/WBE companies utilized during the development process.

5. The owner must designate an individual who will be responsible for the administration of the MBE/WBE Utilization Program.
6. The contractor must enter into subcontracts or written agreements with the MBE/WBE identified on the Schedule of Participation for the scope of work and amount specified. In the event a MBE/WBE indicated in the development's Utilization Plan cannot be secured, the owner must notify MHDC staff.
7. If at any point during development construction it appears the scheduled amount of MBE/WBE participation may not be achieved, the owner must provide evidence to MHDC staff demonstrating how the Participation Standard will be met.
8. During the disbursement process, MHDC staff will compare the MBE/WBE listed in the Schedule of Participation to the payment request and payroll documents to ensure compliance with the documents submitted. To facilitate this review, the owner/contractor must provide a listing of payments and completion records of MBE/WBE companies and copies of contracts.

## *Record Keeping*

The owner must keep records to enable MHDC staff to determine compliance with the MBE/WBE Initiative. These records should include the names and contract information of all MBE/WBEs, scope of work, contracts, cancelled checks and paid invoices verifying payment for work, services, and procurement, and documentation of all correspondence, telephone calls, and other efforts to obtain the services of MBE/WBE contractors. Upon request, the owner shall submit all contracts and documentation to MHDC staff.

## *Reporting*

The owner must submit monthly reports on MBE/WBE involvement in a manner designated by MHDC staff, even if no MBE/WBE performance activity occurred during the monthly reporting period. Reports will be required until all contractor performance activity is complete and the development is substantially completed. If MHDC staff is processing/reviewing construction draws, the reports can be included with each monthly draw request package. LIHTC-only developments will be required to submit monthly since MHDC staff does not process/review construction draws on these developments.

If the Participation Standard is not met, documentation supporting good faith efforts must be submitted with the monthly report. Failure to submit the monthly report may result in the delay of processing draws and/or issuance of 8609s.

## *Non-Compliance*

An owner shall be considered to be in a state of non-compliance when the owner, developer, or any contractor associated with the development:

1. Fails to adequately document compliance; or

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2. Fails to diligently pursue participation of MBE/WBEs; or
3. Fails to comply with the elements set forth in the final Utilization Plan in connection with the Participation Standard or MBE/WBE Priority; or
4. Eliminates or reduces the Commercially Useful Functions to be performed by an MBE/WBE after such MBE/WBE was named in the final Utilization Plan, unless the developer demonstrates a change was reasonably necessary and notifies the MBE/WBE Initiative Coordinator; or
5. Fails to comply with any element or provision of the MBE/WBE Initiative.

## Section 3

### *Introduction*

The Section 3 guidelines set forth in this section have been prepared to provide information and guidance to those developers/owners with an award of Section 3 covered assistance, and should not be treated as a comprehensive recitation of the Section 3 Act and Section 3 Regulations. This section is a summary of the pertinent provisions of the Section 3 Act and Section 3 Regulations, and focuses on the Section 3 requirements imposed on the developer/owner, general contractor, and subcontractor receiving the requisite amount of Section 3 Covered Assistance. MHDC reminds each developer/owner, general contractor, and subcontractor that each bears the responsibility to familiarize itself with the Section 3 Act and Section 3 Regulations prior to accepting Section 3 covered assistance from MHDC.

Section 3 is required for developments awarded MHDC HOME Funds in excess of \$200,000.

### *Definitions*

**General Contractor (Section 3)** – Any entity awarded a construction contract of \$100,000 or more by an owner/developer to provide general contractor services, generated by the expenditure of Section 3 Covered Assistance or in connection with a Section 3 Covered Project.

**Employment Opportunities** – All employment opportunities arising in connection with a Section 3 Covered Project, as described in 135.3(a)(2), including management and administrative jobs. Management and administrative jobs include architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups, and jobs directly related to administrative support of these activities (e.g., construction manager, relocation specialists, payroll clerk, etc.)

**Housing and Community Development Assistance** – Any financial assistance provided or otherwise made available through a HUD housing or community development program, through any grant, loan, loan guarantee, cooperative agreement, or contract, including community development funds in the form of community development block grants, and loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

**Low-income person** – Defined in the definition of “Section 3 Resident” herein.



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Metropolitan Area – A MSA, as established by the Office of Management and Budget.

Neighborhood Area or Section 3 Area – For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances or other local documents as a neighborhood, village, or similar geographical designation.

New Hires – Full-time employees for permanent, temporary, or seasonal employment opportunities.

Non-Metropolitan Area – Any area outside of a MSA.

Owner/Developer – Any entity engaged in the business of development of affordable housing which is an applicant for Section 3 Covered Assistance or has been awarded Section 3 Covered Assistance in excess of \$200,000 by MHDC.

Public and Indian Housing Assistance includes funds used for:

1. Development assistance provided pursuant to Section 5 of the U.S. Housing Act of 1937 (the “1937 Act”);
2. Operating Assistance provided pursuant to Section 9 of the 1937 Act; and
3. Modernization Assistance provided pursuant to Section 14 of the 1937 Act.

Recipient – Any entity receiving Section 3 Covered Assistance directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian Tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee, or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

Section 3 Business Concern – A company:

1. That is 51% or more owned by Section 3 Residents; or
2. Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or within three (3) years of the date of first employment with the Business Concern were Section 3 residents; or
3. That provides evidence of a commitment to contract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “Section 3 Business Concern.”

Section 3 Clause – The contract provisions set forth in 24 CFR 135.38 and available at [www.mhdc.com](http://www.mhdc.com).

Section 3 Covered Contract – A contract or subcontract (including a professional service contract) awarded by a Recipient, Owner, Developer, General Contractor, or Subcontractor for work generated by the expenditure of Section 3 Covered Assistance of \$100,000 or more, or for work in like amount, arising in connection with a Section 3 Project. Section 3 Covered

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Contract does not include any contracts for the purchase of supplies or materials, unless the contract includes the installation of the supplies or materials.

Section 3 Covered Project – The construction, reconstruction, conversion, or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), or other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 Regulations – The regulations found at 24 CFR Part 135, as amended, which govern the application of the Section 3 Act.

Section 3 Requirements – The employment, training and contracting opportunities imposed by the Section 3 Act upon Recipients and Covered Contractors.

Section 3 Resident – (1) A public housing resident; or (2) an individual who resides in the Metropolitan Area or Non-metropolitan Area in which the Section 3 Covered Assistance is expended, and who is:

1. A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), which is families (including single persons) whose incomes do not exceed 80% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except HUD can establish income ceilings higher or lower than 80% of the median for the area on the basis of the HUD's findings such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
2. A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), which is families (including single persons) whose incomes do not exceed 50% of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except HUD can establish income ceilings higher or lower than 50% of the median for the area on the basis of HUD's findings such variations are necessary because of unusually high or low family incomes.

Subcontractor – Any entity awarded a Section 3 Covered Contract of \$100,000 or more by a General Contractor.

## *Section 3 Purpose*

The Section 3 Act was enacted by HUD (12 U.S.C. 1701u), as amended, to ensure certain employment and economic opportunities generated by certain HUD-funded Section 3 Covered Assistance are, to the greatest extent feasible, directed to Section 3 Residents and Section 3 Business Concerns. Therefore, upon receipt of the requisite amount of Section 3 Covered Assistance and awards of Section 3 Covered Contracts, the Developer, General Contractor and Subcontractor must comply with the Section 3 Requirements.

## *MHDC Policy Statement*

MHDC is a body corporate and politic of the state of Missouri and its purpose is to provide financing to developers of affordable housing throughout the state of Missouri. A portion of this financing consists of HOME Funds. In addition, MHDC serves as the Section 8 contract administrator for HUD, and participates in HUD's Risk-Sharing program. As a result, MHDC is

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a Recipient of Section 3 Covered Assistance exceeding the \$200,000 threshold and is obligated to comply with the Section 3 Act and the Section 3 Regulations. MHDC is committed to this purpose, and will work to ensure to the greatest extent feasible, and consistent with Federal, State, and local laws and regulations, each Developer, General Contractor, and Subcontractor to which it awards Section 3 Covered Assistance comply with the Section 3 Act and Section 3 Regulations through the utilization of these guidelines.

Successful compliance with the Section 3 Act and the Section 3 Regulations by the Owner/Developer and General Contractor will be a factor in determining future awards of Section 3 Covered Assistance.

According to the Section 3 Regulations (24 CFR Part 135), Section 3 Covered Assistance Recipients are required to provide employment, training, and contracting opportunities to Section 3 Residents or Section 3 Business Concerns. However, the Section 3 Requirements are not imposed on a recipient that does not engage in the hiring or training of persons, but instead awards contracts to Owners/Developers and General Contractors that hire and train in connection with Section 3 Covered Projects. According to the Section 3 Regulations, these recipients can comply with Section 3 by ensuring the Owners/Developers, General Contractors and Subcontractors receiving Section 3 Covered Assistance comply with the Section 3 Act. To the extent MHDC utilizes a small portion of its HOME Funds to pay the salary of persons directly related to the HOME program and other HOME relates expenditures, MHDC will comply with the employment, training and contracting opportunities requirements of Section 3.

## *Section 3 Coordinator*

MHDC has a Section 3 Coordinator, who will serve as the immediate point of contact for the Owner/Developer, General Contractor, and Subcontractor, and is available to assist in meeting each development's Section 3 Requirements ("Section 3 Coordinator"). In addition, the MHDC Section 3 Coordinator will provide the Owner/Developer, General Contractor, and Subcontractor with Section 3 materials, including the Section 3 Act, Section 3 Regulations, and these MHDC Section 3 guidelines and is available to provide technical assistance to the Owner/Developer, General Contractor, and Subcontractor. Technical assistance may consist of help in understanding the Section 3 Regulations, identifying employment opportunities and training programs available to Section 3 Residents, and information on outreach to Section 3 Residents and Section 3 Business Concerns. The MHDC Section 3 Coordinator may also develop Section 3 forums and make presentations at seminars and panel discussions on Section 3.

The MHDC Section 3 Coordinator may engage additional MHDC staff who will assist the MHDC Section 3 Coordinator in the acquisition, assemblage, review, and analysis of reports submitted by the Owner/Developer, General Contractor, and Subcontractor. MHDC staff may also conduct random on-site reviews of the Section 3 Covered Project to assess compliance with the Section 3 Act.

The Owner/Developer, General Contractor, and Subcontractor will each appoint a Section 3 coordinator and provide the name, address, telephone number and email address of such individual to the MHDC Section 3 Coordinator. This person will be the direct point of contact with the MHDC Section 3 Coordinator and advise the Owner/Developer, General Contractor, Subcontractor personnel and staff on Section 3 compliance. In addition, the coordinator will be responsible for the submission of all required Section 3 reports to the MHDC Section 3 Coordinator and will serve as the point of contact for Section 3 complaints and as the on-site

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monitor of the Owner/Developer, General Contractor, and Subcontractor implementation of its respective Section 3 Plan.

## *Section 3 Meeting*

Once MHDC has awarded the Section 3 Covered Assistance, it will schedule a meeting with the Owners/Developer(s) to discuss the Section 3 Requirements. Attendees will include the MHDC Section 3 Coordinator, General Contractors, and the Owner's/Developer's Section 3 Coordinator and the General Contractor's Section 3 Coordinator, if selected. The purpose of the meeting is to address any questions the attendees may have regarding compliance with Section 3 Regulations. All attendees will be provided with a copy of the MHDC Section 3 Guidelines, the Section 3 Act and the Section 3 Regulations. Each Owner/Developer and General Contractor will also be required to submit a statement to the MHDC Section 3 Coordinator acknowledging its receipt of the foregoing documents as well as its understanding the Section 3 Regulations apply to the specific Section 3 Covered Project, and its commitment to submit a Section 3 Plan in accordance with the deadlines set out in the Conditional Reservation.

## *Section 3 Contracting Opportunity Goals*

Owners/Developers, General Contractors, and Subcontractors with Section 3 Covered Contracts must establish certain contracting opportunity goals for Section 3 Business Concerns in connection with the Section 3 Covered Project. These numerical goals apply to contracts awarded by the Developer, General Contractor, or Subcontractor. These goals can be met by achieving the following benchmarks:

1. At least 10% of the total dollar amount of all Section 3 Covered Contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
2. At least 3% of the total dollar amount of all other Section 3 Covered Contracts (professional services).

## *Employment and Training Opportunity Goals*

The Section 3 Act requires the Owner/Developer, General Contractor, and Subcontractor to utilize Section 3 Residents and Section 3 Business Concerns in the development of Section 3 projects, to the greatest extent feasible. Specifically, the Owner/Developer, General Contractor, and Subcontractor must establish certain Section 3 goals for each Section 3 Project.

All Section 3 employment and training goals must be explicitly set forth in all Section 3 Plans as follows:

"The numerical goal for Employment for this Section 3 Covered Project is \_\_\_% of new hires.

The numerical goal for Training for this Section 3 Covered Project is \_\_\_% of residents hired."

Employment and training goals can be met by either directly providing the employment or training or by facilitating the employment or training. That is, the Owner/Developer, General Contractor, or Subcontractor can satisfy the Section 3 employment and training goals by arranging for the employment or training of Section 3 Residents in connection with: a) the

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Owner's/Developer's Section 3 Covered Projects; b) the Owner's/Developer's non-Section 3 projects; or c) other non-Section 3 Projects.

The MHDC Section 3 Coordinator is available to provide technical assistance to meet these employment and training goals.

The Owner/Developer, General Contractor, and Subcontractor must provide in its Section 3 Plan a breakdown of job categories and positions needed for the Section 3 Covered Project, including positions occupied by permanent employees.

If the Owner/Developer, General Contractor, or Subcontractor does not have any employment or training opportunities available in connection with the Section 3 Covered Project, this must be reflected in its Section 3 Plan.

## *Formal Section 3 Plan*

After the General Contractor has been selected, the Owner/Developer must submit a comprehensive Section 3 Plan, signed by the Owner/Developer and the General Contractor, to the MHDC Section 3 Coordinator for review and approval, in accordance with the deadlines set forth in the Conditional Reservation. The Section 3 Plan will include the Section 3 goals of the Owner/Developer and the General Contractor.

Upon submission of the Section 3 Plan, the MHDC Section 3 Coordinator will review and either approve it, conditionally approve it with suggested modifications, or disapprove the plan. MHDC staff will not issue a Firm Commitment for the development until the Section 3 Plan has been approved. After the Section 3 Plan has been approved, the MHDC Section 3 Coordinator will review and monitor it regularly to assess its implementation and the attainment of the Section 3 goals.

As subcontracts in excess of \$100,000 are awarded, such Subcontractors will be required to submit their own Section 3 Plan to the MHDC Section 3 Coordinator for review and approval.

Copies of all bid documents that are received and all contracts that are awarded must also be submitted to MHDC staff. These documents should be submitted electronically and in pdf format.

## *Components of a Section 3 Plan*

The Section 3 Plan must include specific information including, but not limited to, the following:

1. Owner/Developer, General Contractor, or Subcontractor's statement certifying it intends to comply with the Section 3 Act and Section 3 Regulations, as well as the MHDC Section 3 Guidelines;
2. Owner/Developer, General Contractor, or Subcontractor's statement certifying each is aware of the employment, training, and contracting goals and agrees to work together to meet these goals;
3. Name and contact information of the Owner/Developer, General Contractor, or Subcontractor's Section 3 coordinator;
4. Identification of the Section 3 Area (see definition of Neighborhood Area);
5. Owner/Developer, General Contractor, or Subcontractor's current workforce;

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6. Owner/Developer, General Contractor, or Subcontractor's Contractor's workforce necessitated by the Section 3 Covered Project;
7. Owner/Developer, General Contractor, or Subcontractor's Section 3 employment, training, and contracting opportunity goals;
8. Specific strategies for notifying Section 3 Residents of Section 3 employment and training goals;
9. Specific strategies for notifying Section 3 Business Concerns of Section 3 contracting opportunities;
10. Commitment to inform all Subcontractors of its Section 3 Plan;
11. Owner's/Developer's commitment to prepare and submit monthly Section 3 reports to the MHDC Section 3 Coordinator;
12. General Contractor's commitment to prepare and submit monthly reports to its Section 3 coordinator;
13. Commitment of Owner/Developer, General Contractor, and Subcontractor to include the Section 3 Clause in all construction contracts and subcontracts exceeding \$100,000.00 awarded as a result of the Section 3 Covered Assistance.
14. Commitment to provide employment agencies and local public housing authorities of possible employment, training, and contracting opportunities.
15. Commitment by Owner/Developer, General Contractor, and Subcontractor to conduct aggressive outreach and notification campaign to Section 3 Residents and Section 3 Business Concerns regarding its Section 3 goals, including the usage of site signage, flyers, etc.
16. Inclusion of other strategies which facilitate the achievement of the Section 3 goals established by the Owner/Developer, General Contractor, and Subcontractor.

## *Implementation Strategies*

To comply with the Section 3 Act and the Section 3 Regulations, the Owner/Developer, General Contractor, or Subcontractor, as applicable, must implement an aggressive campaign to encourage participation of Section 3 Residents and Section 3 Business Concerns. Some strategies to implement this campaign include the following:

1. Publish in a local newspaper a notice of the potential employment and training opportunities for Section 3 Residents and potential contracting opportunities for Section 3 Business Concerns. Written notice must be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
2. Post in a prominent location at the Section 3 Covered Project site notice of the potential employment and training opportunities for Section 3 Residents, and potential contracting opportunities for Section 3 Business Concerns.
3. Submit letters or flyers to the residents of the Section 3 Covered Project advising them of the employment, training and contracting opportunities for the Section 3 Covered Project (applies to rehabilitation when there are existing residents);
4. Provide the residents of the Section 3 Covered Project and the surrounding area with information on how to get certified as a Section 3 Resident or a Section 3 Business Concern;

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5. Provide the local public housing authority with flyers, notices and other information related to the Section 3 employment, training and contracting opportunities for the Section 3 Covered Project;
6. Provide information to residents of a Section 3 Covered Project and the surrounding area regarding established job training programs located within the Section 3 Area;
7. Provide minority and women-focused labor and trade organizations with notice of Section 3 employment, training, and business opportunity goals;
8. Provide minority and women-focused labor and trade organizations with notice of when and where plans and specifications for bid review will be distributed;
9. Establish public forums regarding Section 3 Covered Projects being developed within the Section 3 Area, in which the Owner/Developer, General Contractor, and Subcontractor will participate;
10. Utilize other strategies set forth in Appendix "A" of the Section 3 Regulations; and
11. Seek out referral sources to ensure job readiness for public housing residents through on-the-job-training (OJT) and mentoring to obtain necessary skills that will transfer into the external labor market.

## *Certification of Section 3 Residents*

Individuals seeking to participate in Section 3 Covered Projects must first be determined as Section 3 eligible by the municipality in which they reside or by the local public housing agency. If the municipality or local public housing agency does not provide this service, the individual must complete the form entitled "Resident Employment Opportunity Data" found at the HUD Website at: <http://portal.hud.gov/hudportal/section3>. The form can also be obtained by contacting the MHDC Section 3 Coordinator. The completed form and all required documentation should then be submitted to the Owner/Developer, the General Contractor, or the Subcontractor, who in turn will provide a copy to the MHDC Section 3 Coordinator. For further explanation on eligibility, please refer to the definition of a Section 3 Resident found earlier in this section.

## *Certification of Section 3 Business Concerns*

Any business seeking to participate in Section 3 Covered Projects must first be determined as Section 3 eligible by the municipality in which the business is located or by the local public housing agency. If the municipality or local public housing agency does not provide this service, a principal from the business must complete the form entitled "Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability" found at the HUD Website at: <http://portal.hud.gov/hudportal/section3>. This form can also be obtained from the MHDC Section 3 Coordinator. The completed form and all required documentation should then be submitted to the Owner/Developer, the General Contractor or the Subcontractor, who in turn will provide a copy to the MHDC Section 3 Coordinator. For further explanation on eligibility, please refer to the definition of a Section 3 Business Concern found earlier in this section.

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## *Technical Support and Monitoring*

The MHDC Section 3 Coordinator is available to provide technical support to Owners/Developers, General Contractors, and Subcontractors participating in the development of Section 3 Covered Projects.

Owners/Developers, General Contractors, and Subcontractors are required to submit copies to the MHDC Section 3 Coordinator of all outreach attempts, copies of all responses to notices published in the paper and posted other places, copies of all responses to bid invitations, and any other documentation helpful in monitoring compliance with the approved Section 3 Plan.

The MHDC Section 3 Coordinator requires reports submitted by the Owner/Developer, General Contractor, or Subcontractor to assess compliance with the Section 3 Act and the Section 3 Regulations. Reports are due no later than the 20th of each month. When the Section 3 Covered Project is completed, a final report will be due along with other customary due diligence documentation. The HUD Form 60002 shall be used for the final report.

The MHDC Section 3 Coordinator or MHDC staff may conduct on-site random reviews of the Section 3 Covered Project to determine whether the Owner/Developer, General Contractor, or Subcontractor are complying with its approved Section 3 Plan.

In the event the MHDC Section 3 Coordinator determines the Owner/Developer, General Contractor, or Subcontractor is not meeting its employment, training or contracting opportunity goals set out in the approved Section 3 Plan, he/she will provide the respective party with written notice of non-compliance. The notice will require the non-complying party to meet with the MHDC Section 3 Coordinator to determine if the non-complying party used its best efforts to meet Section 3 requirements and if further outreach attempts would result in goals being successfully met.