

**MINNEAPOLIS/SAINT PAUL HOUSING FINANCE BOARD  
LOW INCOME HOUSING TAX CREDIT  
QUALIFIED ALLOCATION PLAN (2016)**

**ARTICLE I  
Purpose**

Section 42(m) of the Internal Revenue Code of 1986, as amended (the “Code”) requires housing tax credit agencies to develop and adopt a “qualified allocation plan” which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions and which gives certain priorities and preferences as a condition to allocating Low Income Housing Tax Credits (the “Credit”) to housing projects. The provisions of §42 have been permanently extended, and it is in the best interest of the public health, safety and welfare of the citizens of the Cities of Minneapolis and St. Paul that an effective qualified allocation plan be in place.

**ARTICLE II  
Authority**

This Plan is to be construed and governed under the laws of the State of Minnesota and Section 42 of this Code.

Minnesota Statutes, Sections 462A.221 through 462A.225, as amended (the “Act”), provides that the amount of Credits available in Minnesota shall be allocated by certain cities and counties or their designees, including the Minneapolis/Saint Paul Housing Finance Board (the “Board”) as designee for the Cities of Minneapolis and Saint Paul.

This Qualified Allocation Plan (the “Plan”) was prepared by the staff of the Community Planning & Economic Development (CPED) of the City of Minneapolis and the Department of Planning and Economic Development of the City of Saint Paul (or any successor department which provides staff assistance to the HRA) (“PED”) as staff for the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the “HRA”) on behalf and at the request of the Board according to the procedure set forth in Section 42(m) of the Code.

**ARTICLE III  
General Concepts**

- A. This Plan gives preference in allocating Credits among selected projects to:
- (1) projects serving the lowest income tenants;
  - (2) projects contractually obligated to serve qualified tenants for the longest periods; and
  - (3) projects located in a Qualified Census Tract that are part of a cooperatively developed plan that provides for community revitalization.

**MINNEAPOLIS/SAINT PAUL HOUSING FINANCE BOARD LIHTC QUALIFIED ALLOCATION PLAN**

B. The following factors required under Section 42(m)(1)(C) of the Code have been incorporated into the selection criteria to allocate Credits to specific projects:

- (1) project location;
- (2) housing needs characteristics;
- (3) project characteristics;
- (4) sponsor characteristics;
- (5) tenant populations with special housing needs;
- (6) public housing waiting lists;
- (7) tenant populations of individuals with children; and
- (8) projects intended for eventual tenant ownership.

C. This Plan provides for review of financial feasibility of each project and its viability as a qualified low-income project throughout the credit period as of the application date, allocation date and placed in service date, all as required by Section 42(m)(2) of the Code.

D. This Plan sets forth selection criteria to be used to determine housing priorities of the Board which are appropriate to local conditions.

E. This Plan provides a procedure that the Board (or an agent or other private contractor of the Board) will follow in monitoring compliance with the provisions of Section 42 and in notifying the Internal Revenue Service of any noncompliance of which the Board or such agent becomes aware.

F. This Plan applies to tax-exempt bond financed projects as required by §42(m)(1)(D) of the Code.

**ARTICLE IV  
Definitions**

“City Recognized Redevelopment Area” means for the purpose of this Plan those areas located in a Targeted Neighborhood as defined in Minnesota Statutes, Section 469.201, subd.10, Tax Increment Financing District, Redevelopment Plan Area, or Small Area Plan and 40 Acre Study.

“Costs of intermediaries” shall mean those costs referred to as “costs of intermediaries” as that phrase is used in Section 42(m)(B)(iii) of the Code and as may be defined in any regulations promulgated pursuant thereto. In the absence of federal regulations or rulings to the contrary, such costs shall be deemed to include all costs of development of the project other than actual acquisition costs, construction costs and architectural and engineering fees, including without limitation developer fees, developer overhead, developer contingency fees, consultant fees, contractor’s profit, general requirements, contractor’s overhead, financing fees, loan origination points, marketing fees, closing costs, property management fees, legal fees, advertising costs, letter of credit costs, credit liability reserves, operating reserves, syndication fees, expenses related to syndicating the development project and any rental attainment gap.

“Qualified Census Tract” means any qualified census tract as defined in Section 42(d)(5)(C) of the Code.

“Single Room Occupancy” means a unit having one bedroom or less with rents affordable at 30% of median area income.

“Extended Use Period” means the period an owner declares in the Declaration of Land Use Restrictive Covenants, units within a project to comply with Section 42 of the Code.

**ARTICLE V**  
**Amount of Credit to Allocate**

The maximum Credits that may be allocated by the Board in any calendar year will be determined in accordance with State and federal law. The specific amount to be allocated by the Board in any year will be the amount reserved to Minneapolis and St. Paul by MHFA pursuant to Minnesota Statutes, §462A.222, Subd. 3. For 2014, such amount is estimated to be \$1,406,950 for Minneapolis and \$1,056,694 for Saint Paul.

**ARTICLE VI**  
**Credit Agency Allocation Policies**

A. The Board shall act as the designated housing credit agency on behalf of the Cities of Minneapolis and Saint Paul.

B. The Board’s aggregate allocation will be divided between the Cities as follows:

(1) The HRA and CPED shall each administer, reserve, and allocate that portion of the Board’s total allocation equal to the Cities’ respective Credit apportionment pursuant to the formula established for allocations for the applicable year under existing State law.

(2) Should either City not be able to use its entire portion of the Credit apportionment, it may share its apportionment with the other City.

(3) The City of Minneapolis (the “City”) or the HRA, whichever is sharing its apportionment, must approve a resolution validating the sharing of Credits with the other City.

(4) Upon approval by the City Council of the City of Minneapolis (the “Minneapolis Council”) or HRA Board as provided in clause (3), the Board shall authorize the sharing arrangement between the Cities and maintain a record thereof.

C. Applicants for Credits must apply to PED for project proposals located in Saint Paul and to CPED for project proposals located in Minneapolis.

D. CPED Staff, after review and approval by the Minneapolis Council, shall execute the commitment and allocation of Credits for development projects located in the City of Minneapolis.

E. The PED staff, after review and approval by the HRA Board, shall execute the commitment and allocation of Credits for development projects located in the City of Saint Paul.

F. PED staff and CPED staff will process tax credit applications and administer the Credit program pursuant to a procedural manual approved by the HRA for projects located in Saint Paul and a procedural manual approved by CPED for projects located in Minneapolis.

G. Project owners will be required to execute a Declaration of Land Use Restrictive Covenants (the "Declaration") as required by §42(h)(6) of the Code which will apply to the land on which the project is located for the term of the Extended Use Period. The Declaration shall include provisions for monitoring compliance and for reporting non-compliance to the Internal Revenue Service as provided in Article XI of the Plan.

H. Participants in the Low Income Housing Tax Credit Program will be expected to use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions as addressed in Title VIII of the Civil Rights Act of 1968. In part, Title VIII makes it unlawful to: (i) discriminate in the terms, conditions, or privileges of a sale or lease, or in providing services or facilities because of race, color, religion, sex, national origin, handicap or familial status; (ii) make or publish (or have anyone else make or publish) advertisements that indicate preferences or limitations based on race, color, religion, sex, or national origin, handicap or familial status; and (iii) tell a person that because of race, color, religion, sex, national origin, handicap or familial status, a dwelling is not available, when it is.

Suggested steps in affirmative fair housing marketing practices include:

- (1) Outreach to protected groups;
- (2) Marketing strategy that reaches protected groups; and
- (3) Self-analysis to make sure all steps are non-discriminatory.

**ARTICLE VII**  
**Application Process**

The application process for reserving and allocating the Credits shall consist of the following steps:

(1) Applicants for projects in Saint Paul shall complete, sign, date and submit to PED (Housing Division) an original application and three copies on forms supplied by PED, together with required fees and all documentation required pursuant to the Procedural Manual. Applicants for projects in Minneapolis shall complete, sign, date and submit to CPED an original application and three copies on forms supplied by CPED, together with required fees and all documentation required pursuant to the Procedural Manual.

(2) PED or CPED shall review and evaluate the application in accordance with the Procedural Manual to:

- (a) assure that applicable minimum threshold requirements to qualify for Credits have been satisfied and complied with according to Article VIII.
- (b) assign points to the project according to the selection priority section of this Plan in Article IX.

(c) determine the minimum amount of Credits necessary to make the project financially feasible and viable as a qualified low-income project throughout the credit period.

(d) determine that the applicant is current on the payment of compliance monitoring fees for projects on which the Board has allocated prior Credits to the applicant.

(3) Special Tax Counsel (the "Special Tax Counsel") appointed by PED for Saint Paul projects and by CPED for Minneapolis projects shall review applications.

(4) The project sponsors in Saint Paul shall present the project before the applicable Citizen Participation District Council for review, comment and recommendations to be submitted to the HRA. Project sponsors in Minneapolis shall present the project before the applicable neighborhood group for review, comment and recommendations to be submitted to the Minneapolis Council.

(5) The Mayor in the appropriate City will be notified by staff and provided a reasonable opportunity to comment on the project proposal.

(6) The HRA Board of Commissioners or Minneapolis Council, as applicable, upon recommendation from their respective staffs, shall make a determination to approve or deny the commitment or allocation of Credits for the project pursuant to Articles VIII and IX of this Plan and the Procedural Manual. Such recommendations shall be binding upon, and shall be adopted by, the Board.

(7) After the initial application date, staff and Special Tax Counsel shall reevaluate the application (with all amendments, as appropriate) and amount of Credit for the project (a) at the time of issuing a binding commitment to allocate Credits, (b) at the time, if any, of issuing any carryover agreement, and (c) at the time the project is placed in service. At each evaluation, PED or CPED, as appropriate, may reduce the amount of credit dollar amount to be allocated to the project or may revoke any commitment to allocate Credits to the project if it determines that the financial feasibility or viability of the project does not justify the originally applied for or committed credit dollar amount or that the criteria and requirements of this Plan have not been satisfied.

(8) Upon compliance by the Applicant with all requirements set forth in the Procedural Manual, and following final review by Special Tax Counsel after the project is placed in service, the Board will issue IRS Form 8609, Low Income Housing Credit Allocation certificate to the owner/applicant.

(9) As provided in the Procedural Manual, prior to each evaluation as to the minimum amount of Credit needed to make the project financially feasible and viable throughout the credit period, the eligible applicant will be required to submit additional information and documentation with respect to the project. The status of any federal, state, or local government subsidies anticipated must be certified in writing by the subsidizing government body as of each date of review. Misrepresentations of information will result in failure to issue IRS Form 8609, debarment from participation in the Low Income Housing Credit Program, and possible criminal penalties. Such evaluations will be made by the PED/CPED staff solely for purposes of complying with §42(m) of the Code, and shall not be relied upon by any developer or investor or used in connection with any offering of interests in the entity owning the project to such person.

**ARTICLE VIII**  
**Procedure for Selecting Projects;**  
**Project Threshold Requirements**

A. In each year in which tax credits may be allocated there will be one competition for Credit allocations from the Board, which shall coincide with the “first round” allocation procedure established by MHFA pursuant to Minnesota Statutes § 462A.222, Subd. 3. All applications must be submitted by applicants on or before 4:00 p.m. on July 11, 2014. In order to qualify for any subsequent competition rounds applications for Credits and all documentation required by the Procedural Manual must be submitted to CPED or PED no later than the deadline established by the executive director of the Board following publication by MHFA of the dates for the various rounds of competition for allocation. *An application will not be accepted if the applicant is delinquent in the payment of compliance monitoring fees or other fees due and owing to CPED, PED, the Board or their agents for projects in which the applicant materially participates as an owner, sponsor and/or managing general partner.*

B. After determinations that the project applicant satisfies the threshold requirements set forth in this Article VIII, projects will be rated according to the selection and preference priority point system in Article IX of this Plan.

C. Under the Act, all applications during the first round must meet one of the following threshold types, provided that such thresholds shall be deemed amended to the extent required by any applicable amendment to the Act:

(1) New construction or substantial rehabilitation in which, for the term of the extended use period, at least 75% of the total tax credit units are single-room occupancy units which are affordable by households whose income does not exceed 30 percent of the median area income;

(2) New construction or substantial rehabilitation family housing projects that are not restricted to persons who are 55 years of age or older and in which, for the term of the extended use period, at least 75% of the total tax credit units contain two or more bedrooms and at least one-third of the 75% must contain three or more bedrooms;

(3) Substantial rehabilitation projects of existing housing in neighborhoods targeted by the City of Minneapolis or the City of Saint Paul for revitalization;

(4) Projects in which at least 50% of the units are for mentally ill, mentally retarded, drug dependent, developmentally disabled, or physically handicapped persons, all as further described in Minnesota Statutes, Section 462A.222, Subdivision 3(c)(1)(3);

(5) Projects which preserve existing subsidized housing which is subject to prepayment if the use of tax credits is necessary to prevent conversion to market rate use.

D. The project must be shown by information in the application to be a qualified low-income building under Section 42(c)(2) of the Code and applicable regulations, rulings and notices.

E. To qualify for the competition, the project must be financially feasible and viable as a qualified low-income project throughout the credit period as documented by information in the application which satisfies reasonable, local underwriting standards as used by CPED or

PED, as appropriate, including sources and uses of funds, the total financing planned for the Project, any proceeds or receipts expected to be generated by reason of tax benefits, and the percentage of the housing credit dollar amount used for project costs other than Costs of Intermediaries. The information must show that, at a minimum (i) the sponsor is creditworthy, (ii) has site control, (iii) has the financial ability to undertake the project, including preliminary financing commitments, (iv) that the project can be completed in a timely manner, (v) that the project is forecasted to have a positive cash flow after debt service, (vi) that the project demonstrates reasonable operating expenses relative to comparable projects in the past, and (vii) that the project will comply with applicable building, land use and zoning ordinances, (viii) that the Costs of Intermediaries are not excessive for a project of that nature in that location, and (ix) that the project conforms to the City of Minneapolis' Consolidated Plan for Housing and Community Development or the City of Saint Paul's Consolidated Plan as approved by the Department of Housing and Urban Development.

F. The developer must agree to enter into a Declaration of Land Use Restrictive Covenants as required by Section 42 of the Code in form and substance satisfactory to CPED or PED, as applicable.

G. For projects other than tax exempt bond-financed projects, the developer must agree to waive its rights provided under Section 42(h)(6)(E)(i)(II) and Section 42(h)(6)(F) allowing the developer to terminate the Declaration after 15 years.

H. The developer must agree to utilize public housing waiting list(s) in marketing units to the public. The applicable public housing authority will provide referrals from its waiting list to which the developer will provide a notice of initial vacancies, including notices of open houses.

I. After reviewing the applications and recommendations of their respective staffs, the HRA Board of Commissioners/Minneapolis Council reserves the right not to award any credits. The HRA Board of Commissioners/Minneapolis Council further reserves the right not to give partial Credits to a higher ranking application but to give the Credit to the next ranking application that can use the balance of the Credit. The HRA Board reserves the right to award Low Income Housing Tax Credits to a project that received a prior Low Income Housing Tax Credit allocation from the HRA Board regardless of its current year ranking pursuant to ARTICLE IX of the Plan. The HRA Board of Commissioners/Minneapolis Council further reserves the right to terminate any further award of credits after a portion of the total credits available has been awarded.

J. For Saint Paul projects only, the HRA Board of Commissioners reserves the right at its sole discretion not to award credits to an applicant with significant parties who have serious and persistent compliance monitoring violations; or to an applicant with significant parties who have an adverse lending position with the City of Saint Paul or HRA due to any delinquencies, foreclosures, or nonperformance of contractual obligations.

K. Projects will be prioritized with the project receiving the most points being rated first, the project receiving the second most points being rated second and so on. In the event two or more projects have overall point totals which are within 2 points of one another, the projects shall be deemed to be of substantially equivalent, and the HRA Board will select the project which best meets the applicable city's housing priorities.

L. Projects selected and approved by the HRA Board of Commissioners or Minneapolis Council will be eligible to proceed toward commitment and allocation.

M. Under State law, Credits not committed or allocated by the Board as of the last day of the first round in each year must be returned to the Minnesota Housing Finance Agency. If any commitment for credits is reduced or revoked, the credits may be reallocated by the Board before the end of the last day of the first round as provided in the Procedural Manual.

N. Projects not selected for the reservation of Credits by the Board are encouraged to apply to the Minnesota Housing Finance Agency for Credits.

O. Sustainable Development Standard Requirements - Saint Paul projects: All new construction projects receiving more than \$200,000 in public investment must comply with Saint Paul Sustainable Building Policy <http://www.stpaul.gov/DocumentView.aspx?DID=11656> Projects that receive \$200,000 or less must comply with the sustainable development standards as PED/HRA Sustainability Initiative. <http://www.stpaul.gov/DocumentView.aspx?DID=11663>

P. All projects must be review by HRA staff and determined to be consistent with City/HRA plans, Saint Paul Comprehensive Plan, or Small Area Plans.

**ARTICLE IX  
Saint Paul’s Selection Priorities**

Projects for which an application is submitted will be rated by CPED or PED, as appropriate, according to the selection and preference priority point system below. Each project will be awarded points according to the nature and character of the project as determined by CPED or PED, as appropriate. There will be a two step process for awarding points. The first step is the Selection Priorities and the second is the Preference Priorities.

All new construction projects receiving more than \$200,000 in public investment must comply with the Saint Paul Sustainable Building Policy. See: <http://www.stpaul.gov/DocumentView.aspx?DID=11656> Projects that receive \$200,000 or less must comply with the sustainable development standards known as the PED/HRA Sustainability Initiative. See: <http://www.stpaul.gov/DocumentView.aspx?DID=11663>

**SELF-SCORING WORKSHEET FOR SAINT PAUL PROJECTS**

Projects located in Saint Paul for which an application is submitted will be rated by the HRA in accordance with the selection and preference priority point system below. Each applicant must fill out this worksheet and submit it along with other materials required by the Procedural Manual

**A. SAINT PAUL’S SELECTION PRIORITIES – Selection Criteria**

1. **Substantial renovation:** The project is a substantial renovation project that preserves low income housing which is defined as subsidized low income housing, the preservation of housing units with project-based Section 8 assistance funded pursuant to the McKinley-Vento Homeless Assistance Act (42. U.S.C. 11302) by transferring such federal assistance from a functionally-obsolete building into a newly-constructed building that offers affordable housing, or non-subsidized housing developments with current rents at or below 50% area median income as determined by HUD if the use of tax credits is necessary to (1) prevent conversion to market-rate use; or (2) to remedy physical deterioration of the project for which would result in loss of affordable housing.  
**(15 points)**

Points

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**Project-based Section 8:** The project is a substantial renovation project that preserves existing Project-based Section 8 assistance. **(1-5 points)**

- a) 0% - 25% of units are PBA Section 8 (1 point)
- b) 25.1% - 50% of units are PBA Section 8 (3 points)
- c) 50.1% - 100% of units are PBA Section 8 (5 points)

**HRA Land:** The project, new construction or substantial renovation, is located on HRA-owned land or has a HRA/City debt obligation. **(10 points)**

2.

**Enhanced Services, Programming, and Amenities:** The project will provide affordable housing with new or enhanced resident services contingent upon an agreement with an established organization providing such services to residents and financial plans demonstrating feasibility. **(Up to 7 points)**

3.

- a) After-school Programming and/or ECFE (1 point)
- b) Information and Referral Services (1 point)
- c) Playground Equipment or Water Feature (1 point)
- d) Case Management (1 point)
- e) Health Care Services (1 point)
- f) Resident Association and/or Community Building (1 point)
- g) Self-reliance, Life Skills, and/or Job-Training (1 point)
- h) Community Center (1 point)
- i) Other (Please describe) \_\_\_\_\_ (1 point)

**Economic Integration:** The project is located in a non-impacted area or areas of non-concentrated poverty in which the project has at least 80% of the housing units designated as tax credit units; or

4.

the project is located in an impacted area or areas of concentrated poverty in which the project has at least 20% of the units being restricted to households above 60% of the area median income.

Impacted areas and non-impacted areas are to be defined by HUD, and areas of concentrated poverty are defined by Metropolitan Council

**(7 points)**

Points

5. **No Further Subsidy:** The project will be fully funded with the inclusion of the 2015 Low Income Housing Tax Credits and/or will require no further HRA subsidy, except DEED or Metropolitan Council funds, if awarded the Credits. **(5 points)**

6. **Homelessness:** The project, new production or substantial renovation, provides affordable housing with supportive services to occupancy by homeless households.\* **(1-5 points)**

- a. At least 10% of tax credit units assist homeless residents (1 point)
- b. At least 20% of tax credit units assist homeless residents (3 points)
- c. 100% of tax credit units assist homeless residents (5 points)

7. **Senior Housing:** The project conforms to LIHTC threshold number 1, and serves only residents 55 years of age or older. **(5 points)**

8. **Intermediary Costs (soft costs):** Points will be given to projects on a sliding scale of intermediary costs based on percentage of total project costs. For selected projects, this percentage will be enforced at issuance of IRS Form 8609. **(3 or 5 points)**

% of Total Project Cost	Points
0%-15%	5
15.1% – 20%	3

9. **Transit:** The project, either new production or substantial rehabilitation, is located within 0.25 miles of a completed or planned Light Rail Transit (“LRT”) station, Bus Rapid Transit (“BRT”) stop or a high-frequency bus route, which is defined as a bus running at least every 30 minutes. **(3 points)**

10. **Non-Profit Status:** A tax exempt 501(c)(3) or 501(c)(4) non-profit organization, whose primary service area includes the City of Saint Paul, is a material participant of the project (i.e. project sponsor/participation as a general partner). **(2 points)**

11 **Neighborhood Support:** The developer has a recommendation of support in writing  
 . for the project from a city recognized citizen participation community planning council, or  
 neighborhood-based planning organization which represents the geographic location of  
 the project, (a recommendation of support from the applicant is not eligible for points).  
**(1 point)**

12 **Non-smoking:** The project has a policy prohibiting smoking in all apartment units and all  
 . common areas of the project. The project applicant must develop and maintain a written  
 occupancy policy that prohibits smoking in all apartment units and in all project common  
 areas. The project must include a non-smoking clause in the lease for every household.  
**(1 point)**

\*Note: Homeless households shall be defined as homeless individuals, homeless  
 veterans, homeless families or unaccompanied youth living in a shelter, on  
 the streets, or doubled-up in housing not their own, and current project  
 residents who are participating in a supportive housing program while residing  
 at the project site. The developer must provide satisfactory evidence in writing  
 of a commitment from an appropriate social service agency to provide support  
 services.

**SAINT PAUL’S PREFERENCE PRIORITIES**

According to Article VIII (K), projects will be prioritized with the project receiving the most  
 points being rated first, the project receiving the second most points being rated second  
 and so on. If two or more projects have overall point totals which are within 2 points of  
 one another, the projects shall be deemed to be of substantially equivalent, and the HRA  
 Board will select the project which best meets the applicable city’s housing priorities.

## **ARTICLE X**

### **Credits for Buildings Financed by Tax-Exempt Bonds**

Section 42(h)(4) of the Code provides that under certain circumstances buildings or a portion thereof financed with tax-exempt bonds which have a bond allocation by the State of Minnesota pursuant to Section 146 of the Code and which are issued by the Cities may qualify under Section 42 of the Code under certain circumstances without receiving an allocation of housing credit dollar amount. In order to qualify for this exemption from credit volume cap, the taxpayer/owner must enter into a Declaration as described in Article VIII, Section F. Section 42(h)(6)(c)(ii) provides that the credit amount claimed by the taxpayer/owner under this exception may not exceed the amount necessary to support the applicable fraction specified in the use agreement. In order to qualify for the exemption from the credit volume cap, Section 42(m)(1)(D) provides that the project must satisfy the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located. In order to qualify for the exemption from the credit volume cap, Section 42(m)(2)(D) provides that the governmental unit which issues the bonds (or on behalf of which the bonds were issued) must make a determination that the credit amount to be claimed does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. The issuer analysis and determination must address all of the items set forth in Section 42(m)(2)(B) of the Code.

Section 42(m)(1)(A)(iii) of the Code requires that the applicant must also submit a comprehensive market review of the housing needs of low-income individuals in the area to be served by the project. The review must be conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by the Board.

The HRA and CPED will provide procedures in the Procedural Manual, see Section VII(B), or supplements thereto, for reviewing applications to the extent required by the above provisions. Such procedures will require that the taxpayer/owner (i) submit an application on forms provided by the HRA or CPED containing substantially the same information as required for housing credit dollar amount applications to the extent determined by the HRA or CPED to be necessary to make the determinations required above, (ii) submit nonrefundable application review fees and special tax counsel fees as determined by the HRA or CPED, not to exceed the fees established in the Procedural Manual, and an opinion of counsel that the buildings qualify for an allocation of Credits under Section 42(h)(4) of the Code. Neither the threshold requirements in Article VIII C or Article VIII G nor the Selection Priorities and Preference Priorities provided in Article IX will apply to such projects. For purposes of Section 42(m)(1)(D) of the Code, this Plan shall be deemed the qualified allocation plan applicable to projects located in the City of Minneapolis or the City of Saint Paul.

## **ARTICLE XI**

### **Compliance Monitoring**

#### Statutory Requirements

Section 42(m)(1)(B)(iii) of the Code, as in effect prior to the January 1, 1991 effective date of the IX amendment by Section 11407(b)(2) of the Revenue Reconciliation Act of 1990, required that the Board establish a procedure for notifying the Internal Revenue Service of any noncompliance with Section 42 of which it becomes aware. In addition, Section 42(m)(1)(B)(iii) of the Code as so amended requires that beginning January 1, 1992, the Board establish a procedure for monitoring projects, whenever placed in service, for compliance with the

restrictions imposed by Section 42 of the Code. The Procedural Manual shall include any such additional provisions for monitoring compliance as are required by the Code or as are determined to be reasonably necessary by the monitoring agent to enforce the provisions.

The Board will require that all Declarations required by this Plan or the Procedural Manual include the following provisions.

Monitoring Procedure

1. Recordkeeping and Retention

A. Records Required

The Owner will be required to keep records for each qualified low income building in the project. Such records for each compliance period must show at a minimum:

(i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential unit);

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

(iii) The rent charged on each residential rental unit in the building (including any utility allowances). Documentation including rent rolls, leases, and utility allowances per IRS Notice 94-60 issued June, 1994;

(iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under §42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);

(v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;

(vi) The annual income certification of each low-income tenant per unit on forms provided by the Board, except in cases where the owner has received an IRS waiver under procedure 94-64;

(vii) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation), except in cases where the owner has received an IRS waiver under procedure 94-64. Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42(g);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

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

#### B. Retention Policy

The Owner will be required to retain the records for each building in the project for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

### II. Certification and Review

#### A. Certification

The owner will be required to certify at least annually to the parties specified in the Declaration for the preceding 12-month period.

(i) The project meets the requirements of the 20-50 test under section 42(g)(1)(A) or the 40-60 test under section 42(g)(1)(B), whichever minimum set-aside test is applicable to the project, and the 15-40 test under sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed", projects, if applicable to the project;

(ii) There was no change in the applicable fraction (as defined in §42(c)(1)(B) of any building in the project, or that there was a change, and the description of the change;

(iii) The owner has received an annual income certification from each low-income tenant, except in cases where the owner has received an IRS waiver under Procedure 94-64, and documentation to support that certification or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described above;

(iv) Each low-income unit in the project is rent-restricted under section 42(g)(2);

(v) All units in the project are for use by the general public and are used on a non-transient basis (except for transitional housing for the homeless provided under § 42(i)(4)(B)(iii));

(vi) Each building in the project is suitable for occupancy, taking into account local health, safety, and building codes;

(vii) There has been no change in the eligible basis (as defined in section 42(d)) of any building in the project or that there has been a change, and the nature of the change;

(viii) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

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

(x) If the income of tenants of a low-income unit in the project increases above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

(xi) A Declaration of Land Use Restrictive Covenants, which constitutes an extended low-income housing commitment as described in §42(h)(6) was in effect (for buildings subject to § 7108(c)(1) of the Revenue Reconciliation Act of 1989).

**B. Review**

CPED staff and PED staff shall review the certifications submitted under Section XI(II)(A) above for compliance with the requirements of §42. In addition, pursuant to the Procedural Manual on at least an annual basis either;

(i) CPED staff and PED staff shall require the owners of at least 50% of all low-income housing tax credit projects in their respective jurisdiction to submit to the monitoring agent specified in Section V below for compliance review a copy of the annual income certification from each low-income tenant, a copy of the documentation the owner has received to support that certification and the rent record for each low-income tenant in at least 20% of the low-income units in their projects; or

(ii) CPED staff and PED staff shall inspect at least 20% of the low-income housing projects each year and must inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20% of the low-income units in those projects; or

(iii) The owners of all low-income housing projects must submit to the monitoring agent each year information on tenant income and rent for each low-income unit, in the form and manner designated by CPED staff and PED staff and the owners of at least 20% of the projects must submit to the monitoring agent for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20% of the low-income units in their projects.

If CPED staff and PED staff provides in the Procedural Manual for the inspection of a reasonable number of projects pursuant to (ii) above, the low-income housing projects to be inspected shall be chosen in a manner that will not give owners of low-income housing projects advance notice that their records for a particular year will or will not be inspected. However, the monitoring agent may give an owner reasonable notice that an inspection will occur so that the owner may assemble records, for example, 30 days advance notice of inspection. In any event, CPED staff and PED staff shall determine which tenants' records are to be inspected or submitted by the owners for review.

### III. Inspection Provision

The monitoring agent and the Board shall have the right to inspect any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provisions of this Section III are required in addition to any inspections of low-income certifications and documentation under paragraph II(B) of this section.

### IV. Notification of Noncompliance Provisions

A. General. CPED staff and PED staff shall give the notice described in paragraph (B) of this Section to the owner of a low-income housing project and the notice described in paragraph (C) of this section to the Internal Revenue Service.

B. Notice to Owner. CPED staff and PED staff shall provide prompt written notice to the owner of a low-income housing project if the Authority does not receive the certification described in Section XI(II)(A) or is not permitted to inspect the tenant income certifications, supporting documentation and rent records described in Section XI(II)(B) or (C) hereof or discovers by inspection or review, or in some other manner, that the project is not in compliance with the provisions of § 42 of the Code.

C. Notice to Internal Revenue Service. CPED staff and PED staff, on behalf of the Board shall file Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in paragraph (D) of this Section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. CPED staff and PED staff must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of a project under § 42(c)(1)(A) is noncompliance that must be reported to the Internal Revenue Service under this paragraph. If a CPED staff and PED staff reports on form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Authority need not file Form 8823 in subsequent years to report that building's noncompliance.

D. Correction Period. Owner will have an opportunity to supply any missing certifications and bring the project into compliance with the provisions of Section 42 of the Code within a period specified in the notice to the owner, not exceeding 90 days from the date of notice to the owner described in paragraph (B) of this Section IV. CPED



or PED staff may extend the correction period for up to six months, but only if CPED or PED staff determines there is good cause for granting the extension.

E. **Retention of Records.** CPED staff and PED staff must retain records of noncompliance or failure to certify for 6 years beyond the agency's filing of the respective Form 8823. In all other cases, CPED staff and PED staff must retain the certifications and records described in Section XI(II)(A) of this Plan for 3 years from the end of the calendar year CPED staff and PED staff receives the certifications and records.

F. Project owners shall provide to CPED staff or PED staff, whichever is applicable, any evidence of noncompliance correction and correspondence to or received from the Internal Revenue Service with respect to any reported noncompliance.

V. Delegation of Authority

A. General. CPED staff and PED staff may retain an agent or other private contractor (the "Authorized Delegate") to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Board to monitor compliance, except for the responsibility of notifying the Internal Revenue Service under Section XI(IV) of this Section. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation under Section XI(II)(B) hereof, the right of inspect buildings as described in Section XI(III) hereof, and the responsibility of notifying building owners of lack of certification of noncompliance under Section XI(IV) hereof. The Authorized Delegate must notify the Board of any noncompliance or failure to certify.

B. Limitations. In the event the Board delegates compliance monitoring to an Authorized Delegate, the Board shall use reasonable diligence to ensure that the Authorized Delegate properly performs the delegated monitoring functions. Delegation by the Board of Compliance monitoring functions to an agent or other private contractor shall not relieve the Board of its obligation to notify the Internal Revenue Service of any noncompliance of which the Board becomes aware.

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

VI. Effective Date. Section 42(m) and the applicable Treasury Regulations do not require monitoring for whether a building or project is in compliance with the requirements of §42 prior to January 1, 1992. However, if the Board becomes aware of noncompliance that occurred prior to January 1, 1992, the Board is required to notify the Internal Revenue Service of that noncompliance.

VII. Fees.

The Owner will be required to pay CPED or HRA or their agent a monitoring fee as determined by them or their agent.

VIII. Owner Responsible for Compliance.

The Owner is solely responsible for ensuring compliance monitoring of the project. This procedure is established solely for purposes of establishing the Board's compliance with Section 42(m)(1)(B)(iii) of the Code, and shall not be deemed in any way to be for the benefit of any Owner, developer, any partner thereof or investor therein, any may not be relied upon or used in connection with any offering to any such person of interests in the equity owning the project.

**ARTICLE XII**  
**Amendments to Plan**

This Plan is subject to modification or amendment at any time to ensure that the provisions contained herein conform to the requirements of Section 42(m) of the Code, applicable State law, and all official interpretations thereof. Amendments required solely to comply with the Code, applicable regulations or applicable state law may be approved by the Executive Director. Modifications or amendments and the manner of adoption thereof shall not be inconsistent with the Code.

Written explanation will be made available to the general public for any allocation of a housing credit that is not made in accordance with the Board's established priorities and selection criteria.