



**Webinar Only, Session Location:  
Housing Division**

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**Remote Attendance Information:**

Dial (877) 273-4202  
Access Code: 7233056#  
Webinar: [Click here to register](#)

*Thank you for attending this public work session and  
for your support of affordable housing.*

**Date:** Monday, February 13, 2017

**Time:** 8:30 a.m.

**Vice Chairperson:** Jeanette McKee

## AGENDA ITEMS

### Work Session Begins

- ❖ Introduction and Webinar & Audio Rules
- ❖ Public Comments - Public comment is welcome on any public matter that is not on the agenda and that is within the jurisdiction of the agency.

### Multifamily Program (Manager: Mary Bair)

- ❖ QAP public comment accepted and instructions for submitting in writing
- ❖ Qualified Contract Process revision

### Executive Director (Bruce Brensdal)

- ❖ Update

### Miscellaneous

Work Session ends.

\*We make every effort to hold our meetings at fully accessible facilities. Any person needing reasonable accommodation must notify the Housing Division at (406) 841-2840 or TDD (406) 841-2702 before the scheduled meeting to allow for arrangements.

### Future Meeting Dates and Locations (subject to change)

March 12, (13), 14 2017: Bozeman	April 10, 2017: no meeting	May 8, 2017: Great Falls
June 12, 2017: webinar	July 10, 2017: no meeting	August 14, 2017: Helena
September 11, 2017: no meeting	October (15) 16, 2017: Billings	November 13, 2017: no meeting
November 13, 2017: no meeting	December 11, 2017: no meeting	January 22, 2018: Helena

*The Board of Housing's mission is to create affordable housing opportunities for Montanans whose needs are not met by the market. We value people, families, communities, fairness, teamwork, mutual respect, integrity. We are committed and passionate about collaborating with our partners to make sure Montana's families and communities have attainable, affordable, accessible and sustainable homes.*

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

2018 Draft Qualified Allocation Plan release for public comment

## BACKGROUND

Every state Housing Credit allocating agency is required by Section 42 to have a Qualified Allocation Plan (QAP). The Housing Credits are awarded once a year. The QAP is the rulebook for the Housing Credit Program for the year. This is the proposed Montana QAP for 2018.

## PROPOSAL

The 2018 QAP draft has been created by staff working with developers and other interested parties in the open roundtable discussion. Changes were made to update the QAP to clarify and change processes.

Staff is presenting the draft for board members the document for public comment. The list of changes will be presented as well as an active discussion of the proposed processes. Board member suggested changes will be incorporated into the draft by legal counsel.

# MONTANA BOARD OF HOUSING

## HOUSING CREDIT PROGRAM

### 20187 Draft QUALIFIED ALLOCATION PLAN (QAP)

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# Table of Contents

- INTRODUCTION..... 1**
- SECTION 1 – DEFINITIONS ..... 2**
- SECTION 2 - OVERVIEW OF MBOH HOUSING CREDITS ..... 9**
  - NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION ..... 10
  - ACQUISITION AND SUBSTANTIAL REHABILITATION..... 10
  - EVENTUAL HOME OWNERSHIP..... 10
  - FEDERALLY SUBSIDIZED BUILDINGS ..... 10
  - QUALIFYING BUILDINGS ..... 10
  - ELECTION ..... 11
    - Rent Limitation..... 11*
  - BASIS ..... 11
    - Eligible Basis..... 11*
    - Qualified Basis ..... 11*
  - CREDIT CALCULATIONS ..... 12
  - ALLOCATION OF CREDIT ..... 12
    - Need for Allocation..... 12*
    - Allocation Applies Throughout Credit Period ..... 12*
    - Time for Obtaining Carryover Commitment ..... 12*
    - Carryover Provision..... 12*
  - COMPLIANCE PERIOD..... 12
    - Three-year Tenant Protection Period ..... 13*
- SECTION 3 - MONTANA SPECIFIC REQUIREMENTS..... 13**
  - ELIGIBLE APPLICANTS ..... 13
  - HOUSING CREDIT PROCEEDS ..... 13
  - SOURCES AND USES CERTIFICATION..... 14
  - DEVELOPMENT COST LIMITATIONS ..... 14
    - Hard Cost Per Unit/Hard Cost Per Square Foot and Total Project Cost Per Unit/Total Project Cost Per Square Foot..... 14*
    - Additional Cost Limitations..... 14*
    - Contractor’s Overhead..... 15*
    - General Requirements..... 15*
    - Contractor Profit..... 15*
    - Developer Fees..... 15*
    - Disclosure of Transactions Involving Related Parties..... 15*
    - Limitation on Soft Costs ..... 15*
  - UNDERWRITING ASSUMPTIONS AND LIMITATIONS ..... 15
    - Credit Percentage Rate for Housing Credit Calculation ..... 15*
    - Operating Expenses ..... 16*
    - Debt Coverage Ratio ..... 16*
    - Maximum Rents..... 16*
    - Operating Reserves..... 16*
    - Replacement Reserves ..... 17*
    - Utility Allowances ..... 17*
    - Additional Underwriting Assumptions ..... 17*
  - PROJECT ACCESSIBILITY REQUIREMENTS..... 17
  - ENERGY, GREEN BUILDING AND OTHER INITIATIVES, GOALS AND REQUIREMENTS ..... 18
    - A. Integrated Design Process and Community Connectivity ..... 18*
    - B. Visitability and Universal Design Principles ..... 18*

C. Sustainable Site, Location and Design .....	18
D. Passive House Standard .....	18
E. Energy and Water Conservation.....	19
F. Material and Resource Efficiency .....	19
G. Amenities .....	19
H. Healthy Living Environments (Indoor Environmental Quality) .....	19
I. Smoke-Free Housing.....	19
J. State of Montana Building Code.....	20
K. Required Infrared Testing for Projects Awarded Credits .....	20
SUBSTANTIAL REHABILITATION .....	20
TAX EXEMPT BOND FINANCED PROJECTS.....	20
EVENTUAL HOME OWNERSHIP.....	20
130% BASIS BOOST .....	21
Basis Boost for QCT and DDA Projects.....	21
MBOH Discretionary Basis Boost for Non-QCT/DDA Projects .....	21
NON-HOUSING AMENITIES.....	22
ACCOUNTANT AND OWNER CERTIFICATION .....	22
INFORMATION REQUEST AND RELEASE POLICY .....	22
EX PARTE COMMUNICATION POLICY.....	22
<b>SECTION 4 - APPLICATION SUBMISSION AND AWARD SCHEDULE – MANNER OF SUBMISSION.....</b>	<b>23</b>
COMPETITIVE 9% CREDIT APPLICATIONS.....	23
FIRST AWARD ROUND: .....	23
SECOND AWARD ROUND (IF ANY):.....	23
BOARD CONSIDERATION AND DETERMINATION PROCESS .....	24
4% CREDIT APPLICATIONS FOR TAX EXEMPT BOND FINANCED PROJECTS .....	24
APPLICATION SUBMISSION METHOD FOR 4% AND 9% CREDIT APPLICATIONS.....	25
<b>SECTION 5 - FEE SCHEDULE .....</b>	<b>26</b>
LETTER OF INTENT .....	26
APPLICATION .....	26
REQUESTING ADDITIONAL CREDITS AFTER INITIAL ALLOCATION .....	26
COMPLIANCE FEES.....	26
DEVELOPER/OWNER REIMBURSEMENT OF BOARD LEGAL EXPENSES.....	26
<b>SECTION 6 - MAXIMUM AWARDS.....</b>	<b>27</b>
MAXIMUM CREDIT AWARD.....	27
<b>SECTION 7 – SET ASIDES .....</b>	<b>27</b>
NON-PROFIT .....	27
CORRECTIVE AWARD .....	27
SMALL RURAL PROJECTS.....	28
GENERAL RULES REGARDING SET ASIDES .....	28
<b>SECTION 8 – LETTER OF INTENT AND APPLICATION PROCESS .....</b>	<b>29</b>
LETTER OF INTENT .....	29
APPLICATION .....	29
THRESHOLD REQUIREMENTS ARE MANDATORY .....	30
THRESHOLD REQUIREMENTS .....	30
Public Notice .....	33
Example of Public Notice.....	33

<b>SECTION 9 – EVALUATION AND AWARD.....</b>	<b>34</b>
THRESHOLD EVALUATION AND CONSIDERATIONS .....	34
AMOUNT OF HOUSING CREDIT ALLOCATION .....	35
DEVELOPMENT EVALUATION CRITERIA AND SCORING .....	36
1. <i>Extended Low Income Use*</i> (100 points possible) .....	36
2. <i>Lower Income Tenants*</i> (220 points possible) .....	37
3. <i>Project Location*</i> (100 points possible).....	37
4. <i>Housing Needs Characteristics*</i> (190 points possible).....	38
5. <i>Project Characteristics*</i> (230 points possible).....	39
6. <i>Development Team Characteristics*</i> (330 points possible) .....	40
7. <i>Participation of Local Entity</i> (60 points possible).....	41
8. <i>Tenant Populations with Special Housing Needs*</i> (100 points possible) .....	41
9. <i>Developer Knowledge and Responsiveness (Up to minus (-) 400 points possible)</i> ...	42
MINIMUM SCORING THRESHOLD.....	44
AWARD DETERMINATION SELECTION STANDARD.....	45
<b>SECTION 10 – RESERVATION, CARRYOVER AND FINAL ALLOCATION.....</b>	<b>46</b>
RESERVATION AGREEMENT .....	46
GROSS RENT FLOOR ELECTION .....	47
DECLARATION OF RESTRICTIVE COVENANTS .....	47
CARRYOVER COMMITMENT.....	47
10% TEST .....	48
PLACED IN SERVICE .....	48
FINAL ALLOCATIONS/8609 .....	48
<b>SECTION 11 - DEVELOPER/APPLICANT RESPONSIBILITIES.....</b>	<b>50</b>
STATE LAW REQUIREMENTS .....	50
PUBLIC NOTIFICATION .....	50
QUARTERLY STATUS REPORTING .....	50
CHANGES TO PROJECT OR APPLICATION.....	51
<b>SECTION 12 - COMPLIANCE MONITORING .....</b>	<b>51</b>
COMPLIANCE FEES.....	52
RECORDKEEPING, RECORD RETENTION AND DATA COLLECTION .....	52
<i>Recordkeeping</i> .....	52
<i>Records Retention</i> .....	53
<i>Data Collection</i> .....	53
OWNERS CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE .....	53
INCOME AND EXPENSE SUMMARY.....	53
SUBMISSION DEADLINES .....	53
REVIEW BY MBOH STAFF.....	53
OWNERSHIP/MANAGEMENT CHANGES .....	53
EDUCATION REQUIREMENTS.....	54
TENANT INCOME CERTIFICATIONS (TIC).....	55
<i>Frequency and Form</i> .....	55
STUDENT STATUS CERTIFICATION.....	55
ON-SITE INSPECTIONS .....	55
NOTICE TO OWNER (26 CFR 1.42 (E)(2)) .....	55
CORRECTION PERIOD (26 CFR 1.42 (E)(4)) .....	56
NOTICE TO IRS (26 CFR 1.42 (E)(3)) .....	56
LIABILITY (26 CFR 1.42 (G)) .....	56
MARKETING THE PROJECT .....	56

QUALIFIED CONTRACT PROCESS..... 56

**SECTION 13 – DISCLAIMER.....** 57

    MBOH POLICY ON NON-DISCRIMINATION ..... 57

    QUALIFIED ALLOCATION PLAN REVISIONS ..... 57

    MBOH POLICY ON CIVIL RIGHTS COMPLIANCE ..... 57

**HOUSING CREDIT FORMS:.....** 58

## INTRODUCTION

The low income housing tax credit is established under Section 42 of the Internal Revenue Code of 1986. The credit is a federal income tax credit for Owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements.

Congress established the Low Income Housing Tax Credit program by enactment of the Tax Reform Act of 1986. Montana Board of Housing (MBOH) implemented and began administering the Low Income Housing Tax Credit program in 1987 in the State of Montana. Since then, the program has assisted in providing for the retention, rehabilitation, and construction of rental housing for low income individuals and families for over 6,000 units throughout Montana.

The Omnibus Budget Reconciliation Act of 1989 required the appropriate administering agencies (in this case, MBOH) to allocate credits pursuant to a Qualified Allocation Plan (QAP) which sets forth the priorities, considerations, criteria and process for making Allocations to Projects in Montana. The Omnibus Budget Reconciliation Act of 1993 provided a permanent extension for the Low Income Housing Tax Credit.

Montana Board of Housing (MBOH) is the state agency that allocates the tax credits for housing located in Montana. The per state resident amount of tax credit allocated annually for housing is limited as specified by the IRS and adjusted from time to time as provided in notice from the IRS to \$2.30 with a minimum cap as allocated by IRS, whichever is larger. The current allocation of Tax Credits plus any inflation factor the IRS may calculate is posted to the MBOH website, normally in August or September each year. Montana receives the minimum cap because of its population.

An Owner must obtain a Final Allocation from MBOH and meet all other applicable requirements before claiming the tax credit.

This QAP is intended to ensure the selection of those developments which best meet the most pressing housing needs of low income people within the State of Montana in accordance with the guidelines and requirements established by the federal government and the requirements, considerations, factors, limitations, criteria and priorities established by the MBOH Board.

At its ~~February 8, 2016~~ February 13, 2017 meeting, the MBOH Board considered and approved public notice and distribution of the proposed 201~~87~~ Qualified Allocation Plan (QAP). Public notice of the proposed 201~~87~~ QAP and the opportunity for public comment was published and distributed on ~~February 8, 2016~~ February \_\_\_\_\_, 2017 with oral comments received at a public hearing ~~February 17, 2016~~ \_\_\_\_\_, 2017. At its ~~March 14, 2016~~ March \_\_\_\_\_, 2017 meeting, after considering written and oral public comment on the proposed 201~~87~~ QAP, the MBOH Board approved the proposed 201~~87~~ QAP for submission to and approval by the Montana Governor. The Governor of Montana, Steve Bullock, approved the plan as the final 201~~87~~ QAP on ~~April 11, 2016~~ \_\_\_\_\_, 2017.

MBOH annually makes available for reservation and Allocation its authorized volume cap of credit authority subject to the provisions of this QAP. Montana's Qualified Allocation Plan for the current and prior years, along with current Forms, are available at <http://housing.mt.gov/MFOAP.MBOH> evaluates tax credit Applications, selects the Projects for which tax credits will be reserved, and allocates credits to the selected developments meeting applicable requirements. Federal legislation requires that the administering agency allocate only the amount of credit it determines necessary to the financial feasibility of the development.



Tax credits not Awarded during a given round or any unused credits from earlier rounds may, at the discretion of MBOH, be carried forward for the next round of allocation or, as MBOH determines necessary for financial feasibility, be used to increase the amount of tax credits Awarded for a Project selected for an Award of tax credits in a prior round.

Consistent with the foregoing and notwithstanding any other provision of this QAP, all tax credit Awards, Reservation (Initial Allocations), Carryover Commitments, 10% Cost Certifications and Final Allocations are subject to and conditional upon IRS authorization and allocation of tax credits for the State of Montana.

## SECTION 1 – DEFINITIONS

As used in this QAP, the following definitions apply unless the context clearly requires a different meaning:

“4% Credits” means HCs that may be Awarded in accordance with the applicable QAP to Projects with tax-exempt financing under the volume limitation on private activity bonds and, except as otherwise provided by this QAP for Applications combining 4% and 9% Credits, outside the competitive allocation process applicable to 9% Credits.

“9% Credits” means HCs that may be Awarded through the competitive process in accordance with the applicable QAP.

“10% Cost Certification” means the certification that must be provided to MBOH using the MBOH 10% Cost Certification Forms.

“Absorption Rate” means the number of months projected in the Application’s market study for a Project to become fully leased, using the calculations listed in the full market study guidelines posted on the MBOH website.

“Acquisition” means obtaining title, lease or other Land and Property Control over a property for purposes of an HC Project. Acquisition includes purchase, lease, donation or other means of obtaining Land and Property Control.

“Acquisition/Rehab” means Acquisition of a property with one or more existing buildings and renovation meeting Montana’s minimum Rehabilitation standard set forth in Section 3, Substantial Rehabilitation, for existing buildings on the property that are part of an HC Project.

“Adjusted Construction Costs” means Construction Costs excluding General Requirements.

“Allocation” means an Initial Allocation or a Final Allocation.

“Applicable QAP” means: (a) for purposes of any substantive issues relating to an Award, ~~or to~~ the Development Evaluation Criteria, Scoring, Selection Criteria or Selection Standard for such Award, or the fee amounts charged for Letter of Intent, Application, 10% Cost Certification and Final Allocation, the particular year’s QAP under which the Application is or was submitted, evaluated and Awarded HCs; or (b) for purposes of Project changes, Reservation (Initial Allocation), Carryover Commitment, 10% Cost Certification (other than the fee amount), Final Allocation (other than the fee amount), compliance requirements, compliance audits, and any post-Award procedures, the QAP most recently adopted.

“Applicant” means the entity identified as such in the Application, and who is and will remain responsible to MBOH for the Application. When used in reference to a Letter of Intent, the term means the person or entity on whose behalf the Letter of Intent is submitted and who is and will remain responsible to MBOH for the Letter of Intent.

“Application” means a request for an Award of HCs submitted in the form specified by and according to the requirements of this QAP.

“Architect” means a professional licensed by the applicable state authority as a building architect.

“Available Annual Credit Allocation” is defined as and includes the state’s actual or estimated credit ceiling for the current year plus any other available credits from prior year credit authority determined as of 20 business days prior to the applicable Application deadline, and includes any credits held back pursuant to court order or subject to Award under the Corrective Award set aside.

“Award” means selection of a Project by the MBOH Board to receive a Reservation of HCs.

“Award Determination Meeting” means the meeting of the MBOH Board at which the Board selects one or more Applicants to receive an Award.

“Carryover” means the process and determination of MBOH by which Awarded and reserved HCs are continued and carried into the second year after Award of the HCs by MBOH issuance of a Carryover Commitment, according to the specific requirements of this QAP.

“Carryover Commitment” means a Carryover of HCs based upon an MBOH Carryover determination, which commitment is conditional upon the Applicant performing all conditions and requirements for Final Allocation as set forth in the Applicable QAP, the Carryover Commitment document issued by MBOH and applicable law. “Cold Weather Development and Construction” means experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel.

“Commercial Purposes” means use of any Project Amenities, common space or other Project property or facilities by others than tenants for which the Project owner or management receives any compensation for such use, whether in cash or in kind.

“Common Area” means any space in the building(s) on the Project property that is not in the units (except manager units), i.e. hallways, stairways, community rooms, laundry rooms, garages/carports, manager units, etc. Common Area is eligible to be paid for with Housing Credits.

“Compliance Period” means, with respect to any building, the initial period of 15 taxable years beginning with the 1st taxable year of the applicable credit period as provided in 26 U.S.C. § 42.

“Construction Costs” means all costs listed on the UniApp, Section C, Uses of Funds, under the Site Work and Rehab sections.

“Consultant” or “HC Consultant” means an individual or entity advising a Developer or Owner with respect to the HC Application and/or development process.

“Contractor’s Overhead” means the contractor’s overhead shown in the Applicant’s properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

“Contractor Profit” means the contractor’s profit shown in the Applicant’s properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

“Debt Coverage Ratio” or “DCR” means the ratio of a Project’s net operating income (rental income less Operating Expenses and reserve payments) to foreclosable, currently amortizing debt service obligations.

“Design Professional” means a housing/building design professional.

"Developer" means the individual(s) and/or entity(ies) specifically listed and identified as the developer in the Uniform Application, Section A - Applicant Developer/Sponsor, responsible for development, construction and completion of an HC Project.

"Developer Fee" means those costs included by the Applicant in the UniApp, adjusted as necessary to comply with the maximum Developer's fee specified in Section 3, Additional Cost Limitations, Developer Fees, which are included as Developer's fees by the Cost Analysis.

"Development Evaluation Criteria" means the evaluation and scoring criteria set forth in QAP Section 9, Evaluation and Award.

"Development Team" means and includes the Applicant, Owner, Developer, General Partner, Qualified Management Company, and HC Consultant identified as such in the Application.

"Difficult Development Areas" or "DDA" means an area designated by HUD as a Difficult Development Area.

"Disqualify" or "Disqualification" means, with respect to an Application, that the Application is returned to the Applicant by MBOH without scoring and without consideration for an Award of HCs, as authorized or required by this QAP.

"Elderly Property" means a Project ~~that for which a Fair Housing Act exemption for housing for older persons will apply, i.e., for will limit its tenants to~~ households that include at least one individual age 55 or older or in which all household members are age 62 or older, as more specifically defined in the Fair Housing Act definition of "housing for older persons" as codified at 42 U.S.C. § 3607(b)(2)(B), (C) and (C)(i). If permitted by the rules applicable to other federal funding sources involved in the Project, households may also include disabled individuals below the specified age thresholds.

"Expense Coverage Ratio" means, with respect to a Project with no hard debt included in the UniApp, the ratio of the Project's operating income to expenses.

"Experienced Developer" means a Developer who was entitled by written agreement to receive at least 50% of the Development Fees on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state housing finance agency has conducted a compliance audit which revealed no significant problems.

"Experienced Partner" means a member of the Development Team who was a member of the Development Team on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state housing finance agency has conducted a compliance audit which revealed no significant problems.

"Extended Use Period" means the Compliance Period plus an additional period of at least 15 years, or a longer period, as specified in the Application and the Restrictive Covenants.

"Final Allocation" means, with respect to HCs, MBOH issuance of an IRS Form 8609(s) (Low Income Housing Credit Allocation Certificate) for a Project after building construction or Rehabilitation has been completed according to the Project Application and any MBOH ~~or MBOH~~ Board-approved changes and the building has been Placed in Service.

"Final Cost Certification" means an independent third party CPA cost certification, including a statement of eligible and qualified basis for the Project, submitted to MBOH on the form specified by and in accordance with the requirements of this QAP, for purposes of obtaining IRS Form 8609(s).

“Form” means the most current version of any Form referenced in this QAP. All Forms are available on the MBOH website.

“General Partner” means the general partner of a partnership entity that is formed for purposes of a Project.

“General Requirements” means the contractor's miscellaneous administrative and procedural activities and expenses that do not fall into a major-function construction category and are Project-specific and therefore not part of the contractor's general overhead, categorized in accordance with NCSHA standards and shown in the Applicant's properly completed UniApp Supplement, Section C, Limitations and Requirements.

“Gut Rehab” means a Project that includes the replacement and/or improvement of all major systems of the building, including (i) removing walls/ceilings back to the studs/rafters and replacing them; (ii) removing/replacing trim, windows, doors, exterior siding and roof; (iii) replacing HVAC, plumbing and electrical systems; and (iv) replacing and/or improving the building envelope (i.e., the air barrier and thermal barrier separating exterior from interior space) by either removing materials down to the studs or structural masonry on one side of the exterior walls and subsequently improving the building envelope to meet the whole-building energy performance levels for the project type, or creating a new thermal and air barrier around the building.

“Hard Costs” means and includes all costs other than Soft Costs, land Acquisition costs ~~and~~, operating and replacement reserve costs and the Letter of Intent fee, Application Fee, Reservation Fee, 10% Cost Certification Fee and Final Allocation (8609) fee, as required in the Applicable QAP. Hard Costs include any building Acquisition costs.

“Hard Cost Per Square Foot” means Hard Costs divided by Project Square Footage shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

“Hard Cost Per Unit” means an amount calculated by dividing Hard Costs by the number of units in the Project, as calculated in the UniApp Supplement, Section C, Cost Limitations and Requirements, Part XI, line “Cost Per Unit.”

“Housing Credits” or “HCs” or “Credits” means federal low-income housing tax credits allocated or available for allocation under this Montana QAP.

“Initial Allocation” means the conditional setting aside by MBOH of HCs from a particular year's federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

“Investor” means an entity that will directly or indirectly purchase HCs from the awardee.

“Land or Property Control” means legally binding documentation of title or right to possession and use of the property, or the right to acquire title or right to possession and use of the property, for purposes the Project, including but not limited to documentation of fee ownership, lease, buy/sell agreement, option to purchase or lease, or other right, title or interest that will allow the Owner to acquire Proof of Ownership for purposes of Carryover.

“Large Project” means, for purposes of the Soft Cost Ratio, a Project with more than 24 low-income units.

“Letter of Intent” means a letter and attachment submitted to MBOH on the MBOH Letter of Intent Form.

“Low-Income Housing Tax Credits” means federal low-income housing tax credits, referred to in this QAP as HCs.

“Management Company” means a person or entity that has contracted with the Owner to manage the Project property, including such activities as leasing units, enforcing lease requirements and rules, repairs and maintenance, Housing Credit compliance and other matters relating to the operation of the project.

“Nationally-Recognized LIHTC Compliance Training Company” means a company recognized in the Low Income Housing Tax Credit industry as a qualified Low Income Housing Tax Credit compliance trainer.

“NCSHA” means the National Council of State Housing Agencies.

“New Construction” means construction of one or more new buildings, and includes Gut Rehabs.

“Operating Expenses” means projected ongoing costs to run or operate a property, not including expenses for amortization, depreciation or mortgage-related interest.

“Owner” means the legal entity that owns the Project.

“Placed in Service” means the certification of the building or the date of certification of the building as being suitable for occupancy in accordance with state or local law through issuance of a certificate of occupancy, except as otherwise provided in this QAP or Section 42.

“Preservation” means Projects that are for the Acquisition and/or Rehabilitation of existing affordable housing stock.

“Project” means the low income residential rental building, or buildings, that are the subject of an Application for or an Award of HCs.

“Project Square Footage” means such portion of the total square feet applicable to low-income Units and Common Areas and used for the applicable square footage calculation in the UniApp under Section B - Program Information, Part X, “Project Uses.” Project Square Footage includes all building square footage available to or serving tenants, including units, management unit(s) and offices, Common Area, balconies, patios, storage and parking structures.

“Proof of Ownership” means title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a recorded deed or an executed lease agreement.

“Qualified Allocation Plan” or “QAP” means this Montana qualified allocation plan required by Section 42 of the Code.

“Qualified Census Tract” or “QCT” means an area designated as such by HUD.

“Qualified Management Company” means a Management Company that meets the education requirements specified in Section 12, Education Requirements, and is not disqualified by MBOH to serve as a Management Company on existing, new or additional tax credit Properties or Projects, based upon the company’s: (i) failure to complete timely any required training; (ii) failure to have or maintain any required certification; (iii) record of noncompliance, or lack of cooperation in correcting or refusal to correct noncompliance, on or with respect to any tax credit or other publicly subsidized low-income housing property; or (iv) delinquent MBOH late fees (unless the Management Company demonstrates to the satisfaction of MBOH that such noncompliance or lack of cooperation was beyond such company’s control).

“Qualified Nonprofit Organization” means, with respect to a Project, an organization exempt from federal income tax under Section 501(c) (3) or (4) of the Internal Revenue Code, which is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization, whose exempt purposes include the fostering of low income housing, which owns an interest in the Project, which will materially participate in the development and operation of the Project throughout the Compliance Period, and which is not affiliated with or controlled by a for-profit organization.

“Rehabilitation,” “Rehab” or “Substantial Rehabilitation” means renovation of a building or buildings to house HC units meeting the required minimum Hard Cost Per Unit thresholds specified in Section 3, Substantial Rehabilitation.

“Related Party” means an individual or entity whose financial, family or business relationship to the individual or entity in question permit significant influence over the other to an extent that one or more parties might be prevented from fully pursuing its own separate interests. Related parties include but are not limited to: (1) family members (sibling, spouse, domestic partner, ancestor or lineal descendant); (2) a subsidiary, parent or other entity that owns or is owned by the individual or entity; (3) an entity with common control or ownership (e.g., common officers, directors, or shareholders or officers or directors who are family members of each other); (4) an entity owned or controlled through ownership or control of at least a 50% interest by an individual (the interest of the individual and individual’s family members are aggregated for such purposes) or the entity (the interest of the entity, its principals and management are aggregated for such purposes); and (5) an individual or entity who has been a Related Party in the last year or who is likely to become a Related Party in the next year.

“Reservation” means MBOH’s Initial Allocation of HCs from a particular year’s federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

“Reservation Agreement” means a written contract entered into between MBOH and the taxpayer to provide for a Reservation and setting forth the terms and conditions under which the taxpayer may obtain a Carryover Commitment or Final Allocation.

“Restrictive Covenants” means the recorded covenants required by Section 42 of the Code.

“Selection Criteria” means and includes all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides and priorities set forth in this QAP and all federal requirements.

“Selection Standard” means the standard for selection of Projects to receive an Award of HCs set forth in the Award Determination subsection of Section 9, Evaluation and Award, i.e., the MBOH Board’s determination that one or more Projects best meet the most pressing housing needs of low income people within the state of Montana as more specifically set forth in such subsection.

“Small Project” means a Project with 24 or fewer low-income units.

“Small Rural Project” means, for purposes of the Small Rural Project set aside, a Project: (1) for which the submitted tax credit Application requests tax credits in an amount up to but no more than ~~10%~~12.5% of the state’s Available Annual Credit Allocation; ~~and~~ (2) ~~is a Project with 20 or fewer low-income units, and (3)~~ proposed to be developed and constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.

"Soft Costs" means the costs of professional work and fees, interim costs, financing fees and expenses, syndication costs and Developer's fees included by the Applicant in the UniApp. Soft Costs do not include operating or replacement reserves, or the Letter of Intent fee, Application Fee, Reservation Fee, 10% Cost Certification Fee and Final Allocation (8609) fee, as required in the Applicable QAP.

"Soft-Cost-to-Hard-Cost Ratio" or "Soft Cost Ratio" means total Soft Costs divided by the sum of total Hard Costs (as calculated in the UniApp) and land value (as shown by a comparative market analysis or appraisal). Land value is added regardless of whether land is donated, leased, purchased or otherwise acquired.

"Sources and Uses" means the sources and uses of funds as specified in the Application.

"Substantial Change" means a substantial change in the Project from the Project as set forth in the Application, and includes a change in or to:

- A member of the Development Team occurring prior to Placed in Service;
- Participating local entity;
- Quality or durability of construction;
- Number of units or unit composition;
- Site or floor plan;
- Square footage of Project building(s);
- Project amenities;
- Income or rent targeting;
- Rental subsidies;
- Target group;
- Project location;
- Sources and Uses (to the extent any line item changes by 10% or more);
- Common Space square footage, location or purposes;
- Housing Credits required for the Project;
- Extended Use Period;
- Any Application item or information required by the Applicable QAP;
- Any item that would have resulted in a lower Development Evaluation Criteria Score under the Applicable QAP; and
- Any other significant feature, characteristic or aspect of the Project.

"Total Project Cost" mean all costs shown in UniApp Section C, Part II, Uses of Funds line "Total Projects Costs without Grant Admin". Total Project Cost does not include grant administration costs.

"Total Project Cost Per Square Foot" means Total Project Costs divided by Project Square Footage shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

"Total Project Cost Per Unit" means an amount calculated by dividing Total Project Costs by the number of units in the Project, as calculated in the UniApp Supplement, Section C, Cost Limitations and Requirements, Part XI, line "Cost Per Unit."

"UniApp" means the most current Uniform Application and Supplement available on the MBOH website at: <http://housing.mt.gov/FAR/housingapps.mcp.x>.

"UniApp Supplement" means the Supplement portion of the UniApp.

"Unit" means an income-restricted or market rate tenant or management (manager, security or other) residential apartment or single-family home.

“Vacancy Rate” means percentage of vacant affordable units in the Application’s market area or in the property.

## **SECTION 2 - OVERVIEW OF MBOH HOUSING CREDITS**

THE FOLLOWING IS A BRIEF SUMMARY OF SOME ELEMENTS OF THE HOUSING CREDIT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THERE ARE NUMEROUS TECHNICAL RULES GOVERNING A BUILDING'S QUALIFICATION FOR THE HOUSING CREDIT, THE AMOUNT OF THE HOUSING CREDIT, AND AN OWNER'S ABILITY TO USE THE HOUSING CREDIT TO OFFSET FEDERAL INCOME TAXES. ANYONE CONSIDERING APPLYING FOR HOUSING CREDITS SHOULD REFER, IN ADDITION TO THIS QAP, TO SECTION 42 OF THE UNITED STATES INTERNAL REVENUE CODE (26 U.S.C. § 42). DEVELOPERS OR OWNERS INTERESTED IN APPLYING FOR A CREDIT ALLOCATION SHOULD CONSULT THEIR OWN TAX ACCOUNTANT OR ATTORNEY IN PLANNING A SPECIFIC TRANSACTION.

Low Income Housing Tax Credits, referred to in this QAP as Housing Credits or HCs, are Awarded by the State of Montana through MBOH to applicants based on the information submitted in or in connection with Applications, other information obtained by MBOH staff as provided in this QAP and justification with support documentation supplied by the Applicants. At or before the time an Application is made, the Applicant must solicit an Investor who will purchase the tax credits, if Awarded.

The Housing Credits are Awarded each year for a ten-year period. Hypothetically, a Project Awarded \$100,000 in Housing Credits is essentially Awarded \$1,000,000 (\$100,000 X 10 years) for the ten-year period. When an Investor purchases the Credits, the money from the purchase is infused into the financing for the building of the Project. The Investor purchases the Housing Credits, for example, \$ .75 on the dollar (\$100,000 X \$.75 X 10 years) equating to \$750,000. Typically, the Investor pays at a range of \$ .70 to \$.90 on the dollar. This money directly reduces the amount of dollars financed in a Project, thereby reducing the rents that must be charged to tenants as well as assuring that the Project cash flows.

The Investor, through a limited liability limited partnership (LLLP) or other legal entity, must be a 99.99% Owner of the Project for fifteen years during which the Investor declares \$100,000 each year for ten years as credit on the Investor’s income tax. Generally, once fifteen years have passed, the Project is sold back to the General Partner (the .01% partner) for a negotiated amount and the ownership is transferred.

Throughout the Housing Credit Extended Use Period, the Project must comply with the requirements of Housing Credit administration as set forth in the current QAP and 26 U.S.C. § 42. Periodic file audits and inspection of units will be performed by MBOH staff.

The Housing Credit is available for residential rental buildings which are part of a qualifying low income Project. The rental units must be available to the general public. Residential properties which are ineligible for the Credit generally include transient housing, housing initially leased for less than six (6) months, buildings of four (4) units or less which are occupied by the Owner or a relative of the Owner, nursing homes, life care facilities, retirement homes providing significant services other than housing, dormitories, and trailer parks.

Projects with tax-exempt financing under the Montana’s volume limitation for private activity bonds may be eligible to receive Housing Credits outside the state’s Housing Credit allocation volume cap. See specific requirements in Section 3, Montana Specific Requirements, Tax Exempt Bond Financed Projects.



The Housing Credit can be used to assist in financing Acquisition with Substantial Rehabilitation, Substantial Rehabilitation, construction of qualifying residential rental, or eventual homeownership housing. The applicable percentage rate (APR) for each Project will depend upon the type of building and its financing, the floating APR or other APR set by the federal government, and the Project's election of the APR. As long as the building continues to qualify for the Credit, the Owner may claim the Credit each year during the 10-year credit period.

## **New Construction or Substantial Rehabilitation**

New Construction and Rehabilitation Projects using competitive Credits will qualify for the ~~floating monthly tax credit rate (commonly referred to as the 9% rate)~~ or another percentage rate permitted by federal law. The applicable tax credit rate is elected by the taxpayer and locked at Reservation/Initial Allocation or at Placed in Service, as specified in the Reservation Agreement. If an Owner Substantially Rehabilitates a building (basically by incurring Rehabilitation expenditures in an amount that equals or exceeds the greater of: (a) the Montana-specific Substantial Rehabilitation per rental unit standard specified in Section 3, "Substantial Rehabilitation," or (b) 30% of the adjusted basis of the building during a 24-month or shorter period), the Rehabilitation expenditure is treated as a separate new building for purposes of the Housing Credit. The "per unit" calculation is the total amount of Hard Costs for the Project divided by the number of units within the Project. Because Montana's Substantial Rehabilitation standard is higher than the federal minimum of \$6,200.00 in Hard Costs and 20% of adjusted basis, Montana's higher Substantial Rehabilitation standard applies.

## **Acquisition and Substantial Rehabilitation**

For an existing building which is acquired and Substantially Rehabilitated, the Housing Credit will be approximately four (4) percent for qualified Acquisition costs and nine (9) percent for the qualified Substantial Rehabilitation costs, provided that the Rehabilitation is not federally subsidized.

## **Eventual Home Ownership**

The opportunity for eventual home ownership allows for Projects, with sufficient justification, to make units available to be purchased by the current tenants after 15 years of successful performance as an affordable rental. See Section 3, Eventual Home Ownership.

## **Federally Subsidized Buildings**

Projects funded by tax exempt bonds are considered federally subsidized and qualify only for 4% of the qualified basis for New Construction, Acquisition, and Rehabilitation. Buildings directly or indirectly financed with below market federal loans are not considered federally subsidized. Below market loans made to the Project from the proceeds of grants made under the HOME Investments Partnership Act or loans made to Projects through the Native American Housing Assistance and Self Determination Act of 1996 are no longer considered to be federal subsidy. Section 8 rental "certificate" or "voucher" subsidy is not considered to be federal subsidy.

## **Qualifying Buildings**

In order to qualify for the Housing Credit, an eligible building must be part of a qualifying low income Project. A Project is a qualifying Project only if it meets one of the following requirements:

At least 20% of its units are rent-restricted and rented to households with incomes at 50% or less of area median gross income, adjusted for family size (the "20-50 test"), or

At least 40% of its units are rent-restricted and rented to households with income at 60% or less of area median income, adjusted for family size (the "40-60 test").

## Election

The Owner must make an irrevocable election between the 20-50 test and the 40-60 test. Regardless of the election made, the credit is only allowed for the portion of the building dedicated to low income use (for example, if the Owner elects the 40-60 test and a minimum of 40% of the units are low income, the Owner would qualify for Housing Credits on a minimum of 40% of the eligible basis).

## Rent Limitation

The gross rent for each Housing Credit unit may not exceed 30% of the applicable income ceiling (30% of 50% of median or 30% of 60% of median, as applicable, calculated based on the number of bedrooms in the unit, which is the "Maximum Rent"). For purposes of the rent limitation, the gross rent is the sum of the rent amount payable by the tenant, a utility allowance amount determined in accordance with this QAP (see Section 3, Underwriting Assumptions and Limitations, "Utility Allowances") and any mandatory fees payable by the tenant. Rental assistance payments made by government agencies such as Section 8, Rural Development, or any comparable rental assistance program are not included in gross rent. Gross rent does not include any fee for supportive services as described in 26 U.S.C. §42(g)(2)(B)(iii). Gross Rent is expressed as follows:

$$\text{Tenant paid rent} + \text{Utility Allowance} + \text{Mandatory Fees equals the Gross Rent}$$

The Gross Rent must be less than or equal to the Maximum Rent (i.e., 30% of the applicable income ceiling).

## Basis

### Eligible Basis

Eligible basis of a qualifying building is generally the same as its adjusted basis for tax purposes, determined at the time the building is Placed in Service. Generally, eligible basis consists of:

- The cost of New Construction or Substantial Rehabilitation; or
- The cost of purchasing an existing building and the cost of Substantial Rehabilitation.

Eligible basis will be determined in accordance with Internal Revenue Code Section 42~~includes costs of Common Areas and comparable amenities provided to all residential rental units in the building. However, eligible basis must be reduced to reflect any Rehabilitation or historic preservation tax credit claimed with respect to the building. Eligible basis excludes land cost, costs attributable to any portion of the building which is not residential rental property (except Common Areas), and costs attributable to non-low income units which are above the average quality of the low income units in the Project. Cost certifications must list all items in basis (parking lot, paving, community areas, covers for parking, etc.).~~

### Qualified Basis

To determine the qualified basis of a qualifying building, the taxpayer multiplies the eligible basis of the building by the lesser of the "unit percentage" or the "floor space percentage". The "unit percentage" is the number of low income units in the building expressed as a percentage of the number of all residential rental units in the building. The "floor space

percentage" is the total floor space of the low income units in the building expressed as a percentage of the total floor space of all residential rental units in the building. Low income units are eligible units which are occupied by qualified low income tenants (with income at or below 50% or 60% of area median gross income, depending on the Owner's election of the 20-50 or 40-60 test) and which comply with the gross rent limitation (30% of the applicable 50% or 60% income limit). The Credit is only allowed for the portion of the building dedicated to low income use.

## **Credit Calculations**

To calculate the Credit each year, the taxpayer applies the applicable credit percentage to the qualified basis of a qualifying building. The "qualified basis" is that portion of the "eligible basis" attributable to low income units in the building.

## **Allocation of Credit**

### **Need for Allocation**

All Projects including Projects financed with tax-exempt bonds must first obtain a Final Allocation from MBOH before claiming the Housing Credit. MBOH makes a Final Allocation by issuance of IRS Form 8609(s).

### **Allocation Applies Throughout Credit Period**

An Owner needs to obtain a Final Allocation only once with respect to a building for which the Credit will be claimed. The Final Allocation then applies each year during the 10-year Credit period. Regardless of the maximum Credit otherwise available (based on applying the applicable credit percentage to the qualified basis), the Credit claimed each year for a building may not exceed the amount of the Final Allocation for that building.

### **Time for Obtaining Carryover Commitment**

An Owner who receives an Award of Credits must either:

- Place the building in service and receive a Final Allocation by MBOH issuance of IRS Form 8609(s) by the close of the calendar year corresponding to the annual tax credit ceiling from which the Credits are allocated (e.g., by the close of calendar year 2017 for 2017 credits Awarded in January 2017), or
- Obtain a Carryover Commitment as provided below, **and** place the building in service **and** receive a Final Allocation by MBOH issuance of IRS Form 8609(s).

### **Carryover Provision**

A Carryover of a Housing Credit Allocation will be permitted for a period of two (2) years beyond the end of the calendar year corresponding to the annual tax credit ceiling from which the Credits are allocated (e.g., by the close of calendar year 2019 for 2017 credits Awarded in January 2017); contingent upon meeting 10% requirements (see Section 10).

## **Compliance Period**

The Compliance Period is the initial period of 15 taxable years beginning with the 1st taxable year of the applicable credit period as provided in 26 U.S.C. § 42. The Application must specify an additional period of 15 or more years in which the Applicant agrees to maintain units for low income occupancy. The Compliance Period plus the additional 15 or more year period together are referred to as the Extended Use Period. These restrictions will be included in the Declaration of Restrictive Covenants and will be effective for the entire Extended Use Period.

An Owner must continue to meet the requirements of Section 42 for a Compliance Period of 15 years. Failure to comply, reducing the number of the HC units, or reducing floor space

for which the Credit is based during the Compliance Period, may result in IRS recapture of Housing Credits, including non-deductible interest, of at least a portion of the Housing Credits taken previously by the Owner.

To be eligible for HCs, a building must be subject to an extended low income housing commitment between the Owner and the state agency, which commitment must be established by recorded Restrictive Covenants effective for the full Extended Use Period. The Owner must meet compliance criteria for the full Extended Use Period specified in the Restrictive Covenants. Through execution and recording of the Declaration of Restrictive Covenants with respect to Housing Credits, all Owners waive and forfeit the right to request that MBOH locate a non-profit qualified buyer (the "qualified contract process") and the Owner must maintain HC units through the Extended Use Period as provided in the Restrictive Covenants. The Extended Use Period specified in the Declaration of Restrictive Covenants may not be terminated early through the qualified contract process.

### **Three-year Tenant Protection Period**

HC rent requirements and restrictions will continue for a period of three years following the termination or expiration of the Extended Use Period. The Owner cannot evict or terminate the tenancy of an existing tenant of any HC unit other than for good cause during the Extended Use Period or during the additional three-year tenant protection period.

## **SECTION 3 - MONTANA SPECIFIC REQUIREMENTS**

### **Eligible Applicants**

An Applicant who previously received an Award of Credits for its first Housing Credit Project in Montana may not receive an Award of Credits for another Housing Credit Project until the first Project has achieved 100% qualified occupancy and an MBOH compliance audit has been conducted which revealed no significant problems. For purposes of this rule, Applicants are considered to be the same Applicant if the Applicants are Related Parties or if the same Developer or a Related Party of the Developer will receive more than 50% of the Development Fees for both Projects. The foregoing rule does not apply to a subsequent Housing Credit Application if the Developer partners with an Experienced Developer who will be entitled under a written agreement to receive at least 50% of the Developer Fee on the subsequent Project. The Applicant is not eligible to apply for Credits if the Applicant or any member of the Applicant's Development Team is debarred from federal programs or FHLB (Federal Home Loan Bank), prohibited from applying for LIHTCs by another state HFA for disciplinary reasons, or has delinquent late fees due and payable to MBOH,. If any member of the Development Team has delinquent late fees due and payable to MBOH at any time from submission of Letter of Intent through the Award Board meeting, the Application will be ineligible for an Award of Credits until such fees are paid in full. If such late fees are not paid in full within ten (10) business days of written notice, the Application will be returned and will receive no further consideration. Application fees will not be refunded.

### **Housing Credit Proceeds**

In order to allow MBOH to adequately evaluate Sources and Uses for Housing Credit Projects, the Applicant is required to provide information to MBOH regarding the proceeds or receipts generated from the Housing Credit.

At Application, expected Credit proceeds must be estimated by the Applicant. **Within 30 days after the partnership or operating agreement is signed by all parties, the Applicant must provide MBOH with a copy of the executed agreement.** If MBOH does not receive a copy of the executed agreement within 30 days of execution, a late fee

of \$500.00 will be assessed. Prior to issuance of IRS Form 8609(s), MBOH will require the accountant's certification to include gross syndication proceeds and costs of syndication, even though the costs are not allowed for eligible basis.

## Sources and Uses Certification

Applicants must certify that they have disclosed all of a Project's Sources and Uses, as well as its total financing, and must disclose to MBOH in writing any future changes in Sources and Uses over 10% in any line item or any increase in Soft Costs throughout the development period (until 8609's are received). Applicant's certification of such disclosure must be provided to MBOH at Application, at 10% Cost Certification and at Final Cost Certification on the MBOH Disclosure Certification Form.

## Development Cost Limitations

To balance housing needs in Montana with appropriate and efficient use of the state's allocation of tax credit authority, MBOH has adopted the following cost limitations and requirements for purposes of calculating the Housing Credit amount for a particular Project. These cost limitations are based upon and in accordance with NCSHA standards.

### Hard Cost Per Unit/Hard Cost Per Square Foot and Total Project Cost Per Unit/Total Project Cost Per Square Foot

Hard Cost Per Unit, Hard Cost Per Square Foot, Total Project Cost Per Unit and Total Project Cost Per Square Foot are subject to the specific limitations provided in other sections of this QAP. In addition, even for those projects meeting such specific limitations, MBOH will evaluate such Cost Per Unit and Cost Per Square Foot for all Projects for reasonableness, taking into account the type of housing, other development costs as detailed below, unit sizes, the intended target group of the housing and other relevant factors. MBOH will also consider in this review the area of the state and the community where the Project will be located.

All Applications must provide justification for development costs. These costs will be analyzed and scrutinized considering the individual characteristics of the Project listed above and will be compared to other like Projects.

Even though the costs of some Projects may be justifiable and even in some contexts considered reasonable given their unique characteristics, MBOH may decline to Award Credits to a Project where it determines that costs do not reflect the optimal use of Housing Credits.

The following limit must be met:

- o **Total Project Costs Per Unit may not exceed ~~\$230,000~~ \$235,000.**

Applications exceeding this limit will be returned un-scored and will receive no further consideration, and the application fee will not be refunded. Projects must meet this limit at Letter of Intent, Application, 10% Cost Certification and Final Cost Certification. If this limit is exceeded at Final Cost Certification, negative points will be assessed with respect to future Applications as provided in Section 9, Item 9, Developer Knowledge and Responsiveness. The negative points assessment provided in this paragraph for exceeding the Total Project Costs Per Unit limit will apply only prospectively to Projects Awarded Credits in the 2017 or later Award rounds.

### Additional Cost Limitations

Applications must comply with the following limitations on Contractor Overhead, General Requirements, Contractor Profit and Developer Fee. To the extent an Application exceeds these cost limitations, as calculated in UniApp Section C, Cost Limitations and

Requirements, the excessive costs will be reduced to the limit amount for all purposes under the HC program, including without limitation, calculation of basis and eligible Project costs, determination of Credit eligibility, and any Award, Reservation (Initial Allocation) or Final Allocation of Credits.

### **Contractor's Overhead**

Contractor's Overhead is limited to a maximum of 2% of Construction Costs.

### **General Requirements**

General Requirements are limited to a maximum of 6% of Adjusted Construction Costs.

### **Contractor Profit**

Contractor Profit will be limited to a maximum of 6% of Construction Costs.

### **Developer Fees**

Developer Fees for New Construction or Rehabilitation will be limited to a maximum of 15% of Total Project Costs. For purposes of this Developer Fee limit, Total Project Costs do not include Developer Fees, Contractor Profit or land costs. HC Consultant fees (amount must be disclosed) will be included as part of and subject to the limit on Developer Fees.

Architectural, engineering, and legal fees-services are considered to be professional services, and fees for such services are not included in this limitation; however, fees for professional services will be examined for reasonableness.

Developer fees for Acquisition will be limited to a maximum of 15% of the Project Acquisition costs.

### **Disclosure of Transactions Involving Related Parties**

If the development includes transactions with Related Parties, any profit from those transactions must be subtracted from the Total Project Cost before calculating the 15% maximum Developer Fee and 6% maximum Contractor Profit. Failure to fully disclose Related Party transactions may result in the Project's not receiving an Award of Housing Credits. MBOH reserves the right to negotiate lower Developer Fees and Contractor Profit on Projects involving Related Party transactions.

### **Limitation on Soft Costs**

The Soft-Cost-to-Hard-Cost Ratio ("Soft Cost Ratio") for the Project, based upon the Application's UniApp, may not exceed 30% for Large Projects (more than 24 units) and 35% for Small Projects (24 or fewer units) or Small Rural Projects. If the Soft Cost Ratio for a Project exceeds the applicable maximum, MBOH will contact the Applicant regarding the excessive costs and allow the Applicant to specify how and by what amount its Soft Costs will be reduced to comply with the maximum. The Applicant must communicate its chosen Soft Costs adjustments to MBOH staff in writing within ten (10) business days after such communication and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program. All such Soft Cost adjustments and the Application, as amended to reflect such adjustments, must comply with this QAP in all other respects. If the Applicant fails to communicate its Soft Cost adjustments to MBOH staff within the required time, MBOH staff will decide how and by what amount Soft Costs will be reduced to comply with the maximum and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program.

## **Underwriting Assumptions and Limitations**

### **Credit Percentage Rate for Housing Credit Calculation**

The credit percentage rate published by the federal government for the month prior to the date of Application will be used by Applicants and MBOH for purposes of preparation, submission, underwriting and evaluation of Applications and Award of HCs.

## Operating Expenses

MBOH will evaluate Operating Expenses and Vacancy Rate underwriting assumptions for all Projects for reasonableness, taking into account the type of housing, unit sizes, intended target group of the housing and the location of the Project within the area of the state and the community. Staff may require the Applicant to provide additional justification and documentation regarding any Operating Costs deemed to be outside the normal range.

## Debt Coverage Ratio

The Debt Coverage Ratio (“DCR”) should be:

- For Projects whose DCR is projected to trend upward through the first 15 years of normal operation, the DCR should be between 1.15 and 1.35 in the first year of normal operation, i.e., year 1 as shown on the DCR calculation of the UniApp.
- For Projects whose DCR is projected to trend downward through the first 15 years of normal operation, the DCR should be between 1.10 and 1.50 during the entire first 15 years of normal operation i.e., the 15-year period that begins with year 1 as shown on the DCR calculation of the UniApp.

DCR's outside these ranges must be justified in the Application narrative to the satisfaction of MBOH, in its sole discretion. In determining whether the Applicant's justification is acceptable, MBOH will consider the reasonableness of the Project's proposed rent levels, Operating Expenses, reserve payments, projected Vacancy Rates, debt service obligations, Soft Costs and amount of Credits requested. If the DCR, as underwritten by MBOH at Application, falls outside the ranges specified above without justification acceptable to MBOH, MBOH will reduce the amount of Credits requested by the Applicant to an amount determined by MBOH to be necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period.

MBOH considers several variables, including projected Vacancy Rates (which may require upward adjustment for Small Projects) and Operating Cost data, in conjunction with debt service coverage, in judging the long-term financial viability of Projects. MBOH may require adjustments to rents or Credit amount to assure the Credits Awarded are no greater than necessary to make the Project feasible.

MBOH will evaluate the DCR at Application, at 10% Cost Certification and at Final Cost Certification. In addition, if the DCR at 10% or Final Cost Certification has changed significantly from the DCR as underwritten by MBOH at Application, MBOH may assess negative points to the next Application that includes any member of the Development Team.

~~MBOH considers several variables, including projected Vacancy Rates (which may require upward adjustment for Small Projects) and Operating Cost data, in conjunction with debt service coverage, in judging the long-term financial viability of Projects. MBOH may require adjustments to rents or Credit amount to assure the Credits Awarded are no greater than necessary to make the Project feasible.~~

## Maximum Rents

The MBOH Board may require that rents be maintained at a specified percentage of maximum target rent throughout the Extended Use Period. If required for a particular Project, this limitation must be specifically included as a condition of the HC Award and included in the Project's Restrictive Covenants.

## Operating Reserves

Minimum operating reserves must be established and maintained in an amount equal to at least four months of projected Operating Expenses, debt service payments, and annual replacement reserve payments. The specific requirements for reserves, including the term for which reserves must be held, must be included in the limited partnership or operating agreement and meet the requirements of the Investor. Using an acceptable third party source, this requirement can be met by either cash, letter of credit from a financial institution, or a Developer guarantee that a syndicator has accepted the responsibility for a reserve.

### **Replacement Reserves**

Replacement reserves must be contributed in an amount equal to at least \$300.00 per unit annually. Exceptions may be made for certain special needs or supportive housing developments. Exceptions must be documented and will be reviewed on a case by case basis. The specific requirements for reserves, including the term for which reserves must be held, will be included in the limited partnership or operating agreement and meet the requirements of the Investor.

### **Utility Allowances**

The Montana Department of Commerce Section 8 Utility Allowances are the only acceptable utility allowances for Applications, unless otherwise provided by USDA (Rural Development), an MBOH-approved allowance or a HOME-approved allowance. Utility allowances provided by utility providers will not be considered or accepted.

### **Additional Underwriting Assumptions**

The following underwriting assumptions will be used by MBOH for underwriting of all Applications:

- Vacancy rates: 10% - 20 units and less, 7% - more than 20 and up to 50 units, 5% - more than 50 units or 100% project based rental assistance;
- Income Trending: 2%;
- Expense Trending: 3%;
- Reserves Trending: as proposed in Application but not to exceed 0.3%;
- Debt Coverage Ratio: see "Debt Coverage Ratio" subsection above;
- Structured Debt for pro-forma not allowed; and
- Operating expenses per unit: \$3,000-\$6,000 annually.

These underwriting assumptions will be used at Application, 10% Cost Certification and Final Cost Certification. Credits will not be Awarded in an amount beyond those needed to make the Project feasible according to these underwriting assumptions.

### **Project Accessibility Requirements**

The Fair Housing Act, including design and accessibility requirements, applies to HC properties. In addition to meeting Fair Housing Act requirements, all New Construction units and common areas and Rehabilitation that at least replaces interior walls and doors must incorporate the following:

For Rehab, items 3 and 4 below apply to all units and all floors where moving walls, removing wall coverings, or doing new wiring or rewiring.

1. 36 inch doors for all living areas (except pantry, storage, and closets).
2. All door hardware must comply with Fair Housing Act standards for all units.
3. Outlets mounted not less than 18 inches above floor covering.



4. Light switches, control boxes and/or thermostats mounted ~~no more than~~ from 36 to 48 inches above floor covering.
5. Walls adjacent to toilets, bath tubs and shower stalls must be reinforced for later installation of grab bars.
6. All faucets must be lever style.
7. A minimum of a ground floor level half-bath with a 30X48 inch turn space (also required in Rehabilitation unless waived by staff for structural limitations or excessive cost, etc.) (does not apply if there is no living space on the ground floor level).
8. No-step entry to all ground floor level units.

Compliance with accessibility requirements must be certified in the architect's letter of certification submitted with the 8609(s) submission. It is suggested but not required that Projects also include parking for caregivers for tenants with disabilities and that a lease addendum provide for moving a household without tenants with disabilities from a handicapped accessible unit to a regular unit if the handicapped accessible unit is needed for rental to a tenant with a disability.

## **Energy, Green Building and Other Initiatives, Goals and Requirements**

The following items in Subparagraphs A through K specify voluntary initiatives and goals which MBOH encourages Developers to consider in the planning and development of Projects, as well as certain Project requirements. These items are required only where so indicated by the use of mandatory language (e.g., "must"). Such initiatives, goals and requirements are subject to any further applicable provisions of this QAP.

### **A. Integrated Design Process and Community Connectivity**

Project development and design includes a holistic approach. Processes include neighborhood and community involvement to ensure Project acceptance and enhancement. Integrated design processes ensure higher quality finish Project. Existing neighborhood edges, characteristics, fabric are considered in the Project design. Some considerations may include but are not limited to a community design charrette, incorporating Project into neighborhood fabric, energy modeling, commissioning, infrared testing, etc. (see Required Infrared Testing for Projects Awarded Credits, below).

### **B. Visitability and Universal Design Principles**

Applicants should consider inclusion of visitability and universal design principles in development of the Project. MBOH encourages strong advertising of accessible features when advertising new construction through the Multiple listing services or through MontanaHousingSearch.com.

### **C. Sustainable Site, Location and Design**

The building(s) and Project site, including the surrounding area, provide opportunities for education, alternative transportation, services, and community facilities. This is evidenced, for example, by Projects using existing infrastructure, reusing a building or existing housing, redeveloping a greyfield/brownfield, or developing in an existing neighborhood. Design elements use the site's characteristics and reduce impact on the site allowing for open space and other amenities, such as infill projects, rehabilitating existing building(s), rehabilitating existing housing, providing carpooling opportunities, using well water for landscaping, etc.

### **D. Passive House Standard**

Passive House is a voluntary international building standard developed by the Passive House Institute (PHI), located in Darmstadt, Germany (referred to as the "Passive House

Standard"). The Passive House Standard is composed of several strict performance requirements for new building construction. For the renovation of existing buildings, PHI developed a similar if slightly more lenient performance standard. The resulting performance represents a roughly 90% reduction in heating and cooling energy usage and up to a 75% reduction in primary energy usage from existing building stock.

#### **E. Energy and Water Conservation**

Design features, product selection and renewable energy options directly reduce use of resources and result in cost savings. Design and product selection exceeds applicable energy codes in performance. Examples include but are not limited to Energy Star appliances, drip irrigation, low flow fixtures, dual flush or composting toilets, ground source heat, duct sealing, rain water collection, and low water consumption plants.

#### **F. Material and Resource Efficiency**

Material selections are better quality, designed for durability and long term performance with reduced maintenance. Products used are available locally and/or contain recycled content. Construction waste is reduced in the Project through efficient installation or recycling waste during construction. Considerations include but are not limited to construction waste management specification, recycled content products, local materials, reuse existing building materials, certified lumber, and sustainable harvest lumber.

#### **G. Amenities**

Applicants may consider for inclusion in the Project the amenities listed in the Amenities Form to be provided at no charge to tenants in the Project. Luxury amenities will not be considered or funded with tax credits. Items deemed luxury amenities include but are not limited to swimming pools, golf courses, tennis courts and similar amenities. The added costs of the Project attributable to higher quality amenities will be considered on a Project by Project basis for a cost to benefit assessment.

Amenities provided will not be used for Commercial Purposes. All Projects previously Awarded tax credits are subject to this restriction but are grandfathered only to the extent Commercial Purposes were specifically included in the Application.

#### **H. Healthy Living Environments (Indoor Environmental Quality)**

Materials and design contribute to a healthy and comfortable living environment. Mechanical system design, construction methods and materials preserve indoor air quality during construction as well as the long term performance such as fresh air circulation and exhaust fans, bathroom and kitchen fans exhausting air and moisture, material selection with low toxicity and low VOC (volatile organic compounds) paints, sealants, and adhesives.

#### **I. Smoke-Free Housing**

Promoting healthy behaviors can also have a large impact on residents at no additional cost to the Developer. Smoke-free policies protect residents against the harmful health impacts of tobacco smoke, greatly reduce the risk of fires, and prevent damage to units caused by tobacco smoke. Such policies also make properties more attractive to those who do not allow smoking in their own homes.

For New Construction Projects seeking or awarded 2016 or later year Credits, the Owner (and any Management Company) must establish and implement a written policy that prohibits smoking in the units and the indoor Common Areas of the Project, including a non-smoking clause in the lease for every Project unit. The Owner (and any Management Company) rather than MBOH will be responsible to establish, implement and enforce such written policy and lease clause. The Owner and Management Company also must make

educational materials on tobacco treatment programs, including the phone number for the Montana Tobacco Quit Line, available to all tenants of the Project. The Montana Tobacco Use Prevention Program Smokefree Housing Project can provide educational materials and smokefree signage to property owners and managers free of charge, as requested. If smoking is allowed outside on the Project property, it is recommended that the written smoking policy require that smoking be restricted to areas no closer than 20 feet from all building entrances and exits. The written policy must provide appropriate exceptions for bona fide cultural or religious practices.

#### **J. State of Montana Building Code**

All Projects must comply with State of Montana Building Code, whether or not the State of Montana building code has been adopted in the Project's jurisdiction.

#### **K. Required Infrared Testing for Projects Awarded Credits**

*For Rehabilitation Projects Awarded HCs:* Infrared tests will be required on at least ~~1020~~10% of units and a representative sampling of Common Areas both before and after the Rehabilitation to demonstrate that improvement has been achieved. MBOH staff may require-approve changes to the sample selected. ~~The Developer or Builder must notify MBOH at least one week in advance of the date and time that post-Rehabilitation infrared tests will be performed and MBOH staff must be permitted to attend and observe such testing.~~ Proof of such testing must be submitted to MBOH within 30 days of testing and reviewed by MBOH to qualify for issuance of Form 8609(s), demonstrating that at the time of testing there was at least 20 degrees temperature difference from outdoors to inside the unit. Infrared testing must be performed by a certified tester.

### **Substantial Rehabilitation**

Montana's minimum Substantial Rehabilitation standard is expenditures the greater of (i) \$15,000 (for 4% projects)/\$25,000 (for 9% Projects) of Hard Cost Per Unit, or (ii) an amount which is not less than 30% of the adjusted basis of the building during a 24-month or shorter period.

Rehabilitation Projects applying for (9%) competitive credits must meet all requirements of the capital needs assessment and the Application must also include a list of items in each unit that will be replaced, refinished, repaired, upgraded, or otherwise rehabilitation in the Project and a detailed narrative explaining the scope, details and expectations of the rehabilitation.

### **Tax Exempt Bond Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds ("4% Projects") may be eligible to receive Housing Credits outside the state's tax credit allocation volume cap. Applications must meet all requirements of the applicable QAP and must meet at least the minimum Development Evaluation Criteria score specified in Section 9, below, to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding tax credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

### **Eventual Home Ownership**

Several supplemental Application documents are required for Projects that include eventual home ownership. The Application must: (a) address how the Owner will administer the

transfer of ownership to a qualified homebuyer at the end of the Compliance Period; (b) either identify the price at the time of the title transfer or a reasonable process to determine the price; (c) document that the potential owners will be required to complete a homebuyer counseling program; and (d) identify how Reserve for Replacement funds will be used at the time of sale of the properties.

At the time of sale, the HC Owner must provide a copy of the title transfer together with a certificate verifying that the new homeowner completed a homebuyer program within five years prior to the transfer of title. Enforceable covenants must maintain the home as affordable and prevent sale or resale to a realtor, financial institution, or a family with an income over 80% AMI, or more than 80% of FHA appraised value. Families who exceed income levels of 80% of AMI at the time of the sale must have qualified at the appropriate AMI contained in the recorded Restrictive Covenants for the Project evidenced by the Tenant Income Certification at the initial rent-up for the family. Tenant qualification documentation must be sent to MBOH for approval before the sale is completed. Please contact MBOH for current forms. Units not sold under the Eventual Home Ownership Program must remain in compliance with Section 42 until such time as they are sold to a qualified buyer or the end of the Extended Use Period.

## 130% Basis Boost

### Basis Boost for QCT and DDA Projects

Federal law permits MBOH to reserve Housing Credits based on a “basis boost” of 30% for Projects in a Qualified Census Tract (“QCT”) or in HUD designated Difficult Development Areas (“DDA”). In addition, a 30% “basis boost” may be available for non-QCT or DDA Projects based upon the specific requirements specified below.

### MBOH Discretionary Basis Boost for Non-QCT/DDA Projects

For buildings not already eligible for the 30% “basis boost” by virtue of being located in a QCT or DDA, up to 130% of the eligible basis of a New Construction building or the Rehabilitation portion of an existing building may be considered in Awarding Housing Credits if MBOH determines that an increase in Housing Credits is necessary to achieve the Project’s feasibility. MBOH staff may recommend an Award of Housing Credits, and the MBOH Board, at the time it considers authorizing Reservations of Housing Credits, may Award Credits for such buildings based upon a basis boost of up to 30%. Applications for Projects not located in a DDA or QCT may be submitted with requested Housing Credits calculated at up to 130% of eligible basis. The Application narrative and supporting documentation must specify and explain in detail the applicable considerations supporting the need for the requested basis boost (i.e., any of items 1 through 5, below) and provide a detailed justification~~justify the need~~ for the requested basis boost. The justification must explain why the Project would not be feasible without the basis boost. In addition to the explanation and justification, MBOH may consider the~~The~~ following factors ~~may be considered~~ in determining whether Housing Credits will be awarded based upon the discretionary basis boost:

1. Qualification of the Application for the Small Rural Project set aside ~~pool~~;
2. Qualification of the building location for Rural Development funding;
3. Targeting of more than 10% of the Project units to 40% or below area median income level or more than 75.62% of Project units to 50% or below area median income level;
4. The Project includes historical preservation or Preservation or replacement of existing affordable housing; or
5. The Project is located within a community where unusual market conditions produce higher than normal labor and material costs, unusually high land cost and/or rent

and income limits which are too low to support the cash flows required by the Project's financial structure.

The MBOH discretionary basis boost does not apply to non-competitive 4% Credits.

## **Non-Housing Amenities**

Swimming pools, tennis courts, golf courses, and other similar amenities will not be funded by Housing Credits. Proposed Projects may include such amenities only if the amenities are funded by sources other than Housing Credits. Subject to the requirements of this QAP, garages or car ports may be funded by Housing Credits considering Montana's extreme winter weather.

## **Accountant and Owner Certification**

Prior to the 10% Cost Certification deadline and at Final Cost Certification, MBOH requires an independent third party CPA cost certification, including a statement of eligible and qualified basis for the Project, as more specifically provided in Section 10 of this QAP. The Accountant Certification must include a breakdown of costs similar to the Project Sources and Uses of the Application, including development cost limitation categories as discussed in this QAP. The Owner must provide the CPA certification, under penalty of perjury, providing the Owner's name and address, the Placed in Service date, taxpayer identification number, the Project name and address, building(s) address(s), building identification numbers, the total eligible and qualified basis, and, if applicable, the percentage of the Project financed by tax-exempt bonds. The most current forms from the MBOH website must be used.

## **Information Request and Release Policy**

Requests for information and documents from MBOH will be handled in accordance with and subject to applicable law and the MBOH Information and Release Policy, which policy is available on the MBOH website.

## **Ex Parte Communication Policy**

MBOH Board members should refrain from ex parte communications with interested persons or parties, or their representatives, who may be affected by any matter on which members may take official Board action. Ex parte communications may include communications that take place outside a duly noticed meeting or hearing of the Board, relate to a matter on which the Board may take action to determine to rights or obligations of the person or party, and which convey information or may otherwise influence the Board member regarding the matter.

If a Board member is unable to avoid such communications, the member will be required to disclose at a public meeting of the Board the full content of such communication and the identity of the person making the communication. In addition, the Board member may be disqualified from participating in Board action on the matter. Such communications may also subject the Board to challenge regarding its action on the matter.

Ex parte communications do not include communications regarding general matters of housing, funding for low-income housing, or other Board policy, and do not include Board member speaking appearances, conferences, consulting engagements or other events or settings to the extent not involving communications such as those described above.

The foregoing statement is provided as general information. Ex parte communications are addressed in further detail and governed by the MBOH Ex Parte Communication Policy, available on the MBOH website.

## SECTION 4 - APPLICATION SUBMISSION AND AWARD SCHEDULE – MANNER OF SUBMISSION

### Competitive 9% Credit Applications

Applicants may apply for an Award of 9% Credits (including an Award for a Project combining 9% Credits and other credit sources) for a particular Project no later than the applicable submission deadline specified below or otherwise set by MBOH.

Applicants must submit the Application and the applicable fee (based on the fee schedule below) to MBOH as required in this QAP.

For Projects involving multiple properties in different locations to which different utility allowances and/or income limits apply, a combined Application with sub-applications for each property location must be submitted. Each sub-application must include a separate UniAPP that provides the Project numbers attributable to each location. A separate Application is required for each Project. ~~A single Application or sub-application should include all buildings within a single Project.~~

Complete Letters of Intent/Applications meeting all requirements of this QAP must be received at MBOH's office by 5:00 pm Mountain Time on the Letter of Intent/Application submission date specified below. In the event that any submission date falls upon a weekend or holiday observed by Montana State government, the submission date will be the next business day thereafter as posted on MBOH's website.

#### First Award Round:

- o Application Workshop April 2017
- o Letter of Intent Submission First Monday in July 2016 Friday June 9, 2017
- o Applicant Presentations/ Board Invitations to Apply August 2016 June 2017 MBOH Board Meeting
- o Application Submission First Monday in October Tuesday September 5, 2017
- o Award Determination January 2017 November 2017 MBOH Board Meeting

#### Second Award Round (if any):

The Board may decide in its discretion to hold a second award round that is either: (i) limited to those Applicants invited to submit an Application but not awarded Housing Credits in the first award round (a "Closed Round"); or (ii) open to submission of Letters of Intent by any interested party (an "Open Round").

If the Board elects to hold a Closed Round, the Board will announce (and post on MBOH's website) such Closed Round, along with all applicable submission requirements and deadlines, presentation opportunities and award meeting dates. A Closed Round need not include additional Letters of Intent or Applications, but may include only such additional documents and information submissions as the Board deems appropriate for purposes of such Closed Round.

If the Board decides to hold an Open Round, it will determine and post on MBOH's website the dates for submission of Letters of Intent and Applications, Board review, discussion and invitation to apply, Applicant presentations and Award determination.

Any of the above deadlines and dates may be extended or changed by MBOH if circumstances warrant, and in such event MBOH will provide notice of such extension or change by posting on MBOH's website. The MBOH Board, in its discretion, may waive any requirement of this QAP if it determines such waiver to be in the best interests of MBOH, the HC program or the Award cycle. In any Award round or rounds, the MBOH Board may elect to Award less than all available Credits or to not Award any Credits if the MBOH Board determines that such is in the best interests of MBOH, the HC program or the Award cycle.

## Board Consideration and Determination Process

At the MBOH Board's meeting in the month after submission of Letters of Intent, MBOH staff will present Letters of Intent to the MBOH Board. MBOH will provide an opportunity for Applicants to make a presentation to the MBOH Board regarding their Projects and Letters of Intent and will provide an opportunity for public comment on proposed Projects and Applications. Applicant presentations will be limited to 10 minutes or less. The MBOH Board may ask questions of Applicants and discuss proposed Projects for purposes of assisting the Board in determining which Projects it will invite to submit Applications and assisting Applicants in presenting better Applications, but such questions, answers and discussions shall not be binding upon MBOH in any later Award determination or other MBOH process.

After considering the Letters of Intent, presentations, questions and answers and discussion, the MBOH Board will select those Projects that it will invite to submit Applications. Selection for invitation to submit an Application may be based upon consideration of any of the Selection Criteria permitted to be considered for purposes of an Award under this QAP, but no evaluation or scoring of Letters of Intent will be done or considered for purposes of selection for invitation to submit an Application. For purposes of determining the number of Projects to select: (a) the total amount of Credits requested for all Projects invited to submit Applications will not exceed 150% of the State's Available Annual Credit Allocation determined as provided in Section 6; and (b) no more than 10-8 Projects will be selected. If the total Credits requested in the Applications for such 8 Projects is less than the amount of Credits available for Award in such round, the Board may invite one or more additional Projects to submit Applications, but may invite only the number of additional Projects necessary to meet the amount of Credits available for Award (the "ceiling"), except that the invited Project that brings the total amount of Credits requested from invited Projects to the ceiling may cause the total Credits request to exceed the ceiling. Each Project so selected by the MBOH Board will be deemed invited to submit an Application. An Application may be submitted only for a Project invited by the MBOH Board to submit an Application. All other Applications will be returned without consideration.

~~At the MBOH Board's meeting in the month of Application submission, MBOH staff will present Applications to the MBOH Board. The MBOH Board may ask questions of Applicants and discuss proposed Projects but there will be no Applicant presentations. MBOH will provide an opportunity for public comment on proposed Projects and Applications.~~

At the Award Determination Meeting, MBOH staff will provide Project Application information to the MBOH Board. Applicants should be available to the MBOH Board to answer questions regarding their respective Applications. The MBOH Board may ask questions of Applicants and discuss proposed Projects but there will be no Applicant presentations. MBOH will provide an opportunity for public comment on proposed Projects and Applications. Applicants shall have an a brief opportunity to make comments and respond to any information presented ~~negative comments regarding their Applications.~~

## 4% Credit Applications for Tax Exempt Bond Financed Projects

Projects with tax-exempt financing under the volume limitation on private activity bonds (“4% Projects”) may be eligible to receive tax credits outside the state’s tax credit allocation volume cap. An Applicant for tax-exempt financing under the volume limitation on private activity bonds also seeking an Award of 4% Credits for a scattered-site Project under a single partnership may apply for such credits by submission of a single Application that includes sub-applications for each property included in the Project.

Full Applications for tax-exempt financing and related 4% Credits may be submitted at any time; submission is not limited to the Application schedule set forth above for 9% Credit competitive awards. However, complete Applications must be received by MBOH at least 6 weeks before the scheduled MBOH Board meeting at which the Application is to be considered. Changes to the Application that require MBOH to re-underwrite the Application will restart the minimum 6-week period.

The Application fee for 4% Projects is 1% of the amount of annual Credits requested in the Application and must be submitted to and received in the MBOH office for the Application to receive consideration. In addition, Final Allocation of 4% Credits is subject to payment in full of applicable bond closing fees at bond closing per the MBOH Private Placement policy available on the MBOH website.

**A 42M letter fee will be charged in the amount of 4% of the Credit amount.**

Applications for 4% Projects must meet all requirements of the Applicable QAP, including meeting at least the minimum Development Evaluation Criteria threshold score specified in Section 9 to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding Housing Credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

**For 4% only projects, a Letter of Intent must be submitted with the request for an inducement resolution. The Letter of Intent does not require a Letter of Intent fee or a market study or mini-market study.**

### **Combined Credit Applications for Projects Involving Multiple Credit Sources**

**A single Applicant may apply for credits by submission of a single Application that combines sub-applications for each property/credit request included in the Project (for example, combined 9%/4% applications, or a Housing Credit application that combines Housing Credits and another credit source). Each sub-application must include a separate UniAPP that provides the Project numbers attributable to the sub-application's credit source. Letters of Intent and Application for Projects combining 9% Credits with other credit sources must be submitted in a competitive 9% Credit round and by the applicable deadlines specified for such competitive round.**

### **Application Submission Method for 4% and 9% Letter of Intent and Credit Applications**

Electronic submission of Applications using MBOH’s system (currently ShareFile) is preferred but hard copy Applications will also be accepted. Please contact staff (preferably at least a week ahead of the submission deadline) for set up and for specific instructions on how to access this system. In submitting or preparing to submit Applications, Applicants shall not change or create folders or otherwise change the file structure within the ShareFile submission. An Applicant may request an additional folder by contacting MBOH staff.



## SECTION 5 - FEE SCHEDULE

### Letter of Intent

The Letter of Intent fee is ~~\$1,500.00~~\$3,000.00 and must be submitted to and received in the MBOH office by the applicable Letter of Intent deadline. MBOH will not consider Letters of Intent submitted without the Letter of Intent fee. The Letter of Intent fee is not refundable.

### Application

The application fee is 1% of the amount of credits requested in the Application and must be submitted to and received in the MBOH office by the applicable application deadline. MBOH will not consider Applications submitted without the application fee. The application fee is not refundable and will not be adjusted even if the MBOH Board Awards no credits or only a portion of the tax credits requested.

In addition to the application fee, a Reservation fee in the amount of ~~10.0%~~8% of the credits reserved is due on or before December 1 of the credit ceiling year from in which the Award is made (e.g., for 2018 Credits awarded in November 2017, the fee is due on December 1, 2017-2018 for 2017 credit Awards made in January 2017). After a Reservation Agreement is executed the Reservation fee is not refundable. If the conditions described in the Reservation Agreement are not met, the entire Reservation fee will be forfeited to MBOH.

### Requesting Additional Credits After Initial Allocation

As MBOH, in its discretion, determines necessary for financial feasibility, returned or unreserved Housing Credits may be used to increase the amount of Housing Credits reserved for a Project after the first round Awards have been made. In considering a request for an increase under this paragraph, MBOH may consider any anticipated potential need for returned or unreserved Credits to fund Projects that would otherwise be funded or require greater funding under the Corrective Award set aside under Section 7. An Applicant seeking an increase in the amount of reserved Credits must apply in writing for such increase and must submit new financials (UniApp Section C) and supporting documentation for the of cost increases (e.g., higher bids than expected, material costs, etc.). Applications for additional Credits must be submitted to staff. Staff will review and evaluate supporting financials and new cost documentation and a staff recommendation will be presented at a later MBOH Board meeting for consideration. Staff will not recommend and the MBOH Board will not approve any increase beyond that necessary to make the Project feasible.

Any request for Credits above the amount initially Awarded is considered a request for additional Credits after Initial Allocation and is subject to the provisions of this section.

An Application and Reservation fee of ~~10%~~109% of the additional Housing Credits requested is due with the request. In the event an increase for the additional requested Credits is not approved, the Reservation fee in the amount of ~~82%~~89% will be refunded.

### Compliance Fees

See Section 12, Compliance Monitoring.

### Developer/Owner Reimbursement of Board Legal Expenses

The Developer/Owner of any Project awarded credits will be required to reimburse MBOH for legal fees and expenses incurred by MBOH with respect to any non-standard request, change, document or other matters relating to Reservation (Initial Allocation), Carryover

Commitment, compliance or other aspects of qualifying for or obtaining Housing Credits. Such fees and expenses must be paid within 30 days of MBOH's submission of an invoice. MBOH shall not be required to complete any pending process, approval or other action until such fees and expenses are paid in full.

## **SECTION 6 - MAXIMUM AWARDS**

### **Maximum Credit Award**

Twenty-five percent (25%) of the state's Available Annual Credit Allocation will be the maximum Credit Awarded or Allocated to any one Project or Developer. The state's Available Annual Credit Allocation is defined as and includes the state's actual or estimated credit ceiling for the current year plus any other available Credits from prior year credit authority determined as of 20 business days prior to the applicable application deadline, and includes any Credits held back pursuant to court order or subject to Award under the Corrective Award set aside. The Developer's percentage of the Development Fee, as specified in a written development agreement, will be that Developer's percentage of the 25% limit. The maximum Credit Award for a Project will be determined based upon the state's Available Annual Credit Allocation for the Housing Credit year from which the Project is first Awarded HCs. If the state's Available Annual Credit Allocation is not known as of 20 business days prior to the applicable application deadline, the Available Annual Credit Allocation from the previous year will be used, subject to later adjustment once the state's actual Available Annual Credit Allocation is known. If an estimated amount is used for Award purposes, all Awards based upon such estimate shall be conditional upon a final determination of the state's actual Available Annual Credit Allocation.

MBOH does not commit tax credits from future years, except as specifically provided in this QAP. The MBOH Board may Award Housing Credits from a future year's Available Annual Credit Allocation at any time outside the competitive cycle for purposes of funding repair or replacement of a Project building due to a life/safety emergency as determined by the MBOH Board in its discretion. The Applicant must submit a Letter of Intent and the Board must invite the Applicant to submit an Application before making an Award. The Application must meet all QAP requirements.

## **SECTION 7 – SET ASIDES**

### **Non-profit**

Ten percent of each state's credit ceiling must be set aside for buildings which are part of one or more Projects involving Qualified Nonprofit Organizations.

The 10% non-profit set-aside requirement may be met by an Award to a Project involving a Qualified Nonprofit Organization out of any other set-aside or the general pool. If no Project Awarded HCs involves a Qualified Nonprofit Organization, the non-profit set aside (i.e., 10% of the state's credit ceiling) will be held back for later Award to a Project involving a Qualified Nonprofit Organization.

### **Corrective Award**

Such portion of the state's Available Annual Credit Allocation is reserved and set-aside as is necessary for Award of credits to:

- Any Project for which an Application was submitted in a prior round or year, if:

- o a final order of a court of competent jurisdiction determines or declares that such Applicant was entitled to an Award in such prior round or year or requires MBOH to make an Award or Allocation of tax credits to such Project;
- o a final order of a court of competent jurisdiction invalidates or sets aside an Award of credits to an approved Project from such prior round or year and a Reservation Agreement was executed by MBOH and such Applicant prior to issuance of such court order, unless such court order determines that such Project was not eligible or qualified under the applicable QAP to receive an Award of tax credits; or
- o MBOH, upon further consideration of any Award determination as required by and in accordance with the order of a court of competent jurisdiction, determines that such Project was entitled to an Award in such prior round or year.

All requirements and conditions of this Corrective Award set aside provision must be met to receive an Award under this set aside provision. The amount of any Award under the Corrective Award set aside shall be the amount specified by the court, or if no Award amount is specified by the court, an amount determined by MBOH in accordance with this QAP. The Corrective Award set aside shall be funded first from returned or unreserved tax credits from a prior year. Awards may be “future allocated” under this Corrective Action set aside, i.e., such Awards may be made from returned or unreserved tax credits from a prior year and/or the current year’s credits at any MBOH Board meeting after the final court order has been issued and presented to MBOH. Such Award need not await the annual Application and Award cycle.

Where a court orders that an amount of the current year’s credits be set aside for a Project pending the decision of the court, if the court’s decision is not received before the end of the current year, the credits set aside will become classified as the next year’s credits, as required by federal code.

If the court orders MBOH to Award credits to any Project under this set-aside, the Project must submit an updated Application so the MBOH can review and underwrite current numbers and assumptions to verify that the amount of credits requested or some other credit amount is justified for Project feasibility, unless otherwise ordered by the court. The corrective awardee must pay the Reservation fee as required in Section 5.

## Small Rural Projects

Twenty percent (20%) of the state’s Available Annual Credit Allocation is set-aside for Small Rural Projects. For purposes of this set-aside, a Small Rural Project is a Project: (1) for which the submitted tax credit Application requests tax credits in an amount up to but no more than ~~10%~~12.5% of the state’s Available Annual Credit Allocation, and (2) ~~with 20 or fewer low-income units, and (3)~~ proposed to be developed and constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.

## General Rules Regarding Set Asides

MBOH reserves the right to determine in which set-aside a Project will be reviewed (subject to its eligibility), regardless of its eligibility for any other set-aside. For example, if a Project is submitted as a Small Rural Project in order to utilize the Small Rural Project set-aside when it is clearly part of a larger or non-rural Project, the Project will be placed in the proper category as determined by MBOH staff.

To qualify and receive consideration to receive an Award of credits under a set-aside, the Project must meet all applicable requirements of this QAP and must receive minimum Development Evaluation Criteria score specified in this QAP.

The MBOH Board reserves the right to not Award credits to a qualifying Small Rural Project even if the Project meets the minimum required score, if the MBOH Board, at its discretion, determines another Project or Projects better meet the most pressing housing needs of low income people within the state of Montana, taking into consideration the Selection Criteria of this QAP as determined in accordance with Section 9.

In the event there are insufficient tax credits available to fully fund all set aside categories, the respective set asides categories shall be funded in the following order of priority: (1) Non-profit; (2) Corrective Award; and (3) Small Rural Project.

## **SECTION 8 – LETTER OF INTENT AND APPLICATION PROCESS**

Applicants are responsible to read and comply with this Qualified Allocation Plan (QAP) (and any other Applicable QAP) and accompanying materials.

Applicants are responsible to determine the degree that their building(s) and development correspond to the MBOH's Selection Criteria contained in this QAP.

Applicants are responsible to consult their own tax attorney or accountant concerning: (a) each building's eligibility for the tax credit; (b) the amount of the credit, if any, for which their building(s) may be eligible; and (c) their ability and/or their Investor's ability to use the tax credit.

### **Application Workshop**

MBOH staff will conduct a workshop annually to educate potential applicants and answer questions regarding the content and requirements of the Letter of Intent and Application. Attendance is highly encouraged but not mandatory. This workshop will be held prior to the deadline for submission of letters of intent, as specified in the schedule in Section 4 above. In addition, Applicants are encouraged to contact MBOH staff well prior to submission of Letters of Intent and Applications to discuss and clarify any questions, ambiguities or other issues identified by the Applicant.

### **Letter of Intent**

All Projects wishing to apply for HCs in Montana must submit a Letter of Intent by the deadline specified in Section 4 with the applicable fee.

All Letters of Intent must be submitted in the format posted on the Board's website. The Project Location, type (e.g., family or elderly), and Developer specified in the Letter of Intent may not be changed in any later Application. Other information in the Letter of Intent (e.g., cost information, number of units, unit sizes, income targeting, rents, hard and soft loan sources, etc.) will be considered the Applicant's best estimates and may be changed in the Application. A market study or mini-market study is required for purposes of a Letter of Intent, and the Letter of Intent must include the completed market study summary Form posted on the MBOH website.

### **Application**

An Application may not be submitted for a Project unless a Letter of Intent has been submitted with respect to the Project according to the requirements of this QAP and the

Board has invited that Project to submit an Application. MBOH will return all other Applications without consideration, along with the application fee.

Applicants must commission a full market study as outlined in the MBOH Market Study Form. Such Market Study must be included with the Application submission in accordance with the Threshold Requirements below.

Applicants must complete and submit the Uniform Application and Supplement, [all Threshold Requirements](#), full market study and full application fee by the applicable application deadline (see Section 4, Application Submission and Award Schedule). Applicants must use the most current form of the Uniform Application (UniApp) and Supplement available on the MBOH website at: <http://housing.mt.gov/UniformApplication>

## **Threshold Requirements Are Mandatory**

Threshold Requirements are mandatory for all Letters of Intent and Applications. Letters of Intent and Applications received not meeting all Threshold Requirements or other requirements of this QAP will be returned un-scored and will receive no further consideration. Fees will not be refunded.

Submit complete Applications to MBOH. Electronic submission of Applications using MBOH's system (currently ShareFile) is preferred but hard copy Applications will also be accepted. Please contact staff (preferably at least a week ahead of the submission deadline) for specific instructions on how to access this system. In submitting or preparing to submit Applications, Applicants shall not change or create folders or otherwise change the file structure within the ShareFile submission. Applicants may request an additional folder by contacting MBOH staff.

MBOH staff may communicate with Applicants for purposes of providing interpretive guidance or other information or for purposes of clarifying Applications. MBOH staff may allow minor corrections to Applications, but will return and will not further consider Applications requiring substantial revision or those that are substantially incomplete.

## **Threshold Requirements**

To be eligible for further consideration, all Letters of Intent and Applications must be submitted in accordance with the requirements of this QAP and the following Threshold Requirements.

ALL MBOH FORMS REFERENCED IN THIS QAP ARE AVAILABLE ON THE MBOH WEBSITE AT [URL]. ALL FORMS SUBMITTED TO MBOH IN OR AS PART OF THE APPLICATION, DEVELOPMENT, UNDERWRITING, ALLOCATION, COST CERTIFICATION, COMPLIANCE OR OTHER PROCESSES UNDER THIS QAP MUST BE THE MOST CURRENT FORM AVAILABLE ON THE MBOH WEBSITE. If the most current Form(s) are not used, submissions may be returned and required to be resubmitted on the correct Form.

Letters of Intent must:

1. Include the applicable fee;
2. Be received by the applicable deadline; and
3. Be substantially complete and in the format prescribed in the MBOH Letter of Intent Form.

Applications must:

1. Include the application fee;
2. Be received by the applicable deadline;

3. Include all of the documents, information and other items specified in Threshold Requirements 4 through 2729 below;
4. Include a cover letter summarizing the Project, limited to 2 pages, which will be provided to MBOH Board members within one week following the Application deadline ;
5. Include a fully completed, UniApp, including all applicable Forms, all in the most current forms as posted on the MBOH website.
6. Specify the Qualified Management Company that will provide property management service to the Project and provide a copy of the written agreement with the Management Company evidencing the company's commitment to provide management services. Upon written notice from MBOH that the Application has identified a Management Company that is not a Qualified Management Company, the Applicant must submit to MBOH within ten (10) days a written designation of a Qualified Management Company and a copy of the written agreement with the Management Company evidencing the replacement company's commitment to provide management services.
7. Include a Market Study prepared and signed by a disinterested third party analyst, with certificate (included in MBOH Market Study Form) signed by analyst and notarized. Market Studies must be completed within six (6) months prior to the submission date of the Application, must have the market analyst complete a physical inspection of the market area within one (1) year of the Application and must adhere to minimum market study requirements in MBOH Market Study Form.
8. Include documentation of Land or Property Control.
9. Include documentation from the applicable local zoning authority that applicable zoning requirements are met or otherwise addressed, e.g., Project is within applicable zoning requirements, part of an approved planned unit development, subject to a zoning change request for which a change request has been submitted, or not subject to any existing zoning requirements. Acquisition/Rehabilitation Projects may provide documentation that the Project will not require a change in zoning requirements.
10. Include documentation of availability and capacity of utilities to serve the Project, including documentation that utilities are available to the Project and the present proximity of utilities to the Project location. Such documentation must be from the electric, gas/propane, water and/or sewer/septic provider/company, as applicable. Documentation must be in the form of a letter from the utility provider verifying that the utilities are or will be available to the property and that the provider has the capacity to handle the load or additional load to be added by the Project. Acquisition/Rehabilitation Projects need only provide such documentation for any expected additional load. Documentation of utility availability and capacity must be current (within 18 months prior to Application date)-not be more than 24 months old at the time of Application submission. MBOH staff may in its discretion require the Applicant to provide updated documentation. If Applicant obtains an updated letter from the utility provider, a copy of the updated letter must be provided to MBOH at Reservation or with the next submitted quarterly report.

11. Include a preliminary financing letter from a lender indicating the proposed terms and conditions of the loan. The financing letter must formally express interest in financing the Project sufficient to support the terms and conditions represented in the Project financing section of the Application.
12. Include a letter of interest from an equity provider including an anticipated price based on the market at time of the Application.
13. For all Applications, include a comparative market analysis ("CMA") or an appraisal done by an independent (non-related) party. Such CMA or appraisal is required regardless of the manner or method of Acquisition and must cover all real estate acquired, including land and/or buildings. **Land and existing building values must be listed separately.**
14. For Rehabilitation Applications, include a full scale Capital Needs Assessment on the USDA Rural Development Capital Needs Assessment (CNA) template or similar form, a list of items in each unit that will be replaced, refinished, repaired, upgraded or otherwise rehabilitated, and a detailed narrative explaining the scope, details and expectations of the Rehabilitation.
15. For Applications proposing Rehabilitation or replacement of existing units, include a preliminary relocation plan addressing the logistics of moving tenants out of their residences and providing temporary housing during the Rehabilitation or replacement and returning tenants to their residences upon completion of the Rehabilitation or replacement.
16. Include a site plan, and a Design Professional's preliminary floor plan and elevations/photos of existing properties for the Project.
17. For Applications for Projects involving Qualified Nonprofit Organizations and seeking to qualify for the non-profit set aside under Section 7, include: (a) a copy of the IRS determination letter documenting such organization's 501(c)(3) or (4) status; (b) an affidavit by the organization's managing partner or member certifying that the organization is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization; and (c) documentation that one of the exempt purposes of the organization includes the fostering of low-income housing.
18. For Applications proposing a property tax exemption for rental housing providing affordable housing to lower-income tenants pursuant to Mont. Code Ann. § 15-6-221, include documentation of intent to conduct a public hearing as required by Mont. Code Ann. § 15-6-221(2). Such public hearing must be conducted by the Owner and documentation of such public hearing must be submitted prior to issuance of the Carryover Commitment. If the Application does not include documentation of intent to conduct the required public hearing, the Project will be underwritten as if no exemption was or will be received.
19. Specify the Extended Use Period.
20. For Projects targeted for Eventual Homeownership, provide the supplemental Application documents and information specified in Section 3, Eventual Home Ownership.
21. Specify the selected minimum set aside (20-50 test) or (40-60 test).

22. Include a copy of both the public notice and the **affidavit of publication** from the publisher, meeting the requirements specified in this Section 8, Public Notice.
23. Include letters of community support. These support letters must be Project specific and address how the Project meets the needs of the community. New letters of support (as well as new letters of non-support) must be submitted for each Application for each Application round. Generic support for affordable housing will not be considered support for the specific Project being considered. These letters will be provided to the MBOH Board for its consideration.
24. If the Project is an Elderly Property, ~~include a stipulation of minimum tenant or resident age (i.e., 55 or 62 and over)~~specify which exemption for housing for older persons will apply.
25. Include a narrative addressing each of the Development Evaluation Criteria, demonstrating how the Application meets each of these criteria, and providing a specific explanation and justification of the points sought for each scoring item. Narrative references to the Market Study must cite the specific page and paragraph of the Market Study. The narrative must include the Applicant's own proposed total score for each scoring item in the Development Evaluation Criteria and, at the conclusion of the narrative, the Applicant's own proposed total score.
26. Include the completed and signed Indemnification Form, Cost Sponsor Certification Form and Release of Information Form.
27. Include the explanation and justification for a request for discretionary basis boost, if applicable.
28. Identify the name of the entity with Legal ownership of Project (LP, LLP, etc.).
29. Include the completed amenity form. This completed form will be provided to the MBOH Board for its consideration.

Applications must also demonstrate that the proposed Projects are financially sound. This includes reasonable financing terms, costs, expenses, and sufficient cash flow to support the operations of the Project, all of which must meet the underwriting standards of MBOH.

### **Public Notice**

An Applicant must place a notice in the local newspaper of the intent to apply for Housing Credits, and encouraging submission of public comment to MBOH. Such notice must include name of Project, number of units, location of Project, for-profit or non-profit status, and, if applicable, intent to request tax-exempt status for the Project. The notice will be placed as a box advertisement in the newspaper within 90 days prior to or not more than 5 working days after the due date of the Application and will allow for not less than 30 days for submission of comments to MBOH. The notice must be published twice within a seven-day period. A copy of the notice, together with an affidavit of publication showing the dates published, must be included in the Application.

### ***Example of Public Notice***



(Name of Developer, address, telephone number), a (for-profit/non-profit) organization, hereby notifies all interested persons of (city, town, community name) that we are planning to develop, (Name of Project) an affordable multi-family rental housing complex on the site at (street location). This complex will consist of (number) (one bedroom, two bedroom, or three bedroom) units for (elderly persons/families). This Project (will/will not) be exempt from property taxes.

An Application (will be/has been) submitted to the Montana Board of Housing for federal tax credits financing.

You are encouraged to submit comments regarding the need for affordable multi-family rental housing in your area to the Montana Board of Housing, PO Box 200528, Helena, MT 59620-0528 or FAX (406) 841-2841. Comments will be accepted until 5 PM on (specify the date 3 weeks the Friday\_ before the MBOH Board Award Determination Meeting (see Section 4, Application Cycle)).

## **SECTION 9 – EVALUATION AND AWARD**

### **Threshold Evaluation and Considerations**

MBOH staff will review all Applications received by the applicable submission deadline for compliance with all Threshold Requirements, including but not limited to completeness, soundness of the development, and eligibility based on federal requirements and this QAP. Applications determined by MBOH staff to not substantially meet all Threshold Requirements or other requirements of this QAP or federal law will be returned un-scored and will receive no further consideration. Except as specifically provided in this QAP, Application fees will not be refunded.

MBOH staff may communicate with Applicants for purposes of providing interpretive guidance or other information or for purposes of clarifying, verifying or confirming any information in Applications. MBOH staff may allow minor corrections to Applications, but will return and will not further consider Applications requiring substantial revision or those that are substantially incomplete.

MBOH staff may query an Applicant or other persons regarding any concerns related to a Housing Credit Application or the management, construction or operation of a proposed or existing low income housing Project. Questionable or illegal housing practices or management, insufficient or inadequate response by the Applicant, General Partners, or Management Company as a whole or in part, may be grounds for Disqualification of an Application and non-consideration for an Award of Housing Credits.

As part of its review of Applications, MBOH staff will contact community officials of the Project location to discuss relevant evaluation criteria information pertaining to the Application and the proposed Project. MBOH may also contact any other third parties to confirm or seek clarification regarding any information in the Application, including but not limited to checking Development Team references, verifying credit reports and verifying information through direct contact with the Project Developer.

Between the submission deadline and the MBOH Board Award Determination Meeting, as required by federal law, MBOH will notify the chief executive officer of the local jurisdiction of each proposed development requesting comments on the development.

Housing Credit Allocations will be subject to three underwriting evaluations: (i) evaluation for purposes of Award/Reservation and, for Projects that have received an Award of credits and entered into a Reservation Agreement, (ii) evaluation for purposes of the 10% Cost Certification, and (iii) evaluation for purposes of Final Cost Certification.

MBOH will return and will not consider for an Award of Credits:

- Incomplete Applications;
- Unsound Applications, i.e., Projects for which the Market Study and other available market information fails to demonstrate adequate market need within the proposed location community or Projects that are not financially feasible, including but not limited to viable cash flow, based upon MBOH underwriting standards as set forth in this QAP;
- An Application submitted by an entity with a demonstrated poor track record in completion of development or management of low income housing, whether located in Montana or another state;
- Applications submitted by Applicants with current Project(s) that have/had numerous or unresolved substantial non-compliance issues or IRS 8823's (consideration will be given to the type of 8823);
- Any other Application failing to meet any mandatory requirement of this QAP or federal law; and
- Any Application as otherwise specified in this QAP.

Applications meeting all minimum Threshold Requirements and not excluded from further consideration under this QAP will be evaluated for the amount of tax credits needed for feasibility and long term viability and will be evaluated and scored according to the Development Evaluation Criteria section below.

### **Amount of Housing Credit Allocation**

Although a proposed development may be technically eligible for a certain Credit amount, federal law prohibits MBOH from allocating more Credits than necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period. Accordingly, an Award of Housing Credits under this QAP will be limited to the amount of Credits that MBOH, in its sole discretion, deems necessary to make the development feasible and viable throughout the Compliance Period.

In determining the amount of Credits necessary, MBOH will consider:

- The Sources and Uses of funds and the total financing planned for the Project. Funds, including funds from federal sources, such as HOME grant money, Rural Development, and similar funds, may be loaned by or through a parent organization to a Project at an interest rate below the Applicable Federal Rate (AFR). Such loans will not reduce the basis for the Project providing they are true loans.
- Grants made with federal funds directly to a Project, which will reduce basis.
- Any proceeds or receipts expected to be generated by the Housing Credits.
- The reasonableness of the development and operational costs of the Project.

Based on its evaluation, MBOH will make a preliminary determination of the amount of Credits deemed necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period. This determination is made solely at MBOH's discretion, and is not intended to be a representation or warranty to anyone as to the feasibility of the development. Rather, it will serve as the basis for making an Award of Credits. A similar analysis will be done at the time of 10% Cost Certification and at Final Cost Certification prior to issuing IRS Form(s) 8609. Neither the selection of a Project to receive an Award of Housing Credits nor the amount of Credits to be allocated constitutes a representation or warranty that the Owner or Developer should undertake the development, or that no risk is involved for the Investor.

### **Full Funding of Applications**

Just as MBOH will not allocate more Credits than necessary for the financial feasibility of the development and its viability, MBOH will not award Credits in an amount less than necessary for these purposes. Therefore, if the Board Awards Credits to a Project, it will Award the amount of Credits determined by MBOH staff for the Project based upon the Applicant's requested amount (except for any *de minimis* reduction because of lack of available Credits to fully fund the full Credit amount). In the event available Credits are not awarded in any round, invited but unawarded Applications will be allowed 30 days to re-submit Applications resized to the amount of Credits remaining available and, after staff underwriting and evaluation, the Board will award the remaining Credits.

## Development Evaluation Criteria and Scoring

In addition to evaluation under all other QAP Selection Criteria, Applications will be evaluated and scored according to the following Development Evaluation Criteria.

- Awarding of points to Projects pursuant to these Development Evaluation Criteria is for purposes of determining that the Projects meet at least a minimum threshold of 1100 of the total possible ~~1330-1290~~ available points to qualify for further consideration. Developments not scoring the minimum Development Evaluation Criteria score of 1100 of the total possible ~~1330-1290~~ available points will not receive further consideration.
- Non-competitive 4% Credit Bond Deals will meet at least a minimum threshold of 850 of the total possible ~~1330-1290~~ available points to qualify for further consideration. Non-competitive developments not scoring the minimum Development Evaluation Criteria score of 850 of the total possible ~~1330-1290~~ available points will not receive further consideration.
- The Development Evaluation Criteria, other QAP Selection Criteria and information submitted or obtained with respect to Projects will be used to assist the MBOH Board in evaluating and comparing Projects.
- Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board. It does not control the selection of Projects that will receive an Award of tax credits. For purposes of this QAP and HC Awards and Allocations, the QAP Selection Criteria include all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data set forth in this QAP and all federal requirements.

### 1. Extended Low Income Use\* (100 points possible)

Federal law requires a 30-year or longer Extended Use Period. An Application in which the Applicant agrees to maintain units for low income occupancy beyond the Compliance Period will receive points as indicated below and must incorporate these restrictions into the Restrictive Covenants.

#### **Years beyond initial 15**

15 years	0 points	(30 total years)
16 – 20 years	40 points	(31 – 35 years)
21 – 25 years	60 points	(36 – 40 years)
26 – 30 years	80 points	(41 – 45 years)
Over 30 years	100 points	(46 years +)

Eventual Home Ownership\* Applications must also specify an Extended Use Period and will receive points for the Extended Use Period chosen as provided above (refer to the “Eventual Home Ownership” portion of Section 3 for supplemental Application documentation and information requirements).

**2. Lower Income Tenants\* (220 points possible)**

An Application will receive points for the percentage of eligible units at the percentages of area median income (“AMI”) levels listed below. An Application will receive points for 40%, 50%, and 60% categories when the development targets those income and rent levels. Points awarded for 40% units are independent of and not calculated as part of 50% or 60% units, except that the number of 40% units included in the Project, if any, that exceed 10% of eligible units will be added to the number of 50% units for purposes of point scoring under the chart below. Developments will be bound by the terms committed to in the application process through the use of the Declaration of Restrictive Covenants. Section C, Part IV, Rent and Forecasted Income of the UniApp will be used to calculate the score for this item. Scoring under the following chart is based upon the total number of HC units including a manager’s unit if applicable.

Target Median Income Level	Percentage of Eligible Units	Points
40%	10% (or greater)	20 NOTE 1
50%	15-20%	60 NOTE 1
50%	21-40%	80 NOTE 1
50%	41-60%	150 NOTE 1
50%	61-100%	200 NOTE 1
60%	40%	0
60%	41-60%	20
60%	61-100%	40

NOTE 1: Rents @ 40% allowed to income qualify to 49% AMI.

Rents @ 50% allowed to income qualify to 55% AMI (40-60 election must apply)

(Applicable to all existing HC properties)

**3. Project Location\* (100 points possible)**

An Application will be awarded points to the extent the Project is located in an area where amenities and/or essential services will be available to tenants, determined according to the following specifications. An Application will be awarded points with respect to an amenity or service as specified below, if: (i) a Project is located within 1½ miles of the specified amenity or essential service; (ii) public or contracted transportation (not including taxi or school bus service) is reasonably available to the specified amenity or service (i.e., the Project is located within ¼ mile of fixed bus stop or on a same day call basis); or (iii) where applicable, the specified amenity or service is available via a no-charge delivery service to the Project Location:

- 20 points for grocery store (convenience store does not count); and
- 10 points for each of the following, up to a maximum of 80 points:
  - One or more public schools;
  - Senior Center;
  - Bank;

- Laundromat (only if washer/dryer not included in unit or onsite);
- Medical services appropriate and available to all prospective tenants (e.g., hospital, doctor offices, etc.);
- Pharmacy services appropriate and available to all prospective tenants;
- Gas station and/or convenience store;
- Post Office;
- Public Park;
- Shopping (department, clothing or essentials – does not include convenience store); or
- Public Library.

#### 4. Housing Needs Characteristics\* (~~190~~ 150 points possible)

Development meets area housing needs and priorities and addresses area market concerns, such as public housing waiting lists (for all units and tenants), Vacancy Rate and type of housing required.

- **Local Community Input (40 points possible)**: Up to a total of 40 points will be awarded for Local Community Input. ~~2010~~ points will be awarded for ~~each~~ any of the items (i) through (iv) (not to exceed total of 40 points) through which local community input regarding the proposed Project was gathered, as shown by evidence provided in the Application or in response to MBOH inquiries: (i) local neighborhood meetings held expressly for this Application with attendance rosters and minutes; (ii) local charrettes held expressly for this Application with supporting documents, concept drawings, and input from local community; (iii) other appropriate form of local community input specifically designed to gather local community input for this Application\_ and/or (iv) City or County Commission meeting. In order to obtain the available points under item (iii), there must be actual local community input in some form. If a community meeting is held but there is no attendance, another form of local community input must be used. No points will be awarded if the meeting or charrette is part of another public or design meeting, unless the minutes demonstrate that a portion of the meeting was specifically dedicated to community input for this Application. No points will be awarded if the Application does not provide evidence of qualifying local community input, including minutes of any meeting, charrette or other form of local community input and copies of any written comments received. Documentation of community outreach efforts to inform and invite community members to attend any of the community input events must be included. All meetings, charrettes and other Local Community input events must be held within 6 months before the Application deadline.
- **Appropriate Size (50 points possible)**: Points will be awarded for the appropriateness of size of the development for market needs and concerns as reflected in the Market Study. 50 points will be awarded if the number of units being proposed is 50% or less than the number of units needed as projected by the Project's Market Study. No points will be awarded if the number of units being proposed is more than 50% of the number of units needed as projected by the Project's Market Study. For projects developed, rehabilitated or constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula, no points will be awarded if the number of units being proposed is more than 75% (rather than 50%) of the number of units needed as projected by the Project's Market Study. If the Project is existing in the community, the number of units in the Project will be added to the new units needed and the

above test will be applied. The Application narrative must address this scoring item with citations to the relevant pages and paragraphs of the market study.

- ~~• **Appropriate Development Type (40 points possible):** Points will be awarded for the appropriateness of the development type for market needs and concerns as reflected in the Project's Market Study. 40 points will be awarded if the Project's Market Study explains and justifies the selection of the type of construction and housing selected (including justification of Rehab/New Construction, Family/Elderly, Single-Family/Multi-Family, bedroom size and Eventual Home Ownership). If this explanation and justification is not included in the Project's Market Study, no points will be awarded in this category. The Application narrative must address this scoring item with citations to the relevant pages and paragraphs of the market study.~~
- **Market Need (60 points possible):** The Application will be awarded points based upon the required Market Study's documentation that the Project meets the market needs of the community, as follows:
  - Vacancy Rate is at or below 5% (20 points);
  - Absorption rate is less than 4 months (20 points) or Absorption rate is 4 or more months and less than 6 months (10 points) and
  - Rents are at least 10% below adjusted market rents (20 points).

Narrative references to the Market Study must cite the referenced page and paragraph of the Market Study.

## **5. Project Characteristics\* (230 points possible)**

### ***Preservation of or Increase in Housing Stock (50 points possible)***

50 points will be awarded if the Application proposes the Preservation of existing affordable housing stock or increases the affordable housing stock through the use of federal funds or funds from other sources (e.g., donation of land, other substantial donations, reduction in taxes through tax abatement (other than non-profit exemption) or impact fees) to leverage the tax credit dollars.

### ***Qualified Census Tract\* or Community Revitalization Plan\* (10 points possible)***

10 points will be awarded if the Project is located in a Qualified Census Tract\* or **involves existing housing** as part of a local (not national, state or regional) community revitalization plan\* or similar plan. The Application must include any such local community revitalization plan and identify where in the plan such existing housing may be found.

### ***Preservation of Affordable Housing Projects\* (20 points possible)***

20 points will be awarded if the Application proposes the Acquisition and/or Rehabilitation of buildings with local, state, and/or federal historic\* preservation designations, existing affordable housing stock, or Projects applying for Rehabilitation tax credits that have completed their Compliance Period.

### ***Project-based rental subsidy (50 points possible):***

- 0 points for less than 25% of the units;
- 10 points for at least 25% of the units;
- 20 points for at least 35% of the units;
- 30 points for at least 50% of the units;
- 40 points for at least 75% of the units; or

50 points for 100% of the units.

The Application must provide a copy of the relevant contract or other documentary proof of subsidy from the provider. MBOH staff will verify claimed subsidies with funding source.

***Green Building and Energy Conservation Standards\* (100 points possible):***

Applicant's justification for green building and energy conservation includes but is not limited to Energy Star building and appliance initiatives, water saving devices and green construction and materials. The green building and energy conservation items are listed and further described, and the available points and evaluation scoring criteria are specified, for New Construction and Rehabilitation in the MBOH Green Building and Energy Form. The Application must include the completed MBOH Green Building and Energy Form worksheet, (Exhibit F). The Applicant's architect, who is qualified with respect to energy and green building standards, must provide a letter confirming the listed green building items, as shown in the MBOH Green Building and Energy Form which is referenced in and attached to the architect letter, are incorporated into the Project ~~and a document that is outlined in a column and table format, listing each Mandatory and Scoring Item~~. For all Projects (New Construction and Rehab)Rehabilitation, the table Form must list each scoring item and **specify each unit** by unit number or number of each unit type (e.g., 4 of the 10 3-bedroom units) that will include the item. This letter and the accompanying ~~column/table document~~Form must be included in the Application. NOTE: The Applicant's architect also must provide certification at Final Cost Certification for 8609(s) purposes confirming that the initiatives were incorporated.

Please refer to Section 3 for mandatory infrared testing for Projects that have been Awarded HCs.

**6. Development Team Characteristics\* (330 points possible)**

Participation by an entity with a demonstrated track record of quality experience in completed development or management of low income housing tax credit Projects. MBOH will consider all members of the Development Team (Applicant, Owner, Developer, General Partner, Management Company, and HC Consultant) and whether housing Projects have been developed and operated with the highest quality either in Montana or another state. Special attention will be paid to existing Projects, amount of active local community participation used to develop Projects, and a management entity with a good compliance track record and specialized training. If a new Developer these points can be obtained through Experienced Partners. **(180 points possible)**

Thirty points each will be awarded for (a) one member of the Management Company meeting the education requirement under Section 12, and (b) one member of the Development Team (other than the Management Company) who is directly and actively involved with the Project that has been trained by a Nationally Recognized LIHTC Compliance Training Company. For MBOH purposes, to maintain certification, the person must attend a complete class with a Nationally Recognized LIHTC Compliance Training Company at least once every four years (certificates must be attached with each Application). MBOH annual compliance training does not qualify for credit under this category **(60 points possible)**.

Ninety points will be awarded if the Project's Developer or Consultant who is actively involved in the actual construction process has experience with Cold Weather Development and Construction, as reported on the MBOH Cold Weather Experience Form. Cold Weather Development and Construction is defined as experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel **(90 points possible)**.

The application must list all affordable housing including low-income housing tax credit Projects in Montana or any other state developed, owned, managed or consulted on by Applicant and any member of the Development Team or for which an Award of tax credits was received, whether or not such Projects were successfully completed. All Development Team members, including Applicant, Developer, General Partner/Owner, Management Company, and HC Consultant -must consent in writing, on a form provided in the UniApp Supplement, to the release of information by any other applicable state tax credit agencies to MBOH regarding the Applicant's history of performance on other tax credit Projects.

### **7. Participation of Local Entity (60 points possible)**

The MBOH Board has determined having a ~~l~~ocal ~~e~~ntity participate at a significant level increases the success and acceptance of the Project into the community. For purposes of this scoring item, a local entity includes a provider serving the Project locality from a physical office in the region of the state where the Project is located even if the provider does not maintain a local office in the locality. Up to but not more than 60 total points may be awarded for participation of one or more local entities. 10 points will be awarded for each ~~of the~~ local entity for each of the participation items (i) through (vi) documented in the Application as provided below.

Qualifying participation includes ~~l~~ocal ~~e~~ntities providing: (i) screening and referring of individuals as prospective tenants; (ii) providing on-site services to Project tenants; (iii) donation of land or sale at a reduced price to enhance affordability; (iv) use of grant money to develop infrastructure or for other uses; (v) significant fee waivers on local government fees; or (vi) other forms of significant monetary or ~~material-in-kind~~ support.

Each item of local entity participation must be evidenced by a binding written agreement to participate, binding grant or conveyance, binding commitment for fee waivers, etc. Such written agreements must specifically identify and describe the particular services the entity is providing and how such services will benefit the project and must separately identify each of the items in (i) through (v) above. Such agreements may be conditioned upon an Award of Credits. Formal written agreements are required; letters, offers or other non-binding documents will not be accepted as sufficient documentation of local entity participation under this section. Only new or updated agreements, land donations, and/or grants requested or negotiated for the current round will be considered for awarding points. The Application must provide evidence of how such local entity support will benefit the property. Formal written agreement for ongoing services must be extended or replaced so that a binding agreement remains in place for the duration of the Extended Use Period (with such agreement preserving the Owner's right to cancel the agreement and obtain a replacement agreement with a new servicer if existing servicer is unable to provide the services). The same component of participation by a local entity may not be counted toward more than one item, and may be given credit by an award of points only once. Points will not be awarded for the same item in both this Development Evaluation Criteria 7 and Development Evaluation Criteria 5, Preservation of Affordable Housing.

### **8. Tenant Populations with Special Housing Needs\* (100 points possible)**

An Application will be awarded 10 points for each 5% of the units targeting the following identified needs up to a maximum of 100 points. The Application must specify the number of units targeted for each category. Section B Part XII, Units Accessibility, of the UniApp will be used to calculate the score for this item. Units may not be counted more than once or in more than one category for purposes of awarding points.

- Units targeted specifically for individuals with children or large families (units with 2 or more bedrooms).



- Units targeted specifically as Section 504 fully accessible units exceeding minimum fair housing requirements.
- Units targeted specifically for persons with disabilities (limited to a maximum of 25% of units in the Project) (Application must describe the strategy that will be used to market available units to disabled persons throughout the Extended Use Period).
- Units targeted to veterans (limited to a maximum of 25% of units in the Project).
- Units targeted to victims of domestic violence (limited to a maximum of 25% of units in the Project)

If the Project is an Elderly Property as defined in federal law, the Application will receive 100 points under this provision.

**Example:**

- 2 – 2 bdrm units meet family requirement 20% – 40 points
- 2 – 1 bdrm units exceed section 504 20% – 40 points
- 1 – 1 bdrm unit targeted to mental illness 10% – 20 points
- 5 – 1 bdrm units with no targeting 50% – 0 points
- 10 – Total units in Project – 100 total points received

**9. Developer Knowledge and Responsiveness (*Up to minus (-) 400 points possible*)**

If an entity or individual participating in a Project as a member of the Development Team identified in an Application has a demonstrated poor track record or demonstrated past management weaknesses with respect to developments in Montana or in another state, or has failed in the past to respond timely to an MBOH letter of Inquiry with respect to a Project, MBOH may assign negative points.

MBOH will provide written notice within thirty (30) days of MBOH learning of any event that will result in a negative point assignment, unless MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting. If MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting, MBOH will provide written notice to the Applicant within five (5) business days. The written notice must describe the event giving rise to the negative point assignment and specify the Development Team member or members affected by the negative point assignment, the number of negative points to be assigned and the number of future Applications to which negative points will be assigned. If MBOH has learned of the event after Application submission and prior to the MBOH Board's Award meeting, the notice must be provided to the Applicant and affected members of the Development Team and inform such persons or entities that they may respond in writing to MBOH within five (5) business days of the date of the notice or, if earlier, by 3 days prior to the MBOH Board's Award meeting. If MBOH learns of the event outside the period from Application submission to MBOH Board Award meeting, the notice must be provided to the particular Development Team member affected and inform such Development Team member that they may respond in writing to MBOH within thirty (30) days of the date of the notice.

**a. Demonstrated Poor Track Record**

For purposes of determining a participant's track record, MBOH may contact community officials, Development Team or Development Team member references, credit bureaus, other state tax credit administering agencies and any other sources as MBOH deems appropriate. Up to minus (-) 100 points may be assigned for each of the following: (i) demonstrated poor track record with respect to developments in Montana or in another

state, and/or (ii) failure to respond within 10 working days of MBOH letter of inquiry. (***Up to Minus (-) 200 points possible***)

#### **b. Demonstrated Management Weaknesses**

Development Team members with past demonstrated management weaknesses, including but not limited to those management weaknesses listed below may be assigned negative points for this section (***Up to Minus (-) 200 points possible***), for example:

- Has not followed-through on the development of a Project from Application to rent-up and operation;
- Has not complied with MBOH submission, compliance or other requirements applicable during Project development, construction and Extended Use Period;
- Has not maintained a Project to Section 42 or other program standards;
- Has or had numerous or outstanding substantial non-compliance issues or IRS 8823's (consideration will be given the type of 8823);
- Has not completed required training in a certified compliance training program;
- Has not completed required management compliance retraining at least every four years;
- Has requested income targeting changes that are not supported by unanticipated hardship;
- Has a debt coverage ratio at 10% cost certification or final allocation that has changed significantly from the debt coverage ratio as underwritten by MBOH at Application;
- Has requested additional credits more than once;
- Has made Substantial Changes to previous tax credit applications or has failed to notify MBOH and seek approval of Substantial Changes according to QAP requirements;
- Has significantly diminished the quality and long term viability of a previous Project by lowering costs below a reasonable level;
- Has delinquent late fees due and payable to MBOH;
- Has intentionally provided false information to MBOH in connection with an application, Project or any related Board inquiry or process; or
- Has been a member of the Development Team for a prior Project that exceeded maximum Hard Cost Per Unit or Total Project Cost Per Unit at Final Cost Certification.

Negative points may not be assigned for the same matter under both Section 9(a) and 9(b).

#### **c. Method of Assigning Negative Points.**

Any negative points will be assigned as follows:

- The factors that will be considered in determining whether to assign negative points and the number of any negative points to be assigned with respect to poor track record items, management weaknesses and failure to response to MBOH letters of inquiry, include:
  - The nature and seriousness of the incident(s);
  - The frequency of such incidents;
  - The incidents were or were not within the control of the individual or entity;
  - The degree and timeliness to and with which the entity or individual responded to correction and educational efforts;
  - The responsiveness of the individual or entity in responding timely to fees, penalties and other sanctions imposed;
  - The cost or financial harm caused to the Project, the tax credit agency or third parties;

- The nature and extent of inconvenience and harm caused to Project tenants;
- The nature and extent of damage or expense caused to Project property;
- The extent to which the Project as completed failed to comply with the Project as represented in the Application or in approved Project changes;
- The extent to which the incident would have affected scoring of the Project Application if known as the time (although no such effect on Application scoring need be shown to justify an assignment of negative points);
- The extent to which completion of a Project that received an Award of Credits was substantially delayed or prevented;
- The extent to which Credits that were Awarded were recaptured;
- The extent to which unreasonable or excessive fees, profits or other improper remuneration was derived improperly from a Credit Award or Project; and
- The presence of any other relevant factors or considerations.
- Except as otherwise provided in this Section, negative points will be assigned on the next competitive 9% Credit Application (or multiple Applications in the same competitive round) which includes as part of its Development Team any person or entity that participated as a Development Team member in the Project or Projects giving rise to the negative point assignment.
- If multiple and/or repeat instances of poor performance, management weakness or fail to respond occur or have occurred, negative points may be assigned with respect to a Development Team member for not only the first competitive round in which an Application involving such member participates but may also be assigned for such Applications in multiple future years or competitive rounds.
- If negative points are assigned as a result of poor track record, management weakness or failure to respond that occurred as part of the development/construction/rehabilitation process prior to beginning of lease-up activities or other involvement of the Qualified Management Company, negative points will not be assigned with respect to such Qualified Management Company.
- If more than one Development Team member subject to a negative point assignment from a prior Project is part of the Development Team on a current or future Project Application, the total negative points assigned to the Application will be the greatest number of negative points assigned with respect to any one such participating Development Team member.
- If the Project giving rise to the negative points would have received a lower Development Evaluation Criteria score under the QAP under which the Project initially was evaluated, scored and awarded credits had the poor track record, management weakness or failure to respond been known as of Application scoring, the negative points assigned with respect to a Development Team member from the earlier Application will be the number of points corresponding to the difference in scoring that would have resulted. Such point difference shall be converted as appropriate and necessary to correspond to the current QAP point scoring system.

\* Indicates federally mandated criteria

## **Minimum Scoring Threshold**

Developments not scoring the minimum Development Evaluation Criteria score of 1100 points (or 850 points for non-competitive 4% Credit Bond Deals) will not receive further consideration. Applications scoring at least the minimum Development Evaluation Criteria score of 1100 points or 850 points for non-competitive 4% Credit Bond Deals and meeting all other requirements of this QAP will be considered for an Award of Housing Credits as provided in this QAP.

## **Award Determination Selection Standard**

The MBOH Board will select those Projects to receive an Award of Housing Credits that it determines best meet the most pressing housing needs of low income people within the state of Montana, taking into consideration: (i) all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data (including without limitation the statistical data in the MBOH Statistical Data Form) set forth in this QAP and all federal requirements (together referred to in this QAP as the "Selection Criteria"); (ii) the Development Evaluation Criteria scoring; and (iii) all other information provided to the MBOH Board regarding the applicant Projects.

The awarding of points to Projects pursuant to the Development Evaluation Criteria is for purposes of determining that the Projects meet at least the minimum Development Evaluation Criteria required for further consideration and to assist the MBOH Board in evaluating and comparing Projects. Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board and does not control the selection of Projects that will receive an Award of Housing Credits. In addition to any other Selection Criteria specified in this QAP, the MBOH Board may consider the following factors in selecting Projects for an Award of Housing Credits to qualifying Projects:

- The geographical distribution of Housing Credit Projects;
- The rural or urban location of the Projects;
- The overall income levels targeted by the Projects;
- The need for affordable housing in the community, including but not limited to current Vacancy Rates;
- Rehabilitation of existing low income housing stock;
- Sustainable energy savings initiatives;
- Financial and operational ability of the Applicant to fund, complete and maintain the Project through the Extended Use Period;
- Past performance of an Applicant in initiating and completing tax credit Projects;
- Cost of construction, land and utilities, including but not limited to costs/credits per square foot/unit;
- The Project is being developed in or near a historic downtown neighborhood; and/or
- The frequency of Awards in the respective areas where Projects are located.

If the MBOH Board Awards Credits to an Applicant where the Award is not in keeping with the Selection Criteria of this QAP, it will publish a written explanation that will be made available to the general public pursuant to Section 42(m)(1)(A)(iv) of the Internal Revenue Code.

If all of the authorized Credits are Awarded after a particular cycle, MBOH may place qualifying Applications which did not receive an Award of tax credits on a waiting list for potential Award of Housing Credits in the event Credits become available at a later date. Any available Credits that are not Awarded or reserved in a particular cycle may in the discretion of the MBOH Board be made available for Award in a future cycle or may be used to increase the amount of Housing Credits reserved for a previously Awarded Project as provided in this QAP.

## SECTION 10 – RESERVATION, CARRYOVER AND FINAL ALLOCATION

Once MBOH has selected Projects and determined the Award of Housing Credits and amount of Credits to be reserved, MBOH will provide a Reservation Agreement, Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership for execution and return to MBOH. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH.

### Reservation Agreement

MBOH will provide a Reservation Agreement, Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership for execution and return to MBOH. The partnership should review, complete, sign, and return the Reservation Agreement and Gross Rent Floor Election, along with the additional information and materials required below. A Reservation Agreement is MBOH's conditional commitment to make a Carryover Commitment and/or Final Allocation to the Project, subject to the requirements and conditions of the Reservation Agreement, the QAP and federal law. Such requirements include but are not limited to submission of evidence of timely progress toward completion of the development acceptable to MBOH and compliance with federal tax credit requirements.

If an unsuccessful Applicant, or a party associated with such Applicant, commences any legal action or proceeding challenging MBOH's Award determination or process, MBOH will make a Carryover Commitment or Final Allocation of Housing Credits as required by an executed Reservation Agreement to the same extent it would have been bound to do in absence of the legal challenge, unless the court determines that such Applicant was not eligible or qualified under the applicable QAP to receive an Award of Housing Credits or MBOH otherwise determines that it is precluded by Court order from doing so. If a court determines in any such action or proceeding that MBOH must Award Credits to one or more unsuccessful Applicants from such round or year, such Award or Awards will be made using any available returned or unreserved Housing Credits or current year's Credits provided in Section 7.

~~The following will be required from the partnership, prior to entering into a Reservation Agreement:~~

- ~~• Demonstrated financial ability to proceed (conditional financing commitment); and~~
- ~~• Certain other updated Application material~~

MBOH will send the successful Applicant a Reservation Agreement shortly after Award and upon meeting the foregoing requirements. The Applicant will have a maximum of 120 days after award to accept, sign and return the Reservation Agreement. **Failure to return the Agreement by the deadline will result in a late fee of 25% of the Reservation Fee.** Where applicable, however, if the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement must be signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. Owners electing the placed-in-service date should return the signed Reservation Agreement immediately. Upon receipt, MBOH will sign the Reservation Agreement, and return a copy to the partnership.

The Reservation Fee specified in the fee schedule in Section 5 will be due and must be received by MBOH on or before December 1 of the year in which the Award is made (e.g., December 1, 2016 for 2016 credit Awards made in January 2016).

Once the partnership enters into a Reservation Agreement with MBOH, the partnership must then meet the requirements and conditions described in the Reservation Agreement and

provide the required documentation before it receives a Carryover Commitment or Final Allocation of Housing Credits.

MBOH will revoke an approved Reservation (Initial Allocation) and terminate the Reservation Agreement when a Project fails to make successful progress toward completion or otherwise fails to perform its obligations under the Reservation Agreement. Submitting quarterly status reports demonstrating satisfactory evidence of the Project's completion is the responsibility of the Applicant. Successful progress toward Project completion and Project completion require that such progress and completion are in substantial accordance with the Project as described and proposed in the Project Application, except to the extent that Substantial Changes have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

NOTE: Reservation Agreements for tax credit Projects funded through tax-exempt bonds must be completed, signed, and returned to MBOH not later than five business days following the close of the bond financing agreement.

## **Gross Rent Floor Election**

The election on this form verifies when the Owner elects the gross rent floor for the Project. There are two options: at the Reservation/Initial Allocation, or at the date Placed in Service. This form reflects the election made by the Owner in the Reservation Agreement. This form must be returned with the executed Reservation Agreement.

## **Declaration of Restrictive Covenants**

The Declaration of Restrictive Covenants assures that the land and its use will be restricted for the purposes of providing low-income housing for the period proposed in the Application. Provisions included in the Restrictive Covenants will include Exhibit A-1 (Legal Description of Project Land); Exhibit A-2 (Conditions of Tax Credit Allocation) indicating the number of units at the appropriate elected rent levels, e.g., 30%, 40%, 50%, 60% AMI as determined by the Application. Owners will be required to maintain those rent levels through the Extended Use Period of the Project; Exhibit A-3 (Energy and Green Building) indicating the architect's letter provided in the Application outlining those energy and green building initiatives; —Exhibit A-4 (Amenities); Exhibit A-5 (Participation by Local Entity); and Exhibit A-6 (Special Housing Needs).

**It is the Developer's responsibility to record the Declaration of Restrictive Covenants in the county in which the Project real property is located. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH.**

**In unusual circumstances, and for good cause shown, MBOH may permit amendments to the Declaration of Restrictive Covenants at a subsequent date.**

## **Carryover Commitment**

MBOH will issue a Carryover Commitment in December of the year for which the credits are being Awarded and such Carryover will be for a period of two (2) years. To preserve this commitment the Owner/Developer must submit the 10% Cost Certification by the deadline specified in the Applicable QAP.

In order to receive a Carryover Commitment, Owners must provide the executed Reservation Agreement and Gross Rent Floor, Proof of Ownership (evidence of title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a recorded deed or an executed lease agreement), executed and recorded Restrictive Covenants, and the Reservation fee. Land lease periods

must be at least one year longer than the Restrictive Covenant period. These items must be received by December 1, of the year for which the Award of Credits was made. MBOH will issue Carryover Commitments before year end.

## 10% Test

MBOH requires that more than 10% of the expected basis in a Project, including land, must be expended by the 10% Cost Certification deadline. MBOH requires that Developers provide an independent third party CPA Cost Certification, in a format established by MBOH, verifying compliance with the 10% test.

Developers must submit the 10% requirements, including the required CPA Cost Certification, other documents and the 10% test underwriting fee by the deadline. Failure to do so will result in the loss of the Credit Award. The fee for 10% test underwriting is ~~\$1,000.00~~\$1,500.00, which fee must be paid at the time of submission of 10% test information and documentation.

**~~Failure to provide the 10% test information so that it is received by MBOH by the deadline will result in a \$5,000.00 late fee. Because MBOH's submission deadline is set at the latest date allowed by federal law, no extensions will be granted. If 10% test information is submitted by the deadline but any forms are incomplete or omitted, a \$100 correction fee will be imposed for each incomplete or omitted item.~~**

At 10% Test, MBOH staff will re-evaluate:

- The Sources and Uses of funds;
- Total financing planned for the Project;
- Proceeds or receipts expected to be generated by the Housing Credits;
- Reasonableness of the development and operation costs;
- Projected Rental Income and Operational Expenses;
- Debt Coverage Ratio; and
- Housing Credits required for financial feasibility of the Project.

Deadline for submission of the required 10% information is the first anniversary of the date on which MBOH executed the Reservation Agreement. This submission deadline will apply to 10% test submissions for Projects awarded Housing Credits in the 2016 or later year allocation rounds. Developers that fail to pay the required fee will be deemed not to have met the 10% Test requirements. Failure to submit certification for 10% documentation or to meet the 10% Test will cause forfeiture of Awarded, reserved or allocated Housing Credits for the Project.

## Placed in Service

Placed in Service is the certification of the building or the date of certification of the building as being suitable for occupancy in accordance with State or local law through issuance of a certificate of occupancy.

New Construction and Gut Rehabilitation buildings must be Placed in Service not later than the close of the second calendar year following the calendar year in which the Carryover Commitment is made.

Other Rehabs that are accomplished with residents in place during Rehab can be Placed in Service at the end of the 24 month or shorter period over which the required amount of expenditures are aggregated. The Owner selects the Placed in Service date in this case unless local approval is required.

## Final Allocations/8609

Documentation supporting a request for issuance of IRS Form 8609(s) must be submitted to MBOH within 6 months of the last building Placed in Service date. MBOH will not allocate tax credits on IRS Form 8609(s) until a qualified building is Placed in Service. A site visit and file audit by MBOH may be conducted prior to the issuance of the IRS Form 8609(s). Notwithstanding other provisions of this QAP, to obtain issuance of Form 8609(s), the Project must be Placed in Service in substantial accordance with the Project as described and proposed in the Project Application, except to the extent that Substantial Changes have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

The Final Allocation/8609 underwriting fee is ~~\$2,500.00~~\$3,000.00, which fee must be paid at the time of submission of the request for issuance of IRS Form 8609(s). If the paperwork is not received by MBOH within the 6 months of the last building Placed in Service date, a \$5,000.00 late fee will be assessed. If 8609 information is submitted by the deadline but any forms are incomplete or omitted, a \$100 correction fee will be imposed for each incomplete or omitted item. If a draft 8609 is sent to Developer for review and 8609s must be redone because of Developer/Accountant error, there will a \$1,250.00 fee for additional underwriting.

The request for issuance of IRS Form 8609(s) must include:

- Certification of required infrared test results (if not previously submitted);
- The independent third party completed MBOH CPA's Cost Certification and Owner's Statements Forms;
- Sponsor Certification section of the UniApp;
- The architect's verification that the items for green and amenities and energy listed in the Application -as well as provisions of accessibility listed in Section 3 have been incorporated;
- Certificates of Occupancy (C of O's);
- Copies of all permanent loan and/or grant documents;
- Copy of partnership/operating agreement; ~~and~~
- Detailed list Statement of items or costs excluded from eligible basis- (for example, parking lot is not in eligible basis);
- Statement identifying the first year of the credit period, which statement must name the specific year (e.g., 2017)-;
- The Final Allocation/8609 underwriting fee-; and
- Documentation evidencing that the site manager and Management Company personnel have completed a Nationally Recognized LIHTC Compliance Training Company certification course, passing the test within the last four years.

If the required fee is not submitted, the Project will be deemed not to have met Final Allocation requirements and MBOH will not issue Form 8609(s). MBOH will complete the final credit Allocation evaluation. Typical turn-around time for 8609(s) is 4-8 weeks after submission of all required documentation and the fee. Once the 8609(s) are issued and delivered to the Owner, the bottom half must be completed and signed.

**A copy of each completed and signed 8609 must be sent back to MBOH within 90 days of issuance. Failure to provide the completed and signed 8609(s) so that they are received by MBOH by the deadline will result in a \$1,000.00 late fee. If the 8609(s) need to be reissued after completed by MBOH due to Developer error, the MBOH underwriting fee must be paid again.**



## SECTION 11 - DEVELOPER/APPLICANT RESPONSIBILITIES

Applicant must respond to a written MBOH request within 10 working days. Failure to do so may result in the Application being deemed ineligible for that funding round.

Applicant must proceed according to the timeframe identified in the Implementation Schedule. Adjustments up to 60 days are acceptable. Any changes in the Implementation Schedule greater than 60 days must be submitted in writing with justification to MBOH within 10 business days of the change. Any changes not reported or not approved may jeopardize the credits. If the schedule is more than 60 days behind and has not been updated as stated above, a late fee of \$1,000.00 will be assessed.

### State Law Requirements

The Applicant and Development Team must agree to comply with Montana State law requirements (e.g., certificate of contractor registration, workers compensation, unemployment compensation, and payroll taxes). MBOH will include this certification in the execution of all Reservation (Initial Allocation) and Carryover Commitment documents.

### Public Notification

Any public relations actions by a recipient of tax credits involving MBOH funds or tax credits must specifically state that a portion of the funding is from MBOH. This will be included in radio, television, and printed advertisements (excluding rental ads), public notices, and on signs at construction sites, e.g., "Housing Credits allocated by the Montana Board of Housing, Montana Department of Commerce."

### Quarterly Status Reporting

All Applicants receiving Reservations (initial Allocations) of credits must provide written status reports for each calendar quarter, beginning with the quarter in which the tax credit Award is made. Status reports will be due on or before January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup> & October 10<sup>th</sup> until the Applicant receives its 8609(s). The documentation regarding the progress must be development specific, and include such items as planning approval and building permits, firm debt and/or equity financing commitments, construction progress (foundation, framing, rough in, enclosed, drywall, etc., **for each Project building**), and lease up progress. Submission of photos is encouraged.

The following items must be addressed for **each building** on the quarterly report that is submitted to MBOH. If all items are not addressed, the report will be returned and must be corrected and resubmitted. If the resubmitted report is received after the due date the late fee will apply.

- Updated implementation schedule if more than 60 days behind schedule submitted with application;
- Advertising for construction bids;
- Construction bid awards;
- Pre-construction meeting date;
- Groundbreaking ceremony date (at least 2 weeks' notice);
- Future dates of construction/draw meetings;
- Each phase of construction for **each building including photos** (excavation, foundation framed, etc.);
- Certificate of Occupancy for **each building** as issued for the month of report;

- Number of units occupied and number left to full lease up each quarter; and
- Grand Opening date (at least 2 weeks' notice).

**Owners must provide a copy of the Certificate of Occupancy for each building. The Certificate of Occupancy must be included in the status report covering the period in which it was issued. Failure to provide the reports so that they are received by MBOH by the deadline will result in a \$500.00 late fee. This also applies to those Properties with ARRA funding.**

All ARRA reports are due on or before the dates listed in the ARRA Exchange or TCAP Program Agreement.

**\$500.00 late fee will be assessed if the financial audit is not received by MBOH by the deadline.**

**\$500.00 late fee will be assessed if the annual budget is not received by MBOH by the deadline.**

**\$500.00 late fee will be assessed if the annual insurance binder is not received by MBOH by the deadline.**

## **Changes to Project or Application**

The Applicant must notify MBOH in writing at least 30 days before any proposed Substantial Changes in the Project. Proposed Substantial Changes to the Project must be approved by MBOH.

Specific approval by MBOH is required for Substantial Changes. MBOH staff will review requested Substantial Changes and may approve or deny approval of such changes, or may request Board consideration and determination of the change request. If MBOH staff denies approval of any Project Change, the Applicant may request Board review and approval of the change request. Requests must be submitted to MBOH with proper justification at least 30 days before the change is expected to take place. The Applicant must inform MBOH staff if the proposed change requires immediate or urgent review and approval. MBOH review and approval of changes must be completed prior to the change taking effect. Changes completed without MBOH approval may result in the termination of the Reservation Agreement and/or loss of some or all credits.

Any requested changes submitted requiring MBOH action may incur additional fees. Changes to the Project site, construction of building(s), architectural, engineering, or any on-site review by any member of MBOH will incur additional charges. Fees will be determined based upon the cost of MBOH Staff travel for that purpose.

## **SECTION 12 - COMPLIANCE MONITORING**

Federal law requires state allocating agencies (MBOH) to monitor compliance with provisions of Section 42 of the Internal Revenue Code (26 U.S.C. § 42). In addition, Federal law requires allocating agencies to provide a procedure the agency will follow in monitoring for non-compliance and to inform tax credit recipients (Owners) of procedures and requirements.

Included in the requirements are procedures for notifying the Internal Revenue Service (IRS) of any non-compliance of which the allocating agency becomes aware. Federal income tax regulations related to Procedures for Monitoring Compliance with Housing Credit Requirements are published in 26 CFR Part 1 and 602.

For complete HC compliance guidance, refer to the MBOH HC Compliance Manual, available at <http://housing.mt.gov/MFCompManual>

## Compliance Fees

Developments will incur and must pay to MBOH a compliance monitoring fee to offset the costs for MBOH compliance monitoring. The compliance monitoring fee is currently of \$45.00 per each non-market unit, and may be adjusted by MBOH from time to time. The amount of the compliance monitoring shall be posted on the MBOH website in and any adjustments to the fee amount shall be posted on the MBOH website in advance of the effective date of such adjustment. The compliance monitoring fee (subject to change) is payable annually at the time of the Owner's Submission of the Owner's Certificate of Continuing Program Compliance.

**If the complete Annual Compliance Package is not received by the deadline, a late fee of \$100.00 or 25% of the annual compliance monitoring fee, whichever is greater, will be charged.**

Failure to provide corrections on noncompliance so that they are received by the deadline set by MBOH will result in a \$200.00 late fee and \$25.00 per day \$200.00 a week fee until all required documentation is received by MBOH. A one-time extension may be granted if a written request is submitted to MBOH no later than 10 days prior to the deadline. If Once the extension deadline passes without MBOH receipt of the complete documentation, a \$25.00 \$200.00 per day week fee will be imposed until all required documentation is received by MBOH.

The following procedure describes MBOH plans for monitoring compliance on tax credit Projects. At minimum, each Project that has been Placed in Service will be subject to the following monitoring requirements:

## Recordkeeping, Record Retention and Data Collection

### Recordkeeping

The Owner of a low-income housing Project must keep records for each building in the Project that shows unit qualifications for each year throughout the term of the Declaration of Restricted Covenants, including the Compliance Period and the Extended Use Period in effect for such Project.

The information must show for each year in the Compliance Period:

- The total number of residential rental units in a building (including the number of bedrooms and the size in square feet of each residential rental unit);
- The percentage of residential rental units in the building that are qualified units;
- The rent charged on each residential rental unit in the building (including any utility allowances and mandatory fees);
- HC unit vacancies in the building and information that shows when, and to whom, the next available units were rented. If a unit is left vacant, or in a mixed use Project is rented to a non-qualifying tenant, the Owner must maintain documentation showing a diligent attempt was made to rent the unit to a qualifying tenant;
- The tenant income certification of each HC tenant (by unit), including annual certifications for each continuous tenant;
- Documentation to support each HC tenant's income certification. This must include a copy of (a) verification of income from third parties, or (b) 6 consecutive paystubs;
- The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

- The character and use of any non-residential portion of the building included in the eligible basis of the building, if applicable.

### **Records Retention**

Federal regulations require the Owner of a HC Project receiving tax credits to retain the records listed above. The Owner is required to retain such records for at least 6 years after the due date for filing the federal income tax return for that year. Records for the first year of the credit period must be retained for at least 6 years beyond the due date for filing the federal income tax return for the last year of the Compliance Period. Owner should also retain records relating to the amount of credit claimed for the Montana Housing Tax Credit, including the Form 8609(s) and Schedule A of Form 8609(s).

### **Data Collection**

To the extent required by federal law, the Owner will assist the MBOH with meeting federal reporting requirements by collecting and submitting information annually concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of all qualified households.

### **Owners Certificate of Continuing Program Compliance**

The Owners Certificate of Continuing Program Compliance is required on an annual basis for each property. The certificate must be signed by the Owner and notarized. This statement must be filed with MBOH every year throughout the Extended Use Period. Owners must file annual certifications on the form provided by MBOH. Substitute forms are not acceptable. Failure to provide an annual certification before the date established by MBOH may trigger an IRS Form 8823.

### **Income and Expense Summary**

All property Owners must submit operating income and cost information for the property's latest fiscal period, including a current balance of replacement and operating reserve accounts.

### **Submission Deadlines**

The Owners Certificate of Continuing Program Compliance and Tenant Income Certifications (TIC) must be submitted on or before the 25th of the month following the assigned annual period. Federal regulations stipulate there must be no more than 12 months between certifications.

All submissions must be filed through Certification On Line (COL).

### **Review by MBOH staff**

MBOH will review the items listed above for compliance with the requirements of Section 42 of the Code and with the requirements of the MBOH HC program.

### **Ownership/Management Changes**

Written Notification of changes to property management companies, managers, site managers, or changes to points of contact must be submitted to MBOH prior to or immediately upon implementation of the change. Changes not received by MBOH prior to change or immediately upon change, or within a 15-day grace period thereafter, will result in an initial \$10-00\$500.00 per day late fee, and \$500.00 per month until written notification is received. If no notification is received MBOH will research and identify the date of the change, and impose late fees based upon such date (and allowing for a 15-day

grace period). For purposes of imposition of such late fees, a 5-day grace period shall apply. No Change in Management Company shall be acceptable unless it results in a Qualified Management Company assuming management of the property. Replacement of a Management Company with a company that is not a Qualified Management Company or failure to timely submit such notification to MBOH may trigger issuance of a Form 8823. All management companies, whether in place or being hired, must meet Qualified Management definition.

Subject to the requirements of Section 42 of the Code, the Restrictive Covenants and the Applicable QAP any other applicable restrictions, the Owner may sell, transfer or exchange the entire Project at any time. No portion of a building to which the Restrictive Covenants apply may be sold to any person unless all of such building is sold to such person. Prior to such sale, transfer or exchange, however, the Owner must notify in writing and obtain the written agreement of any buyer, successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of the Restrictive Covenants, the requirements of Section 42 of the Code and applicable Regulations, and the Applicable QAP. Such written agreement of the buyer, successor or other person acquiring the Project must be in the form required by MBOH, which agreement form is available on the MBOH website. Such form, executed by the buyer, successor or other person acquiring the Project must be submitted to MBOH prior to closing of the sale, transfer or exchange. The Board may void any sale, transfer or exchange of the Project if the buyer, successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

## Education Requirements

Persons responsible for qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must be certified in LIHTC compliance by one of the Nationally-Recognized LIHTC Compliance Training Companies. Property managers and property Management Company personnel must complete a Nationally-Recognized LIHTC Compliance Training Company certification course, passing the test. For MBOH purposes, to maintain certification, the person must attend a class with a Nationally-Recognized LIHTC Compliance Training Company at least once every four years. For each of the other three years, all property managers and property Management Company personnel should attend annual MBOH compliance training. The property Management Company and site manager for an HC property must be trained and certified before the property is Placed in Service. New site managers hired for existing HC properties must be certified within their first ~~year~~ 6 months of employment. New property management companies hired for existing properties must be certified before they assume management of a property. On a case-by-case basis, MBOH may approve its compliance training as adequate training until such time as the next Nationally-Recognized LIHTC Compliance Training Company program is available. Training requirements must be met to maintain Qualified Management Company status.

Persons responsible for qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must also attend Fair Housing training at least once every four years. The manager for a HC property must complete such training before the property is Placed in Service. New managers hired for existing HC properties must complete the training within their first year of employment.

Such Fair Housing training must include and cover the following subjects and requirements:

- Protected Classes;
- Accessibility requirements;
- Reasonable accommodation/modification;

- Applicant screening;
- Disparate impact;
- Domestic violence issues;
- Occupancy standards;
- Section 504; and
- Service Animals.

## Tenant Income Certifications (TIC)

### Frequency and Form

Owners must complete the MBOH TIC *for all new move-ins* and file it with MBOH through Certification On Line (COL). Documentation supporting the TIC will not be submitted. MBOH staff will review supporting documentation during file audits. Timely annual Re-certifications (TICs) *for mixed Projects* (with market units) are required must be submitted to MBOH through COL.

The MBOH COL TIC must be used. Any other TIC must be preapproved by MBOH prior to use is the only acceptable form.

### Student Status Certification

Student status certifications must be completed *annually* within the 30 day period *prior to their move-in anniversary date.*

## On-Site Inspections

MBOH staff (staff) will perform an on-site inspection of each property at least once every three years during the Extended Use Period. Staff will notify the Owner/manager in advance of the inspection.

Staff must inspect and review at least 20% of the tenant files and corresponding units. MBOH will not notify the Project's manager, Owner or other representative of the unit selection before the site inspection. The selected sample may be expanded.

Complete copies of all tenant files for each unit from original lease-up forward must remain within the State of Montana at the location of the rental property or the regional in-state office.

If MBOH determines it is necessary, properties may be inspected on a cycle of more than once every three years. The cost of any additional inspections will be billed to the respective property.

MBOH may schedule on-site inspections at any time with minimal notice.

In event of non-compliance under Section 42 of the Code or the implementing regulations MBOH may be required or elect to undertake additional monitoring. The Owner will take any and all actions reasonably necessary to achieve and maintain compliance. Staff may require the Owner to document correction of non-compliance and/or MBOH may elect to conduct one or more site visit(s) to verify correction of non-compliance. The Owner will pay a reasonable fee to MBOH for any such additional monitoring activities.

## Notice To Owner (26 CFR 1.42 (e)(2))

MBOH must provide prompt written notice to the Owner if MBOH becomes aware of non-compliance. These items include:

- Non-receipt of the certification(s) described in this QAP.
- Inaccessibility of tenant income supporting documentation, rent records, or the property.

In addition, MBOH must provide prompt written notice to the Owner if MBOH discovers by inspection, review, or in some other manner, that the Project is not in compliance with the provisions of Section 42.

### **Correction Period (26 CFR 1.42 (e)(4))**

The Owner will be given a reasonable correction period from the date of non-compliance. If Staff determines that good cause exists, an extension may be granted.

### **Notice To IRS (26 CFR 1.42 (e)(3))**

MBOH must file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS (even if non-compliance has been corrected) no later than 45 days after the end of the correction period, and no earlier than the end of the correction period.

### **Liability (26 CFR 1.42 (g))**

Compliance with the requirements of Section 42 is the responsibility of the Owner of the building for which the credit is allowable. MBOH's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an Owner's noncompliance.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relation to, the compliance monitoring of a low-income housing Project.

### **Marketing the Project**

~~The Owner must~~~~MBOH will~~ put all HC properties into the free State-approved Housing Locator website, MTHousingSearch.com within one year after Placed in Service. If not completed within such time period, MBOH will do so and charge the Owner for the related costs. Properties will be contacted by MTHousingSearch for required information. Using this website meets the criteria for advertising vacant units and provides for broad coverage to those searching for affordable housing in Montana.

### **Qualified Contract Process**

Federal law, in Section 42 of the Code, provides for a state housing credit agency process for early termination of the Extended Use Period for certain Projects and subject to certain requirements. Such process provides for the early termination of the Extended Use Period: (i) if the Owner submits a written request to MBOH in accordance with certain requirements to find a person to acquire the Property, and (ii) if MBOH is unable to present within a one-year period a qualified contract for the acquisition of the Property by any person who will continue to operate the low-income portion of the building as a low-income building as defined in Section 42 of the Code. MBOH has adopted certain requirements and procedures applicable to the qualified contract process in the Montana Board of Housing, Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price ( \_\_\_\_\_ 2017). MBOH hereby adopts and incorporates herein by reference the Montana Board of Housing, Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price ( \_\_\_\_\_ 2017) (the "Qualified Contract Process") for purposes of eligibility, submission, consideration, determination and all other aspects of a request for a qualified contract as

provided in Section 42. The Qualified Contract Process shall govern all aspects of a Project Owner's request to MBOH for a qualified contract.

## **SECTION 13 – DISCLAIMER**

MBOH is charged with allocating no more tax credits to any given development than is required to make that development economically feasible. This decision shall be made solely at the discretion of MBOH, but in no way represents or warrants to any Applicant, Investor, lender, or others that the development is feasible or viable.

MBOH reviews documents submitted in connection with this Allocation for its own purposes. In Allocation of the tax credits, MBOH makes no representations to the Owner or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing Montana Housing Tax Credits.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relations to, the Allocation of the Housing Credit.

If it is determined that an Applicant or any member of the Development Team has intentionally submitted false information, a credit Award may be withdrawn or credits may be recaptured and the Applicant or any Applicant involving any related parties or any individual or entity supplying the false information will be ineligible to apply for credits for the next five years or may be assessed negative points as provided in Section 9.

### **MBOH Policy on Non-Discrimination**

Montana Board of Housing is an Equal Opportunity organization. All employees who work for MBOH, agree not to discriminate against any client or co-worker based on any protected class under applicable Federal or Montana law. The failure of any employee to comply with this policy may lead to disciplinary action in accordance with applicable employment policies and procedures, including but not limited to immediate termination of employment.

### **Qualified Allocation Plan Revisions**

This QAP may be amended at any time after compliance with applicable notice, comment and approval requirements.

### **MBOH Policy on Civil Rights Compliance**

The Owner, Developer, borrowers and any of their employees, agents, or sub-contractors, in doing business with the Montana Board of Housing understand and agree that it is the responsibility of the Owner(s) and such other persons and entities to comply with all applicable Federal Civil Rights laws and regulations, including without limitation applicable provisions of the Fair Housing Laws and Americans With Disabilities Act, and any applicable State and local Civil Rights Laws and regulations. Should requirements, such as design, not be specified by MBOH, it is nonetheless the Owner(s) responsibility to be aware of and comply with all applicable non-discrimination provisions related to any protected class under Federal or Montana law, including design requirements for construction or Rehabilitation, Equal Opportunity in regard to marketing and tenant selection and reasonable accommodation and modification for those tenants covered under the Laws.



## **Housing Credit Forms:**

**All Forms Referenced in this QAP are available at:**

**<http://housing.mt.gov/MFOAP>**

**Applicants, Developers, Owners, Management Companies and all other interested persons submitting Applications, Cost Certifications, Compliance materials and other material to MBOH are responsible to review the website and to make such submission on the most current Form available on the MBOH website as of the date of the submission. MBOH may require resubmission of any item if submitted without using the current Form, and late fees may be incurred if the need for such resubmission results in late submission of the correct Form. Please contact MBOH staff with any questions regarding the appropriate or current Form.**

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

Qualified Contract Process (QCP) Revision.

## BACKGROUND

The existing QCP was approved by the Board in April, 2015. Redline tracking shows changes proposed.

## PROPOSAL

MBOH has received a QCP request and have been working through the initial stages of the process along with legal counsel. Staff has realized this process is much more labor intensive and complicated than expected. The changes proposed to the process will help MBOH to work toward retaining the affordable housing.

**Montana Board of Housing  
Montana Housing Tax Credit Program**

**Qualified Contract Process  
And Instructions for  
Calculation of the Qualified Contract Price**

Properties awarded Low-Income Housing Tax Credits under the Montana Housing Tax Credit Program are subject to certain restrictions set forth in Section 42 of the Code, which restrictions must be provided for and documented in Restrictive Covenants. The Section 42 requirements apply during an Extended Use Period, which includes an initial Compliance Period of fifteen (15) years plus an additional period of fifteen (15) or more years. Applicants for tax credits may make a commitment to maintain units in accordance with the Section 42 restrictions beyond the minimum period of time and may be or may have been awarded additional points in the QAP evaluation scoring process for the Project based upon such agreement.

The Extended Use Period generally continues for at least thirty (30) years. However, for certain Eligible Projects, the Extended Use Period may terminate earlier, (i) if the Owner submits a written request to MBOH in accordance with these requirements to find a person to acquire the Property, and (ii) if MBOH is unable to present within a one-year period a Qualified Contract for the acquisition of the Property by any person who will continue to operate the low-income portion of the building as a low-income building as defined in Section 42 of the Code.

**Eligibility for Qualified Contract Process**

The Qualified Contract process is available only for certain Projects with an Owner's minimum low-income commitment period that is less than fifteen (15) years beyond the initial 15-year Compliance Period, as specified in the Project's Restrictive Covenants. Under current program requirements, the owner must agree to a minimum low-income commitment period of fifteen (15) years beyond the initial 15-year Compliance Period, i.e., an Extended Use Period of at least thirty (30) years. Previously, however, some Projects provided for a minimum low-income commitment period of less than fifteen (15) years beyond the initial 15-year Compliance Period and an Extended Use Period of less than thirty (30) years. Only such Projects are eligible for the Qualified Contract process. Further, such Projects are eligible for the Qualified Contract process only if the process could result in a Qualified Contract or termination of the Extended Use Period at least one year earlier than the Extended Use Period would otherwise end under the terms of the Project's Restrictive Covenants. An "Eligible Project" is a Project meeting these criteria.

Eligible Projects may not initiate the Qualified Contract process until one year before the expiration of the Owner's minimum low-income commitment period specified in the Project's Restrictive Covenants. For example, the process could be initiated no earlier than the fifteenth year of the initial Compliance Period for an Eligible Project with an Owner's minimum low-income commitment of zero (0) years beyond the initial 15-year Compliance Period.

Projects will be held to the Owner's commitment as provided in the Restrictive Covenants and will not be permitted to terminate the Extended Use Period (including any portion of the Owner's commitment period) through the Qualified Contract process. The Qualified Contract process is subject to all applicable provisions of state and federal law and these requirements. Owners are encouraged to review their tax credit allocation applications submitted to MBOH and their Declaration of Restricted Covenants to determine if and when they are eligible to pursue the Qualified Contract process.

Notwithstanding the foregoing general eligibility requirements, the MBOH Board may in its sole discretion determine that a Project is eligible for the Qualified Contract process based upon extraordinary circumstances that threaten the ongoing viability of the Project to provide low-income housing in accordance with the Restrictive Covenants, including but not limited to a Project's documented extreme financial difficulties, so long as permitting the Project to pursue the Qualified Contract process is consistent with federal law.

### **Qualified Contract Process:**

The one-year period for finding a Qualified Contract buyer will not commence until after all required documents, information and payments have been submitted to and approved by MBOH and the physical inspection and file audit has been completed showing no substantial noncompliance as provided herein.

#### **1. Qualified Contract Request Letter and Agreement; Payment of Administration Fee**

To initiate the Qualified Contract process, Eligible Project owners must notify MBOH of their desire to sell the property through the Qualified Contract process by submitting a completed and executed Qualified Contract Request Letter and Agreement, in the form attached hereto as Attachment 1, together with payment of a ~~\$4,000.00~~20,000.00 non-refundable administration fee for processing the Qualified Contract Request. MBOH will not begin processing of the Request until and unless the ~~\$4,000.00~~20,000.00 administration fee has been paid in full.

#### **2. Completion/Submission of Qualified Contract Price Calculation Form**

Before the one-year period and marketing of the Property will commence, the Owner must complete and submit to MBOH the Calculation of the Qualified Contract Price form attached to these instructions as Attachment 2 (the "Calculation Form") and the additional information and documentation listed below.

The Owner must fully complete the Calculation Form, including all Exhibits. The Qualified Contract Price ("QCP") calculation will establish the minimum price at which MBOH will market the Property and present any offer(s) for its purchase. All calculations must be prepared in accordance with 26 CFR Part 1, Section 1.42-18, as amended, or any additional or replacement federal laws or regulations governing the Qualified Contract Price calculation. The Calculation Form must be prepared or reviewed, and also must be certified, by an Independent Third-Party Certified Public Accountant. The calculated sales price must also be certified by an Independent Third-Party Certified Public Accountant.

Also please note that federal regulations require that, if a purchaser is found, the Qualified Contract Price must be adjusted by the purchaser and the property owner to reflect changes in the components of the Qualified Contract Price, such as mortgage payments, that have reduced outstanding indebtedness between the time the original calculations were made and the sale closing date.

### 3. Additional Submission Requirements

In addition to the Request Letter, Fee Payment and Calculation Form, the Owner must submit to MBOH the following information and documentation:

- a. A thorough narrative description of the Property, including all amenities, sufficient to familiarize prospective purchasers with the Property;
- b. A detailed description of all income, rental and other restrictions applicable to the operation of the Property;
- c. A detailed set of digital photographs of the Property, including the interior and exterior of representative apartment units and buildings, and the Property's grounds, to be displayed on the MBOH website and in any other marketing materials;
- d. Copies of the last three years' operating statements for the Property showing annual operating expenses, debt service, gross receipts, net cash flow, and debt service coverage ratios;
- e. A current and complete rent roll for the entire Property;
- f. A copy of the land lease, if applicable; and
- g. Any additional financial and other information and documentation reasonably required and requested by MBOH for purposes of the Qualified Contract Price determination, appraisal, marketing and/or due diligence, including without limitation, copies of additional rent rolls, tax returns,

income certifications, repair and maintenance records, operating expenses and debt service information, and other due diligence documents.

4. Marketability of the property

The owner of the property shall make all repairs, modifications, etc., to the property as necessary to that will bring the property to a value at least as high as the sales price included in the Qualified Contract Request Letter and Agreement.

Physical Inspection and File Audit

Upon receipt of the Qualified Contract Request Letter and Agreement and administration fee, MBOH will perform, at the expense of the Owner, a complete physical inspection and file audit of the Property to determine whether the Owner and Property are in compliance with the provisions of Section 42 of the Code, the Declaration of Restrictive Covenants and MBOH requirements.

In addition to serving as the Physical Inspection required under this MBOH Qualified Contract Process (QCP), the inspection constitutes an On-Site Inspection under the Qualified Allocation Plan (QAP). Deadlines and other requirements of the inspection and related follow up and documentation will be specified by MBOH in accordance with MBOH's usual compliance process requirements and set forth in the Applicable QAP and MBOH policy. MBOH will process the qualified contract request in accordance with the QCP, but the QCP process will not limit MBOH's monitoring and enforcement of compliance under Section 42, the Declaration and the QAP.

If, at any time during the Qualified Contract process, MBOH determines that the Owner or Property is out of compliance with the provisions of Section 42 of the Code, the Declaration of Restrictive Covenants or MBOH requirements, MBOH will terminate the Qualified Contract process until such time as MBOH determines that the Owner or Property has achieved compliance.

5. Access to Property

The Owner must provide reasonable access to the Property and relevant files and records for inspection or audit by MBOH, its agents, appraisers, prospective purchasers and any other third parties reasonably required for purposes of the Qualified Contract process.

6. Payment of Fees and Expenses

The Owner must pay a ~~\$4,000.00~~20,000.00 non-refundable administration fee for processing a Qualified Contract Request, as required above in Section 1. In addition,

the Owner must pay MBOH's costs for the physical inspection and file audit required under Section 4, above, and, in the event that additional third-party reports are required by a potential buyer or MBOH, the Owner must pay the cost of the additional reports. All payments for such items must be made within thirty (30) days of the date of any invoice provided to the Owner. The Owner must pay for all third party costs incurred by MBOH in connection with the QCP process.

7. Program Compliance; Owner's Failure to Comply or Cooperate with Qualified Contract Process

If, prior to commencement of the one-year period, the Owner fails to provide any required information, documents or payments, fails to allow access to the Property for inspection or appraisal, or otherwise fails to cooperate in or perform any obligation specified herein, MBOH may cease further processing of the Request upon providing written notice to the Owner specifying the reason(s) for ceasing further processing, and the action(s) that must be taken by the Owner, the date by which such actions must be taken and the documentation, if any, of such actions that must be submitted to MBOH in order to obtain a resumption of Request processing. MBOH may permanently terminate the Qualified Contract process in the event of multiple instances of non-compliance/non-cooperation. In no event will the one-year period commence or be deemed to have commenced until the Owner meets all such requirements.

As provided in Section 4, above, if at any time during the Qualified Contract process, MBOH determines that the Owner or Property is out of compliance with the provisions of Section 42 of the Code, the Declaration of Restrictive Covenants or MBOH requirements, MBOH will terminate the Qualified Contract process until such time as MBOH determines that the Owner or Property has achieved compliance.

8. Qualified Appraisers

Owners and MBOH shall use only Montana-certified general appraisers for purposes of the Qualified Contract process. Neither Owner nor MBOH shall use any individual or organization as an appraiser if that individual or organization is currently on any list for active suspension or revocation for performing appraisals in any state or is listed on the Excluded Parties Lists System (EPLS) maintained by the General Services Administration for the United States Government.

9. Commencement of One-Year Period; Marketing of the Property

Once all required information, documents and payments are received, reviewed and approved, MBOH will notify the Owner in writing that the one-year period

has begun and will begin marketing the Property to the general public. MBOH will undertake reasonable marketing efforts, including posting the marketing information and Qualified Contract Price on the MBOH website and such other efforts as may be deemed reasonable in the sole discretion of MBOH to market the Property to the general public. The Owner must agree to list the Property for sale with a broker who works with affordable multifamily housing properties and must cooperate with the MBOH and such broker in their efforts to market the Property. Marketing of the property will continue until such time as title to the Property has been transferred or the one-year period has expired.

MBOH has the one-year period in which to market and find a buyer for the Property at or above the Qualified Contract Price. The qualified purchaser can be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the extended use agreement. The proposed purchaser must demonstrate to MBOH's reasonable satisfaction that it is familiar with and prepared to comply with the requirements of the Low Income Housing Tax Credit ("LIHTC") program. MBOH, in its sole discretion, may reject purchasers who have failed to demonstrate proficiency with the LIHTC program or other government programs.

#### 10. Suspension or Termination of One-Year Period

MBOH may suspend the one-year period or terminate the Qualified Contract process if the Owner fails to comply or cooperate, or unreasonably delays in complying or cooperating, as required herein, including without limitation failure to respond to reasonable third-party report requests by MBOH or a potential buyer. MBOH may suspend the running of the one-year period upon providing written notice to the Owner specifying the reason(s) for such suspension, and the action(s) that must be taken by the Owner, the date by which such actions must be taken and the documentation, if any, of such actions that must be submitted to MBOH in order to restart the running of the one-year period.

MBOH may permanently terminate the Qualified Contract process in the event of multiple instances of or continuation of an ongoing non-compliance or non-cooperation with the Qualified Contract process, if the Owner again fails or continues to fail to comply or cooperate after MBOH has provided a written warning that further failure to comply or cooperate will result in such termination and loss of the opportunity to undertake the Qualified Contract process. In such event, the Restrictive Covenants shall remain effective for the full duration of the Extended Use Period term (including all of the Owner's commitment period) as specified in such Restrictive Covenants and the Owner and any successor in interest shall have no further opportunity to undertake the Qualified Contract process



11. Effect of Acceptance or Rejection of Qualified Contract Offers

A Qualified Contract is an offer determined by MBOH to constitute a bona fide offer to enter into a contract to acquire the non-low-income portion of the building (including the land underlying the entire building) for fair market value and the low-income portion of the building for an amount not less than the Qualified Contract Price, and which contract is determined by MBOH to: (i) provide for closing within a reasonable period of time after the contract is entered into; and (ii) contain no terms or conditions that are unreasonable or impractical under the circumstances.

The Owner is not required to accept the first or any purchase offer presented. However, if the Owner rejects or fails to act upon a Qualified Contract to purchase the Property at or above the QCP presented by a qualified purchaser, the Property will remain subject to the low-income housing commitment set forth in the Restrictive Covenants for the full duration of the Extended Use Period term (including all of the Owner's commitment period) specified therein. The Owner may accept less than the QCP but cannot require a price higher than the QCP. The Owner must notify MBOH of any purchase offers within one (1) business day of receipt.

During the one-year period in which the Property is marketed to the general public, MBOH may adjust the fair market value of the non-low-income portion of the Property only with the consent of the Owner. If the Owner and MBOH do not agree with respect to any proposed reduction of such fair market value, the fair market value of the non-low-income portion of the Property determined as of the commencement of the one-year period remains unchanged.

MBOH shall not be responsible for any closing costs, commissions, fees or other expenses of or related to the sale, purchase or closing. All such amounts shall be payable from closing proceeds and charged to the account of the buyer and/or seller as mutually agreed thereby.

12. Effect of No Qualified Contract

If the Owner has performed its obligations and cooperated in the Qualified Contract process and MBOH is unable to present to Owner a Qualified Contract before the expiration of the one-year period, the Section 42 restrictions set forth in the Restrictive Covenants shall be terminated, except with respect to the Section 42 tenant protections discussed below. For purposes of this paragraph, MBOH has presented a Qualified Contract within the one-year period if MBOH has notified the Owner of such Qualified Contract by email, facsimile transmission or deposit in the U.S. Mail on or before the last day of the one-year period.

In the event of a termination of the Section 42 restrictions set forth in the Restrictive Covenants as provided above, the Property shall remain subject to the tenant protection requirements of §42(h)(6)(E)(II), which provide that, prior to the close of the three-year period following such termination, no Owner shall be permitted to evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit or increase the gross rent for such unit in a manner or amount not otherwise permitted by Section 42 of the Code.

In such event, the Owner will be required, at the end of each year of the three-year tenant protection period, to provide certification to MBOH that these requirements have been met. In addition, the Owner will provide written notice to the existing tenants within thirty (30) days after the beginning of the three-year period and annually thereafter for the next two (2) years that the low-income use restrictions have been terminated and of the Section 42 tenant protections provided during the three-year time frame.

In the event of and following such termination of the Section 42 restrictions set forth in the Restrictive Covenants, MBOH shall provide to Owner a partial release reflecting release of the restrictions other than the three-year tenant protections. Following the end of the three-year period, MBOH shall provide to Owner such further release as is necessary and appropriate to fully release all remaining restrictions.

**Attachment 1**

**Qualified Contract Request Letter and Agreement**

Date

Montana Board of Housing  
301 South Park Ste 240  
PO Box 200528  
Helena, MT 59620

Re: Qualified Contract Request

Dear

Pursuant to Subsection 42(h)(6)(E)(i)(II) of the Internal Revenue Code (the “Code”) and on behalf of \_\_\_\_\_ (the “Owner), we hereby request that the Montana Board of Housing (MBOH) find a person to acquire, and present a Qualified Contract for the purchase of the Owner’s interest in \_\_\_\_\_ (the “Property”).

We understand that this letter is submitted to initiate the Qualified Contract request process and does not commence the one-year time period for MBOH to present a Qualified Contract for the acquisition of the Property. We understand that we must submit additional information to MBOH at a later date as required by MBOH’s Qualified Contract Request Procedure. We understand that the one-year time period will not commence until the date upon which MBOH determines that our request submission is complete and that MBOH will notify us of this determination and the commencement date of the one-year period. We further understand that this letter is submitted for the purpose of confirming our commitment to perform our obligations under the Qualified Contract process.

In support of our Qualified Contract request, we state and represent to MBOH as follows:

1. The Owner did not waive its right to request a Qualified Contract in its Declaration of Restricted Covenants, between the Owner and MBOH. True and correct copies of the recorded Restrictive Covenants for the Property and any amendments thereto are enclosed with this letter.
2. The Property has completed at least the fourteenth (14<sup>th</sup>) year of its compliance period.

3. The Property is in compliance with all of the requirements of Section 42 of the Code.
4. The owners of all options to purchase and rights of first refusal for all or any part of the Property have unconditionally waived any and all such options and rights, as evidenced by enclosed copies of executed waivers of all such options and rights.
5. Neither we nor any other Owner has previously requested a Qualified Contract on the Property.

In further support of our Qualified Contract request, we represent and certify to MBOH that:

1. We have not been notified of any audit, investigation or disallowance relating to the Property and pertaining to Section 42 of the Code by the Internal Revenue Service.
2. We are solely responsible for the truthfulness, accuracy and completeness of all documents and information that we submit to MBOH with this letter and any other documents or information that we provide to MBOH, appraisers and/or prospective purchasers (collectively, the "Property Sales Information") in connection with this request or any related marketing or sale of the Property.
3. All documents and information submitted with this Letter or in connection with this request for a Qualified Contract are truthful, accurate and complete and contain no material misstatements or misleading information.

In further support of our Qualified Contract request, we acknowledge and agree that:

1. We will cooperate with MBOH and its agents to calculate a Qualified Contract Price and present a Qualified Contract for purchase of the Property. We understand that this includes providing all financial and other information and substantiating documentation reasonably required by MBOH to determine the Qualified Contract Price for the Property in accordance with federal law, including without limitation 29 CFR § 1.42-18, as amended, and MBOH requirements, or for purposes of appraisal, marketing and/or due diligence. Such information and documentation includes but is not limited to the information and documents specified in the MBOH Qualified Contract Price Calculation Form and Worksheets and additional substantiating documentation, and all information and documentation required for appraisal, marketing and due diligence purposes.

2. We agree to provide reasonable access to the Property and relevant records for inspection and audit by MBOH, its agents, appraisers and prospective purchasers in connection with the Qualified Contract process.
3. We agree that MBOH may perform a complete physical inspection and file audit of the Property to determine whether the Owner and Property are in compliance with the provisions of Section 42 of the Code, the Declaration of Restrictive Covenants and MBOH requirements and we agree to pay the cost of such inspection and audit.
4. We understand that our failure to reasonably and timely cooperate, provide or submit any required information, documents, forms, fees or cost reimbursement payments, or respond to report requests, with, to or from MBOH, third parties or potential buyers, may result in either temporary suspension of the one-year period or termination of the Qualified Contract process and the delay or loss of Owner's opportunity to terminate the Restrictive Covenants through the Qualified Contract process.
5. We understand that if, at any time during the Qualified Contract process, MBOH determines that we are or the Property is out of compliance with the provisions of Section 42 of the Code, the Declaration of Restrictive Covenants or MBOH requirements, MBOH will terminate the Qualified Contract process until such time as MBOH determines that we have achieved compliance.
6. By submission of this letter, we agree to indemnify, defend, and hold MBOH harmless for all claims and liabilities arising out of MBOH's use of the Property Sales Information for purposes of the Qualified Contract process.
7. We agree that MBOH and its employees and agents shall have no liability to us with respect to the calculation of the Qualified Contract Price or any other act, omission, or determination by MBOH with respect to marketing the Property or carrying out its responsibilities under Subsection 42(h)(6)(F) of the Code, so long as MBOH is acting in good faith.
8. The one-year period will commence, if at all, on the date specified by MBOH in its written notice to the Owner. Having commenced, the running of the one-year period may be suspended or tolled at the discretion of MBOH based upon our failure to reasonably and timely perform any requirements of the Qualified Contract process.
9. We understand that if MBOH presents a Qualified Contract for the acquisition of the Property within the one-year period and the Owner rejects or fails to act upon such contract, the Property will remain subject to the Declaration of Restricted Covenants for the full duration of the Extended Use Period, and there

will be no further or additional opportunity for the Owner to terminate such covenants through the Qualified Contract process

10. If we choose to execute the Qualified Contract, we will: (i) allow the prospective purchaser a reasonable period of time to undertake additional, customary due diligence prior to closing of the purchase; and (ii) agree with the buyer as required by 29 CFR § 1.42-18(c)(ii) to such adjustments in the amount of the low-income portion of the Qualified Contract Price to reflect changes in the components of the Qualified Contract formula (e.g., mortgage payments that reduce outstanding indebtedness) between the time of MBOH's offer of sale to the general public and the building's actual sale closing date.
11. If we perform our obligations under the Qualified Contract process and MBOH is unable to present a Qualified Contract during the one-year period, resulting in termination of the Section 42 requirements as set forth in the Restrictive Covenants, we are not permitted to and shall not, prior to the close of the three-year tenant protection period following such termination, evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit or increase the gross rent for such unit in a manner or amount not otherwise permitted by Section 42 of the Code.

Sincerely,

Attachments

Attachment 2  
**Montana Board of Housing**  
**Montana Housing Tax Credit**  
**Qualified Contract Price Calculation Form**  
Pursuant to Subsection 42(h)(6)(F) of the Internal Revenue Code and in Accordance  
with 26 CFR 1.42-18, as amended

**A. Calculation of the Low-Income Portion of the Building(s):**

- (i) Outstanding Indebtedness for the Building(s) (from *Worksheet A*) \$ \_\_\_\_\_
- (ii) Adjusted Investor Equity in the Building(s) (from *Worksheet B*) \$ \_\_\_\_\_
- (iii) Other Capital Contributions not reflected in (i) or (ii) (from *Worksheet C*) \$ \_\_\_\_\_
- (iv) Total of (i), (ii) and (iii) \$ \_\_\_\_\_
- (v) Cash Distributions from (or available for distribution from) the Building(s) (from *Worksheet D*) \$ \_\_\_\_\_
- (vi) Line (iv) reduced by Line (v) \$ \_\_\_\_\_
- (vii) Applicable fraction specified in the extended low-income housing commitment \_\_\_\_\_ %
- (viii) Low-Income Portion of the Qualified Contract Price (Line (vi) multiplied by Line (vii)) \$ \_\_\_\_\_

**B. Fair Market Value of the Non-Low-Income Portion of the Building(s) (from *Worksheet E*)** \$ \_\_\_\_\_

**Qualified Contract Price\***  
(Sum of Line A(viii) and Line B) \$ \_\_\_\_\_

**\*If this sum is not a multiple of \$1,000, then when MBOH offers the building(s) for sale to the general public, MBOH may round up the offering price to the next highest multiple of \$1,000.**



**WORKSHEET A**  
*Outstanding Indebtedness for the Building(s)*  
**Code Subsection 42(h)(6)(F)(i)(I) and 26 CFR 1.42-18(c)(3)**

**Instructions**

You must use 26 CFR Section 1.42-18(c)(3), or the appropriate section of its successor, to determine the Outstanding Indebtedness for the Building(s).

In the section marked “Other Information” below please set forth any information with respect to the loans that may be relevant to MBOH’s efforts to market the property. Examples of relevant information include whether the loan has a “due-on-sale” clause or if any portion of the loan is payable from net cash flow (i.e., is “soft” debt).

**Worksheet**

Debt Source	Lien Position and Loan Terms	Most Recent Payment Date	Remaining Stated Principal Balance*
Subtotal			
Less:**			
Adjustment 1:			
Adjustment 2:			
Adjustment 3:			
<b>Total Indebtedness with respect to Low-Income Portion of the Building(s)</b>			

Other Information:

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\*Please attach an amortization schedule, if available.

\*\*Please provide a description of any adjustments in the cells provided. Adjustments may include, but are not limited to, the following:

- Any refinancing indebtedness or additional mortgages in excess of qualifying building costs (described in 26 CFR 1.42-18(b)(4)).
- Outstanding debt that was used to finance nondepreciable land costs, syndication costs, legal and accounting costs, syndication costs, legal and accounting costs, and operating deficit payments.

**WORKSHEET B**  
*Adjusted Investor Equity in the Building(s)*  
**Code Section 42(h)(6)(F)(i)(II) and 26 CFR 1.42-18(c)(4)**

**Instructions**

You must use 26 CFR 1.42-18(c)(4), or the appropriate section of its successor, to determine the Adjusted Investor Equity in the Building(s).

Note: The calculation requires the use of the U.S. Department of Labor’s Bureau of Labor Statistics (“BLS”) Consumer Price Index (“CPI”). The CPI data to be used are the not seasonally adjusted values of the CPI for all urban consumers, sometimes referred to as CPI-U. The BLS publishes the CPI data on-line. See [www.BLS.gov/data](http://www.BLS.gov/data).

**Worksheet**

**1. Unadjusted Investor Equity**

Investor (Owner) Name	Date Invested	Amount of Cash Invested
Subtotal		
Less:*		
Adjustment 1:		
Adjustment 2:		
Adjustment 3:		
<b>Total Unadjusted Investor Equity</b>		

\*Please provide a description of any adjustments in the cells provided. Adjustments may include, but are not limited to, the following:

- Any equity paid for land, credit adjuster payments, Fund low-income housing credit application and allocation fees, operating deficit contributions, and legal, syndication, and accounting costs.
- Amounts that, as of the beginning of the low-income building’s credit period (as defined in Subsection 42(f)(1) of the Code), were not obligated to be invested.

- Amounts included in the calculation of outstanding indebtedness as defined in 26 CFR 1.42-18(c)(3).

**2. Qualified-contract cost-of-living adjustment – General Rule**

Calendar Year that Precedes the Calendar Year in which MBOH Offers the Building for Sale to the General Public (“Year A”): \_\_\_\_\_

Base Calendar Year (the Calendar Year With or Within which the First Taxable Year of the Credit Period Ends) (“Year B”) : \_\_\_\_\_

Did the CPI for any calendar year (within the meaning of Subsection 1(f)(4) of the Internal Revenue Code) during the extended use period after the base calendar year exceed by more than five percent the CPI for the preceding calendar year (within the meaning of Subsection 1(f)(4) ) of the Internal Revenue Code)? (Yes or No)

\_\_\_\_\_

If no, no adjustments need to be done to the CPI-U for the months below.

If yes, then the sum of the CPI-I for Year B (below) is to be increased (\*) so that the excess is never taken into account.

Month	Year A	CPI-U	Month	Year B	CPI-U
September			September		
October			October		
November			November		
December			December		
January			January		
February			February		
March			March		
April			April		
May			May		
June			June		
July			July		
August			August		
<b>Total Year A CPI-U</b>			<b>Total Year B CPI-U</b>		
			Adjustment (Increase)*		
			<b>Adjusted Total Year B CPI-U</b>		

Important Note: See the example given in 26 CFR 1.42-18(c)(4)(vii) to assist you in completing the table above.

Year A CPI-U Total from above (\_\_\_\_\_) divided by Year B CPI-U Total from above (\_\_\_\_\_) equals Qualified-Contract Cost-of-Living Adjustment per the General Rule (carried out to ten decimal places): \_\_\_\_\_.

**3. Qualified-contract cost-of-living adjustment – Provision by the Commissioner of the qualified-contract cost-of-living adjustment**

If the Commissioner published in the Internal Revenue Bulletin a process pursuant to which the Internal Revenue Service will compute the qualified-contract cost-of-living adjustment for a calendar year and made available the results of that computation, describe below:

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**4. Adjusted Investor Equity**

Description	Amount
Unadjusted Investor Equity (from 1 above)	
Times: Qualified-contract cost-of-living adjustment (from 2 or 3 above)	
<b>Equals: Adjusted Investor Equity (rounded to the nearest dollar)</b>	

**WORKSHEET C**  
***Other Capital Contributions***  
**Code Section 42(h)(6)(F)(i)(III) and 26 CFR 1.42-18(c)(5)**

**Instructions**

You must use 26 CFR 1.42-18(c)(5), or the appropriate section of its successor, to determine the Other Capital Contributions.

Do not include in this Worksheet C any amounts included in Worksheets A or B.

**Worksheet**

Date	Reason/Description*	Amount Paid or Incurred
Subtotal		
Less:**		
Adjustment 1:		
Adjustment 2:		
Adjustment 3:		
<b>Total Other Capital Contributions</b>		

\*Describe the Other Capital Contributions. Other capital contributions to a low-income building are qualifying building costs described in 26 CFR 1.42-18(b)(4)(ii) paid or incurred by the owner of the low-income building other than amounts included in the calculation of outstanding indebtedness (from Worksheet A) or adjusted investor equity (from Worksheet B).

\*\*Please provide a description of any adjustments in the cells provided. Adjustments may include, but are not limited to, the following:

- Expenditures for land costs, operating deficit payments, credit adjuster payments, and payments for legal, syndication, and accounting costs.
- Expenditure that was financed by a loan that WAS secured by the qualifying building cost (asset) or the building.

**WORKSHEET D**  
***Cash Distributions from (or available for distribution from) the Building(s)***  
**Code Section 42 (h)(6)(F)(ii) and 26 CFR 1.42-18(c)(6)**

**Instructions**

You must use 26 CFR 1.42-18(c)(6), or the appropriate section of its successor, to determine the Cash Distributions from (or available or distribution from) the Building(s).

Note: Proceeds from the refinancing of indebtedness or additional mortgages that are in excess of qualifying building costs are not considered cash available for distribution.

**Worksheet**

**A. Total Cash Distributions**

Distribution Made To	Date of Distribution	Distribution Amount
<b>Total Cash Distributions</b>		

**B. Cash and Cash Equivalents Available for Distribution:**

Account Name	Balance "as of" Date	Account Balance
<b>Total Cash and Cash Equivalents Available for Distribution</b>		

**C. Total Cash Distributed and Available for Distribution**  
(Sum of Sections A and B above)

\$ \_\_\_\_\_

**WORKSHEET E**  
*Fair Market Value of the Non-Low-Income Portion*  
**Code Section 42 (h)(6)(F) and 26 CFR 1.42-18(b)(3)**

**Instructions**

You must use 26 CFR 1.42-18(b)(3), or the appropriate section of its successor, to determine the Fair Market Value of the Non-Low-Income Portion. **Of particular note, please see the discussion of how land is to be considered.**

**Worksheet**

The fair market value of the non-low income portion is: \$ \_\_\_\_\_.

Attach to this worksheet the appraisal, study, methodology proof and/or other support for the fair market value of the non-low-income portion of the building(s).