NORTH DAKOTA housing FINANCE AGENCY

2010 LOW INCOME HOUSING TAX CREDIT PROGRAM ALLOCATION PLAN

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THE INFORMATION IN THIS PLAN IS PROVIDED AS A GENERAL OVERVIEW AND SHOULD NOT BE RELIED ON FOR TAX PURPOSES. INDIVIDUAL APPLICANTS ARE SOLELY RESPONSIBLE FOR COMPLIANCE WITH SECTION 42 OF THE TAX REFORM ACT OF 1986, AS AMENDED. EACH APPLICANT WILL BE RESPONSIBLE FOR THE DETERMINATION OF THE AMOUNT OF TAX CREDIT FOR WHICH THEY APPLY. NDHFA RECOMMENDS THAT APPLICANTS SEEK PROFESSIONAL ADVICE PRIOR TO SUBMITTING AN APPLICATION.

Equal Housing Opportunity

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NORTH DAKOTA
LOW INCOME HOUSING TAX CREDIT PROGRAM
2010 ALLOCATION PLAN

I. INTRODUCTION

The North Dakota Housing Finance Agency (NDHFA) is responsible for the administration of the Low Income Housing Tax Credit (LIHTC) Program for the State of North Dakota. The LIHTC was established by the Tax Reform Act of 1986 for the purpose of encouraging the construction and rehabilitation of housing for low-income individuals and families. The credit likewise offers a reduction in tax liability to owners and investors. Parties interested in pursuing tax credits should reference Section 42 of the Internal Revenue Code (the "Code") for more detailed information. It is also advisable to seek competent tax counsel for additional guidance.

Pursuant to the Budget Reconciliation Act of 1989, NDHFA is required to develop a "Qualified Allocation Plan" defining the process by which it will distribute the Low Income Housing Tax Credit ("the tax credit") to low income housing properties throughout the State of North Dakota.

The NDHFA allocation plan, as herein stated, promotes the selection of those properties which serve to address the most crucial needs of the state, within the guidelines and requirements established by the federal government.

NDHFA holds an annual public hearing in Bismarck on changes to the Allocation Plan and public comments are invited. Testimony and comments are considered from those attending, as well as other information gathered from comments received as the result of a large mailing of the "draft" allocation plan. These comments are then taken into consideration in the formulation of the final plan.

II. GENERAL PROVISIONS

The NDHFA reserves the right, at its sole discretion, to modify or waive any condition of this plan, which is not mandated by the Code, on a case-by-case basis for good cause.

For purposes of this Plan, the Developer is defined as the individual or entity to which the developer fees are paid for promoting the property. The Developer may or may not be the Applicant. The Applicant is either the owner of the property, (i.e. partnership, corporation, limited liability company, etc.) or the entity that has controlling interest in the ownership entity, (i.e. the general partner, managing member, individual, etc.).

A. Credit Rate: The tax credit is intended to provide, over a 10-year period, a "present value" credit of either of the following:

(1) 30 percent of the property's Qualified Basis for new buildings with a federal subsidy or for the acquisition costs of eligible existing buildings that are rehabilitated.

A new building is treated as federally subsidized if there is tax-exempt financing.

(2) 70 percent of the property's Qualified Basis in the case of new construction or the substantial rehabilitation costs on an acquired building.

The Internal Revenue Service publishes, on a monthly basis, the applicable percentage (credit rate) to be used in calculating the annual credit amount, approximately 4 percent and fixed at 9 percent for

buildings placed in service between July 31, 2008 and December 31, 2013.

Credit is available each year for 10 years. Credit is based on the percentage of qualified low-income units in a property or the percentage of floor space of qualified low-income units, whichever is less. Allocations are made to each building regardless of the number of buildings comprising a property.

B. **Eligible Basis:** The eligible basis for a new building is arrived at by taking all costs not allowable under the Code, including land, and subtracting them from the total property cost.

The eligible basis for an existing building is the sum of the acquisition cost plus additions and improvements, but only if the building has not been placed-in-service or substantially rehabilitated in the preceding 10 years. For exemptions to this rule, see page 10.

Eligible basis is reduced by federal grants, residential rental units which are above the average quality standard of the low-income units, any historical rehabilitation credits, and non-residential rental property. A property located in a Qualified Census Tract (QCT) or HUD designated Difficult Development Area (DDA) is eligible for credits up to 130 percent of eligible basis. Also eligible for consideration for this boost are:

(1) projects designed to primarily serve special needs populations, i.e. homeless or those requiring permanent supportive services;
(2) projects that target 20 percent or more of the units at 30 percent of area median income or less;
(3) projects within tribal reservations, including the Trenton Indian Service Area;
(4) new construction projects on in-fill lots a) with existing structures which need to be demolished or b) require environmental remediation; and
(5) new construction projects in rural areas without sufficient soft financing to be financially feasible in low market rent areas.

Applicants must provide a narrative explanation justifying the need to increase the eligible basis.

The NDHFA is obligated to allocate only the amount of credit necessary to make the property financially feasible.

C. **Maximum Developer Fee:** Developer's fees will be limited to 15 percent of the eligible basis of the property. Fees paid to consultants will be included in this limitation. The developer fee for the acquisition portion of an acquisition/rehabilitation property cannot exceed 10 percent where there is identity of interest between the existing ownership and the new owner. The developer fee will be limited to 15 percent on the acquisition costs if the purchase is an arm's length transaction with no Identity of Interest. The fees of all parties with an Identity of Interest with the Developer in the property will be taken into consideration when calculating the Developer's maximum fees. All developer fees in excess of the 15 percent maximum will not be included in the eligible basis.

D. **Maximum Builder/Contractor Fees:** Builder/General Contractor fees may not exceed the following limits:

Builder/General Contractor's Profit	6 percent of hard construction costs
Builder/General Contractor's Overhead	2 percent of hard construction costs
General Requirements	6 percent of hard construction costs

Fees in one area may exceed the stated percentage if other areas are not at their maximum, so long as they don't exceed 14 percent collectively. Any fees in excess of 14 percent will not be included in the eligible basis. Identity of Interest will not be considered when calculating maximum

builder/contractor fees.

E. **Qualified Basis:** The qualified basis is the portion of a property's eligible basis multiplied by the applicable fraction. The applicable fraction is the lesser of:

(1) The unit fraction which is the number of low income units in a building divided by the total number of units; or

(2) The floor space fraction, which is the overall amount of floor space occupied by low-income units, divided by the total floor space in the building.

The qualified basis and the amount of credit are based upon the amount of low income housing within the building. An on-site manager's unit is considered common space and should not be included in the applicable fraction unless the manager can qualify under the parameters of low income.

F. **Annual Credit Amount:** The annual credit amount is the amount of tax credits necessary to allow for property feasibility. The maximum allowable credit amount is the property's qualified basis multiplied by the applicable credit rate. However, as part of the initial application review, the actual amount of tax credits reserved could be less than the maximum allowable if NDHFA analysis reveals the property would still be feasible with fewer tax credits.

The final determination of the property's tax credit amount is made when a property is "placed-in-service". Placed-in-service is defined, for new construction or rehabilitation, as the date on which the first certificate of occupancy is issued.

G. **Income and Rent Restrictions:** A property must, for at least a 15-year period, have a minimum of either 20 percent qualified low income units occupied by households with incomes under 50 percent of area median income, or 40 percent qualified low income units occupied by households with incomes under 60 percent of area median income. Once made, the choice between the 20 percent at 50 percent formulation and the 40 percent at 60 percent formulation is irrevocable. Median income figures (household size adjusted) are published periodically by the Department of Housing and Urban Development for North Dakota counties and are available from NDHFA upon request.

Rent, including utilities, cannot exceed 30 percent of the qualifying median income (not 30 percent of the particular family's income, but 30 percent of 50 percent or 60 percent of median, as applicable).

To calculate rent, a certain number of occupants are assumed to occupy a unit, depending on the number of bedrooms in the unit (not actual occupants). The assumed family size is one person in an efficiency (studio) apartment and 1.5 persons per bedroom (i.e., rent in a two-bedroom unit is 30 percent of the three-person qualifying income). This restriction is in effect during the entire compliance period.

The limit applies to the "gross rent" for every set-aside unit, which is defined as the rent paid by the tenant including a utility allowance (tenant paid utilities), but excluding rent subsidies. Utility allowances are based on HUD, RHS, or utility company standards depending on the type of property or an energy consumption model.

H. **Extended Low Income Housing Commitment:** Prior to a final allocation of tax credits the owner must enter into an Extended Use Agreement which requires the owner and his successors to meet the applicable fraction of low income occupancy for an extended use period of at least 15 years beyond the initial 15-year compliance period. The owner must record this agreement as a restrictive

covenant.

I. **Gross Rent Floor:** The gross rent floor will be established on the date of initial allocation of a housing dollar credit amount (normally the date of issuance of the carryforward agreement) unless the owner informs NDHFA prior to the placed-in-service date that the owner wishes to establish the rent floor at the placed-in-service date.

J. **Compliance Monitoring:** NDHFA will monitor all properties placed-in-service for which tax credits are, or have been allocated at any time since the inception of the LIHTC program. A copy of the NDHFA LIHTC Compliance Manual is available upon request and is provided to all property owners.

Applicants or Developers utilizing the LIHTC program must remain in compliance with program guidelines throughout the agreed upon use period. An Applicant or Developer involved with an existing property that is determined by NDHFA to be significantly out of compliance, at the sole discretion of NDHFA, will not receive consideration for new tax credit properties until the issues are resolved to the satisfaction of NDHFA.

(1) All tax credit recipients shall submit an annual certification to NDHFA in a manner, form, and time established by NDHFA. This certification will include such items as number of set-aside units, tenant names, household information, rents, utility allowance or cost, tenant income, sources of income, unit information, and any other information required by NDHFA.

The owner of a tax credit property is required to retain records for each building in the property for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms and unit size in square feet); the percentage of residential rental units in the building that are tax credit units; the rent charged for each unit (including utility allowance); the number of household members in each unit; notation of any vacant units; tenant's income (i.e., household income); documentation to support each household's income certification; 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 nonresidential portion of the building included in the building's eligible basis.

(2) Each property owner shall allow NDHFA staff or its agent(s) to conduct on-site reviews of tenant files, supporting financial information and a physical inspection for compliance with habitability standards. All tax credit recipients will maintain records of tenant applications, income certifications and verifications of tenant's income in accordance with the NDHFA LIHTC Compliance Manual.

(3) Upon reasonable notice, NDHFA shall have access to all property development records, including IRS reporting forms.

(4) NDHFA will promptly notify the IRS of any property noncompliance in relation to its responsibilities under the Code.

(5) Each property owner, general partner, and management agent shall be required to complete and submit IRS Form 8821 Tax Information Authorization, as requested by the Agency, and provide the Agency with copies of all correspondence from and to the Internal Revenue Service related to the property during the compliance period.

(6) As part of the compliance monitoring reporting requirements, each property owner will be

required to submit annual operating statements showing property income and expenses.

(7) NDHFA will charge each property an annual fee to carry out the required monitoring. The fee is currently set at $50 per property, plus $35 per low-income unit. Properties with multiple buildings located in different towns (scattered sites properties) will be assessed a $50 per building fee, plus $35 per low-income unit. (Multiple buildings within the same town will be subject to a single $50 fee for all buildings in that town. Normal per unit fees will apply.) NDHFA reserves the right to adjust the annual fee. Additional fees may be assessed to a property determined to be in substantial noncompliance, to cover added costs of monitoring.

(8) Prior to issuance of the IRS Form 8609, which certifies an allocation of Credits, the owner and on-site managers will be required to attend or document that they have recently attended industry recognized training on management and compliance. In addition, if significant or repeated noncompliance events are discovered during the on-going compliance monitoring activities, further follow-up training will be required.

K. **Restriction:** No one Developer, Applicant or party with an Identity of Interest (excluding management control) will be eligible to receive Conditional Reservations for more than an aggregate 25 percent of the NDHFA annual per capita allocation.

An exception to this limitation will be made to ensure maximum distribution of the tax credits:

(1) If during the regular allocation cycles, the only properties remaining are applications by Developers who have reached the 25 percent limit, or

(2) If, after the regular cycles, there are recaptured or unallocated tax credits, they may be allocated without regard to the 25 percent limitation.

A forward commitment of following years' credit authority may be made to fully fund a project, at the sole discretion of the Agency.

L. **Discrimination:** All housing receiving tax credits must be open to all persons regardless of race, color, national origin, religion, creed, sex, disability, or familial status.

M. **ADA and 504:** Properties containing facilities that are available to the general public must meet the Americans with Disabilities Act (ADA) requirements and if federal assistance is involved, must also comply with Section 504 of the Rehabilitation Act of 1973. The property must also comply with the Fair Housing Amendments Act of 1988.

N. **Limit on Volume:** Each state can issue new tax credits up to the greater of $1.95 per resident or $2,430,000 in 2010, adjusted for inflation. Properties with tax-exempt financing, which are subject to a separate volume limitation, are not counted against the state credit limit. Only the first year of the 10-year credit period is counted against the limit.

O. **Recapture:** Part of the credit will be subject to IRS recapture provisions, if the qualified basis at the close of any year is less than the amount of such basis at the close of the preceding taxable year, or if the minimum percentage of qualified low income units is not maintained for the full extended use period.

P. **Reserve Accounts:** All properties will be required to maintain a replacement reserve account for the term of the compliance period. This account will be set aside in a federally insured financial institution or the Bank of North Dakota. The replacement reserve requirement for new construction properties and substantial rehabilitation (rehab exceeding $30,000 per unit) properties designed for seniors will be $250 per unit per year. The requirement for all properties designed for families as

well as rehabilitation developments with rehabilitation costs of $30,000 per unit or less will be $300 per unit per year. This account shall not be used for routine maintenance and upkeep expenses.

All properties will also be required to establish and maintain for the term of the compliance period an operating reserve equal to a minimum of 4 months of projected operating expenses plus debt service payments and annual replacement reserve payments. This requirement can be met with an up-front cash reserve; a letter of credit from the developer's financial institution guaranteeing this reserve; or partnership documents specifying satisfactory establishment of an operating reserve. This operating reserve must be set aside at a federally insured financial institution or the Bank of North Dakota and accounted for in a manner acceptable to the Agency.

If applicable, a tax escrow account must be maintained in a federally insured financial institution or the Bank of North Dakota

Q. **Tax-Exempt Financed Properties:** Properties for which tax-exempt bond financing is proposed in conjunction with LIHTC do not fall under the state's credit volume cap; however, such properties are subject to all of the other requirements of this Plan.

R. **Identity of Interest:** The Applicant must disclose any and all relationships (generally based on financial interests or family ties) with others involved in the property. This disclosure is required for all parties which:

(1) Have an ownership, development, or financial interest in the property (excluding limited partners with less than a 15 percent ownership interest);

(2) Have current or future management control of the property;

(3) Have any current or contingent financial or management liability for the property, including guarantees, letters of credit, take out agreements or support agreements; and

(4) Are involved in the property and have been debarred from any North Dakota program, other state program or any federal program.

This disclosure requires the names and addresses of all parties, including corporate officials, if applicable. Forfeiture of the reserved tax credits may result if this information is not adequately disclosed, or if the information changes. Applicants may apply for a waiver of this procedure.

The intent of this section is not to limit passive ownership, but to properly identify all parties that have a significant involvement in the development of the property.

S. **Disclosure of Interest:** The Applicant must also disclose the names and addresses, including corporate officials where applicable, of all parties that have a significant role in the property. These parties include, but are not limited to: the general contractor, all subcontractors whose aggregate contract will exceed ten percent of the cost of property (this cost shall be calculated excluding the acquisition of land), accountants, architects, engineers, financial consultants, and any other consultants.

III. TYPES OF DEVELOPMENTS

A. **New Construction:** For new construction properties, the annual credit amount is 9 percent of the qualified basis.

A maximum of 70 percent present value credit can be issued for low income units in buildings that are not "federally subsidized", and a maximum of 30 percent present value credit can be issued for units in properties that are federally subsidized.

A federal subsidy is any type of tax-exempt financing provided by state or local governments, the interest on which is exempt from federal taxation under the Internal Revenue Code.

Assistance derived from federal grants will not be treated as a federal subsidy if subtracted from the property's basis to determine the qualified basis.

B. **Existing Properties:** Existing properties qualify for a credit based upon 30 percent of present value of low-income units, including acquisition cost, when used in conjunction with a substantial rehabilitation property. Credits allocated for acquisition will take into account the appraised value of the property. In order for the acquisition cost to be part of the eligible basis, the building must be newly acquired by the owner and a period of at least 10 years must have elapsed between the date of acquisition and the date the building was last placed-in-service. The ten-year period may be waived in certain instances by the Secretary of the Treasury with respect to any building acquired from an insured depository institution or from a conservator or receiver of such an institution. Certain situations are exempted from the 10-year rule, including:

(1) A person who inherits a property through the death of another person;

(2) A governmental unit or qualified nonprofit group if income from the property is exempt from federal tax;

(3) A person by foreclosure (or instrument in lieu of foreclosure) of any purchase money security interest, provided the person resells the building within 12 months after placing the building in service following foreclosure; or

(4) A project substantially assisted, financed or operated under HUD or RHS housing programs.

Interested parties are urged to reference Section 42(d) of the Code and to seek competent tax counsel for guidance.

C. **Substantial Rehabilitation:** Rehabilitation expenditures, which exceed the greater of an average of $6,000 per low-income unit or 20 percent of the depreciable basis, are treated "as a separate new building". Effectively, this means that, substantial rehabilitation carried out by a new owner, a credit of 30 percent present value is available on the acquisition cost and 70 percent present value is available on the rehabilitation cost, assuming that no tax-exempt financing is used. If the property does not change hands, the current owner can receive the substantial rehabilitation credit (30 percent or 70 percent as applicable) only on the rehabilitation work, so long as the costs are the greater of $6,000 per unit or 20 percent of the basis. To assure meaningful rather than cosmetic rehabilitation, NDHFA has chosen to exceed the requirement set forth in the Tax Code and has established a minimum rehabilitation threshold of $10,000 per unit in hard construction costs.

NDHFA will waive the $10,000 minimum rehabilitation threshold requirement if a capital needs assessment, submitted with the initial application package, supports a lower rehabilitation requirement. See Section VII B (1) for information on completing a capital needs assessment.

D. **Ineligible Properties:** Most residential properties qualify for the tax credits. Ineligible properties include transient housing (housing leased for less than 6 months); properties of 4 units or less which are occupied by the owner or a relative of the owner; nursing homes; life care facilities; and mobile

home communities.

Applications will be accepted for existing properties containing units that are subsidized by state or federal resources providing that "gross rents" are capped at the Housing Credit ceiling rent levels. For purposes of this paragraph, "gross rents" are defined to include tenant paid rent, utilities and federal project based rental subsidies. Minimum rehabilitation thresholds will also apply, as described above.

IV. APPLICATION PROCESS

Applicants must apply (using NDHFA forms) to receive a tax credit allocation. The complete application, including all fees, must be received by 5 p.m. (Central Time) on the closing date to be eligible for consideration. The following application cycles have been set:

Application Cycle	Closing Date For Applications	Maximum Amount of Total Credits to be Allocated
1	February 26, 2010	$2,430,000 plus any additional available amounts
2	April 30, 2010	Balance of available credits

The housing credits available for allocation in 2010 are approximately $2,430,000.

If, after the second funding cycle, credits remain unallocated or additional credits become available, applications will be accepted and considered for funding on a first-come, first-serve basis until September 30, 2010 during what is considered to be an open funding round. Applications submitted during the open funding round must meet both the threshold requirements as well as the requirements for a formal reservation of credits. At the discretion of the Agency, applications may be accepted after September 30, 2010 if credits remain available and the applicant can demonstrate that it can meet the carryover deadline of December 1, 2010.

Applications selected will be given a conditional reservation subject to meeting additional requirements. Applicants will be notified of the status of their application.

Proposals with tax-exempt financing must comply with the provisions of the NDHFA Allocation Plan. These proposals will be processed as soon as practical. The Applicant is advised to seek competent bond and tax counsel prior to application.

V. THRESHOLD REQUIREMENTS

When an application is received, it shall first be reviewed for eligibility to be scored and ranked. In order to be eligible for scoring and ranking, the application must be complete and include the following information, unless waived by NDHFA for good cause:

A. **Demonstrated Site Control:** Evidence that the Applicant has, and will maintain from the start of the application review process until the land is acquired, direct site control. This will also include a sketch plan of the site.

B. **Zoning Availability:** Evidence that the appropriate zoning will be available must be provided (i.e. a letter from a city official stating that appropriate zoning is in place or forthcoming.)

C. **Applicant Characteristics:** NDHFA must be satisfied that those who will own and operate the property are familiar with, and prepared to comply with, the requirements of the program. This is

evaluated in terms of

(1) Property ownership and development;
(2) Management experience; and,
(3) Level of knowledge of the program demonstrated through preparation of the tax credit application.

Applicants who have been convicted of, enter an agreement for immunity from prosecution for, or plead guilty, including a plea of nolo contendere, to: a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records are ineligible. Applicants who have been debarred from any North Dakota program, other state program or any federal program are ineligible. Applicants having an Identity of Interest with any debarred entity may not be eligible at the sole discretion of NDHFA. The developer, general partner and owner will be required to complete IRS Form 8821, Tax Information Authorization as a condition of application for an allocation of credits. Other members of the development team may also be required to complete Form 8821. Information obtained from the IRS will be used solely for the purpose of tax credit awards and the information will be safeguarded by the Agency to prevent improper disclosure.

NDHFA may inquire to other state allocating agencies relative to the Applicant's or Developer's performance history. Negative performance may result in the application being deemed ineligible at the sole discretion of NDHFA.

D. **Financial Projections:** A 15-year pro forma financial projection for the property shall accompany the application using the income, expenses, and debt service as represented in the application. The rental income should reflect the vacancy rate as stated in the application.

The reasonableness of development and operating costs in relation to other similar developments will be assessed in evaluating the financial feasibility of credit applications.

E. **Ownership:** The Applicant must be either the owner or Developer of the property. If the Applicant intends to sell or transfer the property within 3 years from the application date, the Applicant must disclose the intent to sell or transfer the property and, if known, the names and backgrounds of those who will purchase or receive the property. Failure to provide this information may result in forfeiture of tax credits previously reserved.

Credits are reserved for the ownership entity identified in the initial application. A sale or transfer of a controlling ownership interest prior to issuance of the final allocation document requires an amended application and NDHFA approval. A nonrefundable transfer fee of $1,000 or 3 percent of the annual credit amount reserved for the property, whichever is greater, must accompany the amended application. The payment of this fee does not obligate NDHFA to approve the transfer. If the transfer is denied, the credit reservation will remain with the original Applicant.

F. **Subsidies:** The application package must include a signed certification as to the full extent of all federal, state and local subsidies that are expected to apply to the property.

G. **Compliance with Fair Housing Act**: The application package must include a completed and signed Fair Housing Act Accessibility Checklist (Exhibit D in Application).

H. **Public Housing Waiting List**: The application package must include a signed written commitment from the Applicant to inform the public housing authority (PHA) of vacancies and to give priority to households on PHA waiting lists who apply for occupancy.

I. **Local Support Letter from a City-Governing Body (Commission/Council):** This letter of support shall identify the number and type of units requested and the exact location of the proposed property.

J. **Housing Need:** Completion of a comprehensive market study of the housing needs of low-income individuals in the area to be served by the property, at the Developer's expense, by a disinterested party who is acceptable to the NDHFA is required. The Market Study must document sufficient demand in the market area to support the proposed development. The Market Study must have been completed within six months of application for credits and must contain, at a minimum, the following information and analysis: a) a statement of the competence of the market analyst; b) a description of the proposed site; c) a demographic analysis of the number of income eligible households, using tax credit limits, that can afford to pay rent; d) geographic definition and analysis; e) analysis of household sizes and types; and f) a description of comparable market rate developments as well as all Low Income Housing Tax Credit properties in the market area. An acceptable Market Study will also include: a) a description of rent levels and vacancy rates of comparable market rate properties as well as all Low Income Housing Tax Credit properties in the market area; b) analysis of practically available operating expenses and turnover rates of comparable market rate properties as well as all Low Income Housing Tax Credit properties in the market area, c) projected operating funds and expenses when available at the time of the study; and d) expected market absorption for the proposed units, including a description of the market impact. If the applicant is targeting various income levels, (i.e. 50 percent, 40 percent or 30 percent targeting), the market study must address demand and absorption rates for these designated income levels. The applicant is advised to reference the market study requirements of other funding sources, such as USDA Rural Development, as may be applicable and insure that the market study meets NDHFA requirements as well as those of other funding providers**.** If the Agency has cause to question the conclusions reached in the study, we reserve the right to order a new market study at the expense of the Applicant.

K. **Capital Needs Assessment:** A Capital Needs Assessment as described in Section VII B (1) must be submitted with the application package, if proposed rehabilitation expenditures (hard construction costs) are less than $10,000.

L. **Ability:** The Applicant must demonstrate that all members of the development team have the ability and financial capacity, in their respective roles, to undertake, comply, maintain and manage the property. NDHFA may require the Applicant to provide financial statements as deemed necessary. Misrepresentation of any information about the experience or financial capacity of any property team member, or failure to disclose team members or any "Identity of Interest", will be grounds for denial or loss of the credits, and may affect future participation in the program.

M. **Appraisal:** An application package involving acquisition costs, which exceed 15 percent of the total property costs, must include an appraisal of the subject property, completed within 6 months of the date of the application by a state Certified General Real Property Appraiser, that supports the amount of acquisition. Applicant is advised to also consider the requirements of other funding sources, such as USDA Rural Development, before ordering the appraisal.

N. **USDA Financing**: An application package involving existing USDA debt must include a letter from USDA stating what progress has been made on an "Initial Transfer Request".

Application packages will be reviewed for completeness upon receipt. Application packages missing any of the above listed items will be deemed incomplete and will be given reasonable time to submit the missing information. A negative 5 points for <u>each</u> missing item will be assessed in the scoring and ranking process. If the package is received early such that missing information can be requested and

received prior to the application due date, the negative points will not be assessed.

NDHFA reserves the right to reject an application if the qualified basis per square foot exceeds 125 percent of the average qualified basis per square foot of selected properties in the previous 2 years. The average qualified basis per square foot of selected properties during the 2008-2009 funding years was $103.73

Proposals will be underwritten to achieve a target debt service coverage ratio of 1.20. NDHFA reserves the right to reject an application if, during underwriting, the property is determined to have a debt service coverage ratio less than 1.1. Credit adjustments may be made on any proposals with ratios over 1.25.

VI. APPLICATION FEES

A non-refundable processing fee of $500 is due with all applications for tax credits. This fee will not count toward satisfaction of the 10 percent allocation fee.

Successful LIHTC applications are subject to the following fee schedules:

A. **For-Profit Applicants:** All for-profit Applicants will be required to pay a total allocation fee of the greater of $1,000 or 10 percent of the first year's LIHTC allocation as follows:

(1) Reservation: A reservation fee of 3 percent of the annual credit amount reserved is due upon issuance by the NDHFA of formal reservation of tax credits. This fee is non-refundable.

(2) Carryover Allocation: Properties will be charged a fee of 1 percent of the carryover amount of credits. This is due at the time a carryover agreement is executed. This fee is non-refundable.

(3) Allocation: The balance of the allocation fee is payable at the time the allocation is finalized (prior to issuance of IRS Form 8609).

B. **Non-Profit Applicants:** All non-profit Applicants will be required to pay a total allocation fee of the greater of $1,000 or 10 percent of the first year's LIHTC allocation.

(1) Reservation: A reservation fee of 1 percent of the annual credit amount reserved is due upon issuance by the NDHFA of formal reservation of tax credits. This fee is non-refundable.

(2) Carryover Allocation: Properties will be charged a fee of 1 percent of the carryover amount of credits. This is due at the time a carryover agreement is executed. This fee is non-refundable.

(3) Allocation: The balance of the allocation fee is payable at the time the allocation is finalized (prior to issuance of IRS Form 8609).

Applications having combined for-profit and non-profit sponsorship will be subject to the for-profit fee structure.

C. **Tax-Exempt Financed Properties:** All tax-exempt financed properties will be subject to the same fee structure as indicated above, depending upon for-profit or non-profit sponsorship.

VII. CREDIT RESERVATIONS

Applications will first be reviewed for compliance with the Threshold Requirements (Section V). Thereafter, the following definitions shall apply:

(1) Conditional Reservation - A commitment to reserve tax credits conditioned upon Applicant providing program requirements within 60 days of notice.

(2) Formal Reservation - A commitment that tax credits have been reserved for the property. The commitment is conditioned on evidence of timely progress toward completion of the property acceptable to NDHFA and evidence of compliance with Federal Tax Code and state law.

(3) Final Allocation of Tax Credits - The awarding of the tax credits by NDHFA to the property and the issuance of IRS Form 8609 upon the property being placed-in-service.

A. Conditional Reservation: Those proposals which meet the basic eligibility criteria will be evaluated for a Conditional Reservation and will be given points as outlined in Section IX (Property Ratings).

The NDHFA will give priority during the evaluation process to properties which serve the lowest income tenants, are obligated to serve qualified tenants for the longest period and utilize the credits most efficiently.

The selection process is based on the numerical value awarded to each property. The properties with the highest numerical value will be selected first. The time frame for selection of successful properties is expected to be about 30 days. A complete explanation of the selection process is given in Section IX.

Once NDHFA has completed the evaluation and determined the amount of tax credit to be reserved, it will issue a Conditional Reservation on its prescribed form to the Applicant, which shall be good for a period of 60 days. For good cause shown, NDHFA may extend the Conditional Reservation beyond its expiration date.

B. Formal Reservation: Prior to the expiration of the Conditional Reservation, the Applicant must submit to NDHFA acceptable evidence of the following:

(1) Capital Needs Assessment: An application package involving rehabilitation of less than $30,000 per unit in hard construction costs must include a capital needs assessment by a competent, independent third party acceptable to the NDHFA, such as a licensed architect or engineer. The assessment will include a site visit and a physical inspection of the interior and exterior of units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies. The assessment will consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment will include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than 50 percent of the expected useful life, immediate rehabilitation will be required. If the remaining useful life is less than the affordability period of 30 years, the application package must provide for a practical way to finance the future replacement. The assessment will also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance

expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The assessment will examine and analyze the following:

- Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and gas and electric utilities and lines;
- Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage;
- Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors; and
- Mechanical systems, including plumbing and domestic hot water; HVAC, electrical, lighting fixtures, fire protection, and elevators.

Applicants are advised to also consider the requirements of other funding sources, such as USDA Rural Development, when ordering a capital needs assessment.

(2) Firm commitment of construction and permanent financing: The Applicant must demonstrate that it has enforceable financing commitments. Generally, an enforceable financing commitment is a written approval of a loan, from a lender, with conditions that can only be satisfied and controlled by the Applicant. The letter must state the interest rate, term of the loan and all conditions.

If the Applicant intends to finance all or part of the property costs out of its own resources, the Applicant must prove that such resources are available and committed solely for this purpose (i.e. written third party verification of fund availability).

(3) Necessary local approvals, including zoning, site plan approval, etc. (i.e. a letter from a city official stating that appropriate zoning is in place).

(4) Updated 15-year pro-forma financial projection, if there has been a change in income, expense, or debt service projections since the original application. If there has been no change, an affidavit to that effect from the Applicant is required.

(5) Formation of ownership entity (i.e. partnership agreement, etc.).

(6) Signed certification as to the full extent of all federal, state, and local subsidies that will apply to the property.

(7) If applicable, a complete report on the status and history of the non-profit Applicant and a copy of the Board minutes approving the non-profit's involvement in the property.

(8) A statement regarding developer's fee and what costs they represent.

(9) An updated application.

(10) An affidavit regarding the establishment and maintenance of replacement and operating reserve accounts, as well as a tax escrow account, if applicable.

(11) The reservation fee.

Upon receipt of this information, NDHFA will conduct another evaluation of the property based on

updated information, and may issue a Formal Reservation of tax credits to the Applicant in the amount it deems necessary and reasonable. Applications containing material changes which would have affected the initial scoring may be deemed ineligible and require forfeiture of the conditional commitment of credits. The Applicant would have the ability to reapply for credits in future application cycles.

The above information must be received in our office within the 60 day timeframe identified in the Conditional Reservation letter. Applicants who do not submit the items within the 60 day timeframe, and who have not requested and been granted an extension, will be assessed a late fee of $200 per calendar day up to a maximum of $2000. If the information is not received within 70 days, the Conditional Reservation will be cancelled and the credits made available to other applicants.

C. **Property Progress Reports:** In order to assure that the available credits are fully utilized, each Applicant receiving a Formal Reservation will be required to submit quarterly progress reports. The report must describe the Applicant's actual progress in comparison to the property schedule (page 17 of the Application) submitted as part of the Formal Reservation package.

D. **Credit Return or Cancellation:** If, at any time after issuance of a Formal Reservation of credits, an Applicant is unable to complete the property within the program's limitations, the Applicant shall voluntarily return the tax credits to the state. If the credits are returned prior to October 1st of the year, thereby providing NDHFA sufficient time to reallocate the credits, the returned credit penalty fee will be $1,000. If the credits are returned after October 1st a penalty fee of $2,500 will be charged. Further, if NDHFA is unable to reallocate the credits prior to year end, the Applicant will be ineligible to participate in application cycles for 2 full years following the return of the credits. Failure to pay the returned credit penalty fee will result in permanent ineligibility to participate in NDHFA programs until the fee is paid.

E. **Final Allocation of Tax Credits:** The final evaluation of the property will be made at the time the building is placed-in-service, which is defined as the date on which the first certificate of occupancy is issued. Within 180 days after the last building is placed- in-service, the Applicant must submit a complete a final application package. Unless waived by the Agency for good cause, failure to deliver by this due date will result in a penalty of $200 per day. For projects that place-in-service in the year of allocation, the deadline to submit a complete final allocation package is December 1, 2010, in order to allow sufficient time for 8609 issuance. The final allocation package must contain the following documentation:

(1) Updated application, including all exhibits;

(2) A schedule of property costs, prepared on the method of accounting used by the taxpayer for federal income tax purposes, and must detail the property's total costs as well as those costs that may qualify for inclusion in eligible basis. The schedule of costs must be accompanied by a Certified Public Accountant's audit report on the schedule and on the sources of funding. The CPA's audit must be conducted in accordance with generally accepted auditing standards and must be unqualified;

(3) Updated 15-year pro-forma financial projection on the property;

(4) Original or certified copy of the recorded Land Use Restrictive Agreement;

(5) A signed certification giving full disclosure of all federal, state, and local subsidies that apply to the property;

(6) A copy of the final ownership documents. Ownership interest of 15 percent or more must be

disclosed;

(7) Certification from Applicant or architect that the property is in compliance with ADA and Section 504, as applicable;

(8) Verification of all sources of funds (loan amounts and terms, equity generation, etc.);

(9) Evidence that tax escrow, operating reserve and replacement reserve accounts have been established;

(10) IRS Form 8821 completed and signed by the developer, general partner, owner and/or other members of the development team, as requested by the Agency;

(11) Copy of Certificate(s) of Occupancy, if issued or other evidence of project completion;

(12) Evidence of title to land; i.e. copy of title insurance; attorney's title opinion; or BIA title status report and, if necessary, backup or supporting documentation;

(13) Documentation of current utility allowance;

(14) Breakdown of units and square footage;

(15) Documentation of industry recognized training for owner(s) and on-site manager(s);

(16) Balance of allocation fee; and,

(17) Any other information requested by NDHFA.

VIII. SET-ASIDES

NDHFA has established the following set-aside requirements:

A. **Non-Profit Participation**: Ten percent of the state's housing credit ceiling will be set aside for properties involving non-profit organizations. To qualify for this set-aside category, the Applicant must be a qualified non-profit organization (IRS 501(c)(3) or 501(c)(4) status) which has as an exempt purpose, the fostering of low income housing; owns an interest in the property (directly or through a partnership); and materially participates on a regular, continuous, and substantial basis in the development and operation of the property throughout the compliance period. Ownership interest is defined as a minimum 50 percent general partner position in a limited partnership.

The initial application must include:

(1) Explanation illustrating that the non-profit has been actively involved within the community as a non-profit organization;
(2) Explanation outlining the rights and responsibilities of the non-profit organization including the right of the non-profit to purchase the property in the future; and,
(3) Information to show that the non-profit organization is not affiliated with, or controlled by, a for-profit individual or organization.

The highest-ranking non-profit application will be considered to be a part of the non-profit set-aside providing the request for credits does not exceed 125 percent of the set-aside. If the application exceeds 125 percent, the Applicant must indicate whether the application should be split into a partial non-profit/for-profit application or whether the entire application should be considered from the for-profit pool of credits. Non-profit applications in excess of the set-aside must compete with eligible "for-profit" applications. (These properties are eligible for bonus points under Section IX, Paragraph O.)

B. **Indian Reservation Set-Aside:** Ten percent of the state's housing credit ceiling will be set aside for properties located within North Dakota Indian Reservations or on Tribal land held in trust. If sufficient proposals on Reservations are not received by the close of the first funding round, the unused set-aside credits will be awarded to non-Reservation proposals in accordance with this Plan. Applications in excess of the Indian Reservation set-aside must compete with other applications in the general pool of credits. Credits reserved to an Applicant under this category will not result in negative points under Section IX Property Ratings, Paragraph Q - Developer Limitation.

C. **Preservation Set-Aside**: Ten percent of the state's housing credit ceiling will be set aside for applications involving preservation of existing affordable housing properties. Both Acquisition with Rehabilitation and Rehabilitation-only applications will be eligible under this set-aside. If sufficient preservation proposals are not received by the close of the first funding round, the unused set-aside credits will be awarded to non-preservation proposals in accordance with this Plan. Applications in excess of the preservation set-aside must compete with other applications in the general pool of credits.

D. **Energy Impact Set-Aside:** Ten percent of the state's housing credit ceiling will be set aside for applications from areas of the state experiencing housing shortages due to energy-related exploration and extraction. Eligibility for this set-aside will be determined at the sole discretion of the Agency based on Agency's knowledge of impacted housing markets and supported by adequate descriptive narrative from applicant outlining how the proposed project would address the housing shortage. If sufficient proposals are not received by the close of the first funding round, the unused set-aside credits will be awarded to non-energy impacted proposals in accordance with this Plan. Applications in excess of the energy impact set-aside must compete with other applications in the general pool of credits.

IX. PROPERTY RATINGS

Each application meeting the threshold requirements in Section V of the Plan will be reviewed and assigned points according to the following selection criteria. Applications must receive a minimum of 65 points as determined by the NDHFA, in its sole discretion, to be eligible for further consideration. Based on ranking, properties will be selected for Conditional Reservation. In the case of a tie between two or more projects, when insufficient credits remain to fund each one, the project requiring fewer credits per unit will be selected first. Once a property is selected, NDHFA will determine the amount of credit to be reserved, which may not equal the amount requested in the application.

IRS Code Section 42 requires that the NDHFA determine that "the housing credit dollar amount allocated to the property shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the property and its viability as a qualified low income housing property throughout the credit period."

A. **Serves Lowest Income Group Possible** **0-20 points**

Points will be awarded to properties with a minimum percentage of units having gross rents based

upon 50 percent or less of area median income. The units set aside in this category must be occupied by households within the applicable income limits. Elections made in this category will be incorporated into the Land Use Restrictive Agreement and will be binding for the 15-year compliance period (unless extended).

Note: This category awards points for gross rents that do not exceed these lower percentages of area median income. For purposes of this category, gross rent is defined to include the tenant portion, utility allowance, and any project or tenant-based rental assistance (RHS rental assistance, HUD Section 8, etc.)

Percent of Median Income on Which Gross Rent is Based

50%		40%		30% or less	
% of Total Units	**Points**	**% of Total Units**	**Points**	**% of Total Units**	**Points**
<=100%	6	<=100%	14	<=100%	20
<26%	5	<16%	10	<9%	15
<20%	4	<11%	6	<5%	10
<16%	3	<6%	2	<1%	0
<11%	0	<1%	0		

All fractions of units are rounded up (i.e. 9 percent of 24 units is 2.16 or 3 units). The maximum number of points that may be earned in this category is 20 points. See page 5 for the possible boost in eligible basis for exceeding the 30 percent targeting levels listed above.

B. Extended Duration of Low Income Use **3-9 points**

Points will be awarded to properties that maintain units for low-income occupancy for a period of at least 5 years beyond the 15-year minimum compliance period. For each additional 5-year compliance period, an additional 3 points will be awarded. Properties will be bound by these terms through the use of a Land Use Restrictive Agreement (LURA). The maximum is 9 points.

C. Community Revitalization Project **5 points**

A property located in a qualified census tract or city revitalization area and the development of which contributes to a concerted community revitalization plan will receive 5 points.

D. Special Needs **3-12 points**

Properties in which units are set aside and rented to persons with special needs will receive up to 12 points. These special needs include:

(1) Chronic or persistent mental illness,
(2) Drug dependency,
(3) Developmental disabilities,
(4) Physical disabilities (accessible units),
(5) Homeless, or
(6) Frail Elderly.

10 percent of the units ..... 3 points
15 percent of the units ..... 6 points
More than 15 percent of the units..... 9 points

To earn points in the Special Needs category serving residents with mental illness, drug dependency, developmental disabilities, who are homeless, or are frail elderly, a property must provide documentation that it meets the following requirements:

(1) A need for the special type of housing based on market demand, the applicable *Consolidated Plan*, and the findings of the local social service agency;
(2) Third-party verification of the services appropriate to the targeted population; and
(3) A commitment from a service agency to provide on-going services consistent with the needs of the targeted population.

To earn points in the Special Needs category serving residents with physical disabilities, a property must provide documentation that it meets the following requirements:

(1) A need for the special type of housing based on market demand, the applicable *Consolidated Plan*, and the findings of the local social service agency;
(2) Evidence that the unit/building configurations meet the specific needs of the targeted population; and
(3) Certification from an architect or Applicant that the accessible units and common areas meet or exceed Federal Fair Housing Accessibility Guidelines.

Compliance monitoring activities will include reviewing marketing efforts targeted at the specific special needs population.

Applicants who receive points under this category will receive 1 additional point for each physically accessible unit that is a two-bedroom unit or larger, up to a maximum of 3 points. As an example, an applicant who designates more than 15 percent of the total units to serve a special needs category, 3 of which are two-bedroom or larger and meet the definition of physically accessible will receive a total of 12 points.

E. Design Standards 5-20 points

1) Properties with an elevator will receive 10 points.

2) Properties with a building(s) design that does not exceed 2 stories and no more than 4 units per outside main entrance will receive 5 points.

3) Properties with a building design(s) that does not exceed 2 stories and includes a separate outside main entrance for each unit will receive 10 points. (Points given for this building design cannot be added to points given for design standard #2.)

4) Properties consisting of single family, detached homes will receive 15 points. (Points given for this building design cannot be added to points given for design standards #2 or #3.)

5) Properties that include a community room with kitchen facilities for the use of the tenants of the property at no charge will receive 10 points.

A maximum of 20 points may be earned in this category.

F. Green Communities **1-6 points**

To be eligible to earn any points in this category, applicants must submit a written development plan outlining the integrated design approach taken for this development that demonstrates involvement of the entire development team. The plan should provide a statement of the overall green development goals, the expected outcomes from addressing those goals, and the rationale for choosing each of the green features. Any applicant meeting 5 of the Green Communities' criteria found in Exhibit E will receive 1 point. Any applicant meeting 10 of the listed criteria will receive 3 points. By meeting 15 of the criteria, the applicant will be eligible for a total of 5 points in this category. Applications involving rehabilitation must meet 8 of the criteria to be eligible for 3 points and must meet 12 of the criteria to be eligible for the maximum 5 points.

A project obtaining LEED, Green Communities or National Association of Homebuilders' National Green Building Standard Certification will receive the maximum of 6 points in this category. Evidence of certification is required prior to 8609 issuance.

G. Property Rehabilitation **5-12 points**

Properties with rehabilitation expenditures of $ 10,000 up to $25,000 per unit will receive 5 points.

Properties with rehabilitation expenditures of $25,000 or more per unit will receive 10 points.

Properties that are historic in nature (i.e. on the National Register of Historic Places or approved for the State Historic Preservation Office's review list) will receive an additional 2 points.

H. Rent Rebate for Homeownership **5 points**

Applications that contain a commitment to set aside at least 5 percent of the tenant paid rent, for home ownership, will receive 5 points. The owner will enter into a binding contract with tenants of set-aside units at move-in agreeing to a rebate of the rent, payable to a lender, for a home selected by the tenant as a credit toward down payment, closing costs, etc. The accrual of rent to be rebated must be for the tenant's entire term of occupancy within a property (unit transfers should not void the rebate) and the vesting period can be no longer than 3 years of continuous occupancy within the property. It is intended that the rebate be paid only if the household moves directly into homeownership upon termination of the rental agreement.

I. Tenant Ownership **2 points**

Properties intended for eventual tenant ownership will receive 2 points. Applicants must include a) a feasible plan that sets forth a plan for transferring the property, in whole; b) the future purchase price; c) homebuyer counseling efforts; and d) any other information requested by the Agency. Information will be reviewed for conformance with Section 42(h)(6) and IRS Revenue Ruling 95-49. Applicants will not qualify for points under the extended low-income use category if the property is intended for eventual home ownership unless the applicant can demonstrate a plan for maintaining affordability for the extended use period.

J. Housing for Individuals with Children **2 points**

Properties in which 20 percent or more of the total units are three-bedroom or larger will receive 2 points.

K. Housing for People 55 and Over **10-15 points**

Properties that are designed for and marketed to households consisting of individuals 55 years of age and over will receive 10 points. The marketing plan must be consistent with Fair Housing requirements for 55 and over housing. If the applicant can demonstrate that long-term supportive services will be provided to the residents, the application will receive 15 points.

L. Internet Connection Provided to Tenants **1 point**

Properties that agree to construct all LIHTC units and any community rooms with high speed internet wiring will receive 1 point.

M. Preserve Existing Properties **5-10 points**

Federally assisted properties in danger of prepayment, such as Rural Development 515 financed or those with project-based rental assistance for 50 percent or more of the units, which are "at-risk" of being lost from the state's affordable housing inventory were not tax credits allocated, will receive 10 points.

Existing LIHTC properties that are near the end of the initial 15-year compliance period and did not waive the ability to opt out will receive 10 points. LIHTC properties that waived their ability to opt out of the extended use period for points in the scoring process will receive 5 points.

N. Rural Properties **10 points**

Developments located in rural North Dakota (cities with populations of 20,000 or less) will receive 10 points.

All areas of the state are eligible for this rural designation except Bismarck/Mandan, Fargo/West Fargo, Grand Forks and Minot, and any location within 10 miles of the city limits of these cities.

O. Non-Profit Sponsorship **5 points**

Applicant is a tax exempt organization as defined by Section 42 of the Internal Revenue Code, is organized under the laws of North Dakota, and maintains its principal office in North Dakota or provides satisfactory evidence to NDHFA that it meets the definition of non-profit as described in Section VIII at the time of the application.

P. Geographic Location

Points will be deducted based on the relationship (stated as a percentage) of the set-aside units selected within a location as compared to the total units selected, taking into consideration the population of the community where the tax credit property is proposed. The point table for geographic distribution is as follows:

Percentage of Units	Points
40% +	-10
<40.0%	-9
<30.0%	-8
<20.0%	-7
<15.0%	-6

<10.0%	-5
<5.0%	-4
<4.0%	-3
<3.0%	-2
<2.0%	-1
<1.0%	0

For purposes of the selection process, the communities of Bismarck and Mandan shall be considered one geographic location. Fargo and West Fargo will also be considered one geographic location.

Q. Developer Limitation

Points will be deducted based on the amount of tax credits reserved to a given Developer/Applicant. As properties are selected, all remaining properties by the same Developer will be awarded (Identity of Interest inclusive) negative points based on the Developer's aggregate tax credit awards as a percentage of all tax credits reserved. This negative pointing system will function in the same manner as paragraph P above. The point table for Developer's properties is:

Percentage of Tax Credits	Points	Percentage of Tax Credits	Points
30% +	- 10	< 15 %	- 4
< 30 %	- 9	< 12 %	- 3
< 27 %	- 8	< 9 %	- 2
< 24 %	- 7	< 6 %	- 1
< 21 %	- 6	< 3 %	0
< 18 %	- 5		

The negative points will be recalculated after each property selection. If during the selection process, a Developer/Applicant reaches the 25 percent limitation, then all unselected properties for that Developer will be removed from further consideration. (See paragraph K. Restriction on page 8 for possible exception.) However, if there are tax credits remaining after all other eligible properties have been selected, then those Developer/Applicants who have reached the 25 percent limitation and have applications remaining, will be considered for the continuation of the application cycle.

X. CARRYOVER ALLOCATIONS

Section 42 provides that the allocating agency may give a carryover allocation of credit to properties which have received a reservation of credits and which are not able to place the property in service in 2010. A carryover allocation may be awarded if more than 10 percent of the property's reasonably anticipated basis is incurred by the taxpayer within twelve months from the date of the reservation. The carryover allocation would then give the Applicant until December 31, 2012, to place the property in service. Applicants should review Section 42 (including IRS regulations, notices and private letter rulings) to ensure all requirements for a carryover allocation are met. All developments funded during the year must submit requests for a carryover allocation of credits to the NDHFA by December 1, 2010. The request must include both an "Owner Certification of Costs" and a certification of those costs from an independent CPA. The certification may be based on projected expenditures. If a carryover is issued based on projected expenditures, a follow-up certification from both the owner and CPA will be required at the end of the twelve-month period. Developers who received reservations of credits should contact the NDHFA for specific forms and instructions.

A. Carryover Late Fee: Developers that do not submit a carryover allocation request by the established due date of December 1, 2010 will be assessed a late fee of $500 plus a supplementary fee of $200 per day for each day from the original due date through the date on

which the NDHFA receives the carryover documents. This fee will not be allowed as an eligible cost in carryover basis or final basis and will not be included when calculating the total application fee of 10 percent.

XI. RESPONSIBILITY OF APPLICANT

The Applicant has the responsibility to abide by the representations made in the tax credit application and in the Land Use Restrictive Agreement. Failure to abide by these representations may result in sanctions against the Applicant, including but not limited to, the inability to apply for tax credits in the future and participate in other programs administered by NDHFA.

XII. CLARIFICATION OF AGENCY ROLE

Eligible applications will be evaluated to determine the credit reservation. NDHFA will conduct 3 evaluations prior to awarding the credit:

(1) At the time of initial Application/Conditional Reservation.
(2) At the time of Formal Notification to allocate credits.
(3) At the time the building is placed-in-service.

Prior to each evaluation, the eligible Applicant will be asked to submit the most recent financial information on the property. Any federal, state, or local subsidies anticipated must be certified. Inaccurate or misrepresentation of information will result in non-issuance of IRS Form 8609, debarment from the LIHTC Program, audit of Applicant's financial records at the Applicant's expense, and possible referral for criminal prosecution.

NDHFA reserves the right to exchange information with other state allocating agencies and with other parties as deemed appropriate. By submitting an application for tax credits, the Applicant is acknowledging and agreeing to this exchange of information.

NDHFA is charged with allocating enough tax credits to a property to make that property economically feasible. This decision shall be made solely at the discretion of NDHFA but in no way represents or warrants to any Applicant, investor, lender, or others that the property is feasible, viable or of investment quality.

In spite of the development standards and selection criteria outlined in this allocation plan, each and every proposal is analyzed on a comparative basis in a variety of categories to ensure the highest value for the tax credits awarded.

NDHFA review of documents submitted in connection with the allocation is for its own purpose. The NDHFA makes no representations to the Applicant or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing tax credits.

No member, officer, agent or employee of NDHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation of the tax credits.

XIII. MODIFICATION TO THE QUALIFIED ALLOCATION PLAN

To the extent necessary to facilitate the award of low income housing tax credits that would not otherwise be awarded, this Plan may be modified by NDHFA from time to time. The Executive Director may make minor modifications deemed necessary to facilitate the administration of the tax credit program or to address

unforeseen circumstances. Further, the Executive Director is authorized to waive any conditions not mandated by the Code on a case-by-case basis for good cause shown. For example, in the event of a major natural disaster, the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response. As a matter of practice, NDHFA will document any waivers from the established priorities and selection criteria of the Plan and will make this documentation available to the public, upon request.

To the extent that anything contained in this Plan does not meet the minimum requirements of federal law or regulation, such law or regulation shall take precedence over this Plan.