

Description of Information and Documentation Needed for 420-c Declaratory Ruling Requests

Please include a letter with a narrative summary and the attached request form with the following:

--Addressee for the declaratory ruling letter with address, phone and fax.

--Name of Sponsor.

--Name of Project and Street Address of Project with borough, block and lot.

--**Eligible Owner:** Provide the exact name(s) of the Eligible Entity(ies) that will **own or lease** the property for at least 30 years. (An organization chart will be helpful, but is not required.)

- If legal and beneficial title will be held by separate entities under a nominee agreement, provide the exact names of each entity;
- If entities are in the planning stage, indicate "to be formed" and the proposed name, if any.

For a **Limited Partnership (LP)** or **Limited Liability Company (LLC)** provide the following information:

- Exact name of the partnership or company;
- Exact name of each **General Partner (GP)** or **Managing Member (MM)** and also indicate "sole GP" or "sole MM," if so, or the total number GP/MMs;
- Exact name of the **Charitable Organization** that will hold the **Controlling Interest** in LP or LLC (specifically the entity that owns and controls at least 50% of each GP or MM); and
- Corporate documents evincing Eligible Ownership structure, including LP Articles of Limited Partnership, GP Certificate of Incorporation, stock certificates and LLC/MM Operating Agreements.

For a **Charitable Organization that itself has 501(c)(3) or (4) designation**, enclose the following or indicate that the following will be obtained prior to the effective date of benefits:

- **501(c)(3) or (4) designation letter & IRS letter indicating it is still in effect,**
- **Certificate of incorporation as filed**, showing that a purpose of the not-for profit entity is to provide housing accommodations for low income persons and families.

For a **Charitable Organization that is wholly owned and wholly controlled by a 501(c)(3) or (4):**

- Enclose **Certificate of incorporation** (or commitment to obtain such a certificate prior to the effective date of benefits for an entity to be formed) which indicates the following:
 - That the Charitable Organization appoints **the board of directors** (and may also be the sole member), as explicitly stated on the certificate of incorporation, or will commit to amend the certificate of incorporation to indicate this prior to the effective date of benefits, and
 - That a purpose is to provide housing accommodations for low income persons and families.

-- **Regulatory Agreement(s):** Provide the program name(s) & agency(ies) for all regulatory agreements with:

- Term (number of years) and
- Number and percentage of Tax Credit eligible units reserved for persons and families with incomes at limits at or below 60% of area median income. Indicate number of units reserved for superintendents and income restrictions for Tax Credit ineligible units, if applicable.

-- **Use of the Project:** Indicate the percentage of the project that will be used exclusively as Housing Accommodations as defined in the 420-c Rules and identify the percentage of the project to be used for ineligible uses such as commercial stores or services that are NOT primarily for residents.

--**Tax credits:** Indicate the source of federal tax credits, e.g., HPD, DHCR, HFA. etc. Include the status of the allocation, e.g., application pending, reservation received, etc.

--**Underwriting:** Provide most recent underwriting, including Sources and Uses, Development Budget, M&O and Cash Flow. Indicate whether the project is applying for or expects to receive Section 8 or other project-based rental or operating subsidies, and submit copies of original contract and most recent renewal documents. If Project is a rehabilitation, provide project financial audits for the last three years.

-- **A certified check or money order for \$250** payable to the New York City Department of Finance with a notation "420-c declaratory ruling" must accompany each request.

Definitions related to ownership established under the amended §420-c of the Real Property Tax Law. §420-c(3) and (4) pertain to applications to be approved after September 28, 2004.

Eligible Owner is defined in §420-c(4)(a)(6) as “one or more eligible entities that holds

- (i) legal and beneficial title to eligible real property, or
- (ii) a legal and beneficial leasehold interest with a term of not less than thirty years in eligible real property.”

Eligible Entity as defined in §420-c(4)(a)(5) is “a corporation, partnership or limited liability company at least fifty percent of the controlling interest of which is held by a charitable organization.”

Charitable Organization as defined in §420-c(4)(a)(4) is

- “(i) an entity formed for purposes that include providing housing accommodations for persons and families of low income and that has received written recognition of exemption pursuant to Section 501(c)(3) or Section 501(c)(4) of the [Code], or
- (ii) a corporation, partnership or limited liability company wholly owned and wholly controlled by an entity formed for purposes that include providing housing accommodations for persons and families of low income and that has received written recognition of exemption pursuant to Section 501(c)(3) or Section 501(c)(4) of the [Code].” (See attached suggested language for an HDFC or other non-profit subsidiary of a 501(c)(3) or (4)).

Housing Accommodations is defined the 420-c Rules (Sec. 31-01(b) of Title 28 RCNY) as “Real Property used for (i) residential purposes including dwelling units, common sanitary and cooking and dining facilities, common recreation areas including outdoor recreation areas and public areas such as cellars, basements, public halls and stairs and roofs; and (ii) ancillary residential purposes including management, administrative and social service offices and facilities used to provide social services (including job training, as defined herein) primarily for Persons or Families of Low Income residing in such Housing Accommodations provided that such ancillary purposes do not exceed 25% of the Aggregate Floor Area of the Real Property.”

Suggested language for an HDFC certificate of incorporation where the HDFC will be wholly owned and wholly controlled by a Charitable Organization by selection of the board of directors. Changes can be made to accommodate instances where the Charitable Organization has not yet received IRS designation or where the HDFC itself will eventually receive 501(c)(3) or (4) designation . See below for additional first sentence* and later phrase** where the HDFC has a sole member.

The directors of _____ [HDFC] shall, at all times, be limited to the individuals who are either members of the board of directors of _____ [Charitable Organization] or who have otherwise been appointed or elected directors of [HDFC] by [Charitable Organization]. In the event that [Charitable Organization]** dissolves or ceases to have written recognition of exemption pursuant to §501(c)(3) or §501(c)(4) of the Internal Revenue Code of 1986, as amended, or any successor statute from the United States Internal Revenue Service or any successor agency, the directors of the Corporation shall, at all times, be limited to individuals who have been appointed or elected by a comparable entity which has such exemption and which was formed for purposes that include providing housing accommodations for persons and families of low income.”

If the HDFC has the Charitable Organization as its sole member:

* Add the following sentence to the beginning of the above paragraph, “The sole member of [HDFC] is [Charitable Organization];” and

**Add the following phrase “ceases to be the sole member of the Corporation,” where indicated in the above paragraph.

420-c DECLARATORY RULING REQUEST FORM

Cover letter must be attached with a description of the project and documentation.

Requested by _____ Phone _____; Fax _____

Send opinion to

Address (& name, if different) _____

1. **General Information:** Name of the Project: _____

Street Address or Location: _____

Borough: _____ Block: _____ Lot(s): _____

Project Type: new construction, rehabilitation, or preservation

Sponsor(s) _____

Date Opinion needed (state reason if less than 4 weeks): _____

2. **Owner:** Exact Legal Name(s) if known OR indicate "to be formed"(see attached definition of eligible entities):

LP or LLC: Exact name" _____

Will LP or LLC hold: legal title and/or beneficial title

Exact name of General Partner(s) ("GP") or Managing Member ("MM"): (sole GP or MM yes no)

Exact name of Charitable Organization(s) holding _____ % (at least 50%) of the GP or MM:

This Charitable Organization(s) has: 501(c)(3) or (4) designation and low income housing purpose,
OR is wholly owned & wholly controlled by a 501(c)(3) or (4) Charitable Organization(s) with low
income housing purpose whose name(s) is: _____

(Submit the 501(c)(3) or (4) designation letter & Certificate of Incorporation for each Charitable Organization)

Nominee Agreement will be executed (submit as above for Eligible Entity or Charitable Organization).

Exact Name of Legal Title Holder(s): _____

3. **Regulatory Agreement(s):** Program Name(s) & Agency(ies): (if more than one, list separately) _____

Term (# of years): _____ No. of Tax Credit eligible DUs _____ / Total No. of DUs _____ (_____ %)

4. **Use of Project:** _____ % Project exclusively as Housing Accommodations (see attached definition.)

_____ % Project commercial or administration and services not primarily for residents

5. **Tax Credits:** HPD DHCR HFA Other _____

Status of allocation: _____

6. **Sect. 8 or other Project Based Rental/Operational Subsidies:** yes no (If yes, describe separately.)

7. **Certified check or money order** for \$250 payable to the New York City Department of Finance with a notation "420-c declaratory ruling" must accompany each declaratory ruling request.

Submit to Christopher Boltinghouse, Tax Incentive Programs, HPD, 100 Gold Street, Room 3Z-7, NY, NY 10038