

2005 LOW INCOME HOUSING TAX CREDIT

QUALIFIED ALLOCATION PLAN

CITY OF NEW YORK

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Issued

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I. INTRODUCTION

Since 1988 the New York City Department of Housing Preservation and Development (“HPD” or “Agency”) has been making direct allocations of Low Income Housing Tax Credits to eligible projects in New York City by mutual agreement with the New York State Division of Housing and Community Renewal (DHCR). Under procedures authorized by federal statute and state law, HPD is officially designated by DHCR as a Local Housing Credit Agency, a designation that is renewed annually.

As a Housing Credit Agency, HPD is required to make allocations according to a "Qualified Allocation Plan" (the Plan), which may be adopted only after providing opportunity for public comment and gaining approval of the Mayor. HPD's Plan was first issued and received mayoral approval in 1990. The Plan was found by NYC Corporation Counsel to be consistent with Section 42 of the Internal Revenue Code (the Code), and was approved by DHCR as consistent with the 1990 *State of New York Allocation Plan*.

Modifications have been made to the Plan as needed in response to federal law and industry practice. In 1991, HPD made several changes to facilitate the administration of its Tax Credit Program and to ensure that amendments required by the 1990 Federal Budget Reconciliation Act were incorporated into the Plan. In 1993, a description of compliance monitoring procedures was incorporated into the Plan, as was required under new IRS regulations that became effective that year. In 1998, in response to changes in federal law, HPD made additional changes in the Compliance Monitoring section of the Plan, as well as changes in sections dealing with Administrative Processes, Selection Criteria and Project Underwriting. The 1999 revisions included changes in the Selection Criteria and Project Underwriting sections of the Plan. For 2000, minor changes and clarifications were made in sections on Administrative Processes, Selection Criteria, Project Underwriting, and Compliance Monitoring. In 2001, several sections of the

Plan (Administrative Processes, Assessment of Housing Needs, Selection Criteria, and Compliance Monitoring) were revised in response to federal rule changes. No substantive changes were made for 2002 or 2003. In 2004, changes were made to the Administrative Processes, Selection Criteria, and Project Underwriting sections of the Plan. No substantive changes are being made for 2005.

The Plan presented herein sets forth the goals and administrative procedures to be undertaken by HPD in allocating credit to projects, including application submission, evaluation and selection criteria, standards to be used in underwriting credit amounts and monitoring compliance pursuant to Section 42 of the Code (“Section 42”). This Plan fully conforms to Section 42 and State Executive Order 135.

II. CREDIT ALLOCATION AUTHORITY

HPD has a long and successful history as a provider of housing assistance including direct subsidies for the construction, substantial rehabilitation, and moderate rehabilitation of affordable residential buildings. In addition, HPD owns and manages approximately 11,000 units of “in-rem” or tax-foreclosed housing. The Agency also administers the City's housing code and acts as a Public Housing Agency in order to provide Federal tenant-based rent subsidies through the Section 8 Voucher program.

Together these activities constitute far and away the largest locally sponsored housing program in the nation. In FY 2006, HPD will spend over \$930 million from Capital and Expense funds for the production and preservation of affordable housing.

HPD also has substantial experience in awarding and administering the Low Income Housing Tax Credit Program. Since 1988, HPD has served as a Local Housing Credit Agency. At the end of calendar year 2004, we had awarded nearly \$ 144 million in tax credits to 803 projects with 20,165 low-income units. (The \$144 million figure represents annual allocation amounts that are repeated for 10 years, or \$ 1.44 billion in total credits. These credits resulted in over \$ 900 million of direct private equity investments in low income housing.)

HPD's credit authority for the 2005 calendar year is expected to be approximately \$10 million. As in the past, HPD will work cooperatively with DHCR by furnishing periodic reports and summary information on the administration of its tax credit program. In addition, where DHCR receives a proposal for projects located in HPD's five-county New York metropolitan jurisdiction, DHCR will notify HPD of the proposal prior to making their decision to allocate credit to the project. Any unused New York City credit authority

(i.e., credit authority for which no funding reservation has been issued) will be recaptured by DHCR.

Should HPD exhaust its allocation of credit authority, the Agency may request additional authority from the statewide pool of recaptured credit or from any national pool credits available.

III. GEOGRAPHIC JURISDICTION

HPD's allocation authority covers the entire City of New York, including the five counties of New York, Kings, Queens, the Bronx, and Richmond. However, selection criteria will target the use of credits to those neighborhoods with the greatest need.

IV. ADMINISTRATIVE PROCESS FOR CREDIT ALLOCATIONS

The allocation of Low Income Housing Tax Credits is administered by HPD's Tax Credit and Compliance Unit within the Division of Housing Finance. Specifically, the Tax Credit and Compliance Unit is responsible for evaluating, underwriting, and scoring applications for tax credits, issuing determinations, reservations and allocations, maintaining the waiting list and monitoring compliance of tax credit recipients with Federal tax credit regulations.

HPD will annually publish in the City Register a Notice of Credit Availability that informs applicants of submission dates and deadlines for future funding rounds. One or more funding rounds may be held each year in which credit allocations will be awarded on a competitive basis. HPD may establish set-asides of credit for projects that meet qualifications determined by the Agency to be current housing priorities. Specific details regarding set-asides, including amounts and eligibility requirements, will be published in the annual Notice of Credit Availability.

To receive consideration for a credit allocation, project owners must submit an application on or before the published submission deadline. Application forms may be obtained from the address below or from the HPD website: www.nyc.gov/hpd. Applications must be completed in their entirety, and the required supporting documentation must be attached. The Agency may reject any application that is incomplete.

A non-refundable fee of \$200 will be charged for each application submitted for an allocation of credits from HPD's credit authority. A non-refundable fee of \$500 will be charged for each application for "as-of-right" credits (for projects with tax-exempt bond financing). In addition, an Allocation Fee of 4% of the requested credit amount will be collected at the final Certification ("8609") stage. Finally, Compliance

Monitoring Fees will be charged in the amount of \$25 per tax credit unit per year.

Applications and requests for information should be submitted to:

Tax Credit and Compliance Unit
NYC Dept. of Housing Preservation and Development
100 Gold Street, Room 9 I-5
New York, N.Y. 10038
(212) 863-7698

Tax credits will be awarded based upon the selection criteria outlined in Section VI of this document. Tax credit applications will be evaluated and underwritten according to the guidelines in effect during the year a complete tax credit application is submitted to HPD. Applications received by the submission deadline will be reviewed for completeness and basic eligibility. Those that meet the threshold eligibility criteria will be scored to determine competitive ranking and underwritten to determine the maximum amount of credits for which they are eligible. Credit reservations will then be issued, in rank order, to as many projects as can be covered by the credit authority available in a given funding round. In the event of scoring ties, HPD will rank tied projects according to which require the least number of tax credit dollars per tax credit unit. After that, HPD reserves the right to select the last project or projects to be funded based on whose credit needs most closely approximate the remaining available credit.

Notwithstanding a project's competitive score, HPD may limit the number of awards to a developer in a given year, or make no awards to a developer if, in HPD's judgment, the developer does not have the current capacity to successfully complete any or all of the projects for which the applications have been submitted.

Should HPD's credit authority be exhausted before all eligible applications are funded, applications may be placed on a waiting list through the next funding round to ensure a continuous flow of quality projects

should additional credit authority become available. Applications on the waiting list will be considered along with new applications submitted in the next funding round, based on their competitive score. They will not receive any preference or priority over new applications. Applicants will, however, have the opportunity to review and update their application to improve their score. If no award is received in that round, the applicant must submit a new application and pay another application fee to receive further consideration.

The allocation of tax credits under HPD's credit authority will proceed as outlined below. Applicants will be notified in writing of the status of their application, and of any conditions to be met in order to proceed to subsequent stages of the allocation process.

Allocation Steps - Applications for Credits under HPD's Credit Authority

1. Initial Review & Evaluation - Applications are accepted, reviewed for completeness, evaluated against threshold and competitive selection criteria and underwritten. If sufficient credits are available to fund the project in the current funding round, it proceeds to the Credit Reservation stage (below.) If the Agency is unable to award credits to an eligible project, the project may be placed on a waiting list through the next funding round.
2. Credit Reservation Agreement - Reservations will be executed for projects selected during periodic funding rounds. The reservation document serves as a binding commitment. Applicants who execute Credit Reservation Agreements may elect to "lock in" the credit percentage rate for the month in which the agreement is made.
3. Carryover Allocation - Projects requiring credit allocations prior to completion of construction will be issued a Carryover Allocation if they meet all of the following requirements: (a) evidence is provided that 10% of the project's reasonably expected basis will be incurred by the close of the calendar year in which the allocation is made (or by such earlier date as HPD may, for administrative purposes, establish, or for projects receiving allocations later than June 30 in any calendar year, within six months of receiving the allocation, (b) the project will be placed in service no later than the close of the second calendar year following the year of the allocation, and (c) the project has closed on its construction loan.
4. Certification of Allocation (8609) - Certification of the final credit amount will be issued after projects are placed in service. The certification will be in the form of an IRS Form 8609 to be issued by the Agency. To request the 8609 project owners must submit a "Financial Update" and such

other documentation as HPD may require. For administrative purposes, HPD may establish deadlines or submission periods during which “Financial Updates” will be accepted for review.

Allocation Steps - Applications for “As-of-Right” Credits for Tax Exempt Bond Financed Projects

Rental projects which meet the rent, income and occupancy requirements of Section 42, and for which more than 50% of aggregate basis is financed by tax exempt bond financing may qualify for “as-of-right” allocations of tax credits which are not charged against the credit ceiling of either HPD or the State of New York. Such projects must apply to a Housing Credit Agency for two purposes: (a) for a determination that the project satisfies the threshold requirements for an allocation under the qualified allocation plan applicable to the area in which the project is located, and (b) for a determination of the amount of tax credits to be allocated to the project. Applications for “as-of-right” credit allocations will be subject to such administrative deadlines as HPD may establish, and to the same threshold requirements (except as specified in Section VI of this document) and underwriting guidelines as apply to applications for credits under HPD's credit authority. Applications are evaluated and underwritten according to the guidelines in effect during the year a complete tax credit application is submitted to HPD.

Projects that apply to HPD for “as-of-right” allocations shall be processed as follows:

1. Initial Review & Evaluation - Applications are accepted, reviewed for completeness, evaluated against threshold criteria (but not competitive criteria) and underwritten. (See Section VI “Selection Criteria”, and Section VII “Project Underwriting”.)
2. Determination of Credit Eligibility - Projects found to be eligible shall receive a Determination of Credit Eligibility, which is a non-binding statement of the amount of credit for which the project is eligible. The Determination will also list conditions and requirements for obtaining an allocation. Once a Determination has been issued by HPD, the owner may elect to lock in a credit rate for the month in which the bonds are issued, by executing and returning to HPD a statement to that effect, along with evidence of the date of bond issuance, within 5 days of the month the bonds are issued.
3. Certification of Allocation (8609) - Certification of the final credit amount will be issued after projects are placed in service. The certification will be in the form of an IRS Form 8609 to be issued by the Agency. To request the 8609 project owners must submit a “Financial Update” and such other documentation as HPD may require. For administrative purposes, HPD may establish

deadlines or submission periods during which “Financial Updates” will be accepted for review.

Official written notice of Determination of Credit Eligibility, Credit Reservation, Carryover Allocation, and Certification of Allocation must be signed by the Assistant Commissioner of HPD's Division of Housing Finance or his/her designee.

V. ASSESSMENT OF HOUSING NEEDS

Providing decent and affordable housing is a constant challenge throughout the State of New York. Nowhere is this challenge greater, however, than in New York City, where more than 42% of the state's total population resides and many of the most significant housing problems exist.

New York City is faced with an extreme shortage of housing units, especially low cost housing units. This shortage has led thousands to become homeless, and forced countless others to "double-up" with existing occupants or to settle for substandard accommodations. In addition, many of those who have found decent living conditions are paying excessive portions of their income for rent and consequently may be in jeopardy of being displaced themselves. Predictably, low and very low income families are the hardest hit. These households include the elderly, as well as the mentally and physically disabled, whose incomes severely restrict their housing choices.

The *New York City Housing and Vacancy Survey* (HVS) is the primary data source used to analyze the City's housing needs. The HVS is conducted periodically by the U. S. Census Bureau for the Department of Housing Preservation and Development, and provides an assessment of the housing inventory in the City, including the condition of the rental housing stock, vacancy rates, rent levels, and ownership trends. Data from the HVS for 2002 revealed numerous critical housing issues with which the City must contend.

The Survey disclosed:

- The overall vacancy rate for rental housing in New York City in 2002 was 2.94%. For units renting under \$400 the vacancy rate was 1.26%; for units renting between \$400 and \$499 the vacancy rate was 2.05%; and 1.04% for units in the \$500-\$599 range.
- 11,458 renter households were living in buildings that were considered dilapidated.
- 225,062 households (11.1% of all renters) were overcrowded.

- 455,000 households (22.5% of all renters) had incomes below the poverty level.
- 854,000 households (46% of all renters) paid more than 30% of gross income in rent.

Data compiled by the New York City Housing Authority further document New York City's housing dilemma:

- there are over 150,000 families on the public housing authority's waiting lists;
- the vacancy rate for conventional public housing units is near zero;
- the turnover rate for apartment occupancy has been steadily declining.

Finally, while it is virtually impossible to determine exactly how many people are homeless (the HVS is restricted to households living in dwelling units), there is ample evidence that the homeless problem remains quite serious. Estimates of the number of homeless people in New York City have ranged from 54,000, the number currently being served by the City's shelter system, to more than twice that number.

While New York City has always evidenced tremendous housing needs, Federal funding for housing assistance has not always kept up with demand. The lack of Federal funding for New York City has been most acute in recent years in the public housing sector, where waiting lists for housing are growing, and Section 8 rental subsidies for low and moderate income households have not kept pace with demand.

During the mid-1980's, in response to the Federal government's virtual withdrawal from the field of housing, the City mounted its own housing program, which continues to operate within available resources. Because the City's housing needs are so substantial and so varied, a broad-based comprehensive approach is required. Consequently, the City of New York embarked on an aggressive campaign to produce new housing units and preserve the affordable housing stock. This program incorporates state subsidies and a small amount of Federal assistance, but the overwhelming majority of the resources are coming from its own capital outlays and from private resources.

While the City's efforts were focused initially on rehabilitation of vacant "in rem" buildings, attention has now shifted to the remaining stock of occupied "in rem" buildings, most of which are deteriorated, pose substantial management difficulties, and negatively effect the low income neighborhoods where they are located. While it is working to renovate these buildings and return them to private ownership, the City has also made thousands of vacant apartments in these buildings available to homeless families and individuals from the shelter system to ease the homeless crisis.

A pro bono study conducted by Arthur Andersen Consulting in 1995 concluded that the cost to the City of acquiring, managing and selling the average residential building was \$2.2 million, compared with only \$36,000 in unpaid taxes and liens when the City took ownership. In addition to the substantial annual management cost of the "in rem" stock, the City was effectively losing millions of dollars more in property tax revenues during the time these properties were off the tax rolls. (The period of "in rem" ownership averaged 19 years.) The City has subsequently concluded that the goal of housing preservation can be addressed more effectively by keeping buildings in private ownership.

In December 2002, the Mayor announced an innovative \$3 billion housing plan, "The New Housing Marketplace: Creating Housing for the Next Generation" that calls for the construction, rehabilitation and preservation of 65,000 homes and apartments within the five boroughs of New York City. Key objectives of the Mayor's Plan include increasing housing production for the homeless, very low-income and special needs populations, creating new markets for affordable housing by investing in new housing construction, offering low interest loans to renovate and lease apartments that have been vacant and off the market, and proposing rezoning plans in communities in need of residential development.

In addition, the City will continue to emphasize preventing the abandonment of privately owned housing

stock, along with the improvement and transfer to private ownership of City-owned occupied housing. Among the tools to be used are: tax foreclosures which result in title transfers to new owners rather than the City, direct loan programs for rehabilitation and violation removal, improved efforts to enforce the housing maintenance code, and tenant and owner training programs. Another focus of the City's efforts has been the creation of new housing units. In fact, HPD has developed a host of innovative programs to produce additional housing units that are safe, decent and affordable.

The Low Income Housing Tax Credit, one of the few Federal incentives remaining to stimulate private sector participation in low income housing production, has been an essential tool for meeting housing needs in New York City. While those needs are extremely broad, the limited availability of tax credit resources dictates that they be targeted to specific housing needs, as set forth below:

1. Projects that produce affordable standard housing units for low and moderate income persons. Priority will be given to those projects that include a high percentage of low-income units, and to those that provide rents affordable to persons of very low income.
2. Projects that facilitate the return of City-owned "in-rem" stock to private ownership including, among other options, eventual tenant ownership.
3. Projects that create permanent housing for special populations (homeless families with children, homeless individuals, the homeless mentally ill, other homeless groups, persons with AIDS, and mentally and/or physically disabled), and provide training and/or support services necessary to make the transition to independent living.
4. Projects involving low-income and mixed income new construction.
5. Projects that attract or retain Federal, state, and local subsidies.
6. Projects that generate the participation of non-profit and community-based organizations in housing development, ownership and/or management.
7. Projects that contribute to community revitalization and/or economic development goals.

A more detailed discussion of the City's priorities in awarding credit authority is included in the following section.

VI. SELECTION CRITERIA

As a Local Housing Credit Agency, HPD will evaluate all applications received to determine which projects should receive tax credits. (Note: Tax-exempt bond financed projects which qualify for “as-of-right” credit allocations must still be in conformance with the threshold requirements of the qualified allocation plan applicable to the area in which the project is located.)

THRESHOLD CRITERIA

To be considered for a funding reservation, a project must demonstrate that it meets each of the following threshold criteria:

1. ***Rent and Income Restrictions*** Project conforms to the basic income, occupancy and rent restrictions of Section 42.
2. ***Readiness*** Project is ready to proceed as documented by:
 - a. Evidence of site control
 - b. Zoning approval and/or ULURP, if required
 - c. Evidence of executed construction and permanent financing commitments (For “as-of-right” applications, only construction commitments are required.)
 - d. Construction start scheduled before the end of the calendar year (Not required for “as-of-right” projects.)
 - e. All entities in the ownership structure are identified, including, for partnerships, all proposed general partners and managing general partners and, for limited liability companies, all members and managing members.
3. ***Regulatory Agreement / Extended Low Income Use*** Owner is willing to enter into a regulatory agreement with HPD for extended low-income use of the project (i.e. a 30-year compliance period) that is in conformance with the requirements of Section 42.
4. ***Housing Needs*** Project is of the appropriate type needed to address the housing needs in the area where project is located as evidenced by a market study produced by HPD or a market study consultant approved by HPD. The market study must demonstrate a need for the proposed housing.

5. ***Applicant Qualifications*** Applicant must certify that applicant and all principals of the applicant and the sponsor are not the subject of: (1) arson conviction or pending case, (2) harassment conviction or pending case, (3) City mortgage foreclosure proceedings or arrears, (4) in-rem foreclosure or substantial tax arrears, (5) defaults under any City-sponsored program, (6) de-designation as developer of any government sponsored or publicly assisted projects, (7) a record of substantial building code violations or litigation against properties owned by the Applicant or by any entity or individual that comprises the applicant, or (8) conviction for fraud, bribery, or grand larceny.

Projects that do not meet the threshold criteria will not be reviewed further. Applicants will be informed that the project is not eligible for a reservation of credits. Applicants may reapply for subsequent funding cycles, but must pay an additional application fee.

COMPETITIVE CRITERIA

A scoring system will be used to evaluate and rank those projects that meet the basic threshold criteria. This system has been established to conform to the selection criteria contained in the Federal law as well as fulfill the objectives outlined in the Assessment of Housing Needs (Section V). This scoring system has a maximum attainable score of 100 points, including special priority points that may be given to a project that the Commissioner of HPD determines to be an important initiative or unique opportunity to meet basic local housing objectives. The elements for which competitive points will be awarded are:

A. PROJECT OCCUPANCY (Maximum points 20)

1. ***Single Room Occupancy Housing*** Buildings designed predominantly with SRO, efficiency or studio units to accommodate low income single adults.
2. ***Permanent Housing for the Homeless*** For this purpose, "homeless" shall be defined to mean either homeless singles or families referred by HPD, the NYC Department of Human Resources (HRA) or the NYC Department of Homeless Services (DHS).
 - a. Projects that set aside at least 10% of residential rental units for homeless.
 - b. Projects that set aside 50% or more residential rental units for homeless.

3. ***Households with Children*** Projects where at least 10% of the low income units are two bedrooms or larger.
4. ***Low Income / Very Low Income Occupancy*** Projects that exceed the minimum threshold requirements of Section 42 will receive additional points. (All special set asides will be reflected in the project's Regulatory Agreement and apply to the full compliance period.)
 - a. Projects that set aside at least 70% of units for low income tenants (60% of median or lower).
 - b. Projects that either elect the 20/50 threshold test, or otherwise set aside at least 20% of units for very low income tenants (50% of median or lower).
 - c. Projects that set aside at least 20% of units for tenants with incomes at 40% of median or lower.
 - d. Projects where rents on at least 20% of units are set at or below HRA "shelter rent" levels.
5. ***Special Needs Populations*** Special needs groups include homeless persons and families, persons who are mentally ill or disabled, persons with AIDS, substance abusers, and survivors of domestic violence and their families. (Set asides will be reflected in the Regulatory Agreement.)
 - a. Projects that set aside 35% or more of units for Special Needs groups.
 - b. Applications that evidence adequate provision of support services for the intended population by including a letter of interest from a social service agency, e.g. Office of Alcoholism and Substance Abuse Services (OASAS), Office of Mental Health (OMH), Office of Mental Retardation and Development Disabilities (OMRDD), the NYC Human Resources Administration (HRA) or the Department of Homeless Services (DHS), stating that the agency has reviewed the project and determined that the applicant will be eligible for operating subsidies and/or supportive housing services through the agency.
 - c. Sponsors that have previous experience in this type of housing or service delivery.
6. ***Public Housing Waiting Lists*** Scored on whether the sponsor has committed in writing to the Agency to designate at least 20% of the low-income units in which special priority will be given households on the waiting list for public housing.

B. PROJECT FINANCING AND DEVELOPMENT COSTS (Maximum points 15)

1. **Public Financing** Projects that attract or retain local, state and/or Federal project-based subsidies. Evidence of subsidy (a commitment letter from appropriate Federal, State or local agency) must be submitted identifying the subsidy and the terms and conditions for its receipt.
2. **Developer Fees** Projects with developer fees of 10% or less of development costs (total development costs less developer fee, operating and other reserves, syndication and partnership costs.)
3. **Total Development Cost** Projects where total development costs (excluding reserves, syndication and partnership expenses) do not exceed \$100,000 per apartment.
4. **Efficiency of Financing** Preference will be given to projects that reduce the amount of the tax credit allocation needed by maximizing other sources.
 - a. Projects whose net equity raise factor exceeds, by at least five cents per dollar, HPD's assumed minimum net equity raise factor.
 - b. Projects where proposed tax credit equity is 40% or less of total project cost.

C. PROJECT CHARACTERISTICS (Maximum points 15)

1. **Targeted Areas** Scored on whether project is located in a geographic area defined by HPD as an area of special need: (a) SONYMA target area, (b) HPD designated slums and blight area, (c) a census tract where 51% or more of families have incomes which are below 80% of area median income, (d) an area with a concentration of City-owned "in rem" housing, or (e) projects located in qualified census tracts which contribute to a concerted community revitalization plan.
2. **"In Rem" Acquisition** Projects where buildings are acquired from the City of New York through one of the "In Rem" disposition programs operated by HPD and returned to private ownership including, among other options, eventual tenant ownership.
3. **Existing Housing** Rehabilitation projects that are part of community revitalization plan.

D. APPLICANT CHARACTERISTICS (Maximum points 10)

1. **Experience** Applicants (owner and/or developer) with demonstrated capacity for undertaking the development, management and/or ownership of a low and moderate income housing project.
 - a. Successful experience as developer in publicly subsidized low income housing programs, including previous experience in tax credit projects.

- b. Success in the operation and/or management of low and moderate income residential properties.
 - c. Projects proposed by organizations which, in lieu of direct development or management experience, provide evidence of technical support from an established citywide non-profit organization experienced in housing development.
2. ***Nonprofit Status*** A qualified nonprofit organization, as defined in Section 42, is one which: a) is tax exempt under Section 501(c)(3) or Section 501(c)(4), b) has the fostering of low income housing as one of its purposes, and c) is not controlled by a for-profit organization. To earn points under this section, the nonprofit organization must materially participate in the development and ownership of the project throughout the compliance period. Material participation shall mean being the managing general partner of the owner.
 3. ***Community Based Organizations*** Applicants will qualify for additional points if they are community based, i.e. they have a geographically defined service area that is smaller than a borough.
 4. ***HPD Development History and Problems*** Applicants who have previously received tax credit allocations or other development financing from HPD will be reviewed for outstanding problems on previous projects. Points will be *deducted* for applicants who are principals in any of the following:
 - a. Projects with outstanding instances of uncorrected Tax Credit noncompliance.
(1 point deducted for each uncorrected finding, up to a maximum of 15 points)
 - b. Projects with outstanding instances of uncorrected HOME noncompliance.
(1 point deducted for each uncorrected finding, up to a maximum of 15 points)
 - c. Projects whose credit allocations have been returned to or recaptured by HPD.
(5 points deducted for any return or recapture of credits)
 - d. Projects that are in default or work-out status.
(10 points deducted for any such project)
- E. EXTENDED LOW INCOME USAGE (Maximum points 10)
1. ***Additional Years of Affordability*** Projects which pledge to extend the low income affordability period beyond the 30 years required under Section 42. (The additional affordability period will be reflected in the Regulatory Agreement for the project.) To receive points, the application must include a plan deemed acceptable by HPD for ensuring the feasibility of any additional affordability period.
 2. ***Waiver of Right to Qualified Contract*** Projects where applicants agree to maintain the Extended Use Period by including in the Regulatory Agreement a waiver of the right to

seek a qualified contract to purchase the project at the end of the 15 year compliance period.

F. PROJECT READINESS (Maximum points 20)

1. **Equity Commitment** Preference will be given to applications that include an equity commitment letter from a syndicator or investor, executed by both the issuing party and the applicant, showing that the necessary equity contribution to the project is in place. Such commitment letter must state the amount of the equity to be provided and the adjustment factor, and must clearly state that the investment has been approved by the investment committee or other determining body of the issuer. In cases where the tax credit is being used directly by the project owner, a letter from an independent CPA must be provided certifying that the applicant has the amount of cash needed to provide the equity stated in the application.
2. **Ownership of Property** Additional points will be given to projects where the applicant owns or has already taken title to all the land or buildings in the project at the time of application. An executed deed must be provided as evidence.
3. **Approved Contractor Price** Projects that can provide evidence that the general contractor has been selected by the owner and, if necessary, approved by the construction lender, and that the contractor's price has been approved by the owner and construction lender.
4. **Construction Start** Preference will be given to projects where the development timetable realistically indicates that significant construction progress will occur before or during the year the Credit Allocation is requested.
 - a. Projects that project a construction start on or before August 1 of the calendar year in which the application is submitted.
 - b. Projects that have already begun construction, *and* have reached at least 20% of construction completion, at the time the application is submitted. Completion percentage must be evidenced by a letter from the supervising architect or engineer.

G. SPECIAL PRIORITY POINTS (Maximum points 10)

Projects that the Commissioner of HPD determines to be an important initiative or unique opportunity to meet the basic local housing objectives.

HPD will evaluate projects according to their strength in meeting the selection criteria, and award points accordingly. The results of the evaluation will be determined by HPD in its sole discretion. Applications

that do not score highly enough to receive a credit reservation may be placed on a waiting list through the next funding round. Applications on the waiting list will be considered along with new applications in the next funding round based on their competitive score. They will not receive any preference or priority over new applications. If no reservation is received in the next round, the applicant must submit a new application and pay another application fee to receive further consideration.

VII. PROJECT UNDERWRITING

The following guidelines apply equally to projects competing for an allocation of credits under HPD's Credit Authority and to "as-of-right" credits for tax-exempt bond financed projects. The determination of the amount of credit to be allocated to projects and the underwriting of projects will be made at each of the following times:

1. At Initial Review and Evaluation of the application for tax credits;
2. Prior to issuance of a Carryover Allocation of tax credits;
3. Prior to Certification of Allocation, i.e., when the project is placed in service.

A pre-requisite for underwriting will be the submission of the rent structure, development and operating budgets, and financing and syndication plans. (Application forms and Financial Update forms specifying the information required may be obtained from HPD.)

HPD will establish underwriting guidelines to ensure project feasibility and determine that credit allocated does not exceed the amount needed. Section 42 requires that two forms of financial analysis be employed in determining the amount of the credit allocation:

1. *Qualified Basis Analysis* - Based on: (a) total qualified costs as adjusted, where allowable, for high cost areas, (b) the "applicable fraction," of low income units or floor space, and (c) the monthly credit rate in effect, HPD will calculate the maximum credit amount for which the project could qualify.
2. *Sources and Uses Analysis* - HPD will compare total project costs (as adjusted to exclude the cost of Syndication Fees, Limited Partnership (or Upper Tier) Reserves, and Bridge Loan Fees and Interest) and total financing available to determine what, if any, gap in project financing exists. The amount of credit needed to generate equity to fill the gap is then calculated.

The amount of credit allowable will be the lower of the two amounts calculated above. (Actual allocation amounts may be lower than the amount allowable, depending on the availability of credit authority.)

The following guidelines will be employed in performing the financial analyses described above.

1. *Development Costs* - All development costs will be reviewed for reasonableness as required under Section 42. As general reference points, HPD may refer to development cost guidelines used by the agency's own financing programs, or to general industry standards. Costs may be reviewed both on a line by line basis, as well as on a total cost per unit basis. HPD will consider reasonable variations in cost based on project location, the scope of work involved, whether prevailing wage rules apply, and other factors unique to the project. The following specific guidelines will apply to all projects applying for tax credits:
 - a. *Eligible Basis* - In performing the Qualified Basis Analysis for Rehab/Construction credits, HPD will recognize Eligible Basis in amounts not exceeding \$250,000 per residential unit.
 - b. *Cost Increases* – At the 8609 stage of underwriting, HPD reserves the right to disallow costs that are not either: (a) identified in the initial application, or (b) based on unforeseen conditions. For all projects, documentation and justification of any significant cost increases may be required.
 - c. *Acquisition Costs* - Acquisition costs exceeding \$500 per unit will not be recognized unless supported by an independent appraisal of "as-is" value. (HPD appraisals are also acceptable.) If a project receives financing from an HPD loan program and the acquisition amount approved by the loan program is less than the appraised value, only the cost approved by the loan program will be recognized. This cap applies for purposes of the Qualified Basis Analysis, the Sources/Uses Analysis, and for calculating the allowable Developer Fee.
 - d. *Developer Fees* - The term “Developer Fee” shall refer to and encompass all compensation for development services, including all staff and overhead costs, developer profit, and the cost of consultants (financial, construction monitoring, relocation, and other consultants) engaged by the developer to perform development services. In performing the Qualified Basis Analysis and Sources/Uses Analysis, HPD will recognize Developer Fees in amounts not exceeding 15% of improvement costs and 10% of acquisition costs. For this purpose “improvement costs” excludes Developer Fee, reserves and syndication and partnership expenses.
 - e. *Deferred Developer Fees* - HPD will recognize deferred Developer Fees in the Qualified Basis and Sources and Uses analyses only when all the following conditions are met: i) total Developer Fee, including any deferred portions, does not exceed the 15% standard described above, ii) the owner's liability for such fees is incurred under a valid development agreement and reflected in the partnership documents, and iii) the

applicant can demonstrate in a manner acceptable to HPD that a clear source of revenue exists, usually cash flow, to enable the deferred fees to be paid within 12 years of the expected placed in service date of the project.

- f. “Waived” Developer Fees – In calculating the credit amount, HPD will recognize Developer Fees only if they are: (i) included in the application’s development budget, and (ii) reflected as a non-contingent liability in the partnership documents. These requirements will apply whether or not such Developer Fees are included in Eligible Basis, and whether or not the developer may subsequently waive the fee.
 - g. Reserves - Projects will be evaluated to determine that operating reserves are adequate (but not excessive) to insure project affordability to low income tenants and viability over the project term. Additional amounts necessary to provide operating assistance to support very low income, homeless and special needs populations may be permitted. All reserves, whether funded from the Developer Fee or separately, must be irrevocably committed to the project. For purposes of analyzing reserves, HPD may review project income and expense data and cash flow analyses, as it deems necessary, and may require justification for reserves required by lenders or investors. Reserve amounts considered by HPD to be excessive may be reduced for purposes of performing the Sources/Uses analysis.
 - h. Identity of Interest - Where an identity of interest exists between the developer and the contractor, the applicant may be required to demonstrate that project expenditures are customary given the financial structure of the project. HPD will not recognize development costs not deemed to be reasonable or customary.
2. *Financing* - All sources of financing will be examined. Evidence of firm commitment must be provided for all debt financing, including specific amounts and terms of repayment. Such documentation must confirm the amounts and terms of financing stated in the application. HPD reserves the right to review debt service coverage ratios, to calculate the amount of debt the project could support, and to use such imputed debt amounts in its Sources and Uses Analysis, if it deems appropriate.
 3. *Syndication Proceeds* - In calculating the amount of credit required to fill any financing gap identified in the Sources and Uses Analysis, HPD will use an assumed minimum net equity raise factor, which shall be determined by the agency yearly, based on the agency's evaluation of current market trends. This raise factor will be applied as follows:
 - a. Timing of Analysis - The assumed minimum raise factor will be used for analyses conducted at the initial application and carryover allocation stages, unless the applicant has provided documentation of the actual raise factor pledged by the investor. If the actual raise factor is known, HPD will utilize the higher of the actual or the assumed minimum. At the "8609" stage, applicants must provide documentation of actual net equity. At this stage, HPD will utilize the higher of the actual raise factor or the assumed minimum factor in effect when the credits were first reserved or allocated.

- b. **Source of Equity** - If tax credit equity is being raised through a syndication, the assumed minimum raise factor (as expressed in cents on the dollar) will apply. If equity is raised through a private placement with a single investor, the assumed minimum will be increased by 10 cents on the dollar. If tax credits are being utilized by the general partner or the owner, the assumed minimum will be increased by 20 cents on the dollar. Where an identity of interest exists between the developer and syndicator, the equity source will be treated as a private placement.
4. **Operating Costs** - The rents and operating budget will be reviewed for reasonableness. As general reference points, HPD may refer to operating cost guidelines used by the agency's own financing programs, or to general industry standards. HPD may establish reasonable assumptions with respect to the rates at which income and expenses can be expected to increase.
5. **HOME Subsidy Layering** - When federal HOME funds are to be used with tax credits, HPD will perform a subsidy layering review to determine that the level of assistance is appropriate and that the project owner will not receive excessive compensation or excessive Federal subsidy through HPD. Under current regulations, where Federal funds other than HOME are used in conjunction with tax credits, HUD performs the subsidy layering review.

HPD's underwriting and subsequent allocation of credit shall not be construed as a representation or warranty of feasibility or viability of a project.

VIII. ADMINISTRATIVE PROCESS FOR EXTENDED USE PERIOD

One of the mechanisms by which HPD will discharge its post allocation responsibilities is through enforcement of a regulatory agreement executed with the project owner. (See also Section IX - Compliance Monitoring.) The regulatory agreement shall be recorded as a restrictive covenant prior to the issuance of a Certification of Allocation (IRS form 8609) or Carryover Allocation document. In addition, the essential terms of the regulatory agreement as it affects low income tenants shall be contained in a rider attached to the lease of each low income unit. The regulatory agreement will specify the following for the low-income portion of the building(s):

1. The agreement shall be binding on all successors of the owner;
2. The project is subject to the requirements of Section 42 of the Internal Revenue Code of 1986;
3. The owner shall agree to attach a lease rider to the lease of each low income unit on forms provided by HPD which will disclose the restricted rent for such unit;
4. The lease rider which the owner must attach to the lease of each low income unit will require the tenant to annually provide income verifications to the owner;
5. The owner shall agree under the regulatory agreement that the applicable fraction (as defined in subsection (c) (1) of Section 42 of the Internal Revenue Code) for the building for each taxable year in the extended use period will not be less than the applicable fraction for the building when placed in service;
6. The owner shall consent to enforcement in any State court of the extended use requirement by any prospective, present or former income eligible persons;
7. The owner shall annually submit to HPD a certification that the building is owned and operated in compliance with the provisions of Section 42 of the Internal Revenue Code and any regulations promulgated thereunder;
8. The owner shall not retaliate against any tenant who notifies HPD of alleged violations of the regulatory agreement.

HPD is responsible for enforcing all regulatory agreements and reporting non-compliance to the IRS. All correspondence and/or legal notices relating to the regulatory agreement should be addressed to HPD.

IX. COMPLIANCE MONITORING

As a Housing Credit Agency, HPD is required to monitor compliance with Low Income Housing Tax Credit (“LIHTC”) requirements for all projects awarded credits by HPD. HPD may delegate its monitoring responsibility in the case of tax-exempt bond financed projects. The agency's monitoring obligations include: a) monitoring record keeping and record retention by project owners; b) receiving and reviewing annual owner certifications; c) making periodic on-site inspections of projects and records; and d) notifying the IRS of non-compliance. The specific IRS requirements that HPD shall monitor are the following:

RECORDKEEPING AND RETENTION

1. Recordkeeping - The owner of a LIHTC project shall keep records for each qualified low-income building in the project and make these records available to HPD upon request. These records shall show for each year in the compliance period the following:
 - a. Total number of residential rental units in each building, including the number of bedrooms and size in square feet of each residential rental unit.
 - b. The percentage and location of LIHTC qualified low-income residential units in each building.
 - c. The rent charges for each residential rental unit, including any utility allowances.
 - d. The number of occupants in each LIHTC qualified unit, *but only if rent is determined by the number of occupants* in each unit under Internal Revenue Code Section 42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989).
 - e. For each building with LIHTC qualified low income units, all vacancies that occurred in LIHTC units and information that shows when, and to whom, the next available units were rented.
 - f. All annual income certifications submitted by each past and present tenant of LIHTC qualified low-income units.
 - g. The documentation to support certifications (for example, a copy of the tenant's federal income tax return or W-2 Forms or verification of income from third parties such as employers or state agencies) that tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (“Section 8”).

- h. The eligible basis and qualified basis of the building at the end of the first year of the credit period (i.e., the first IRS Form 8609 filed with the IRS for each building).
 - i. A description of the character and use of the non-residential portion of each building if included in the building's eligible basis under Internal Revenue Code Section 42(d) (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities reasonably related to the project).
 - j. Management agreements, all tenant waiting lists, leases, riders, DHCR rent registration, complaints, tenant correspondence and related records.
 - k. Original local health, safety, or building code violation reports or notices that were issued by the State or local government unit responsible for making such inspections.
2. Record Retention - The owner of a LIHTC project shall retain the above records for each building in the project for at least six years beyond the end of the 30 year extended use period for the building.

ANNUAL CERTIFICATION

Process - Annual certifications shall be submitted for all projects for which an IRS form 8609 has been issued, and shall be submitted annually for the 30 year period during which the project is subject to regulation under Internal Revenue Code Section 42. The owner of a LIHTC housing project shall certify annually under the penalty of perjury that the project or building is in compliance with all state and federal applicable laws, regulations, procedures, policies and contractual obligations in a form approved by HPD ("Owner Certification").

Requirements - The owner certification shall include, but shall not necessarily be limited to, the following elements:

1. Part A: Project and ownership data.
2. Part B: Certification that:
 - a. The project meets the requirements of:
 - i) the 20-50 test under Section 42(g)(1)(A), or the 25-60 test under Sections 42(g)(4) and 142(d)(6) for New York City, whichever minimum set aside test is applicable to the project; and
 - ii) if applicable to the project, the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;
 - b. The owner has received an annual income certification from each tenant residing in a LIHTC qualified low-income unit and documentation to support that certification;
 - c. Each LIHTC qualified low-income unit in the project is rent restricted under Section 42(g)(2)

- d. All LIHTC qualified low-income units in the project were for use by the general public, and there has been no finding of discrimination under the Fair Housing Act (including an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), an adverse final decision by a state or local fair housing agency, or an adverse judgment from a federal court.)
- e. All LIHTC qualified low-income units in the project are used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) or single-room occupancy units rented on a month-by-month basis under Section 42(I)(3) (B)(iv);
- f. Each building in the project is suitable for occupancy, taking into account local health, safety, and building codes, and no State or local government unit responsible for making local health, safety, or building code inspections issued a violation report for any building or unit in the project. (If a violation report or notice was issued during the calendar year covered by the certification, a summary of such violations(s) must be included with the certification, and the owner must state whether the violation has been corrected;
- g. There has been no change in the eligible basis (as defined in Section 42(d)) of any building in the project; or if there has been such a change(s) the owner shall certify to the nature of the change(s) on a building by building basis;
- h. There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project; if there has been such change(s) the owner shall certify to the nature of the change(s) on a building by building basis;
- i. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas are provided on a comparable basis without charge to all tenants in the building;
- j. If a LIHTC qualified low-income unit in the project became vacant, reasonable attempts were, are being, or will be made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
- k. If the income of tenants of a LIHTC qualified low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was rented to tenants having a qualifying income, unless the project qualified for "deep rent skewing";
- l. An extended low-income housing commitment (regulatory agreement) as described in Internal Revenue Code Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the US Housing Act of 1937; and

- m. The project has been operated in compliance with the HPD regulatory agreement (if applicable).

COMPLIANCE REVIEW

1. Review of Owner Certifications - HPD shall review the owner certifications for compliance with the requirements of Section 42.
2. Inspections - HPD shall inspect all new LIHTC projects during the first year they are in compliance monitoring. Subsequently, projects will be inspected at no more than three-year intervals. During inspections, at least 20% of apartments will be inspected. Inspections will be conducted according to HUD's Housing Quality Standards ("HQS"). HPD shall provide reasonable advance notice to the owner that an inspection will occur. Such inspections may include, but are not limited to:
 - a. A physical inspection of the building, grounds, individual rental units, common facilities and central systems for general construction.
 - b. Interviews of tenants and project employees.
 - c. Review of all records described in "Recordkeeping" above.
3. Review of Records - As part of its on-site inspections, HPD will inspect records of at least 20% of the LIHTC qualified low-income units in all new LIHTC projects during the first year the projects are in compliance monitoring. Subsequently, project records will be inspected at no more than three-year intervals. HPD will choose which tenants' records to inspect in such a manner that the owner will not know in advance which tenants are to be inspected. Those records which must be inspected for each of the 20% of units chosen may include, but will not necessarily be limited to:
 - a. The tenant's initial income certification demonstrating his/her qualification as a low-income tenant at move-in, together with income documentation the owner received to support this certification; and
 - b. Annual tenant income re-certifications, together with income documentation the owner has received to support these certifications, except if the owners of projects in which 100% of the residential units are LIHTC qualified low income units have obtained waivers of annual tenant income re-certification requirements, as discussed in the following section; and
 - c. Rent Records
 - d. Review of all records described in "Recordkeeping" above.

WAIVER OF ANNUAL TENANT INCOME RECERTIFICATION REQUIREMENT

Under Section 42 (g)(8)(B), owners of projects in which 100% of the residential rental units are LIHTC qualified low-income units may apply to IRS for a waiver of the annual income re-certification requirement. (Procedures for requesting such a waiver are specified in IRS Revenue Procedure 94-64.)

1. Requirements Waived - An owner who obtains a waiver from IRS for its 100% low-income project is no longer required to:
 - a. Keep records that show an annual income re-certification of all low income tenants (as long as each low-income tenant has previously had its income verified, documented and certified upon initial occupancy);
 - b. Maintain documentation to support annual income re-certifications; and
 - c. Certify to HPD that it has received this information.

All other Record keeping and Annual Certification requirements described above will remain in effect, whether or not the owner obtains a waiver.

2. Evidence of Waiver - An owner who obtains a waiver from IRS must provide satisfactory written evidence to HPD that such waiver has been approved by IRS, before HPD will exempt the owner from the compliance requirements stated in this plan. Such written evidence shall be submitted as part of the owner's Annual Certification of Compliance to HPD.
3. HPD Acceptance of Waivers - Section 42(g)(8)(B) provides that, irrespective of any IRS waiver, the local monitoring agency (i.e. HPD) may continue to require annual tenant income re-certifications under its own monitoring procedure. While it is HPD's intention to honor such waivers in most cases, the Agency reserves the right, at its discretion, to continue requiring annual income re-certifications, or to reinstate annual re-certification requirements, in certain instances. These may include, but not be limited to, projects found by HPD to have less than 100% low-income occupancy, or to have noncompliance with any other IRS requirements.
4. Effective Date of Waiver - Waivers obtained from IRS shall take effect beginning with the compliance monitoring cycle (i.e. the calendar year) following the year in which the waiver request was submitted to IRS by the owner. Once the waiver takes effect, it covers all subsequent compliance monitoring cycles during the project's compliance period, unless the owner receives notification from IRS or HPD that the waiver has been revoked.

RIGHT TO INSPECT

In addition to the inspections described above, HPD shall have the right to perform an on-site inspection of any LIHTC project at least through the end of the compliance period and, if applicable, the extended use period.

NOTIFICATION OF NON-COMPLIANCE

1. General - In accordance with Federal law HPD shall notify project owners and the Internal Revenue Service of non-compliance with any requirement or of any failure to submit the owner certification as required by Section 42(m)(1)(B)(iii).
2. Specific Requirements - HPD notification provisions are as follows:
 - a. Notice to Owner - HPD shall provide prompt written notice to the owner of a low-income Monitoring Procedure prior to the deadline stated by HPD, or (b) discovers upon inspection, review, or in some other manner, that the project is not in compliance with the provisions of Internal Revenue Code Section 42;
 - b. Notice to Internal Revenue Service - Upon finding any failure to certify or other event of noncompliance as described above, HPD shall file Form 8823, "Low-Income Housing Credit Agencies Report of Non-compliance", and/or provide such other notification as is required by Internal Revenue Code Section 42, with the Internal Revenue Service. Such notification will be filed no later than 45 days after the end of the correction period (as described in Paragraph 3 of this section), whether or not the non-compliance or failure to certify has been certified. If HPD reports on Form 8823 that a building has gone entirely out of compliance and will not be in compliance at any time in the future, HPD need not file Form 8823 in subsequent years to report that building's non-compliance.
 - c. Correction Period - HPD may, at its discretion, allow the owner a period of time to correct a failure to certify or any other event(s) of non-compliance ("correction period"). The correction period shall not exceed 90 days from the date HPD sends the notice described in paragraph 1 of this Section. HPD may extend the correction period for up to 180 days, if HPD, in its sole discretion, determines there is good cause for granting the extension.

DELEGATION OF AUTHORITY

HPD, at its discretion, may retain an agent or other private contractor to perform compliance monitoring functions and activities, or may delegate all or some of its compliance monitoring responsibilities for a building to another Housing Credit Agency within the State of New York, to the extent such delegation is allowed by law.

LIABILITY

Compliance with the requirements of Section 42 is the sole responsibility of the owner of the building for which the credit is allowable. HPD's obligation to monitor for compliance with the requirements of Section 42 shall not make HPD liable in any way whatsoever for an owner's non-compliance.



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April 7, 2005

State of New York
Division of Housing and Community Renewal
38-40 State Street
Albany, New York 12207

Attn: Judy Calogero, Commissioner for Community Development

Re: Low Income Housing Tax Credit Qualified Allocation Plan

Dear Commissioner Calogero:

You have requested an opinion of counsel from the City of New York that the 2005 Low Income Housing Tax Credit Qualified Allocation Plan of the Department of Housing Preservation and Development (the "Plan"), attached hereto, is in conformance with Section 42 of the Internal Revenue Code.

As counsel for the City of New York, it is our opinion that the Plan is in conformance with the applicable requirements of Section 42 of the Internal Revenue Code of 1986, as amended.

Sincerely yours,

A handwritten signature in cursive script that reads "Steve Stein Cushman".

Steven Stein Cushman