



## **Michigan State Housing Development Authority**

### **Multifamily Direct Lending Parameters**

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# MSHDA Multifamily Direct Lending Parameters

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# MSHDA Multifamily Direct Lending Parameters



## I. Introduction:

MSHDA offers direct lending to eligible borrowers in the form of loans from both tax-exempt and taxable bonds, as well as MSHDA gap funding loans and equity bridge loans in certain situations, for the development of affordable rental housing. MSHDA direct lending programs are available for both new construction<sup>1</sup> and acquisition and rehabilitation of affordable or conventionally-financed rental housing, mixed use buildings or the adaptive re-use of other structures.

MSHDA seeks to achieve the following objectives through its direct lending activities:

- Creation or preservation<sup>2</sup> of affordable rental housing that incorporates at least one of the following components:
  - Family units serving low-income households;
  - Senior housing, including proposals supporting successful aging in place;
  - Housing in rural communities;
  - Permanent supportive housing integrated with and supported by necessary services;
  - Workforce housing in high-cost areas;
  - Mixed-use and adaptive re-use buildings including housing in urban communities; or
  - Housing that meets the needs of Native Americans.
- Production of housing that contributes to the strengthening of communities through site and design standards.
- Ensuring the supply of affordable housing by encouraging the longest term of affordability.
- Origination of loans that are long-term earning assets for MSHDA.
- Enhancement of resident livability and functionality of existing projects through rehabilitation that addresses the physical needs of the property.

These parameters describe the types of direct loans available from MSHDA, and the requirements and process for obtaining any loan from MSHDA's Rental Development Division. Project requirements, interest rates, and gap funding availability may vary by location of the property, population to be served, income targeting, and resource allocation.

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<sup>1</sup> For these purposes, adaptive reuse projects, entirely vacant residential buildings, and projects requiring demolition will be considered new construction, regardless of whether or not project-based rental subsidies are being preserved.

<sup>2</sup> The term preservation is used throughout these parameters to refer to the acquisition and renovation of existing affordable properties that are currently subject to a low income use restriction.

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### II. Eligibility and Resource Availability:

#### A. General Eligibility for MSHDA Direct Lending:

##### 1. Eligible Applicant and Borrowers:

Every proposal for funding must be submitted by a sponsor. A sponsor (also sometimes referred to as applicant) may be a for-profit or non-profit organization, an individual, a group of individuals, a corporate entity, or some combination thereof. Prior to MSHDA mortgage loan commitment, a legal entity must be formed that is an "eligible borrower" under Act No. 346 of the Public Acts of 1966 of the State of Michigan, as amended (hereinafter referred to as the "MSHDA Act"). Any proposal involving the syndication or sale of low income housing tax credits (LIHTC) must be characterized as a for-profit venture, even if the sponsor or the general partner of the mortgagor is a non-profit group.

No proposal will be accepted so long as any member of the sponsor's development team or any other party who, directly or indirectly, has the ability to control a member of the development team or exercise significant influence over a member of the development team in making financial and operating decisions:

- Is in default or in material non-compliance with the LIHTC or any other MSHDA program;
- Has outstanding flags in HUD's national 2530 National Participation system; or
- Has been debarred or suspended from any MSHDA, HUD, or Rural Housing programs.

In addition, a history of defaults or material acts of non-compliance, even if none are currently outstanding, may preclude acceptance of a proposal until appropriate assurances of the development team member's ability to comply is given.

##### 2. Financial Requirements for Sponsors, Guarantors, and General Contractors:

Certain development team members will be reviewed for financial capacity and credit worthiness based on the LIHTC Allocation Policy #7 found on MSHDA's website.

Summarized below are the minimum financial threshold requirements that will be applied:

###### a. Applicant (sponsor) and Guarantors:

Required to have net liquid assets at least equal to 3% of the permanent mortgage loan(s) of the proposed project, plus permanent mortgage loan(s) for project(s) that have been approved previously and have not "placed in service" (i.e. projects currently in the development process).

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In addition to the foregoing, a guarantor providing a recapture guaranty and/or a MSHDA equity bridge loan repayment guaranty must have a net worth that is at least two times the original principal balance of the loan(s) subject to recapture and/or the equity bridge loan being guaranteed (see Guaranty Requirements Section VI.S).

### **b. General Contractor:**

Required to have net liquid assets at least equal to 3% of the construction contract of the proposed project, plus the construction contracts for project(s) that have been approved previously and have not submitted contractor cost certifications to MSHDA (i.e. projects currently in the development process).

### **3. Eligible Developments:**

Any new construction or acquisition and rehabilitation of a multifamily rental housing development in Michigan, including existing affordable housing and small scale rental developments, are eligible to apply for direct lending from MSHDA. At a minimum, proposals must be at least 24 units with exceptions considered for Housing Resource Fund (HRF) Program proposals.

### **4. Ineligible Developments:**

Nursing homes, adult foster care homes, rooming houses, student housing, transient housing and single room occupancy developments are ineligible for MSHDA direct lending.

### **5. Minimum Hard Construction Costs:**

Unless otherwise agreed to by MSHDA, all applications for loans for proposals utilizing the 9% LIHTC must indicate a need for at least \$20,000 per unit in hard rehab or construction costs (excluding allowable amounts for general requirements, builder overhead, builder profit, contingencies, etc.) and must include this amount in the construction budget. Projects not seeking 9% LIHTC will only need to meet the minimum rehabilitation requirements found in Section 42 of the Internal Revenue Code (IRC) or other applicable federal requirements, such as HOME.

### **6. Minimum Design Standards/Site Selection Criteria:**

Developments must meet MSHDA's Multifamily Standards of Design, which often exceed the requirements of local building codes and site selection criteria against which all proposed development sites are reviewed. These standards are located on MSHDA's website. The sponsor's architect will be required to certify compliance of the plans and specifications with the design standards. Additionally, MSHDA financing may include funding from federal sources that trigger compliance with design standards for accessibility (Uniform Federal Accessibility Standards) and environmental reviews. For proposals including HOME funding, all construction or rehabilitation work must be performed in compliance with the property standards and accessibility requirements set forth in 24 CFR §92.251 as they apply to new construction or rehabilitation projects, as applicable.



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### B. Funding Sources:

#### 1. Tax-Exempt Bond Loans and Taxable Bond Loans:

MSHDA offers loans funded with the proceeds of tax-exempt and taxable bonds upon the following general terms:

##### a. Availability:

Loans are only available to eligible borrowers to finance eligible developments (see section II.A. above), subject to MSHDA's tax-exempt bond volume cap limitations in the case of tax-exempt bond loans.

##### b. Uses:

Loans are available primarily for construction and permanent debt financing; however, construction-only financing will be made available by MSHDA on a case-by-case basis. At least 95% of a proposal's tax-exempt bond funds must be used to finance a "qualified residential rental project" (as described in Section 142 of the IRC), which may include costs relating to functionally related facilities like parking and recreational facilities for tenants. Loans are not available for commercial only uses.

##### c. Amount:

Loans funded with bond proceeds are limited to 110% of the applicable HUD 221(d)(3) Mortgage Limits, as amended from time to time by HUD. Moreover, the maximum amount of MSHDA loans that are outstanding with respect to any one project at any time shall not exceed 90% of the total development cost. Taxable bond loans may not exceed 70% of the total development cost. Additionally, in order to obtain a MSHDA tax-exempt bond loan, the proposed tax-exempt financing cannot be less than 52% of the aggregate basis (i.e. eligible basis plus land) with respect to each building, and must equal or exceed 15% of the portion of the cost of acquiring such building and related equipment.

For preservation transactions involving developments that receive federal project-based assistance under an "old regulation" Housing Assistance Payment (HAP) contract or a Section 236 Interest Reduction Payment (IRP) contract, the first mortgage loan may be split into a Part "A" loan and a Part "B" loan. With respect to old regulation Section 8<sup>3</sup> transactions, this Part "A" and Part "B" loan structure will only be allowed where the HAP contract has not been renewed under the Multifamily Assisted Housing Reform and Affordability (MAHRA) Act. For old regulation Section 8 transactions, the 35-year term Part "A" loan will be established using the lesser of the acceptable rent

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<sup>3</sup> Where used herein, the term "old regulation Section 8" transactions refer to those projects that are subject to HAP contracts originally entered into prior to the effectiveness of certain revised HUD regulations for programs that took effect in late 1979 or early 1980 (as applicable). Where used herein, the term "new regulation Section 8" transactions refer to those projects that are subject to HAP contracts originally entered into after the effectiveness of the aforementioned revised HUD regulations.

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comparability study rent levels, trended for the remaining term of the HAP contract, or the current Section 8 contract rents. An annual increase of 1% will be assumed when trending the rents that support the Part "A" loan. The size of the Part "B" loan will be the amount that can be fully amortized over the remaining term of the existing HAP contract, based on the annual difference between the trended market rents and the actual contract rents. Part "B" loans will be underwritten at a fixed rate over a fully amortizing term not to exceed the term of the remaining HAP contract at a 1.0 debt coverage ratio (DCR), and will begin amortization upon the initial closing of the project.

For Section 236 preservation transactions involving developments that have an IRP contract, the first mortgage loan may also be split into a Part "A" loan and a Part "B" loan. In such cases, a Part "A" loan will be established based on the net operating income and a Part "B" loan will be established in the amount of debt that can be supported by the continuing stream of income from the "decoupled" IRP contract. Such Part "B" loans will be underwritten at a fixed rate over a fully amortizing term not to exceed the term remaining on the IRP contract at a 1.0 DCR, which will begin amortization upon initial close.

**d. Term:**

For new construction and acquisition/rehabilitation transactions, the typical mortgage loan term is 35 years.

For projects receiving Part "A" and Part "B" loans as described in the preceding subsection, the term of the Part "A" loan will typically be 35 years and the term of the Part "B" loan will be based on the remaining term of the HAP contract or IRP contract, as applicable.

**e. Interest Rate:**

Interest rates are based on MSHDA's cost of borrowing. Changes in the interest rate are posted on MSHDA's web site. Construction and rehabilitation loans are offered at the same interest rate as permanent loans. The specific interest rate and any reservation of gap financing will be locked in upon MSHDA's board commitment for up to three months. If initial closing<sup>4</sup> does not occur within three months of MSHDA board commitment, the rate will be subject to change.

**f. Repayment:**

Loans are repayable in equal monthly payments of principal and interest over their 35-year permanent loan term. In many cases, the permanent loan will be preceded by a construction loan requiring interest-only payments until conversion to the permanent loan takes place.

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<sup>4</sup> Initial Closing: See section IV.H for Initial Closing description.

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### **g. Prepayment:**

Loans (including Part “A” and Part “B” loans) are eligible for prepayment without MSHDA approval after the expiration of fifteen (15) years after the commencement of amortization. The mortgagor must provide MSHDA with at least 60 days' notice prior to any such prepayment.

In the event of a prepayment, however, the mortgagor must pay a prepayment fee equal to the sum of:

- 1% of the balance being prepaid;
- Any bond call premium, prepayment or swap penalty, or any other cost that MSHDA incurs to prepay the bonds or notes that were used to fund the mortgage loan; and
- Any loss of debt service spread between the mortgage loan and the bonds used to finance the mortgage loan from the date of the prepayment through the end of the 20<sup>th</sup> year of amortization.

Once the mortgagor has been approved for the early prepayment of the underlying loan, the mortgagor must sign an agreement with MSHDA accepting responsibility for the cost of terminating any interest rate swap agreement. The mortgagor can then choose the timing of the termination and participate in the transaction with the swap counterparty. The swap counterparty will quote the cost of terminating the swap and the mortgagor will have the ability to execute the transaction or cancel at its sole discretion. If the mortgagor chooses not to terminate the swap, it will forfeit the right to prepay the mortgage loan.

### **h. Term of Affordability:**

Development's receiving a tax-exempt or taxable bond loan will be required to maintain the affordability restrictions (described in the Underwriting Terms section below) for the longest of (i) the period the tax-exempt or taxable bond loan is outstanding, (ii) the time required under the LIHTC Regulatory Agreement for the development, or, (iii) in the case of tax-exempt bond loans, the Qualified Project Period. Additionally, for tax-exempt or taxable bond loan transactions that also include a MSHDA gap funding loan, the affordability restrictions must be maintained for 50 years.

### **i. Security:**

All tax-exempt and taxable bond loans will be secured by a first priority mortgage on the development, and a security agreement and financing statement (including a security interest in installments of tax credit equity) granting a security interest in personal property. Additionally, the mortgagor will be required to deliver the following: certain guaranties as described more in section VI.S below; an assignment of the architect agreement; payment and performance bonds or other assurances of construction completion acceptable to the Authority; and such other items of security as deemed necessary by MSHDA given the nature of the transaction.

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### j. Loan Insurance:

For certain loans that may involve higher risk to MSHDA, MSHDA reserves the right to require the loan to be insured by FHA under either the risk-sharing (50/50) or the full insurance program. Typically, loan insurance is required for those transactions that are existing public housing, Section 202, and/or new regulation Section 8 transactions. In such cases, the interest rate will be increased by one half of one percent to cover the additional cost; however, the project's DCR will be lowered by 0.05 points (see Underwriting Terms in section VI below). [Ex: MSHDA's standard DCR is 1.20, with loan insurance the DCR will be 1.15]

## 2. Gap Funding Loans:

MSHDA may make gap financing available using funding from programs such as the federal HOME Program, the federal NSP Program, or other funding sources that may be available to MSHDA from time to time. Additionally, MSHDA may make gap financing available from MSHDA funds, including Preservation Fund Loans from the MSHDA Mortgage Resource Fund. The use of federal funding sources may trigger cross cutting federal requirements such as Davis Bacon and Related Acts (DBRA), National Environmental Protection Act (NEPA), Section 3, and/or the Uniform Relocation Act (URA).

### a. Availability:

MSHDA does not anticipate making MSHDA gap funding loans available for development proposals that do not also include a MSHDA tax-exempt bond loan and compete under the NOFA (described in the loan processing phases section below) with the exception of:

- Some Permanent Supportive Housing (PSH) proposals awarded 9% LIHTC pursuant to the PSH set-aside under MSHDA's Qualified Allocation Plan (QAP) PSH; and
- Certain small scale loan proposals under MSHDA's Community Development Division's HRF program.

In PSH proposals without a permanent loan planned, if operations are able to support a permanent loan in place of part of, or the entire, requested gap funding from MSHDA, a taxable bond loan in the amount that can be supported may be required.

### b. Uses:

Subject to any applicable federal restrictions, MSHDA's gap funding sources may be utilized for all development costs.

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**c. Amount:**

The minimum amount of any MSHDA gap funding loan will be \$1,000 per unit in the development. The maximum amount of any MSHDA gap funding loan will not exceed the lesser of (1) the equity gap as determined by MSHDA, (2) the amount of the permanent tax-exempt bond loan, if any, or (3) program limits imposed by applicable state or federal regulations associated with a specific funding source. Moreover, the maximum amount of MSHDA loans that are outstanding at any time with respect to any one project shall not exceed 90% of the total development cost.

**d. Term:**

MSHDA gap funding loans are typically made with a term of 50 years.

**e. Interest Rate:**

MSHDA gap funding loans are typically available at 3% simple interest.

**f. Repayment:**

Annual payments equal to 50% of surplus cash available for distribution to the owner are generally required; however, so long as the mortgagor elects to apply available surplus cash to the payment of any deferred development fee<sup>5</sup>, payments will be deferred until the earlier of the year in which all the deferred development fee has been paid, or 12 years. Beginning at the earlier of the year in which the deferred development fee has been paid in full, or in the 13<sup>th</sup> year from the beginning of amortization of the first mortgage loan (or, in the case of certain PSH and HRF loans where there is no permanent first mortgage loan, the 13<sup>th</sup> year from initial disbursement of MSHDA gap funding loan proceeds), annual payments from 50% of any surplus cash available for distribution to the owner will be required.

If there are multiple MSHDA gap funding loans, the priority of such loans will be established in the MSHDA staff report and payments on the lower priority MSHDA gap funding loans will be deferred for so long as the primary MSHDA gap funding loan is receiving payments from 50% of surplus cash available for distribution. In cases where MSHDA has made a permanent first mortgage loan, upon payment in full of the first mortgage loan, the outstanding balance of the primary MSHDA gap funding loan, including accrued interest, will become the new first mortgage loan and will begin amortization with monthly mortgage payments equal to the payments made under the original first mortgage loan. At such time as the primary MSHDA gap funding loan begins receiving monthly amortization payments as described in the preceding sentence, annual payments on the lower priority MSHDA gap funding loan (if any) will be required in the amount of 50% of any surplus cash available for distribution. If the lower priority MSHDA gap funding loan remains outstanding after both the original first mortgage loan and primary MSHDA gap funding loan have been

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<sup>5</sup> See Section VI.P below for a description of development fee

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repaid, the outstanding balance of the lower priority MSHDA gap funding loan, including accrued interest, will become the new first mortgage loan and will begin amortization with monthly mortgage payments equal to the payments made under the original first mortgage loan.

All payments made on MSHDA gap funding loans will be applied first to accrued interest, then to current interest and principal. The entire balance of principal and all interest on MSHDA gap funding loans is due at the earliest of (i) sale of the development; (ii) prepayment or refinancing of the first mortgage loan; or (iii) 50 years after initial closing.

### **g. Prepayment:**

MSHDA gap funding loans are eligible for prepayment at any time upon 60 days' prior written notice to MSHDA, but prepayment will not eliminate the term of affordability requirements or extinguish federal compliance requirements.

### **h. Term of Affordability:**

Developments receiving MSHDA gap funding loans will be required to maintain the MSHDA Gap Funding Loan Program affordability restrictions (described in the Underwriting Terms section below) for 50 years. Additionally, where federal funds such as HOME funds or NSP funds are used to make the MSHDA gap funding loan, the applicable federal period of affordability must be maintained for the minimum term required under the associated federal program.

### **i. Security:**

MSHDA gap funding loans will be secured by a mortgage subordinate only to (i) the MSHDA tax-exempt bond loan first mortgage, or MSHDA taxable bond loan first mortgage and (ii) the MSHDA Equity Bridge Loan, if applicable. In some cases, such as with certain PSH and HRF transactions, a non-MSHDA first mortgage may be permitted; provided, however, that any such first mortgage must be subordinated to federal HOME or other federal requirements given the sources of funding in the transaction. Additionally, the following will be required to secure gap funding loans: a security agreement and financing statement (including a security interest in installments of tax credit equity) granting a security interest in personal property; certain guaranties as described more in section VI.S below; an assignment of the architect agreement; payment and performance bonds or other assurances of construction completion acceptable to the Authority; and such other items of security as deemed necessary by MSHDA given the nature of the transaction will be required.

### **j. Designation of Funds:**

MSHDA reserves the express right, in its sole discretion, to substitute one gap funding source, in whole or in part, for another in any transaction that includes MSHDA gap funding loan(s). If MSHDA substitutes an alternate source of

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funds, the mortgagor must comply with all requirements necessary for MSHDA to use said alternate source of funds.

### 3. MSHDA Equity Bridge Loans:

In connection with the making of a tax-exempt bond loan, MSHDA may be willing to provide an equity bridge loan. The MSHDA Equity Bridge Loan Program Statement, dated January 23, 2013, contains additional details relating to the requirements and terms of the MSHDA Equity Bridge Loan Program. The MSHDA Equity Bridge Loan Program Statement may be found on MSHDA's website. In the event that there are differences between the Equity Bridge Loan Program Statement and the following description, the former shall apply. Generally, MSHDA equity bridge loans will be made available on the following terms:

#### a. Availability:

MSHDA will make equity bridge loans available on a case-by-case basis to developments receiving a permanent MSHDA tax-exempt bond loan and 4% LIHTC. The MSHDA equity bridge loan will not be available to bridge any portion of the LIHTC equity that is conditioned upon property performance such as achieving economic occupancy levels or a period of underwritten operations, nor will the MSHDA equity bridge loan be available to bridge any other credits or source of funding.

#### b. Amount:

The MSHDA equity bridge loan cannot exceed 80% of the total LIHTC equity committed to the development by the investor. While at least 20% of the LIHTC equity must be paid in prior to construction completion, MSHDA must approve the specific equity pay-in schedule and a portion of the equity will be paid at initial closing of the tax-exempt bond construction loan. Moreover, the maximum amount of MSHDA loans that are outstanding at any time with respect to any one project shall not exceed 90% of the total development cost.

#### c. Term:

Maximum of five years commencing on the date the MSHDA equity bridge loan proceeds are disbursed. Disbursement of the MSHDA equity bridge loan may not occur until after (a) the final completion of the construction or rehabilitation of the development, as approved by MSHDA, and (b) determination by MSHDA that the development has met the 50% test, enabling the development to qualify for the LIHTC.

#### d. Interest Rate:

Interest rates will be locked at the initial closing of the tax-exempt bond loan and will be based on MSHDA's cost of borrowing.

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### e. Repayment:

The principal balance of the MSHDA equity bridge loan will be repaid in equal yearly installments over the term of the loan, with the first payment due 12 months from the date of disbursement and subsequent payments continuing annually until the MSHDA equity bridge loan is paid in full. All interest accrued to the due date of each principal installment will also be due at that time. Modifications to the foregoing standard repayment structure may be requested and will be evaluated on a case-by-case basis.

### f. Prepayment:

MSHDA equity bridge loans may be prepaid in part or in whole at any time upon 60 days' written notice to MSHDA and payment of any applicable prepayment fee. In the event of a prepayment of all or any part of the MSHDA equity bridge loan, the mortgagor shall also simultaneously pay to MSHDA a prepayment fee equal to any penalty, fee or other costs that MSHDA must pay to prepay any advance taken by MSHDA from an outside source, if any, that was used to fund the portion of the MSHDA equity bridge loan that is prepaid.

### g. Term of Affordability:

No additional affordability restrictions are required as a result of the MSHDA equity bridge loan. Developments receiving a MSHDA equity bridge loan must comply with all affordability restrictions required pursuant to the tax-exempt bond loan and any gap funding loan(s).

### h. Security:

In addition to the security required under the terms of the accompanying tax-exempt bond loan, a mortgage securing the MSHDA equity bridge loan will be required. The MSHDA equity bridge loan mortgage shall be subordinate only to MSHDA's tax-exempt bond loan first mortgage, and a personal guaranty of repayment from the sponsor and/or general partner(s) and/or manager(s) of the mortgagor and/or other financially capable members of the development team acceptable to MSHDA will be required.

## 4. Project Based Vouchers (PBV)<sup>6</sup>:

MSHDA awards 9% and 4% LIHTC through a competitive process that can also serve as a form of competitive selection for purposes of applications for PBVs and other forms of assistance. The award may include PBVs for projects with units set aside for permanent supportive housing when serving the greater of (i) 10% of the total units in the development, or (ii) five units of permanent supportive housing.

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<sup>6</sup> MSHDA administers two HUD funded Section 8 programs: (i) the HUD Multifamily – Existing Section 8 (24 CFR 883) with guidance provided by HUD Handbook 4350.3, and (ii) the HUD Public Indian and Housing – Housing Choice Voucher/Project Based Voucher Program (24 CFR 983) with guidance provided by Chapter 17 of the MSHDA PHA Administration Plan. Although both programs are funded by HUD, the funding is allocated through different HUD divisions and the programs are regulated under separate federal rules.



## MSHDA Multifamily Direct Lending Parameters

### III. Application Submission:

Depending on the funding source(s) being applied for, applications must be submitted as described in part A, B, C, D or E below.

#### A. **Competitive Funding Round:**

Tax-exempt bond loan proposals requesting MSHDA gap funding will be subject to an annual competitive funding round, based on a Gap Financing Program Notice of Funding Availability (NOFA). Applications submitted during the NOFA period will be reviewed and ranked with consideration given, but not limited to, the following criteria:

- Ratio of gap financing to hard debt from MSHDA
- Level of per unit gap financing needed to complete the project
- Tax-exempt bond financing supported by the project

In general the highest consideration will be given to those projects needing the least amount of MSHDA gap financing and/or those that can support the greatest amount of tax-exempt bond financing. Those applications ranked the highest, and whose aggregate total gap funding do not exceed the amount of funding available under the current NOFA, will be eligible for an award.

Applications and required exhibit documents must be received in either MSHDA's Lansing office or MSHDA's Detroit office no later than 5:00 pm on the Preliminary Assessment Application due date. Applications received after the due date and time will not be processed. See current NOFA for applicable dates and additional details.

#### B. **Open Funding Round:**

Proposals not required to compete under the NOFA may apply for financing at any time. These would include proposals not requiring gap financing from MSHDA, MSHDA preservation developments not requiring gap financing in excess of what would be recaptured by MSHDA in the event of refinancing, certain taxable bond loan/PSH proposals and HRF loan proposals. Though these proposals will not be subject to the NOFA, all proposals, including PSH and HRF loan proposals, are subject to these parameters and loan processing requirements as described within this document and the exhibits hereto.

#### C. **PSH Set-Aside Proposals:**

Sponsors seeking HOME funding for a 9% LIHTC proposal under the PSH Set Aside<sup>7</sup> must submit their application at least 45 days prior to the 9% LIHTC funding round<sup>8</sup>. If PSH proposals that receive 9% LIHTC reservations request HOME funding that exceeds the amount allocated to the funding round, those proposals will compete against each other under the following ranking criteria:

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<sup>7</sup> See the QAP for a description of projects eligible to apply under the PSH Set-Aside.

<sup>8</sup> Please see the anticipated schedule for the 9% LIHTC funding rounds within the QAP.

## MSHDA Multifamily Direct Lending Parameters

- Ratio of gap financing to hard debt from MSHDA
- Level of MSHDA gap financing per PSH unit needed to complete the project
- Taxable Bond financing supported by the project

### D. Pass-Through Proposals:

Sponsors planning to submit an application under MSHDA's Pass-Through Program, must first submit an application for tax-exempt bond financing from MSHDA to see if the application would be competitive under the NOFA. Transactions whose soft-to-hard debt ratio projection appears to be competitive as compared to the current or most recent Gap Financing Program funding round will need to apply using the Gap Financing Program (or under the Open Funding Round if no MSHDA gap funding is required), and will be ineligible for the Pass-Through Program. However, if, based on MSHDA's determination, the proposal would not be competitive in the Gap Financing Program, the project will be eligible to submit for consideration under the Pass-Through Program. A proposal may be evaluated by MSHDA at any time as long as the submission of the required documentation takes place at least 45 days in advance of the date on which the applicant intends to apply for financing under the Pass-Through Program.

### E. 9% LIHTC Preservation Proposals:

Sponsors planning to submit an application under the Preservation Category<sup>9</sup> of MSHDA's QAP must first submit an application for tax-exempt bond financing from MSHDA to see if the application would be competitive under the NOFA. Transactions whose soft to hard debt ratio projection appears to be competitive, as compared to the current or most recent Gap Financing Program funding round will need to apply using the Gap Financing Program (or under the Open Funding Round if no MSHDA gap funding is required), and will be ineligible for 9% LIHTC. However, if, based on MSHDA's determination, a preservation project is unlikely to be successful in the Gap Financing Program, the project will be eligible to submit for consideration as part of a 9% competitive funding round under the Preservation Category. A proposal may be evaluated by MSHDA at any time as long as the submission of the required documentation takes place at least 45 days in advance of the 9% funding round in which the applicant intends to apply.

## IV. Processing Phases:

Except as otherwise specifically stated, all proposals seeking any MSHDA direct loans must complete each of the following loan processing phases. The loan processing phases are anticipated to take no more than six months to a year. Applicants seeking MSHDA gap funding loans are also encouraged to review the current NOFA for additional details relating to the processing under the NOFA.

### A. Community Development Initial Review:

The Community Development Initial Review phase is required only for small scale development proposals submitting under the HRF program. During this phase, a

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<sup>9</sup> See the QAP for a description of projects eligible to apply under the Preservation Category.

## **MSHDA Multifamily Direct Lending Parameters**

limited review of the proposal will be made by a MSHDA CD specialist to determine if it meets the minimum eligibility requirements of the HRF program. Proposals that meet the requirements will be assigned to a MSHDA Housing Development Officer (HDO) who will take the lead but will work with the CD staff person and they will move through the loan processing phases as described below.

### **B. Preliminary Assessment:**

During this phase the sponsor must submit the LIHTC Program Application and ALL Preliminary Assessment exhibit documents under MSHDA's Addendum IV Exhibit Checklist found on MSHDA's website. This phase is required for all proposals submitting under MSHDA's Gap Financing Program; but it is optional for proposals not seeking MSHDA gap funding. The Preliminary Assessment phase is designed primarily to determine market demand, review the overall capacity and development history/experience of the development team, assess the site, and preliminarily review the development proposal. MSHDA's Loan Committee will meet to determine whether the proposal's Preliminary Assessment is acceptable or not.

### **C. Threshold Review:**

During this phase the sponsor must submit ALL Threshold Review exhibit documents under MSHDA's Addendum IV Exhibit Checklist (see web link in step B). All applications submitted during the Threshold Review phase undergo a detailed underwriting review, including presentation to the Loan Committee. Applications under the NOFA will be ranked and the rankings will be posted on MSHDA's website. Those applications ranked the highest, and whose aggregate total funding does not exceed the amount of funding available under the applicable NOFA, will be invited to continue to the Commitment Review phase. Typically, Open Funding Round applicants will be provided with notification of acceptance or denial for further processing within 30 - 60 days of receipt by MSHDA of a complete Threshold Review package. MSHDA may reject any applications with material errors in documentation, incomplete information, or inconsistencies.

### **D. Preliminary Assessment or Threshold Review Appeal Process:**

If a sponsor disagrees with a Loan Committee decision to reject a proposal and wishes to appeal that decision, then:

- MSHDA's Rental Development Division will be the point of appeal for all Loan Committee decisions. The appeal must be made in writing within 10 business days of notification of the decision, and directly address the concerns identified by the Loan Committee. MSHDA's Chief Housing Investment Officer, with the Housing Development Manager and assigned HDO, will review the written appeal, having the discretion to call upon staff resources such as environmental, design, asset management, and marketing as needed, and make a decision to either uphold the rejection, or change its position and re-present it to the Loan Committee with a new recommendation.
- If the rejection is upheld, the sponsor will receive a written response of the same, and no further appeal will be available.

## **MSHDA Multifamily Direct Lending Parameters**

- If the Rental Development Division decides to make a new recommendation, the HDO will present the new recommendation at the next scheduled Loan Committee meeting. For Loan Committee action, the HDO must prepare a cover memo that identifies and explains how each of the Loan Committee's initial concerns was resolved, with a copy of the staff report or modified staff report attached.
- If the Loan Committee is unable to reach consensus to accept or reject the new recommendation, the matter will be referred to MSHDA's Executive Director for a final decision that is not subject to appeal.
- Decisions on appeals will be made within 30 days of receipt, whenever possible. A written copy of every decision will be sent to the sponsor following its issuance

### **E. Commitment Review:**

During this phase the sponsor must submit ALL Commitment Review exhibit documents under MSHDA's Addendum IV Exhibit Checklist (see web link in step B). Additional underwriting review is conducted by MSHDA staff and the MSHDA staff report is finalized and presented to the Loan Committee for commitment level consideration.

All NOFA applications will receive a final ranking during this phase, and Loan Committee's award decisions will be announced. Open Funding Round applicants will be notified of the Loan Committee's approval or denial, typically, within 30 - 60 days of receipt by MSHDA of a complete Commitment Review package.

Sponsors of projects approved by the Loan Committee will be notified and provided with a signed MSHDA staff report. Certain projects, such as some PSH and HRF loans, will not require MSHDA board approval and may move directly to the Pre-Closing phase following issuance of a signed MSHDA staff report. Commitment Review decisions are not open to appeal except in the case of material error that, if corrected, would result in an award.

### **F. MSHDA Board Consideration:**

Projects provided commitment level approval by the Loan Committee will be presented to the MSHDA board for commitment. Projects approved by the MSHDA board will move to the Pre-Closing phase. All NOFA proposals must close within 90 days of MSHDA board approval or risk having their gap funding award rescinded. Open Funding Round proposals are expected to close within 120 days following MSHDA board approval.

### **G. Pre-Closing:**

During this phase the sponsor must submit ALL Initial Closing Processing exhibit documents under MSHDA's Addendum IV Exhibit Checklist (see web link in step B). MSHDA staff and the development team will work to resolve all conditions to closing contained in the MSHDA staff report. Loan documents are prepared by MSHDA's Legal Affairs Division and documentation relating to all other sources of funding,

## **MSHDA Multifamily Direct Lending Parameters**

including syndication partnership documents, must be prepared and submitted to MSHDA. Once all MSHDA internal approvals (MSHDA Form CD 700s) are submitted to MSHDA's Legal Affairs Division, the MSHDA loan commitment will be finalized and circulated for execution. The MSHDA loan commitment must be signed by the sponsor and mortgagor and returned to MSHDA within fifteen (15) days of its issue date.

Upon receipt of the fully executed loan commitment, the date of the loan document closing will be set (generally, within 10 business days of full execution of the MSHDA loan commitment) and an Attorney General loan review package will be sent to the Attorney General's Office for review (if required). Certain projects, such as some PSH and HRF loans, will not require Attorney General's Office review and may move directly to the Initial Closing phase following execution of the MSHDA loan commitment.

Loans that require Attorney General review will not be eligible to move to the Initial Closing phase until the Attorney General's Office has provided MSHDA with its recommendation. If any changes to the documents are required or additional submissions are required by the Attorney General's Office, they will take place at this time. Additionally, following acceptance of the MSHDA loan commitment and delivery of the Attorney General's loan review package, no substantial changes in the terms of the MSHDA loan(s) or MSHDA loan documents will be considered.

### **H. Initial Closing:**

At the MSHDA initial closing, the development team will submit any and all remaining items required for initial closing and the MSHDA loan documents will be executed. If, following execution of the documents, conditions to closing the MSHDA loan(s) remain, the MSHDA staff attorney will prepare an escrow agreement. Upon fulfillment of all required conditions, including receipt of all required equity for initial closing, receipt of the title insurance policy and endorsements (or a marked-up commitment) and approval of the initial application for disbursement by MSHDA staff, the MSHDA loan(s) will be closed and funding of the project will commence. At this time, a preconstruction meeting will also be scheduled, typically, for a date no more than 10 business days after the initial disbursement of funds.

### **I. Construction:**

During the Construction phase, the project will be constructed according to the approved plans and specifications as described in the construction contract. MSHDA construction staff will oversee construction activities and construction draws will be disbursed monthly upon fulfillment of all conditions to each draw set forth in the construction contract and building loan agreement executed at the MSHDA initial closing.

### **J. Final Closing:**

Following completion of construction, the final closing of the MSHDA permanent loan will take place. For some preservation, HRF and PSH deals, a final closing will not be required, but many of the deliveries required at a MSHDA final closing must still be submitted. These deliveries include, but are not limited to, cost certifications, final title

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insurance endorsements, final as-built survey, evidence that all approvals, licenses and permits necessary for operation have been obtained and a copy of the contractor's final sworn statement.

### V. Fees:

The following fees apply to all proposals seeking MSHDA funding:

#### A. **Preliminary Application Fee:**

A non-refundable application fee for the Preliminary Assessment phase of \$500.

#### B. **Threshold Review Application Fee:**

A non-refundable fee of \$2,000 must be submitted with the exhibit documents for the Threshold Review phase, or \$1,500 for those proposals that paid \$500 for the Preliminary Assessment phase.

#### C. **Commitment Fee Deposit:**

A non-refundable commitment fee deposit of .5% of the total amount of mortgage loan funding requested from MSHDA (calculated on the greater of the requested construction or permanent first loan plus all MSHDA gap funding loans, as applicable) in the proposal will be charged for all projects. This fee is due after Loan Committee Commitment Review phase approval is provided, but before the proposal is presented to the MSHDA board for mortgage loan commitment authorization (or, for those transactions not requiring MSHDA board approval, during the Pre-Closing phase). This non-refundable deposit is credited toward a 2% or 4% commitment fee at the time of initial closing.

#### D. **Commitment Fee:**

The balance of the 2% or 4% commitment fee (calculated on the greater of the actual construction or permanent first loan amount plus all MSHDA gap funding loans, as applicable) must be paid at the initial closing. A 2% commitment fee will be charged in any transaction in which there is a MSHDA amortizing permanent loan greater than \$500,000. A 4% commitment fee will be charged in any transaction in which there is a MSHDA amortizing permanent loan of less than \$500,000, a MSHDA construction loan only, or those transactions with a gap funding loan only.

#### E. **Bridge Loan Application Fee:**

Proposals including a MSHDA equity bridge loan will also be required to pay an additional non-refundable application fee of \$500.

#### F. **Asset Management Fee:**

Developments receiving only MSHDA gap funding loans, such as certain PSH and HRF loans, will also be required to pay an annual asset management fee to MSHDA.

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### G. Tax Credit/Compliance Fees:

Tax credit and compliance fees will also apply. See current QAP for details.

## VI. Underwriting Terms:

The underwriting terms outlined below are general guides for minimum and maximum terms. Staff analysis of a specific transaction may suggest variance from these terms. For example, in some counties where the actual median incomes are substantially below historic exception figures used by HUD to calculate income and rent limits, it may be appropriate to use even more conservative rent trending assumptions for units with rents at regulatory limits. In a similar vein, in acquisition/rehabilitation transactions, actual operating histories may suggest different financial projections related to expense growth.

### A. Debt Coverage:

MSHDA requires a minimum initial debt coverage ratio (DCR) of 1.20, but the DCR, at MSHDA's discretion, may be increased/decreased based on the assessment of risk associated with the development. For example, for smaller transactions where risk is typically greater, the DCR may be increased; while for long-term subsidized proposals, MSHDA may allow a 1.15 DCR. Furthermore, within MSHDA's 20-year cash flow projection, the DCR may not drop below 1.15, or for transactions without a MSHDA permanent loan, the rate needed to maintain an annual cash flow per unit of \$250. However, for proposals where Risk Share coverage is required, the DCR within MSHDA's 20-year cash flow projections may not drop below 1.10.

### B. Vacancy Loss:

Economic vacancy loss will be budgeted, generally, at a minimum 8% of the gross rent potential. At MSHDA's discretion, in certain markets or for smaller size projects (less than 50 units), a higher vacancy loss may be assumed. Additionally, at MSHDA's discretion, for projects with long term rental subsidy and a history of lower vacancy loss, a lesser vacancy loss (to a minimum of 3% of the gross rent potential) may be assumed.

### C. Determining the Number of Restricted Units per Program Funding Source:

The following list breaks down each funding source's required number of restricted units:

#### 1. LIHTC/Tax-Exempt Bond or Taxable Bond Program Units:

A minimum of either 20% of the development's unit total must be available to households at 50% of Area Median Income (AMI), or 40% of the development's unit total must be available to households at 60% of AMI.

#### 2. Section 236/RAD and Section 8 Program Units:

The number of Rent Supplement (Rent Supp), Rental Assistance Payment (RAP) and Section 8 units within Section 236, Rental Assistance Demonstration (RAD)

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and Section 8 preservation transactions will be based on the number of units approved by HUD.

### **3. HOME Program Units:**

If a HOME loan is provided, the minimum number of HOME-designated units will be calculated using the amount of HOME funds necessary for project feasibility, as determined by MSHDA, divided by the lesser of the per unit total eligible<sup>10</sup> cost or the federal per-unit HOME subsidy limit. If there are five or more HOME units, 20% of the HOME units must be designated as Low HOME units.

### **4. NSP Program Units:**

If an NSP loan is provided, the minimum number of NSP-designated units will be calculated based on the prorata share of eligible total development cost funded with NSP. During underwriting and prior to commitment of an NSP loan to a development, MSHDA will identify the number of NSP-designated units that will be required to be income restricted at the Section 8 50% AMI limit, the Section 8 80% AMI limit and/or the Section 8 120% AMI limit.

### **5. PBV Program Units:**

The number of PBV units is determined by either (i) the number of supportive housing targeted units approved based on the review of an Addendum III package (see the Addendum III requirements on MSHDA's web site under the Combined Application for Rental Housing Programs section), or (ii) by the RAD Program for the conversion of Section 236 units to PBV assisted units.

### **6. Gap Funding Loan Program Units:**

For developments receiving a MSHDA Preservation Fund loan or other non-federal MSHDA loan(s), a minimum of either 20% of the development's unit total must be available to households at 50% of AMI, or 40% of the development's unit total must be available to households at 60% of AMI. Additionally, for developments receiving LIHTC and/or a federally sourced gap funding loan from MSHDA, after their required federal compliance period, all LIHTC and federally funded units will convert to Gap Funding Loan Program Units for the balance of the required 50-year affordability period under MSHDA's Gap Funding Loan Program.

## **D. Income Limits:**

Occupancy of developments financed with MSHDA direct loans will be subject to certain income restrictions. To the extent units within the development are subject to multiple sets of income restrictions, the most restrictive income limit will apply so long as the applicable term of affordability continues.

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<sup>10</sup> For this calculation, eligible costs are limited to basis eligible items. Non-basis items are not HOME eligible (such as capitalized reserves).



## **MSHDA Multifamily Direct Lending Parameters**

The following minimum income restrictions apply based on program/funding sources utilized:

### **1. LIHTC/Tax-Exempt Bond or Taxable Bond Income Restrictions:**

Developments utilizing these funding resources must comply with a minimum of either:

- 20% of the units must be occupied or available for occupancy by households whose incomes do not exceed the Multifamily Tax Subsidy Project (MTSP) 50% AMI limit, or;
- 40% of the units must be occupied or available for occupancy by households whose incomes do not exceed the MTSP 60% AMI limit , or
- Any combination of lower MTSP AMI limits contained in the applicant's LIHTC application.

### **2. HOME Income Restrictions:**

In proposals where a HOME loan is provided, if there are five or more HOME units, 20% of the HOME units must be designated as Low HOME units. Low HOME units may only be occupied by households with incomes at or below the HOME published 50% AMI limit. The remaining HOME-designated units may be occupied by households with incomes at or below the HOME published 60% AMI limit.

### **3. NSP Income Restrictions:**

In proposals where an NSP loan is provided, all of the NSP-designated units must be occupied by households with incomes at or below the Section 8 50% AMI limit, the Section 8 80% AMI limit and/or the Section 8 120% AMI limit as described in Section VI.C.4 above.

### **4. Section 8 Preservation Income Restrictions:**

For Section 8 preservation transactions, HAP-assisted units identified in the development's HAP contract must be occupied or available for occupancy by households whose income does not exceed the income limits in the HAP contract.

### **5. Section 236 Preservation Income Restrictions:**

For Section 236 preservation transactions, the Section 236 income limits established by HUD will apply to the Section 236 restricted units identified in the development's Interest Reduction Payment (IRP)<sup>11</sup> agreement until the expiration of the IRP, plus the 5-year extension required by HUD as part of the decoupling program.

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<sup>11</sup> Interest Reduction Payment (IRP) is a HUD subsidy to reduce the effective mortgage interest rate paid by the project to 1 percent.

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### 6. RAD Program Income Restrictions:

For RAD transactions that do not involve the prepayment of a mortgage loan, to be eligible for the PBV program, the residents at the property must be low-income (annual income not exceeding the Section 8 80% AMI limit). For RAD transactions in which there is a prepayment of a mortgage loan, enhanced vouchers (EVs)<sup>12</sup> may be provided as well. Generally, residents of these developments must still have incomes at or below the Section 8 80% AMI limit; however, a moderate income family (up to the Section 8 95% AMI limit) who is elderly or disabled or residing in a low-vacancy area will be eligible for EVs but over-income for PBV. As such, these residents will get EVs. In the case of public housing conversions under the RAD Program, different restrictions will apply. See HUD Notice PIH-2012-32 (HA), as revised, for additional detail.

### 7. PBV/Supportive Housing Income Restrictions:

PBV assisted units identified in the development's HAP contract must be occupied or available for occupancy by households whose incomes do not exceed the income limits in the HAP contract. Except for Section 236 transactions, PBV assistance is available only to designated supportive housing units serving supportive housing target populations, as defined in MSHDA's Addendum III located at MSHDA's website. Therefore, PBV-assisted households must have annual adjusted incomes at or below the Section 8 30% AMI limit at move in.

### 8. Gap Funding Loan Program Income Restrictions:

The following income limits apply to Gap Funding Loan Program units:

- 20% of the units must be occupied or available for occupancy by households whose incomes do not exceed the MTSP 50% AMI limit; or
- 40% of the units must be occupied or available for occupancy by households whose incomes do not exceed the MTSP 60% AMI limit.

Additionally, for developments with LIHTC and/or federally funded units that are expected to convert to Gap Funding Loan Program Units following the expiration of their federal compliance period, all such units will be required to be occupied or available for occupancy by households whose incomes do not exceed the MTSP 60% AMI limit. Notwithstanding the foregoing, HRF loans with expiring federal income restrictions that exceed the MTSP 60% AMI limit will be permitted to continue to maintain such higher federal income restrictions following expiration of their federal compliance period for the remainder of the 50-year Gap Funding Loan Program affordability period.

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<sup>12</sup> Enhanced Vouchers supplement the regular housing choice voucher program for tenants facing opt-out or prepayment, but only upon occurrence of a specified "eligibility event." The enhanced voucher may exceed the public housing authority's ordinary payment standard (used for regular Housing Choice Vouchers). The enhanced voucher also provides the tenant with a right to remain in the unit after conversion to market rents.

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### E. Rent Restrictions:

Developments financed with MSHDA direct loans will also be subject to certain rent restrictions. To the extent units within the development are subject to multiple sets of rent restrictions, the most restrictive rent restriction will apply so long as the applicable term of affordability continues. Unless otherwise noted, rent restrictions calculated as some percentage of the area median income are based upon an occupancy assumption of one and one-half persons per bedroom and adjusted to the imputed family size.

The following rent restrictions apply based on program/funding sources utilized:

#### 1. LIHTC/Tax-Exempt Bond or Taxable Bond Rent Restrictions:

The total housing expense (rent plus utilities) for all tax-exempt bond, taxable bond and/or LIHTC units may not exceed 30% of the MTSP income limit for that unit. For underwriting purposes, on all new construction or vacant acquisition rehab transactions, underwritten rents for all units restricted to the MTSP 60% AMI limit, will be limited to 95% of 30% of the MTSP 60% AMI limit.

#### 2. HOME Rent Restrictions:

The total housing expense for all HOME-designated units may not exceed the High HOME rent as published by HUD. In developments with five or more HOME-designated units, at least 20% of the HOME-designated units must be occupied by very low-income households and total housing expense for these units may not exceed the Low HOME rent as published by HUD. There is an exception to the Low HOME rent restriction for those Low HOME units assisted by Section 8/PBV assistance, which allows greater than the Low HOME rent, but not to exceed the approved PBV rents.

#### 3. NSP Rent Restrictions:

For NSP assisted units that are also subject to LIHTC or tax-exempt bond rent restrictions (described above), the total housing expense for such units will be that which is required by Section 42 and/or Section 142 of the IRC; provided, however, that if the NSP assisted units are units within the Low Income Set Aside, the rents may not exceed the rents required by Section 42 or Section 142 for 50% AMI units.

For NSP assisted units that are not also subject to LIHTC or tax-exempt bond rent restrictions, the rents will be restricted as follows:

- For 80% AMI income restricted NSP units, the rent limit is the HOME definition of “affordable rents” at 24 CFR 92.252 (a)(2), (c), and (f).
- For 120% AMI income restricted NSP units, the rent limit is 30% of 100% AMI, as determined by HUD, without regard to tenant paid utilities, and adjusted for the number of bedrooms in the unit.

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### **4. Section 8 Preservation Rent Restrictions:**

The total housing expense for HAP-assisted units identified in the development's HAP contract may not exceed the rent restrictions contained in the HAP contract.

### **5. Section 236 Preservation Rent Restrictions:**

The total housing expense for Section 236 units will be the lesser of:

- 30% of the MTSP 45% AMI limit; or
- 30% of the level of income currently served by the development

### **6. RAD Program Rent Restrictions:**

In the case of a Rent Supp or RAP termination due to a contract expiration, or contract termination due to mortgage prepayment, the Rent Supp or RAP units may convert assistance to PBVs, and for those units the total housing expense may not exceed the rent limits in the HAP contract, which rent limits will be determined in accordance with the administering PHA's PBV program. In certain cases, the prepayment of a mortgage on a property with a Rent Supp or RAP contract may trigger provision of Enhanced Vouchers (EVs) to unassisted project residents that may qualify for conversion to PBVs under RAD. These units are eligible for inclusion in the PBV conversion only if the prepayment meets all conditions of PIH Notice 2001-41. In the case of public housing conversions under the RAD Program, different restrictions will apply. See HUD Notice PIH-2012-32 (HA), as revised, for additional detail.

### **7. PBV Rent Restrictions:**

Total housing expense for PBV-assisted units may not exceed the rent restrictions contained in the HAP contract. The rent restrictions for these units will be determined as follows:

For PBV-assisted units located outside of a Qualified Census Tract (QCT) where the following exist: (i) in the same development, there are comparable LIHTC units of the same bedroom size as the PBV-assisted unit and the comparable LIHTC units do not have any form of rental assistance other than the LIHTC; and (ii) the allowable LIHTC rent exceeds the 110% of the Fair Market Rent (FMR) (or any exception payment standards approved by the Secretary of HUD), the total housing expense may not exceed the lowest of:

- The tax credit rent minus any utility allowance; or
- The reasonable rent; or
- The amount requested by the owner.

The "tax credit rent" is the rent charged for comparable units of the same bedroom size in the development that also receive LIHTC but do not have any additional

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rental assistance (e.g., additional assistance such as tenant-based voucher assistance).

For all other MSHDA PBV-assisted units, the total housing expense may not exceed the lowest of:

- An amount determined by MSHDA, which does not exceed 110% of the applicable fair market rent (or any exception payment standard approved by the Secretary of HUD) for the unit bedroom size minus any applicable utility allowance; or
- The reasonable rent; or
- The rent requested by the owner.

Note: For more information on procedures for establishing initial and re-determined PBV rents, please visit the MSHDA Web Site.

### **8. Gap Funding Loan Program Rent Restrictions:**

For Gap Funding Loan Program Units, the total housing expense (rent plus utilities) may not exceed 30% of the MTSP income limit for that unit.

### **F. Rent Increases:**

For all programs, rental increases on occupied units during any 12-month period will be limited to not more than 5% of the rent paid by the resident household at the beginning of that annual period. Exceptions to this limitation may be granted by MSHDA's Director of Asset Management for extraordinary increases in project operating expenses (exclusive of limited dividend payments) or mortgage loan increases. Rents on vacated units may be increased to the maximum level permissible by the applicable programs. Rents and utility allowances must be approved annually. Increases in rents relating to PBV-assisted units must also be requested to the assigned PBV Specialist per guidance outlined on the MSHDA/PBV website.

### **G. Operating Expenses:**

Projected operating expenses must be provided using the Intake Package found on MSHDA's Combined Application web site.

For new construction, adaptive/reuse, or unoccupied proposals, projections must be based on annual expenses of similar developments, in type, size, building structure, and location if possible. For occupied acquisition/rehabilitation transactions, projections will generally be based on the current expenses of the existing proposal.

For scattered site proposals, operating expenses will be the greater of \$6,500 per unit, not including the annual funding of the Replacement Reserve, or the amount proposed by the sponsor.

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### H. Annual Trending Factors:

The following annual trending assumptions will be utilized for the 20-year cash flow analysis:

#### 1. Income:

Maximum of 1% per year for the first five years, and 2% for the remaining period.

#### 2. Electricity Expenses:

Minimum of 6% per year for the first five years, and 3% for the remaining period.

#### 3. All Other Operating Expenses:

Minimum 3% for entire period.

#### 4. Replacement Reserve:

Minimum of 2% per year (for new construction) or 3% per year (for rehabilitation) for the entire period.

As noted above, more or less conservative trending factors may be used based on MSHDA's analysis of the transaction, for example; local conditions, development specific factors, experience with similar developments or the project's management company.

### I. Real Estate Taxes and Tax Abatement:

#### 1. Ad Valorem Tax:

Loan proposals that do not include tax abatement will be underwritten based on the ad valorem taxes applicable to the property. MSHDA will generally trend ad valorem tax increases up to a maximum of 5% annually. In the event that a Payment in Lieu of Taxes (PILOT) is obtained in a form acceptable to MSHDA's Director of Legal Affairs after the proposal has been underwritten based on ad valorem taxes, MSHDA may re-underwrite the proposal using the PILOT. Any savings generated by the PILOT disclosed in MSHDA's re-underwriting of the proposal may be applied, in MSHDA's discretion, to reduce any MSHDA gap funding loan(s) to the development or against any other obligation that the mortgagor owes MSHDA.

#### 2. Tax Abatement:

Most MSHDA direct lending proposals include local support for the project in the form of tax abatement through a PILOT. In order for the proposal to be underwritten on the basis of a PILOT (whether an ordinance, resolution, agreement or some combination thereof) the PILOT must be approved by the municipality prior to MSHDA Board consideration and must be acceptable to MSHDA's Director of Legal Affairs. Generally, in order to be acceptable, among other things, a PILOT must: (i) remain in effect and not be subject to termination so long as any MSHDA

## **MSHDA Multifamily Direct Lending Parameters**

loan remains outstanding; (ii) clearly identify the development to be benefited and the service charge to be paid in lieu of taxes; and (iii) impose a contractual obligation on the municipality and the mortgagor with MSHDA as a third party beneficiary. Additionally, in preservation transactions, a new or restated PILOT will be required that establishes or confirms that a new entity (the preservation mortgagor) will own the property, a new MSHDA mortgage loan will be made and set forth the above-listed items.

### **J. Market Determination:**

The market for the development and the proposed rents must be supported by a professional, independent market analysis, and must be sufficient to pay debt service and normal operating expenses. The impact of the proposed housing on other MSHDA developments in the area and the differential between market rent units and the proposed housing will be factors in accepting proposals for financing. The review, analysis, and acceptance of market conditions will be done in accordance with MSHDA Market Study Guidelines and the MSHDA Market Analysis Process.

### **K. Operating Deposits, Reserve and Escrow Requirements:**

MSHDA will require that certain operating account deposits occur and that the following reserves and escrows be established and maintained by the mortgagor depending on the structure of the transaction. Except where otherwise noted, these deposits, reserves and escrows will be funded in cash at the time of initial disbursement of loan proceeds, will be held and controlled by MSHDA and will be invested and reinvested by MSHDA's Finance Division. Interest earned, if any, will become part of the reserve or escrow and will be treated and disbursed in the same way as the other funds in such reserve or escrow. All mortgagors must affirm that they will have no right, title or interest in and to any reserves and escrows of the development remaining after the payment in full of the mortgage loan(s) and payment of all cumulative unpaid limited dividend payments, and that any remaining reserves and escrows shall be retained by MSHDA subject to any lawful claims by HUD. Additionally, in the event that the mortgage loan(s) is/are accelerated after a default, MSHDA may, in its sole discretion, but is not required to, apply any funds on deposit in any of the reserves or escrows, to the amount due on the mortgage loan(s) as accelerated.

#### **1. Operating Assurance Reserve:**

An Operating Assurance Reserve (OAR) equal to at least four months estimated development operating expenses will be required for all MSHDA financed developments. The OAR must be funded completely with cash at initial closing; however, up to 50% of the OAR may be funded with an irrevocable, unconditional letter of credit acceptable to MSHDA, if cash sources are insufficient. To the extent any portion of the OAR is used prior to the final closing of the mortgage loan, the mortgagor must restore the OAR to its original balance at final closing. The OAR and any interest it accrues will be held by MSHDA for a minimum of 15 full years of operation of the development and may be used in accordance with MSHDA's written policy on the use of the OAR, as amended from time to time.

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In the 10th year of operation following the mortgage cut-off date<sup>13</sup>, an analysis of the development's operations will occur. The OAR will be used to fully fund the replacement reserve needs identified by an independent Capital Needs Assessment (CNA) and to fully fund any other MSHDA-required reserve or escrow accounts. If the OAR amount required to fund reserves or escrows is represented by a letter of credit, the letter of credit will be drawn upon. If the analysis results in excess funds in the OAR account, the Director of Asset Management may approve up to a 50% release and/or reduction in the remaining OAR. At the later of expiration of the 15th full year of operation following mortgage cut-off date or the expiration of the 15-year LIHTC compliance period, a final analysis of the development's operations will occur, and OAR funds that are not needed to fund the replacement reserve or other reserves and escrows may be released.

If no default has occurred under the mortgage loan(s) and the mortgagor has satisfied all of its obligations to MSHDA, any funds released from the OAR in the 10<sup>th</sup> and/or 15<sup>th</sup> year as described above (including accumulated interest) will be used in accordance with the Authority's written policy on the use of the OAR, as amended from time to time.

### 2. Replacement Reserve:

#### a. Initial Funding Requirements:

The initial replacement reserve funding requirements are listed below and will apply based on the development type. Development amenities (such as washers/dryers), unit type, or foreseeable replacement of capital items (such as less durable or special/unusual capital items) may dictate higher initial required deposits than those listed below:

- **New Construction:**

No initial deposit to the Replacement Reserve is required. The first year annual deposit is a minimum of \$250 per unit for elderly developments and \$300 per unit for family developments.

- **Acquisition/Rehabilitation:**

An initial deposit equal to the greater of \$700 per unit or an amount determined to satisfy the requirements of the MSHDA- approved CNA over a 20-year period will be required. The annual deposit to this reserve will not be less than \$300 per unit.

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<sup>13</sup> The mortgage cut-off date is calculated by MSHDA's Director of Finance or Deputy Director of Finance in compliance with the MSHDA Cost Certification Manual dated September 24, 1992 and is generally equal to the total of the number of months of the construction contract plus either the number of months included in the absorption period, or plus the interest only period to reach the LIHTC 50% Test for an occupied acquisition rehab transaction.



## **MSHDA Multifamily Direct Lending Parameters**

- **Small Scale/Scattered Site Developments:**

For all HRF proposals, or any scattered site development, an initial deposit equal to \$700 per unit will be required. In addition, the first year annual deposit to this reserve will not be less than \$700 per unit for family or elderly.

**b. Annual Funding Increases:**

For all developments, annual deposits to the Replacement Reserve will increase each year by the greater of:

- the prior year's deposit, increased by 3%; or
- a percentage of the development's projected annual rental income or gross rent potential (GRP) for the year using the percentage obtained by dividing the first year's deposit by the first year's GRP shown on the operating proforma for the development, attached to the Staff Report.

The annual deposit to the replacement reserve may also increase to any higher amount that is determined to be necessary by MSHDA, based on a recent CNA and MSHDA's Replacement Reserve policies. MSHDA may update any CNA or obtain a new CNA every five years, or upon any frequency, as determined necessary by MSHDA.

**c. Disbursements:**

Disbursements from this reserve shall be made only for the replacement of eligible items that have exhausted their useful life, or in emergency situations to protect the health, safety and welfare of the tenants residing at the development, and all disbursements shall be made in accordance with MSHDA's written Replacement Reserve Fund policy, as amended from time to time, and HUD guidelines, if applicable.

**3. Operating Deficit Reserve:**

For transactions including amortizing permanent loans, MSHDA requires that developments maintain an effective DCR of 1.15 over a 20-year cash flow projection. If a development does not have sufficient cash flow to maintain a DCR of 1.15 over the 20-year period, an Operating Deficit Reserve (ODR) will be established in an amount necessary to create an effective DCR of 1.15. For transactions without an amortizing permanent loan, the minimum annual cash flow requirement is \$250 per unit. For developments showing insufficient cash flow to meet this requirement over the 20-year cash flow projection, an ODR will be established in an amount necessary to create an effective annual cash flow per unit of \$250. Disbursements from the ODR may begin, at the request of the mortgagor, in the first year in which the projected budget deficit is shown on the cash flow analysis establishing the ODR. Mortgagors may choose whether to receive budgeted disbursements, applied to their mortgage loan, or to perform an operating deficit reserve draw request when an operating need occurs. If the

## **MSHDA Multifamily Direct Lending Parameters**

mortgagor elects to have budgeted disbursements, each month MSHDA will withdraw 1/12th of the projected annual deficit for that specific year from the ODR, and will apply it against the mortgage loan payment(s) due to MSHDA that month, or if no mortgage loan payment is due, the amount will be deposited in the development's operating account.

In the event that the development experiences an operating deficit that is greater than the accumulated projected budget deficit as shown on the cash flow analysis establishing the ODR, the mortgagor may request a disbursement in excess of the yearly scheduled amount. The Director of Asset Management must approve the request and the mortgagor shall not be entitled to receive a limited dividend payment until the ODR is restored to its appropriate level of funding. The appropriate level of funding is calculated by the following equation: Add the cumulative total of annual projected budget deficits determined on the cash flow analysis establishing the ODR account through the current audited year. Subtract the cumulative ODR draws taken from the ODR account as of December 31 of the current audited year and add back in any surplus cash or other funds previously deposited into the ODR account to determine if the ODR account has been overdrawn.

At the earlier of the time when 80% of the ODR has been depleted or during the 18th year after the mortgage cut-off date, MSHDA will determine the annual projected operating deficits and the total amount sufficient to fund projected operating deficits through the remaining term of MSHDA's mortgage loan(s). The mortgagor must deposit this amount in cash into the ODR, to be held by MSHDA and disbursed as noted above. Failure to replenish the ODR, when required by MSHDA, shall constitute a default on the mortgage loan(s).

At such time as MSHDA's mortgage loan(s) and all other financial obligations to MSHDA are paid in full, the remaining balance of the ODR, including all interest that has accumulated, will be released in accordance with the Authority's written policy on the use of the ODR, as amended from time to time.

#### **4. Rent-Lag Deposit:**

For Section 236 preservation projects planning to convert to voucher assistance through the RAD program, a "rent-lag" escrow equal to 2.5 times the difference between the old and the new GRP will be required to be deposited to the operating account of the development at initial closing. Rent-Lag funds may be used to meet any shortfalls in operations while the PBVs are implemented. Following full implementation of the PBVs, unused funds will remain in the development's operating account and may be used to pay any operating expenses of the development.

#### **5. Remarketing Reserve:**

With the exception of preservation transactions converting units to PBV assistance, a Remarketing Reserve equal to one year of principal and interest payments on the tax-exempt bond loan may be required for occupied transactions seeking a significant rent increase as determined by MSHDA. Funds may be withdrawn from this reserve to cover greater-than-underwritten vacancy loss and/or for marketing

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expenses. Following twenty-four consecutive months of average economic vacancy loss equal to or less than the underwritten MSHDA-approved budgeted rent levels, the mortgagor may request that any remaining balance in this reserve be released. Any funds released from this reserve will be applied against the outstanding balance of any MSHDA gap funding loan(s), with any excess used in accordance with the Authority's written policy on the use of the Remarketing Reserve, as amended from time to time.

### **6. One Month's Gross Rent Potential:**

For occupied acquisition/rehabilitation proposals, one month's gross rent potential is required to be deposited to the operating account of the development at initial closing, and other re-marketing or transitional operating reserves may be required. These funds may be used for general operating expenses of the development.

### **7. Rent-Up Allowance:**

For new construction or vacant acquisition/rehabilitation proposals, a Rent-Up Allowance will be required for the full projected absorption period, based upon the market study and determined by MSHDA's Chief Market Analyst. The Rent-Up Allowance supports interest payments between construction completion and the mortgage cut-off date, as well as required deposits to the tax and insurance escrow.

For transactions with greater than a six-month projected absorption period, the mortgagor may elect to provide an unconditional, irrevocable letter of credit or other security acceptable to the Director of Finance to address this additional expense. The mortgagor may, upon achieving 95% occupancy during lease up, and providing evidence of 12-month leases at rents at least equal to the rents stipulated in the commitment proforma, without rent concessions, request in writing that the mortgage cut-off date be accelerated, amortization commence and the letter of credit or other security be released.

### **8. Master Lease Reserve:**

A Master Lease Reserve equal to three years of the annual lease payments under the master lease will be required with developments for which commercial income is counted as a source of income in the underwriting of the residential project (see Commercial Income/Master Lease Section VII.K). Funds in this reserve may only be withdrawn by the mortgagor to cover shortfalls of income from the master lease when the master tenant is not receiving payments from commercial tenants occupying the commercial space under subleases sufficient to make full payment required under the master lease. If at any time the reserve and any interest earned on it falls below the initial deposit level, the mortgagor will not be eligible for a limited dividend distribution payment until the reserve is replenished to the initial deposit level. At such time as MSHDA's mortgage loan(s) and all other financial obligations to MSHDA are paid in full, the remaining balance of the Master Lease Reserve, including all interest that has accumulated, will be released in accordance with the Authority's written policy on the use of the Master Lease Reserve, as amended from time to time.

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### 9. Commercial Absorption Reserve:

A Commercial Absorption Reserve will be required with developments for which commercial income is counted as a source of income in the underwriting of the residential project when the commercial space build out period exceeds the residential project construction/rehabilitation period (see Commercial Income/Master Lease Section VII.K). This reserve is intended to cover anticipated income from the master lease during the commercial absorption period (i.e., the time the commercial space build out exceeds the residential project construction/rehabilitation period). When required, this reserve shall equal the total master lease payments included in the underwriting of the residential portion of the development relating to the anticipated absorption period. At such time as the commercial build out period ends and a commercial tenant commences occupying the space and making lease payments under a sublease with the master tenant, any remaining balance of the Commercial Absorption Reserve, including all interest that has accumulated, will be released in accordance with the Authority's written policy on the use of the Commercial Absorption Period, as amended from time to time.

### L. Real Estate Appraisal Requirements:

When required, real estate appraisals shall be performed by independent fee appraisers licensed in Michigan as Certified General Appraisers that assess the value of proposals for direct lending and low income housing tax credits. The review, analysis, and acceptance of an appraisal will be done in accordance with MSHDA Appraisal Guidelines found on MSHDA's website. The appraisal report shall conform to applicable Michigan statutory and regulatory requirements and the requirements of the Uniform Standards of Professional Appraisal Practice. The following are some of the important appraisal requirements:

- Appraisals shall be dated no more than six months from the date of application. If the underwriting process exceeds six months, an updated appraisal may be required prior to loan commitment.
- For acquisition/rehabilitation projects, MSHDA limits the acquisition price to the lesser of the actual purchase price or the "as is" appraised value of the property prior to rehabilitation.
- For new construction projects, the value of the land included in project cost shall not exceed the lesser of its appraised value or the purchase price.
- For in-kind contributions of land, evidence of the value of the contribution must be supported by an appraisal.
- The purchase price of foreclosed properties purchased to complete projects assisted with an NSP Loan are required to no more than 99% of the current appraised value of the property.

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### **M. Construction Contract Allowances:**

For projects of 50 units or more, line item allowances within the construction contract may not exceed 6% for builder profit, 2% for builder overhead, and 6% for general requirements of the total construction contract amount. For projects of fewer than 50 units, the line item allowances within the construction contract for builder profit, builder overhead and general requirements may not exceed an aggregate of 20% of the total construction contract amount.

### **N. Identity of Interest:**

If an identity of interest exists between the applicant and the general contractor, incentive fees may only be paid to the extent that they are included in the above-mentioned fee limitations. A general contractor may act as a subcontractor and may be entitled to additional overhead and profit otherwise payable to an independent subcontractor. However, the general contractor's overhead, profit, and general requirements that may be included as allowable project costs are limited to the percentages noted above.

### **O. Construction Contingencies:**

Construction contingencies will be required for all proposals involving rehabilitation, with the requisite contingency amount determined on a case-by-case basis. Rehabilitation contingencies of at least 5% of the construction contract amount should be anticipated. These funds will be a line item in the development budget within "soft costs" and not part of the construction contract. For new construction, a construction contingency of 5% is allowed, and at least 5% will be required when certain site conditions are possible (such as buried debris or environmental remediation).

### **P. Development Fee:**

The total amount of any (i) developer fees, (ii) developer guaranty fees, and (iii) consulting fees (excluding fees to a third party, non-related construction manager included and paid from the construction contract), will be no more than the maximum development fee allowed to a project as outlined below.

#### **1. 4% LIHTC Projects:**

For projects financed with tax-exempt bonds eligible for 4% credit, the maximum development fee shall be calculated as follows:

With 49 units or fewer, the development fee will be the lesser of \$2,100,000 or the sum of the following:

- 7.5% of acquisition costs
- 7.5% of project reserves
- 20% of all other development costs, excluding developer fee, developer overhead, and developer consulting fee.

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With 50 units or more, the development fee will be the lesser of \$2,100,000 or the sum of the following:

- 7.5% of acquisition costs
- 7.5% of project reserves
- 15% of all other development costs, excluding developer fee, developer overhead, and developer consulting fee.

### **2. 9% LIHTC Projects:**

For all projects eligible for 9% LIHTC, the maximum development fee shall be the lesser of \$1,500,000 or the sum of the following:

- 7.5% of acquisition costs
- 7.5% of project reserves
- 15% of all other development costs, excluding developer fee, developer overhead, and developer consulting fee.

### **3. Non-LIHTC Projects:**

For all projects financed by MSHDA that do not receive LIHTC, the maximum development fee permitted will be calculated in the manner described for 4% LIHTC Projects above.

### **4. Additional Considerations:**

In addition to the fee limits outlined above, the following considerations must also be given with regard to the development fee:

- If an existing project, building, or physical structure is split into two or more phases, the aggregate development fee for all phases shall not exceed the limitations stated above.
- For projects involving acquisition and rehabilitation, an amount equal to at least 5% of the acquisition cost of the land and building(s) must be allocated to acquisition-eligible basis for purposes of attribution to the development fee.
- Up to 50% of the total development fee can be deferred to cover a gap in funding sources as long as the entire amount will be paid within fifteen (15) years. If the pro forma in the application indicates that cash flow is insufficient to repay the deferred development fee within 15 years, the applicant must provide an explanation in the narrative as to how the deferred development fee will be repaid.

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- The development fee usually is paid from equity sources such as LIHTC or historic tax credit equity, however, in the event MSHDA construction loan proceeds are used to pay the development fee on an interim basis prior to the pay-in of sufficient LIHTC equity or disbursement of MSHDA equity bridge loan proceeds, no more than 50% of the anticipated net development fee (gross development fee minus deferred fee) may be paid while the construction loan is outstanding.

### Q. Limited Dividend Calculations:

The return on equity permitted to mortgagors shall be limited depending on the type of transaction involved as described below. The return on equity will be cumulative, calculated at the rate in effect during that particular year.

#### 1. Rate of Return:

The rate of return permitted on mortgagor's equity will be determined as follows:

- a. For new construction transactions or for acquisition and rehabilitation transactions not including federally funded project-based assistance, the mortgagor's annual rate of return on equity will be limited to 12% of the mortgagor's equity beginning in the year in which the mortgage cut-off date occurs. This limit may increase by 1% per year until a cap of 25% is achieved, unless a MSHDA gap funding loan and/or other MSHDA concessions are outstanding. In this circumstance, the return on equity shall be capped at 12% until the MSHDA gap funding loan has been fully repaid and/or MSHDA has been fully reimbursed for any other concession. The mortgagor may request to increase the rate of return on equity upon full payment of the MSHDA gap funding loan and/or reimbursement of any other concession and the increase in rate shall begin in the year after that point in time.
- b. For acquisition and rehabilitation transactions of federally funded project-based assisted developments, the return on equity shall be limited as follows:
  - For Section 8 developments subject to HUD's so-called "old regulations", the mortgagor's annual rate of return on equity from operation of the development will be limited to 12% of the mortgagor's equity.
  - For Section 8 developments subject to HUD's so-called "new regulations", so long as the HAP Contract is in effect and the development is subject to federal regulations governing new regulation Section 8 projects, the annual rate of return on equity from operation of the development will not exceed 6% for elderly developments and 10% for family developments, or any other amount approved by HUD, but not to exceed 12% of the mortgagor's equity. Following termination of the HAP Contract, the annual rate of return will not exceed 12% of the mortgagor's equity as determined by MSHDA.

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For Section 236 developments, the mortgagor's annual rate of return on equity will be limited to the lesser of 12% of the mortgagor's equity or the amount approved by HUD.

- Deviations from the above-described limitations will be permitted by MSHDA when required by HUD, such as in the case of certain renewals of HAP Contracts under MAHRA. For these developments, the return on equity will be the amount approved by HUD, but not to exceed 25% of the mortgagor's equity.

### **2. Mortgagor's Equity:**

Mortgagor's equity for purposes of calculating return on equity will be the sum of the following eligible sources of funding (unless a lower amount is required by HUD):

- LIHTC Equity
- Brownfield Credit Equity
- Historic Credit Equity
- General Partner capital contributions
- Interest earned on an Equity Escrow

For all developments initially financed by MSHDA, seller waiver of accumulated and current year deferred limited dividends will be required.

### **R. Equity Pay-In and Non-MSHDA Funding Sources:**

During the Pre-Closing processing phase described in section IV.G above, MSHDA, the sponsor, the syndicator, and any other funding sources must agree to a schedule of funding. The schedule of funding must set forth both the timing of the anticipated payment of all costs necessary to complete the development and the availability of various sources for such payment.

MSHDA must be satisfied that it will receive sufficient equity and other funding sources to assure that, when combined with mortgage loan proceeds, there will be sufficient funds available on a schedule that will assure timely payment of all development costs, including hard and soft costs, during construction. MSHDA will work with the sponsor, the syndicator, and any other funding sources on timing issues in an effort to identify mutually agreeable solutions to fill funding gaps as appropriate to the particular situation. However, in no event will MSHDA agree to a condition(s) that, in its sole judgment, MSHDA determines will jeopardize the availability of funding when the funds are needed.

With the exception of payments of development fees directly from the syndicator to the mortgagor, all non-MSHDA sources of funds must be deposited with and disbursed through MSHDA unless otherwise agreed to by MSHDA's Rental Development and Finance Divisions. Other than future equity contributions from the syndicator that will be made according to a MSHDA-approved pay-in schedule, all non-MSHDA funding sources planned within a transaction are generally expected to be initially funded in the amount approved by MSHDA in the schedule of funding at or



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prior to the date of initial disbursement of MSHDA loan proceeds. In addition, in proposals where MSHDA provided a non-profit sponsor with a predevelopment loan, the loan must be repaid at or prior to initial closing. The balance of all non-development fee LIHTC equity payments must be made no later than the construction completion date; unless such contributions will be paid later pursuant to the terms of a MSHDA equity bridge loan, the proceeds of which will be used, at least in part, to repay the construction loan.

In the event a loan is determined to be out of balance and a shortage exists that threatens the ability to pay development costs in a timely fashion, the sponsor will be required to provide cash to the development's equity escrow account in an amount needed to satisfy all outstanding and payable costs. MSHDA's Director of Finance or Deputy Director of Finance may accept a cash deposit or an irrevocable, unconditional letter of credit in a form acceptable to MSHDA for shortages expected to be resolved by equity pay-ins within 30 days.

### **S. Guaranty Requirements:**

The following guaranties may be required based on the program/funding sources utilized:

#### **1. Performance and Completion Guaranty:**

Required in all MSHDA direct loan transactions and is intended to ensure that the construction/rehabilitation of the development is completed as planned.

#### **2. Operating Deficit Guaranty:**

Required in all MSHDA direct loan transactions and is intended to ensure availability of funds in the event of operational problems. In most cases, this guaranty is limited to 12 months of underwritten operating expenses, debt payments, and required reserve deposits; however, with 501(c)(3) guarantors, the guaranty will be limited to 6 months of underwritten operating expenses, debt service, and reserve deposits. MSHDA may waive the requirement of an operating deficit guaranty if the equity investor requires an equivalent guaranty meeting MSHDA's approval.

#### **3. Recapture Guaranty:**

Required when a federally sourced loan subject to recapture, such as a HOME loan or NSP loan, is made by MSHDA. The recapture guaranty obligates the guarantor to satisfy any federal recapture liability arising due to noncompliance with federal requirements.

#### **4. MSHDA Equity Bridge Loan Repayment Guaranty:**

Required when a MSHDA equity bridge loan is provided to ensure repayment of the outstanding balance of the MSHDA equity bridge loan, including fees and costs, in the event of a default by the mortgagor or failure of the equity provider to deliver the capital contributions provided for in the organizational documents.

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### **5. Guarantors:**

Generally, joint and several guaranties are required from the following parties in any given transaction:

- The listed sponsor(s) from the initial application for LIHTC and/or MSHDA funding; and
- Any entity/individual entitled to receive any portion of the development fee (including the deferred fee) relating to the development.

Additionally, in certain special cases where a project has been determined to carry unique risks or where additional security has been required due to some other special feature, MSHDA may require that additional guarantors be provided.

### **6. Financial Requirements for a Guarantor:**

All guarantors (as defined above) will be required to provide financial statements during the initial underwriting process. MSHDA's Auditor Specialist will review the financial status of the guarantors and provide comments on any that individually fail to meet MSHDA's guarantor standards (see section II.2.b above). The Auditor Specialist will also note other obvious concerns that may arise such as negative credit histories, negative net worth, notable contingent liabilities, etc.

Because the guaranties are joint and several, if an individual guarantor in a given transaction fails to meet MSHDA's standards but the combined financial position of the guarantors is acceptable, MSHDA will generally proceed with the transaction.

## **VII. Additional MSHDA Direct Lending Requirements:**

### **A. Equal Opportunity/Fair Housing/Non-Discrimination:**

MSHDA requires:

- The general contractor to provide an Equal Employment Opportunity (EEO) Plan for goal setting for workforce trade utilizations and for business enterprises contracting to subcontractors and material suppliers; and
- The management agent to aggressively and affirmatively market the housing to minority groups pursuant to a MSHDA-approved Affirmative Fair Housing Marketing Plan, and, for HOME-assisted units, comply with the HOME Program Affirmative Fair Marketing requirements set forth in 24 CFR 92.351 and a MSHDA-approved tenant selection policy that complies with the requirements of 24 CFR 92.253.

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### **B. Cost Certification:**

For all transactions, the general contractor and the mortgagor must submit timely certifications of the actual costs incurred in developing and building the project, based on the MSHDA's Cost Certification Guidelines that may be found on MSHDA's web site. Additionally, for projects receiving LIHTC, the mortgagor will be required to submit a cost certification meeting the requirements of MSHDA's Low Income Housing Tax Credit Cost Certification Guidelines.

### **C. Audit of Development Operations:**

MSHDA's Finance Division conducts an audit of initial development operations to ensure that certain costs incurred during the rent-up and absorption period between initial occupancy and the start of amortization and property stabilization have been properly classified. To the extent that operating income was used to pay for development costs that were to be paid with construction loan proceeds or other sources, the sponsor will be required to deposit funds to rectify any such audit exceptions in the development's operating account at final closing.

### **D. HOME Disbursement and Closeout Requirements:**

In transactions using HOME funds from MSHDA, the following requirements must be met: (i) construction or rehabilitation work must commence and the initial draw of HOME funds must occur within twelve (12) months of MSHDA's commitment of HOME funds; (ii) all requests for disbursement of HOME funds must be for payment of eligible costs as defined in 24 CFR 92.206 and the amount of each request must be limited to the amount needed (such requests may include, if applicable, certain soft costs reasonable and necessary to completion of the project as described in 24 CFR 92.206(d)(1) but may not include funding for project reserves); (iii) the final disbursement of HOME funds by MSHDA may not occur until mortgagor has provided all "Project Completion" (as defined in 24 CFR 92.2) information required to be entered into IDIS in form and substance satisfactory to MSHDA and until the Development has been inspected by MSHDA for completion and compliance with the property standards of 24 CFR 92.251; and (iv) all work must be completed and the project must achieve Project Completion within four (4) years of MSHDA's commitment of HOME funds.

### **E. Cross Cutting Federal Requirements:**

The use of any federal funding sources may trigger cross cutting federal requirements such as DBRA, NEPA, Section 3, and/or the URA. Additionally, a Subsidy Layering Review (SLR) may be required. A summary of each requirement follows:

#### **1. DBRA/Labor Standards/EEO:**

Every contract for the construction or rehabilitation of housing that includes 12 or more HOME-designated units, 9 or more PBVs, any amount of NSP funds, or in any other case where federal regulations require such compliance, must contain provisions requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to DRBA, to all laborers and mechanics employed in the development of any part of the housing

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and must incorporate applicable federal labor requirements. Every contractor must also submit an EEO plan for review and incorporate this plan into the contract for construction or rehabilitation.

### **2. NEPA:**

Every proposal receiving a new award of federal assistance such as HOME, NSP or PBVs must meet the NEPA requirements. MSHDA is required to document compliance with HUD's Environmental Review process to satisfy both the NEPA mandated items and the additional federal statutory and regulatory requirements under EPA, SHPO, etc. Please note that a sponsor is prohibited from undertaking or committing any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance. Violation of the foregoing may result in the denial of federal funds.

### **3. URA:**

Every occupied development receiving federal assistance must meet the URA requirements. If any occupants of the development will be displaced and/or relocated as a result of the rehabilitation of the development, then the mortgagor and/or the sponsor will be obligated to ensure compliance with all requirements of the URA at their sole cost and expense.

### **4. SLR:**

MSHDA staff will perform the SLR, which is required when multiple federal sources are utilized in a transaction. The review will certify that there is no overlap of government subsidies when combining housing assistance programs administered by Federal Housing Administration with other forms of federal funds when administered by Federal, State, or Local agencies, including LIHTC, HOME and PBV.

### **5. Section 3 Utilization Plan:**

The sponsor and general contractor in proposals that include any new award of federal assistance must provide a Section 3 Plan for goal setting for utilization of local residents and business concerns.

### **6. Lead-Based Paint:**

For developments involving the rehabilitation of pre-1978 structures, the development must meet the lead-based paint requirements in 24 CFR part 35.

### **7. Section 106 Review:**

Depending on the age/features of the property, SHPO review for compliance with the National Historic Preservation Act may be required.

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### **F. Permanent Relocation:**

Involuntary permanent relocation of existing residents is not permitted. Any permanent relocation cost incurred (whether voluntary or due to error), will be borne by the mortgagor and/or sponsor. Temporary displacement or relocation of occupants during rehabilitation may be permitted subject to approval of a transition plan by MSHDA's Asset Management Division and compliance with URA requirements, if applicable (see section VII. E.3 above).

### **G. Loan Management:**

Unless otherwise specified, MSHDA's Asset Management Division monitors the operations of all developments with any MSHDA funding source, with or without LIHTC, for compliance with controlling loan documents and its financial and physical condition through a variety of reporting systems. These systems include electronic submission of monthly income and expense statements, review and approval of annual budgets and audits, approval of the use of reserves, and other required reports. A development's compliance with resident income eligibility, rental restrictions, and physical inspections is monitored by MSHDA's Compliance Unit.

### **H. Non-MSHDA Subordinate Loans:**

Subordinate loans from sources other than MSHDA are generally permitted; however, such loans must (i) be expressly subordinate to all MSHDA loans; (ii) not be secured by a lien on the development or any of the development's property, funds or assets; (iii) require payment from limited dividends only or other owner funds, and not from other development funds; and (iv) have a loan term equal to or exceeding the longest term of any MSHDA loan to the mortgagor. Notwithstanding the foregoing, MSHDA will permit subordinate loans from governmental entities to be secured by a subordinate lien on the development and, where underwritten operations show sufficient cash flow, will allow for the repayment of subordinate loans from governmental entities to be made from development funds in amounts approved by MSHDA. Additionally, as described in the section VI.R above, a schedule of funding must be agreed upon by all funders and, typically, subordinate loans must be closed (including initial disbursement of funds) at or prior to the time of initial disbursement of the MSHDA loan proceeds.

### **I. At-Risk Rules and Anti-Churning Rules:**

Sponsors are expected to be familiar with the "At Risk Rules" of Section 42(k) of the IRC and with the Anti-Churning Rules of Section 142(d) of the IRC. If the mortgagor is acquiring the development or land from a related party or there is related party financing in the transaction, MSHDA may require an opinion from mortgagor's counsel verifying compliance with all At-Risk Rules and all Anti-Churning Rules, including specifically with reference to the inclusion of the acquisition cost in mortgagor's LIHTC basis.

### **J. Mixed-Use Development Proposals:**

Mixed-use development proposals supporting downtown housing is an eligible development activity under section I above. Often, a mixed-used project will be

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converted to a condominium with the commercial space being separately owned and operated. MSHDA financing may be used only for the residential portion of mixed-use projects. The commercial space must be separately financed. MSHDA must approve all proposed uses and the owners and/or tenants of commercial spaces within a mixed-use project. Additionally, MSHDA must approve the condominium master deed, bylaws and subdivision plan, if the property is converted to a condominium, and any leases entered with respect to the commercial space. The commercial space must provide some residential benefit.

### **K. Commercial Income/Master Lease:**

Projected rental income from the commercial space within a mixed-use transaction is generally not counted as a source of income for the MSHDA-financed residential project unless covered by a MSHDA-approved master lease, which master lease must include an unconditional guaranty of the commercial space income from a sponsor that has met MSHDA's financial requirements. In addition, a master lease arrangement will only be allowed when the following conditions have been met:

- An acceptable commercial market study has been completed. At MSHDA's discretion, the commercial market study requirement may be waived for rehabilitation proposals where a commercial tenant exists with proof of historical income equal to or in excess of the amount of the master lease payments.
- Final, signed lease(s) are in place with the commercial tenant(s).
- The commercial space budget must show that it is feasible and that there is sufficient surplus cash flow from the commercial space subleases to support the required master lease payments.
- A Master Lease Reserve equal to 3 years of the annual lease payments under the master lease will be required (see reserve requirement Section VI.K.8).
- A Commercial Absorption Reserve will be required to cover anticipated income from the master lease during the commercial absorption period, if applicable (i.e., the time the commercial space build out exceeds the residential project construction/rehabilitation period. See reserve requirement Section VI.K.9)

### **L. Unique Circumstances:**

Developers are encouraged to discuss unique development opportunities not within these parameters with MSHDA Rental Development staff to determine the potential for waiver of certain of these parameters by the MSHDA Board.

## **VIII. For Developments Currently Financed by MSHDA:**

### **A. Repayment of Existing Indebtedness:**

For MSHDA preservation transactions, all repayable subsidy loans, deferred interest, HOME loans, or other secondary financing, such as small size, security, and amenity loans, are to be repaid at initial closing of the new mortgage loan. Assumption of these loans is not anticipated, nor is further secondary financing generally available to address this indebtedness. In proposed transactions where MSHDA provided a non-profit sponsor with a predevelopment loan, the loan must also be repaid at or prior to initial closing.

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### **B. Replacement Reserve Draws:**

Replacement reserve draws will not be processed subsequent to the submission of a loan application for a preservation transaction without notification from MSHDA's Asset Management Division and approval from MSHDA's Rental Development Division.

### **C. Contract Administration:**

For Section 8 preservation transactions, it is anticipated that HUD will designate MSHDA as the contract administrator.

### **D. Reserve Ownership:**

All mortgagors must affirm MSHDA's ownership of excess reserves and escrows subject only to any lawful claims by HUD.

### **E. Seller Obligations:**

At or prior to the initial closing of a preservation transaction, the seller will be responsible for settling all development accounts payable and reconciling those amounts in a manner acceptable to MSHDA's Director of Asset Management. Additionally, the seller must submit any documents required by MSHDA to account for any surplus cash that the seller may be holding and must remit that cash to MSHDA. At initial closing, the seller must also waive its right to any accumulated and/or current year unpaid limited dividend payments.

### **F. Income from Operations:**

MSHDA may allow income from operations (including subsidies) to be shown as a funding source within an existing occupied development. When allowed, income from operations may be used in an amount up to the lesser of (i) the sum of the construction period interest plus property taxes and liability insurance, or (ii) the sum of the amount of the permanent loan's debt service plus property taxes and liability insurance over the same period. Proposals with existing vacancy loss levels greater than MSHDA's standard 8% and/or where voluntarily permanent relocation is planned, may not be allowed to count income from operations as a funding source.

### **G. HUD Approval:**

Where required, HUD approval of the transaction and the owner and its principals, as well as the proposed management agent, will be a condition of initial closing. The approvals from HUD must be consistent with all conditions of the program parameters and policies, and the rents, expenses, debt service and other financial elements in the development proforma stated in MSHDA's mortgage loan commitment staff report.

### **H. Rental Assistance Extensions:**

Upon expiration of any existing project-based rental assistance, all mortgagors must apply for and accept any available subsidy extensions, subject to MSHDA approval.