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Dear \_\_\_\_\_ :

This letter responds to your letter dated November 29, 2004, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a ruling that will waive for Project buildings the 10-year holding period requirement for existing buildings under § 42(d)(2)(B)(ii) of the Internal Revenue Code, pursuant to the authority for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(C). The Internal Revenue Service Office that will have examination jurisdiction over Taxpayer is located in City A.

The relevant facts as represented in these submissions are set forth below.

## **FACTS**

Taxpayer is a State limited partnership formed to acquire, rehabilitate, develop, own and operate Project, a b-unit multi-building residential rental project located at Address in City B. Taxpayer intends to rehabilitate and operate Project to enable Project to qualify for low-income housing credits under § 42.

Taxpayer entered into a binding contract on a, to purchase Project for a purchase price of \$c. The anticipated closing date of the acquisition of Project is d.

Project was originally purchased and placed in service by Seller on e. Pursuant to a series of restructuring transactions on f, Project was treated as newly placed in service for purposes of § 42(d)(2)(B)(ii) because none of the placed-in-service exceptions of § 42(d)(2)(D)(ii) was met. Because the interval between the date Project was last placed in service and the expected date of acquisition in d is less than 10 years, Taxpayer will fail to meet the 10-year holding period requirement of

§ 42(d)(2)(B)(ii) for existing buildings in Project. Thus, a waiver of the 10-year holding period requirement is necessary to qualify Project buildings for the acquisition credit under § 42.

Project is subject to a mortgage loan, the unpaid balance of which is projected to be \$g in d. The mortgage loan is insured by the United States Department of Housing and Urban Development (HUD) and is secured, in part, with interest reduction payments from HUD pursuant to Section 236 of the National Housing Act. The Project is designated as FHA project number h. Project also received substantial federal rental assistance under Section 8 of the United States Housing Act of 1937.

The mortgage loan is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) at any time provided the owner gives the mortgagee, HUD, the residents, and the appropriate representative of the state/local government the requisite statutory notice. In a letter from HUD dated i, HUD states that if the Service does not grant the requested waiver, it is reasonable to expect that Project will cease complying with its low-income occupancy requirements.

If Taxpayer is able to obtain the requested waiver, it represents that it will agree to sign a waiver of its unconditional right to prepay the mortgage loan and such waiver will be binding on all successors of Taxpayer. Further, Taxpayer represents that it will enter into new long-term use restrictions with HUD which will preserve Project as affordable housing. In consideration of agreeing to long-term use restrictions on Project, HUD is expected to approve a financing plan proposed by the Taxpayer to acquire, rehabilitate, and maintain Project as an affordable housing development.

Taxpayer makes the following additional representations and certifications concerning Project:

1) Taxpayer's acquisition of Project buildings will be by purchase as defined in §179(d)(2), as applicable under § 42(d)(2)(D)(iii)(I);

2) Taxpayer will acquire Project buildings to provide affordable housing to qualified low-income households;

3) To the best of Taxpayer's knowledge, there have been no nonqualified substantial improvements to Project buildings since they were last placed in service;

4) As of the date of Taxpayer's application for waiver, each building in Project is a "federally-assisted building" as defined in § 42(d)(6)(B) and § 1.42-2(c)(1) of the Income Tax Regulations;

5) No Project buildings were previously placed in service by Taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) to Taxpayer at the time the buildings were last placed in service;

6) To the best of Taxpayer's knowledge, no prior owner of Project was allowed a tax credit under § 42 for Project;

7) Taxpayer is in compliance with the applicable requirements of § 1.42-2; and

8) All terms and conditions of § 42 and related sections, including minimum substantial rehabilitation as provided by § 42(e)(3), will be met except for the 10-year holding period requirement of § 42(d)(2)(B)(ii).

### **RULING REQUESTED**

Taxpayer requests the Service to waive, for Project buildings, the 10-year holding period requirement of § 42(d)(2)(B)(ii) pursuant to § 42(d)(6)(C).

### **LAW AND ANALYSIS**

Section 38(a) provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under § 42(a).

For an existing building to qualify for the 30-percent present value low-income housing credit, § 42(d)(2)(B)(ii) requires there be a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of:

- (I) The date the building was last placed in service, or
- (II) The date of the most recent nonqualified substantial improvement of the building.

Section 42(d)(6)(A) provides an exception to the 10-year holding period requirement of § 42(d)(2)(B)(ii). It provides that a waiver may be granted for a federally-assisted building if the Secretary determines that the waiver is necessary—

(i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to HUD or the Farmers Home Administration (now Rural Housing Service, USDA-RHS), or

(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

Section 42(d)(6)(C) provides that a waiver may be granted under § 42(d)(6)(A) (without regard to clauses (i) and (ii)) for a federally-assisted building described in § 42(d)(6)(B)(ii) or (iii) if:

- (i) the mortgage on such building is eligible for prepayment under subtitle B of ELIHPA or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of application for such a waiver;
- (ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements; and
- (iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

Under § 42(d)(6)(B)(ii) and (iii) a "federally-assisted building" is any building that is substantially assisted, financed, or operated under section 221(d)(3) or 236 of the National Housing Act, or under section 515 of the Housing Act of 1949, as such Acts were in effect on the date of enactment of the Tax Reform Act of 1986 (October 22, 1986).

Section 1.42-2 contains requirements that must be satisfied before the Secretary will grant the waiver referred to in § 42(d)(6). Taxpayer's representations, including a written representation from HUD, dated   , indicate that these requirements have been satisfied.

Based solely upon the above facts, Taxpayer's representations, and the representation from HUD, we have determined that Building is federally-assisted within the meaning of § 42(d)(6)(B)(ii), the mortgage loan on Project buildings is eligible for prepayment under subtitle B of ELIHPA, the appropriate Federal official has certified that absent the requested waiver it is reasonable to expect that if the waiver is not granted the Project buildings will cease to comply with their low-income occupancy requirements, and the ability to prepay the mortgage without HUD's consent will be waived by all persons who are eligible to prepay and the waiver will be binding on all successors of such persons. Therefore, we rule as follows:

The 10-year holding period requirement of section 42(d)(2)(B)(ii) is waived for Taxpayer's acquisition of Project pursuant to § 42(d)(6)(C).

No opinion is expressed or implied regarding the application of any other provision in the Code or regulations. Specifically, no opinion is expressed or implied regarding whether Taxpayer's costs of acquisition and rehabilitation of Project buildings will otherwise qualify for the low-income housing credit under § 42.

This ruling is directed only to the Taxpayer which requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be filed with the federal income tax return for Taxpayer and its partners for the first taxable year in which the low-income housing credit for the building(s) in the project is/are claimed.

In accordance with the power of attorney on file with the ruling request, this letter is being sent to Taxpayer's first-named authorized representative, and a copy is being sent to Taxpayer and to Taxpayer's second-named authorized representative.

Sincerely yours,

/s/ Harold E. Burghart

Harold E. Burghart  
Senior Advisor, Branch 5  
Office of Associate  
Chief Counsel  
(Passthroughs and Special  
Industries)

Enclosures (2): Copy of this letter  
Copy for § 6110 purposes

cc: