

NEBRASKA INVESTMENT FINANCE AUTHORITY  
LOW INCOME HOUSING TAX CREDIT PROGRAM

2019 LIHTC ALLOCATION PLAN

FOR  
9% LIHTCS

AND  
AHTCS



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**1. INTRODUCTION.**

**The 2019 Low Income Housing Tax Credit (“LIHTC”) Allocation Plan for 9% LIHTCS and AHTCS, as part of the Qualified Allocation Plan (“QAP”) described below, provides for the allocation of the federal 9% low income housing tax credit for the following Nebraska Investment Finance Authority (“NIFA”) programs: Competitive LIHTC and Collaborative Resources Allocation for Nebraska (“CRANE”). For ease of discussion, credits awarded pursuant to the Competitive LIHTC program (“Competitive Credit”) and the CRANE program are sometimes collectively referred to herein as 9% LIHTCs”. The allocation of the federal low income housing tax credit issued in connection with the issuance of qualifying tax-exempt bonds (the 4% LIHTC) is governed by a separate 2019 LIHTC Allocation Plan for 4% LIHTCs adopted by NIFA for the allocation of 4% LIHTCs with issuance of qualifying tax-exempt bonds.**

In 2016, the Nebraska State Legislature enacted LB 884 creating the Nebraska Affordable Housing Tax Credit (the “AHTC”). Additionally, the 2019 LIHTC Allocation Plan for 9% LIHTCs and AHTCs provides for the allocation of the AHTC. The AHTC will be awarded only in connection with qualifying developments for which the owners have also received an allocation of 9% LIHTC.

**1.1 AVAILABLE LOW INCOME HOUSING TAX CREDITS AND NEBRASKA AFFORDABLE HOUSING TAX CREDITS.**

In 2019, NIFA expects to have approximately \$5,184,000 of federal LIHTC allocation for qualifying developments in Nebraska pursuant to the 9% LIHTC program. This amount is based on the U.S. Census Bureau’s Current Population Report for Nebraska multiplied by \$2.70 (as may be adjusted). The amount of LIHTCs available for allocation pursuant to the 9% LIHTC program may be increased by 9% LIHTCs returned to NIFA from a prior year or 9% LIHTCs allocated to Nebraska from the 2019 national LIHTC pool.

All owners of qualifying developments receiving an allocation of 9% LIHTC will also receive an allocation of AHTC equal to no more than one hundred percent (100%) of the 9% LIHTC allocation. The total combined amount of LIHTC and AHTC allocated in connection with a qualifying development shall be determined by NIFA staff based upon underwriting of the developments in order to meet the requirements of the 2019 QAP.

The maximum annual amount of AHTCs that will be awarded in 2019 to owners of qualified developments shall not exceed the maximum annual amount of 9% LIHTC awarded by NIFA for 2019 (Competitive LIHTC and CRANE combined), provided that such annual amount of AHTC is only available for six years, except that any reduction in AHTC allowable in the first year of the credit period due to the calculation in Section 42(f)(2) of the Internal Revenue Code of 1986 (the “Code”) shall be allowable in the seventh year of the credit period as defined in Code Section 42(f)(1). The maximum annual allocation of AHTCs that will be awarded to any single development under either the Competitive LIHTC and CRANE programs shall be consistent

with the Maximum Allocation of LIHTCs as described in Section 8 of the 2019 LIHTC Allocation Plan for 9% LIHTCS and AHTC.

AHTC will be awarded to every applicant of qualifying developments in connection with the award of 9% LIHTC for such development.

In accordance with the Nebraska Affordable Housing Tax Credit Act (the “AHTC Act”), the amount of the AHTC shall be the amount of the LIHTC awarded for the qualifying development. Notwithstanding the foregoing, the AHTC Act provides that NIFA may not award to a particular development any combined amount of LIHTC and AHTC that is more than necessary to make the qualified development financially feasible. In determining that the combined amount of LIHTC and AHTC meet the foregoing, NIFA shall determine the amount of LIHTC and the amount of AHTC to be awarded for a qualifying development based upon the AHTC Act and the parameters of this 2019 LIHTC Allocation Plan for 9% LIHTCS and AHTCs.

## **1.2 DEVELOPMENT OF QUALIFIED ALLOCATION PLAN.**

The 2019 QAP is adopted by NIFA pursuant to a public process established by NIFA and involves input from a number of parties. The 2019 QAP consists of the following:

- a. this 2019 LIHTC Allocation Plan for 9% LIHTCs and AHTCs
- b. the 2019 4% LIHTC Allocation Plan
- c. the 2019 LIHTC, AHTC, HOME and National Housing Trust Fund Application
- d. the 2019 LIHTC, AHTC, HOME and National Housing Trust Fund Exhibit Examples
- e. the LIHTC Forms and Documents
- f. the CRANE Guidelines and Application
- g. the Carryover Allocation Procedures Manual
- h. the 10% Test Certification
- i. the Cost Certification Procedures Manual
- j. the Land Use Restriction Agreement (LURA)
- k. the LIHTC CROWN Land Use Restriction Agreement (CROWN LURA)

A public hearing on the proposed 2019 QAP was held in Lincoln, Nebraska. All comments received by NIFA were taken into consideration in developing and drafting the 2019 QAP.

The 2019 QAP was approved by the NIFA Board of Directors and forwarded to the Governor of the State of Nebraska for approval in accordance with the Section 42 Code. The 2019 QAP is designed to provide for the selection of developments that address the most pressing housing needs of Nebraska, within the guidelines and requirements of Section 42 of the Code. NIFA, in its sole discretion, reserves the right to modify or waive any conditions, which are otherwise not mandated by the Code, contained in the 2019 QAP. Modifications by NIFA may include, but are not limited to, changes which provide for better coordination with other state and federal programs and/or funding sources.

The 2019 QAP may be amended from time to time as new guidelines and regulations are issued under Section 42 of the Code, the AHTC Act or as NIFA deems necessary to meet the LIHTC and AHTC Program goals and objectives.

Persons interested in applying for an allocation of LIHTCs (which shall include AHTCs combined with LIHTC) must complete a 2019 LIHTC, AHTC, HOME and National Housing Trust Fund Application online (the “LIHTC Application”). (See the “CRANE Program Application Process and Allocation Cycles” below for LIHTCs available pursuant to the CRANE Program.) The online LIHTC Application is available at NIFA’s Internet Web site ([www.NIFA.org](http://www.NIFA.org)).

### **1.3 INELIGIBLE APPLICANTS.**

A LIHTC Application will not be considered or reviewed by NIFA:

- i. if the developer or owner is delinquent on Nebraska LIHTC fees, AHTC fees or Tax-Exempt Bond fees due and payable for other Nebraska LIHTC developments; or
- ii. if during the previous three (3) calendar years, there are or have been items of noncompliance or violations of a Land Use Restriction Agreement/Tax-Exempt Bond Regulatory Agreement that have not been corrected within the applicable correction period on any other Nebraska LIHTC development; or
- iii. if the developer or owner is delinquent on any documentation/fees or payment of TCAP Loan that are due and payable to NIFA, including but not limited to the following:
  - (a) Conditional Reservation Documentation/42(m) Letter
  - (b) Carryover Documentation
  - (c) 10% Test Documentation
  - (d) Cost Certification Documentation
  - (e) Asset Management Documentation
  - (f) TCAP Loan Repayment Amounts
  - (g) Any other documentation requested by NIFA

## **2. LIHTC FEE SCHEDULE.**

**NIFA reserves the right to revise the fee schedule from time to time.**

The following sets forth the various fees in connection with the allocation of the 9% LIHTC and AHTC. (Fees to be charged by NIFA in connection with the 4% LIHTC and the issuance of bonds are set forth in the separate 2019 4% LIHTC Allocation Plan.)

### **2.1 LIHTC APPLICATION FEES.**

**Competitive LIHTC:** A non-refundable fee equal to the greater of 1% of the annual LIHTCs requested or \$500 is due to NIFA at the earlier of submission at the Full Application-Threshold Review deadline or Final Full Application deadline each calendar year.

**CRANE LIHTC:** A non-refundable fee of \$500 is due to NIFA at the time of submission of the specific CRANE application. Additionally, a non-refundable fee equal to the greater of 1% of the annual LIHTCs requested or \$500 is due to NIFA at the submission of the Full LIHTC Application.

**AHTC:** A non-refundable fee equal to \$500 is due to NIFA at the earlier of submission at the Full Application-Threshold Review deadline or Final Full Application deadline each calendar year.

## **2.2 RESERVATION FEE.**

A non-refundable fee equal to the greater of 2% of the annual LIHTC stated in the Conditional Reservation or \$500 is due to NIFA no later than the date specified for the submission of the Conditional Reservation Documentation.

## **2.3 LATE FEE – CONDITIONAL RESERVATION DOCUMENTATION.**

A late fee of 1% of the LIHTC Conditional Reservation amount will be assessed and collected from developers/owners of developments for which the Conditional Reservation Documentation as set forth below in Section 12 is not received in NIFA’s office by the required deadline.

## **2.4 LATE FEE - CARRYOVER ALLOCATION.**

A late fee of 1% of the LIHTC Conditional Reservation amount will be assessed and collected from developers/owners of developments for which the Carryover Allocation Documentation and 10% Test certification are not received in NIFA’s office by the required deadline as set forth in the Carryover Allocation Procedures Manual.

## **2.5 ALLOCATION/COST CERTIFICATION FEE.**

**LIHTC:** A non-refundable fee equal to 2% of the annual amount of the LIHTC allocated to each development is due and payable to NIFA by the developer/owner at the time of submission of the Final Cost Certification Documentation as set forth in the Final Cost Certification Procedures Manual.

**AHTC:** A non-refundable fee equal to \$500 is due and payable to NIFA by the developer/owner at the time of submission of the Final Cost Certification Documentation as set forth in the Final Cost Certification Procedures Manual.

## **2.6 LATE FEE – COST CERTIFICATION.**

A late fee of 1% of the LIHTC amount reserved for a development will be assessed and collected from developers/owners of developments for which the Cost Certification Documentation is not received in NIFA’s office by the required deadline as set forth in the Cost Certification Procedures Manual.

## **2.7 EXTENSION FEE.**

A developer/owner may request an extension of any of the following deadlines: Conditional Reservation, Carryover Allocation, 10% Test Certification, and Final Cost Certification, if

- (a) an Extension Fee of \$500 is received in NIFA’s office on or before the applicable deadline; and

- (b) in NIFA's sole discretion, the following conditions have been satisfied.
1. A written explanation of the conditions that exist which have caused the need for the extension, along with the proposed date that information will be submitted to NIFA to meet the extended deadline.
  2. Based on the facts and circumstances, the request for an extension is reasonable.
  3. The request for an extension is submitted to NIFA on or before the deadline for the original submittal.
  4. The Extension Fee is paid concurrently with the extension request.

## **2.8 ANNUAL FEE.**

A non-refundable fee equal to the greater of 2% of the annual LIHTC allocated or \$500 minimum is due to NIFA each year during the 15-year Compliance Period for the development.

If an owner chooses the Income Averaging set-aside election (set forth in Section 9) an additional fee of one half of one percent of the annual LIHTC allocated for each year during the 15-year compliance period will be due at Final Cost Certification submission.

Example: Annual Credit Amount x .005 x 15 years = Additional Annual Fee for Income Averaging Election

In connection with the AHTC, a non-refundable fee equal to \$250 is due to NIFA each year during the 6-year Credit Period for the development. The AHTC annual fee may be paid upfront; however, there is no discount for doing so.

Owners have the option to pay the LIHTC Annual Fee upfront as part of their development budget. If an owner chooses to pay the LIHTC Annual Fee in full, the amount due for the Annual Fee will be discounted to 1.5% of the annual LIHTCs allocated multiplied by 15 years with a minimum fee of \$7,500.

Example: Annual Credit Amount x 1.5% x 15 years = Total Upfront Annual Fee for first 15 years.

If an owner elects to pay the full 15 years of the Annual Fee upfront, this should be reflected in the Development Budget within the LIHTC Application.

After the Compliance Period (e.g. during the Extended Use Period), the LIHTC Annual Fee will be payable in the amount as set forth in the Post Year-15 Monitoring Procedures.

## **2.9 LATE PAYMENT PENALTY.**

A late payment penalty equal to 5% of the Annual Fees will be charged to all accounts that are more than 30 days delinquent. Any fees not collected will be turned over to legal counsel for collection.



## **2.10 TRANSFER/ASSUMPTION FEE.**

A nonrefundable fee of \$1,500, plus attorney fees shall be assessed for changes in the ownership structure of the development or a transfer of the development to another entity.

NIFA reserves, commits and allocates LIHTCs and AHTCs to partnerships, corporations, limited liability companies and individuals. Reservations and commitments of LIHTCs and AHTCs are non-transferable, and **any change in the partners/members of the development owner or sale of the development requires NIFA's prior written approval and payment of the fee described in this Section 2.10** (e.g., addition of a third party or removal of an individual/entity listed as part of the ownership entity of the development in the LIHTC Application).

## **2.11 APPLICATION OR DOCUMENTATION CHANGE FEE.**

A non-refundable fee of \$100 an hour after the first hour of review, plus attorney fees, shall be assessed in connection with a request to amend the terms, conditions or information included in the application or other documentation submitted in connection with the request for LIHTCs and AHTCs. Such non-refundable fees shall be submitted to NIFA at the time of request for consideration of an application or documentation change.

Reservations and commitments of LIHTCs and AHTCs are non-transferable, and any change from the commitments in the application requires NIFA's prior written approval and payment of the fee described in this Section 2.11 (e.g., request for changes to commitments made in the LIHTC Application).

## **2.12 ADDITIONAL TAX CREDIT REQUEST FEE.**

A non-refundable fee of \$2,000 shall be assessed in connection with a request for additional LIHTCs and/or AHTCs. Such non-refundable fees shall be submitted to NIFA at the time of request for consideration along with the applicable documentation to demonstrate the need for the additional LIHTCs and/or AHTCs.

## **2.13 LEGAL FEES.**

Extraordinary legal fees incurred by NIFA in connection with the review of the LIHTC Application, the CRANE Application or any materials submitted in connection with the allocation, the allocation process or ongoing compliance with respect to a development will be assessed and charged to the development owner, including but not limited to the following:

- Fees for research relating to irregular situations
- Ownership agreements
- Rental rate questions
- Unusual timing situations
- Specific technical questions related to Code Section 42

### **3. SET-ASIDE PRIORITIES.**

All allocations for 9% LIHTCS will be based on special set-aside priorities, federal law and the NIFA scoring system, which incorporates various Nebraska housing priorities.

#### **(a) NON-PROFIT SET-ASIDE.**

NIFA will reserve at least ten percent (10%) of its annual 9% LIHTC authority for allocations to qualified non-profit sponsors as required by Code Section 42(h)(5). To qualify for this set-aside, the development sponsor must: (i) be a qualified nonprofit tax-exempt organization within Section 501(c)(3) or 501(c)(4) of the Code, (ii) have as one of its exempt purposes the fostering of low-income housing, (iii) own an ownership interest in the development (directly or through a wholly-owned subsidiary) and (iv) materially participate on a regular, continuous and substantial basis in the operation of the development throughout the 15-year Compliance Period applicable to the development.

Material participation in the development and operations of the development (the “Activity”), as outlined in Section 469(h) of the Code and Treasury Regulation §1.469-5T, shall be certified to NIFA on an annual basis and shall include:

- i) Participation in the Activity for more than 500 hours during the tax year;
- ii) Participation in the Activity for the tax year constitutes substantially all of the participation in the activity of all the individuals (including non-owners) for the tax year;
- iii) Participation in the Activity for more than 100 hours during the tax year and such participation in the activity is not less than the participation of any other individual (including non-owners) for the tax year;
- iv) The Activity is a “significant participation activity” for the tax year and the individual’s aggregate participation in all significant activities during the tax year exceeds 500 hours. A significant participation activity is one in which the individual has more than 100 hours of participation during the tax year, but fails to satisfy any other test for material participation;
- v) Material participation in the Activity existed for any five of the ten tax years immediately preceding the tax year in question; or
- vi) Based on all of the facts and circumstances, the individual participated in the activity on a regular, continuous and substantial basis during the tax year and at a minimum participated in such activity for more than 100 hours.

#### **(b) METRO/NON-METRO SET-ASIDE.**

Metro/Non-Metro set-aside will be as follows:

<b>Percentage of Competitive LIHTC Allocation</b>	<b>Area</b>	<b>County</b>
50% - Metro	South Sioux City MSA	(Dakota and Dixon Counties)
	Lincoln MSA	(Lancaster and Seward Counties)
	Omaha MSA	(Cass, Douglas, Sarpy, Saunders, and Washington Counties)
50% - Non-Metro	Balance of Nebraska	

Note: NIFA will use its best efforts to maintain the Metro/Non-Metro set-aside through Allocation Rounds 1 and 2 for Competitive LIHTCS.

**(c) COLLABORATIVE RESOURCES ALLOCATION FOR NEBRASKA SET-ASIDE.**

In an effort to target specific economic growth, community development and the provision of specific types of affordable housing, NIFA will set-aside up to 33% of Nebraska’s annual LIHTC authority to be allocated pursuant to the CRANE Program. All CRANE applications will be scored in accordance with this LIHTC Allocation Plan and compete against other CRANE applications. The maximum LIHTC allocation to any single development in the CRANE set-aside will be no more than 20% of Nebraska’s annual LIHTC authority. Further details regarding the CRANE Program can be found in Sections 6 and 7 herein. If the LIHTCs in the CRANE Program are not fully reserved for a particular year, the unreserved amount will be available to be allocated for other developments in accordance with this LIHTC Allocation Plan.

**4. APPLICATION FOR COMPETITIVE LIHTCs.**

**4.1 COMPETITIVE LIHTC ALLOCATION ROUNDS AND APPLICATION PROCESS.**

Allocation Rounds. NIFA expects to hold at least two (2) Allocation Rounds in connection with the allocation of the Competitive LIHTC. For a development to be eligible for review during an Allocation Round, a complete LIHTC Application and all required supporting information must be submitted to NIFA via the online funding application system by the deadline for that particular Allocation Round (both Threshold and Final). Submissions for a reservation of Competitive LIHTCs that do not include a fully completed LIHTC Application, with correctly attached Exhibits and specified application fee, will not be reviewed or scored by NIFA. The LIHTC Application is available on NIFA’s web site at [www.NIFA.org](http://www.NIFA.org).

NIFA expects to hold the following Allocation Rounds in connection with the Competitive LIHTC:

2019	Application Deadline (no later than 5:00 p.m. CST)	Competitive LIHTC Reservations Issued	Approximate Competitive LIHTCs to be Reserved*	Approximate HOME funds available through joint application process with Nebraska Department of Economic Development
Round 1 Full Application–Threshold Review:	October 5, 2018 (Optional)			
Round 1 Final Full Application:	November 9, 2018	December 14, 2018 (tentative)		Approximately \$3.5 million for 9% LIHTCs
Round 2 Full Application–Threshold Review:	January 28, 2019 (Optional)			
Round 2 Final Full Application:	March 1, 2019	April 12, 2019 (tentative)	Balance of LIHTC	Balance of HOME funds
Additional Round*				

\*NIFA reserves the right to hold additional Allocation Rounds or make changes to the above Allocation Rounds as it deems necessary to meet LIHTC Program goals and objectives.

#### 4.2 SCORING OF COMPETITIVE LIHTC APPLICATION.

The following criteria will be reviewed for purposes of scoring each LIHTC Application:

- Threshold Criteria
- Other Selection Criteria
- NIFA Scored Criteria

**NOTE:** LIHTC Applications for Competitive LIHTCs will be scored SOLELY on information provided in the online funding LIHTC Application submitted for the applicable Allocation Round deadlines. An LIHTC Application submitted for Threshold review must be resubmitted in full (whether or not changes have been made by the applicant subsequent to threshold review) by the next Final Full Application deadline in order to be considered for an allocation of LIHTCs and AHTCs. (Any documentation or information submitted for a previous deadline will not be taken into consideration for the current deadline.)

#### 5. COMPETITIVE LIHTC REVIEW AND ALLOCATION PROCESS.

NIFA will use the following process in the allocation of Competitive LIHTCs:

##### 5.1 FULL APPLICATION–THRESHOLD REVIEW.

To be considered for a reservation of Competitive LIHTCs, all documentation must be submitted through the online funding application. Only the information submitted for the current deadline will be reviewed regardless of any prior submittal of documentation. An LIHTC Application submitted for threshold review must be resubmitted in full (whether or not changes have been made by the applicant subsequent to threshold review) by the next Final Full Application deadline in order to be considered for an allocation of Competitive LIHTCs. The Competitive LIHTC Application Fee must be received in NIFA’s office on or prior to the deadline as set forth in Section 2.1 and the applicant, developer and owner (or related parties) must be current on any

fees owed to NIFA for existing or previous developments. If requesting HOME or National Affordable Housing Trust Funds, please upload an Exhibit 111 in the online application. Threshold criteria requirements are outlined in the LIHTC Application.

## **5.2 EVALUATION OF FULL APPLICATIONS–THRESHOLD REVIEW.**

- (a) Each application for Competitive LIHTCs for a particular development will be evaluated based upon the information submitted in the online LIHTC Application for the applicable Competitive Application deadline.
- (b) NIFA will communicate with development owners that do not meet the threshold criteria to generally outline deficiencies in the threshold exhibits with respect to the threshold criteria. Upon meeting the threshold criteria, the LIHTC Application for the development may proceed to the Competitive Final Full LIHTC Application deadline as set forth in Section 4.1.

## **5.3 EVALUATION OF FINAL FULL APPLICATIONS.**

- (a) Each application for Competitive LIHTCs for a particular development will be evaluated based upon the information submitted in the online LIHTC Application for the applicable Competitive Application deadline.
- (b) Developments will be ranked based upon the total number of points awarded in all criteria categories and placed into the appropriate set-aside priorities.
- (c) NIFA will conduct an initial evaluation to determine the appropriate amount, if any, of Competitive LIHTCs to be reserved, using data provided by the developer/owner and according to NIFA benchmarks and Section 42 of the Code.

## **6. CRANE PROGRAM APPLICATION PROCESS**

CRANE Application NIFA will accept CRANE Applications on an ongoing basis throughout the year. For a development to be eligible for review, a complete CRANE or LIHTC Application and all required supporting information must be submitted to NIFA via the online funding application system. Submissions for a reservation of LIHTCs for developments that do not include a fully completed LIHTC Application, with correctly attached Exhibits and specified Application Fee, will not be reviewed by NIFA. The CRANE and LIHTC Applications are available on NIFA's web site.

NIFA expects to review applications for the CRANE Program on a monthly basis.

2019	CRANE LIHTC Reservations Issued	Approximate CRANE LIHTCs to be Reserved*	Approximate HOME funds available through joint application process with Nebraska Department of Economic Development	Approximate National Housing Trust Fund available through joint application process with Nebraska Department of Economic Development
CRANE	To be determined	Approximately \$1.7 million	Approximately \$3.5 million for 9% LIHTCs	Approximately \$500,000 for CRANE

The focus and primary purpose of CRANE Program is to target specific long-term, interrelated and coordinated job creation/enhancement, economic growth, and joint housing and community development strategies. NIFA will set-aside up to 33% of Nebraska’s annual 9% LIHTC authority to be allocated pursuant to the CRANE Program (set-aside can be increased as set forth in Section 8(d)). The CRANE Program is a strategic alliance among NIFA and other collaborating resource providers. To participate in the CRANE Program, for-profit or non-profit entities (“Eligible Applicant”) must join together with cities, communities and neighborhoods and collectively demonstrate that through a public process they have assessed the needs of their particular community with respect to economic development, community resource and housing development, and have proposed specific solutions to address those needs (the “Plan”). Proposals submitted under the CRANE Program must demonstrate how current and potential employers and institutions (schools, hospitals, municipal service providers) located in the community will be involved in any proposed solutions. Such proposals shall also demonstrate the development of businesses and creation of jobs and the impact on the development of affordable housing in the area. NIFA will work with other collaborating resource providers to coordinate the various resources available for a community requesting funds for a development pursuant to the CRANE Program and identify those proposals which best demonstrate the need for LIHTC and AHTC to address the needs identified by a community.

Communities/developers interested in applying for LIHTCs through the CRANE Program must meet with NIFA staff. Eligible Applicants may apply for LIHTCs through the CRANE Program for developments that provide substantial benefit (in NIFA’s sole discretion) in one or more of the following areas:

- Housing for individuals with special needs (such as persons with serious/chronic mental illness, physical or developmental disabilities, substance abuse issues, homeless, or those experiencing severe economic distress), including housing for populations with incomes below 30% of the applicable Area Median Income (AMI). At least 30% of the units must serve individuals with special needs; or
- Native American Housing; or
- Housing developments in response to settlement agreements or consent decrees relating to housing deficiencies, housing discrimination or other housing issues; or

- Housing development located in a community with a current state or presidential disaster declaration that resulted in the loss of housing as determined by NIFA.

The CRANE Program will utilize a three-tier process. Potential CRANE Program eligible applicants must submit an email to NIFA with a brief description of the development that includes how the development is CRANE eligible. Upon review by NIFA, potential CRANE Program Eligible Applicants will be invited to submit a CRANE Application and all required supporting information via the online funding application system, along with a nonrefundable CRANE Application Fee of \$500 which must be received in NIFA's office at the time the CRANE Application is submitted to NIFA. NIFA will notify the applicant if they are CRANE eligible and if the CRANE Application has satisfied all the requirements under the CRANE Program, at which time the eligible applicant must submit a completed LIHTC Application via the online funding application system and the LIHTC Application fee must be received in NIFA's office on or prior to the time periods specified by NIFA. CRANE Applications and documentation received by NIFA will be reviewed the month following receipt. NIFA will develop a timeline to assign categorization status in which to meet the requirements under the CRANE Program. CRANE Applications will be categorized as follows:

- Category 4: Conceptual
- Category 3: Feasible
- Category 2: Information
- Category 1: Ready, in all aspects, to proceed

Developments in the CRANE Program that do not submit the online LIHTC Application, with applicable exhibits by the specified deadline, will not be reviewed or scored by NIFA. Upon satisfaction of the requirements under the LIHTC Application and the CRANE Program, NIFA will, if LIHTC's are available, issue a Conditional Reservation of 9% LIHTCs to the development.

## **7. CRANE PROGRAM REVIEW AND ALLOCATION PROCESS.**

NIFA will use the following process in the allocation of 9% LIHTC and AHTC under CRANE Program:

### **7.1 CRANE APPLICATION PHASE.**

To be considered under the CRANE Program, the CRANE Application must be completed, signed and submitted to NIFA via the online funding application along with the \$500 application fee.

### **7.2 CRANE PROGRAM – REVIEW PROCESS.**

All CRANE Program developments receiving a CRANE designation must provide to NIFA, development status reports, in a form and frequency as determined by NIFA, outlining the development's progress toward completion or satisfaction of all requirements necessary to receive a Conditional Reservation and/or Carryover Allocation of LIHTC. Information requested by NIFA will be development specific, and may include such items as zoning approvals, firm debt and/or equity financing commitments (conditioned only upon receipt of LIHTC), construction progress reports, site control documentation and cost analysis updates.

NIFA will review all CRANE Program status reports and determine, in its discretion, whether a CRANE Program development has made significant progress toward meeting the requirements to receive a Conditional Reservation of LIHTCs. If NIFA determines that significant progress has not been achieved in connection with the CRANE Program development, NIFA reserves the right to cancel or suspend the Conditional Reservation of LIHTCs. The LIHTCs reserved under the Conditional Reservation will be available to other applicants meeting the requirements under the CRANE Program.

### **7.3 LIHTC APPLICATIONS SUBMITTED BY CRANE PROGRAM APPLICANTS.**

To be considered for a conditional reservation of LIHTCs under the CRANE Program, all documentation must be submitted through the online funding application. Only the information submitted for the current cycle will be reviewed regardless of any prior cycle's submittal of documentation. If information was submitted in the first cycle, information must be resubmitted in full for each subsequent cycle, until the application has received an award. The LIHTC Application Fee must be submitted on or prior to the submittal of the online Application and the applicant, developer and owner (or related parties) must be current on any fees owed to NIFA for existing or previous developments. If requesting HOME or National Affordable Housing Trust Funds, please upload an Exhibit 111 in the online application. Threshold criteria requirements are outlined in the LIHTC Application.

### **7.4 EVALUATION OF LIHTC APPLICATIONS UNDER THE CRANE PROGRAM.**

LIHTC Applications submitted under the CRANE Program that do not meet the Threshold criteria requirements will either be suspended at NIFA's discretion or rejected without further consideration or review by NIFA.

- (a) Each application for the CRANE Program for a particular development will be evaluated based upon information submitted in the online CRANE Application and the online LIHTC Application for the applicable cycle in which it was submitted and such other information that NIFA may request or obtain in the evaluation process.
- (b) NIFA will conduct an initial evaluation to determine the appropriate amount, if any, of LIHTCs to be reserved, using data provided by the eligible applicant and according to NIFA benchmarks and Section 42 of the Code.

**NOTE:** NIFA will only review materials submitted during the applicable cycle in which it was submitted.

## **8. MAXIMUM ALLOCATION OF LIHTCs.**

- (a) The maximum LIHTC allocation to any single development in the Application Rounds for Competitive LIHTCs and in the CRANE Program set-aside will be no more than 20% of Nebraska's annual 9% LIHTC authority. No development may be divided into two or more developments to receive in excess of this limit of LIHTC in a particular year. Multiple applications in the same year determined to be a single development will be returned to the applicant and all fees forfeited.



- (b) No one owner, developer, co-developer, sponsor, any member of the development team, or an affiliate thereof with an “identity-of-interest” (excluding property management control) will be eligible to receive, for a particular allocation year, more than a total of 20% of Nebraska’s annual 9% LIHTC authority. (LIHTCs received pursuant to the CRANE Program will be added to the total LIHTC amount when determining the ratio of LIHTCs received under Nebraska’s annual 9% LIHTC authority.) An exception to this limitation may be made to ensure maximum distribution and/or effective utilization of LIHTCs as determined by NIFA’s Executive Director.
- (c) In accordance with Section 42 of the Code, each LIHTC Application will be evaluated by NIFA to determine the amount of 9% LIHTCs to be allocated for a particular development. LIHTC allocations will be limited to the amount necessary to ensure the financial feasibility of the development based on the pro-forma information submitted by the developer and such other materials as requested and deemed necessary by NIFA.
- (d) After completion of the Competitive LIHTC Round 2 process, if any, 9% LIHTCs (in either the CRANE Program or the competitive process) that have not been reserved, may be transferred either to the competitive process or to the CRANE Program upon a recommendation of the Executive Director and approval of NIFA’s Board of Directors.
- (e) For purposes of determining the amount, if any, of 9% LIHTCs to be reserved for a particular development, NIFA will limit the amount of developer/contractor overhead, profit and fees, general requirements, and consultant fees included in the eligible basis to an amount not to exceed 24% of the total eligible basis of the development.

Example:

Total Eligible Basis	
- (Builder/Contractor Overhead)	
- (Builder/Contractor Profit)	
- (General Requirements)	
- (Developer Overhead)	
- (Developer Fee)	
- (Tax Credit Consultant Fee)	
- (Real Estate Consultant Fee)	
= Adjusted Eligible Basis	
	X 24%
= Maximum amount allowable for developer, contractor overhead & profit, general requirements & consultant fees <u>includable in eligible basis for LIHTC reservation purposes</u>	

Applicants should be aware that NIFA may reduce the LIHTC allocation to achieve the range of 24% or the per square footage limits for these fees.

- (f) For purposes of determining the amount of LIHTCs allocable to a development, NIFA will limit the amount of architecture design/architect supervision/engineering/survey fees to an amount not to exceed 7% of new and/or rehabilitation of hard construction costs (not to include contractor overhead/profit or general requirements).
- (g) NIFA will limit the amount of LIHTC and AHTC allocated to Senior Developments to not more than 50% of Nebraska's annual 9% authority.

## **9. MINIMUM SET-ASIDE ELECTIONS.**

The Applicant must elect a minimum set-aside of income and rent levels from those listed below.

Any owner election made in regards to the minimum set-aside election requirement for a qualified low-income housing development cannot be changed once made at the Final Application submittal dates as outlined in Section 4. If a development fails to meet its elected minimum set-aside at the end of a year, it is not a qualified low-income housing project for that year under Section 42(g)(1)(C) of the Code and this noncompliance will be reported to the IRS on IRS Form 8823. Note, the owner may be subject to the loss of 9% LIHTCs and AHTCs.

### **9.1 20-50 ELECTION.**

At a minimum twenty percent (20%) or more of the residential units in the development are both rent- restricted and occupied by individuals whose income is fifty percent (50%) or less of area median income ("AMI"); or

### **9.2 40-60 ELECTION.**

At a minimum forty percent (40%) or more of the residential units in the development are both rent- restricted and occupied by individuals whose income is sixty percent (60%) or less of AMI; or

### **9.3 INCOME AVERAGING ELECTION.**

At a minimum forty percent (40%) or more of the residential units in the development serve households earning as much as eighty percent (80%) AMI, as long as the development's average income/rent limit is sixty percent (60%) or less of AMI.

NIFA is currently developing IA compliance and monitoring policies and will require any development electing IA to comply with such policies. Please note, that as of the date of this Allocation Plan the IRS has not issued full and definitive guidance as to how it will administer or monitor developments making the IA election. Any development that considers such an election should do so in consultation with its counsel and/or tax advisors. NIFA is not espousing or recommending any specific approach to this matter.

(a) Income Averaging Affordability Requirements

IA is only permitted if all residential units in a development are designated as low-income. Developments selecting IA may not have any unrestricted or market-rate residential units. Manager units are not subject to this restriction and are permitted in IA developments.

Income and rent levels are restricted to four (4) of the following AMI income brackets: 20% of AMI, 30% of AMI, 40% of AMI, 50% of AMI, 60% of AMI, 70% of AMI, and 80% of AMI.

(b) Multi-Building Election

If the proposed development contains more than one building, the owner must make the 8b election on Form 8609, indicating that the development will be treated as a multiple building development.

(c) Documentation Requirements

The market study submitted with the LIHTC Application, must demonstrate sufficient market demand for each AMI income bracket proposed. Equity and debt commitment letters must affirmatively demonstrate that they are based upon an IA set-aside. NIFA reserves the right to require a legal opinion verifying the ability of a development to utilize IA in combination with any other subsidy.

(d) Design Requirements

Units of similar size and configuration must have substantially similar design and be reasonably distributed throughout the building(s) regardless of the assigned AMI income bracket restriction. Owners must disperse AMI income bracket levels across unit types in a manner that does not violate fair housing laws.

(e) Timing Requirements

2019 Application submittals may select the IA election. Requests from developments that have received an LIHTC/AHTC reservation prior to 2019 and that have not submitted the Final Cost Certification may request the IA election. Such requests must be submitted in writing to NIFA. Requests will be considered at the sole discretion of NIFA only if the overall AMI rent targeting is the same as committed to in the original LIHTC Application.

Eligible applicants must select IA at the time of Final Application as indicated in Section 4. NIFA will not permit a change to IA after a development has received a Conditional Reservation of 2019 LIHTC and AHTC.

**10. DEVELOPER FEE / ACQUISITION OF EXISTING BUILDING.**

A developer fee is permitted in an amount related to the acquisition cost of an existing building that will also be rehabilitated. Such developer fee will be limited to 5% of the building acquisition costs excluding the cost of land and fees associated with the purchase or lease of the land. Acquisition cost of the existing building(s) must be supported by an appraisal from an unrelated third party and a settlement statement.

## **11. LIHTC BASIS BOOST.**

As authorized by the Housing and Economic Recovery Act of 2008 (H.R. 3221), NIFA may increase or “boost” the eligible basis of a particular development for purposes of the allocation of LIHTCs by up to 30% (“Basis Boost”) for designated buildings that are located outside of an established Qualified Census Tract (QCT) or Difficult Development Area (DDA). NIFA will review the financial feasibility of the development and the request for additional Basis Boost in accordance with this LIHTC Allocation Plan. Applicants may request the Basis Boost under the following guidelines if the Basis Boost is needed to make the development financially feasible:

- a. Up to a 15% Basis Boost in connection with any development;
- b. Up to a 20% Basis Boost in connection with developments located in non-metro areas (outside of an MSA) that have an average combined gross rent amount that would be affordable to households with an income less than 45% of the county’s Area Median Income (AMI);
- c. Up to a 30% Basis Boost in connection with CRANE developments; or
- d. Up to a 30% Basis Boost in connection with developments located in a census tract in which an active LIHTC (including 4% LIHTC) development is not located.

## **12. CONDITIONAL RESERVATION.**

Applicants determined to receive a reservation of LIHTC and AHTC in a Competitive Round or in the CRANE Program will be notified in writing and will receive a Conditional Reservation of LIHTCs and AHTCs subject to the conditions set forth in the Conditional Reservation (and as applicable to CRANE Program, the availability of LIHTCs and AHTCs under the CRANE Program).

Within 90 days of notification of a Conditional Reservation, the applicant must submit to NIFA documentation of the following:

- (a) Payment of Reservation Fee and any other fees due to NIFA (including fees due for all other developments sponsored by such applicant).
- (b) Syndication commitment (signed by both parties) outlining LIHTCs and AHTCs equity contribution commitment or terms (i.e., percentage, proceeds to be received, etc.).
- (c) A Phase I Environmental Site Assessment prepared by an unrelated third party professional. For developments for which rehabilitation will be performed, such report must include an assessment of the risks relating to environmental conditions including but not limited to lead-based paint, asbestos and radon.
- (d) Each development owner must agree to provide complete annual operating data and federal income tax returns to NIFA on a timely basis.

- (e) Firm commitments for all sources of funding (including construction and permanent sources and subsidies, if applicable). HOME funds and USDA-RD commitments will be due at the time of the Carryover Allocation submission.
- (f) A Fair Housing Certification in the form attached hereto as Exhibit A signed by the development's architect evidencing that, when constructed in accordance with the plans and specifications, the development will be in compliance with the design and construction requirements set forth in the Fair Housing Act and Americans with Disabilities Act.
- (g) Development status reports, in form and frequency as specified by NIFA, outlining the progress toward completion of the development or satisfaction of all requirements necessary to receive a Carryover Allocation Agreement or a final allocation of LIHTCs and AHTCs. The Quarterly Progress Report attached hereto as Exhibit B shall be used to submit such reports to NIFA by the 5<sup>th</sup> day following the end of each calendar quarter. Information requested by NIFA may include such items as zoning approvals, construction progress reports, site control documentation and cost analysis updates.
- (h) If the owner of the development intends to claim Historic Rehabilitation Tax Credits, NIFA will require evidence from the State Historic Preservation Office (SHPO) of the United States Department of the Interior National Park Service Part I approval of the historic rehabilitation of the development, if not previously submitted with the LIHTC Application.
- (i) Exhibit 111.
- (j) Each development owner must certify that the development will be in compliance with the Violence Against Women's Act, to include ensuring prospective applicants and tenants are provided with the Notice of Occupancy Rights Under the Violence Against Women Act.
- (k) Any other documentation required by NIFA.

**NOTE:** Failure to submit the above requirements, and/or other conditions imposed by NIFA, by the required deadline, will result in late fees and could result in the revocation of the development's Conditional Reservation of LIHTCs and AHTCs. Extensions may be requested as set forth in Section 2.7.

### **13. REVOCATION.**

NIFA may revoke a Future Binding Commitment, Conditional Reservation, Firm Commitment or LIHTC and AHTC allocation made to a developer/owner for any development. Revocation may occur at NIFA's sole discretion due to actions taken by the development's owner without NIFA's prior written approval, from the time of a Future Binding Commitment, Conditional Reservation, or Firm Commitment is issued and up to the placed-in-service date of the development, for any of the following reasons:

- (a) Site change;
- (b) Change in ownership—a change in the parties involved in the ownership entity (e.g., addition of a third party or removal of an individual/entity listed as part of the development ownership submitted in the LIHTC Application);
- (c) Change in unit design, square footage, unit mix, number of units, number of residential buildings, etc.;
- (d) Instances of curable non-compliance issues beyond the specified cure period on an applicant’s existing LIHTC developments in any state; or
- (e) Change in rents to be charged to tenants.

**14. MODIFICATION OR REVOCATION OF LIHTC AND AHTC ALLOCATION.**

NIFA may modify or revoke a LIHTC and AHTC reservation or allocation to the developer/owner of the development for any of the following reasons:

- (a) Information submitted to NIFA is determined to be false or fraudulent;
- (b) Failure to meet conditions set forth in the Conditional Reservation;
- (c) Material changes occur in the actual costs and/or square footage of the development without the prior written approval of NIFA;
- (d) Owner receives additional subsidies or financing for the development other than those disclosed in the LIHTC Application without the prior written approval of NIFA;
- (e) Subsequent regulations are issued by Department of the Treasury or the IRS pertaining to Section 42 of the Code;
- (f) Applicant fails to promptly notify NIFA of any material or adverse changes from the original LIHTC Application; or
- (g) Applicant fails to meet the Carryover Agreement, 10% Test Certification or Placed in Service deadlines.

**15. CARRYOVER ALLOCATION.**

Section 42 of the Code provides that NIFA may issue a carryover allocation (the “Carryover Allocation”) to certain qualified developments for which a 9% LIHTC reservation has been granted and which will not be placed in service by December 31, 2019. To be eligible for a Carryover Allocation costs in an amount equal to 10% or more of the expected basis in the development must be incurred within one year from the date of the Carryover Allocation.

To request a Carryover Allocation, submit **one complete copy** of the following to NIFA by the required deadline:

- (a) The Carryover Allocation Documentation as set forth in the Carryover Allocation Procedures Manual.
- (b) 10% Test certification by an independent, third-party certified public accountant or attorney that costs in an amount equal to 10% or more of the reasonably expected basis in the development determined as of the close of the second calendar year following the year in which the Conditional Reservation was made has been incurred within one year from the date of the Carryover Allocation and no later than June 28, 2020. If the developer fee is included in the 10% test, it must be earned and reasonable for the services performed to date and evidenced by an agreement (Note: amount included should not be greater than 20% of the total developer fee).
- (c) HOME fund commitment letter or USDA-RD commitment letter if applicable.

All developers/owners of developments with respect to which a Conditional Reservation has been received must submit the Carryover Allocation Documentation to NIFA no later than November 1, 2019. The 10% Test certification must be submitted to NIFA by no later than June 28, 2020. If the Carryover Allocation Documentation and 10% Test certification are not submitted to NIFA by the specified deadlines, a 1% late fee, as discussed in Section 2.4, will be assessed to the development owner. A Carryover Allocation Agreement will not be issued for a development prior to payment of all fees due and payable to NIFA.

**NOTE:** Failure to submit the Carryover Allocation Documentation and 10% Test certification by the required deadlines may result in the revocation of the Conditional Reservation. Extensions may be requested as set forth in Section 2.7.

## **16. FINAL LIHTC AND AHTC ALLOCATION / COST CERTIFICATION.**

No LIHTC and AHTC allocation will be made until the development has been placed-in-service and the developer/owner has submitted to NIFA the Final Cost Certification Documentation, as set forth in the Cost Certification Procedures Manual. Final LIHTC and AHTC allocations may be requested as soon as an eligible building has been placed in service. NIFA requires the submission of the Final Cost Certification Documentation by the deadlines set forth in the Final Cost Certification Procedures Manual. The LIHTC and AHTC amount allocated for a development will be based on NIFA's final determination of the qualified basis for the building(s) or development and a review of the development's costs.

**NOTE:** Failure to submit the Final Cost Certification Documentation by the required deadlines as set forth in the Final Cost Certification Procedures Manual will result in late fees and could result in the revocation of the LIHTC and AHTC allocation. Extensions may be requested as set forth in Section 2.7.

## **17. LIHTC AND AHTC GUIDELINES.**

Following are general guidelines of the LIHTC and AHTC Program and other set-asides. These guidelines are not conclusive and should not be relied upon as tax advice. NIFA suggests that, prior to completing the LIHTC Application and/or CRANE Application; you consult with an independent, third-party certified public accountant or attorney for a complete interpretation of Section 42 and other related tax laws in the Code. NIFA's review of documents submitted in connection with a LIHTC Application or CRANE Application is solely for its own purposes. NIFA makes no representations to the development's Owner or anyone else as to:

- (a) compliance with the Code, Treasury Regulations or any other laws or regulations governing LIHTC and AHTC; or
- (b) the financial feasibility or viability of any development.

No member, officer, agent or employee of NIFA will be personally liable concerning any matters arising out of, or in relation to, the allocation of LIHTC and AHTC. LIHTC's and AHTC's will be awarded based on federal and state tax law and Nebraska's QAP. NIFA reserves, commits and allocates LIHTCs and AHTCs to partnerships, corporations, limited liability companies. LIHTC and AHTC commitments, reservations and allocations are not transferable, and any change in development ownership requires NIFA's prior written approval. NIFA verifies development ownership through organizational documents, closing documents, warranty deeds and title reports.

NIFA reserves the right to not allocate LIHTCs and AHTCs to any development, regardless of ranking/scoring, if NIFA determines in its sole discretion that the development does not further the purpose and goals of the LIHTC and AHTC Program. For purposes of this determination, the information taken into account may include, but is not limited to, the applicant/sponsor's experience and performance and the applicant/sponsor's prior participation in the NIFA program and other states' LIHTC and AHTC programs. The prior performance considered may include, but is not limited to, progress achieved with previous Conditional Reservations, Carryover Allocations, Cost Certifications, development compliance and payment of fees due to NIFA.

NIFA reserves the right to not allocate LIHTCs and AHTCs to any development, regardless of ranking/scoring, if NIFA determines in its sole discretion that a disproportionate number of LIHTC developments have been developed in a particular census tract within the past three-year period. NIFA may decide to allocate LIHTC and AHTC to a development in another county to best serve the citizens of Nebraska. This right will be exercised only in limited circumstances, such as when LIHTC developments in a particular census tract have a vacancy rate of 7% or more, or if, when taking into account current LIHTC Applications and existing LIHTC developments and others previously approved and funded (but not yet constructed or occupied), LIHTC developments would create a disproportional number of low-income housing units in that particular area.

NIFA recognizes that certain developments may need additional subsidies to encourage the production of and ensure the viability of low-income housing developments. Under certain circumstances (particularly for smaller developments in rural areas), NIFA may agree to provide limited second mortgage financing to enable such developments to take advantages of LIHTC



available in connection with the issuance by NIFA of tax-exempt bonds. The owners of developments receiving secondary NIFA financing will be required to execute a LURA which will be recorded as a restriction binding on any successor in title to the owner (through assignment, foreclosure or an instrument in lieu of foreclosure) to agree to repay or assume the outstanding balance of such secondary financing indebtedness to NIFA as a condition to an agreement by NIFA to execute a new LURA (a new LURA is necessary for the successor in title to claim any LIHTCs remaining in connection with the development).

All information submitted to NIFA will, to the extent permitted by law, be kept confidential and will not be available to any other applicant or third party. Applicants will be given their scoring results upon request and may receive the total scoring results of the other developments on an anonymous basis.

Applicants who have been convicted of, entered an agreement for immunity from prosecution for or pleaded guilty (including a plea of no contest) to a crime of dishonesty, moral turpitude, fraud, bribery, payments of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records are ineligible to apply for LIHTCs and AHTCs. Applicants who have been barred from any other NIFA program, other state LIHTC programs or any federal programs are also ineligible to apply for LIHTCs and AHTCs. Applicants having an identity of interest with any barred entity may also not be eligible to apply for LIHTCs and AHTCs at the sole discretion of NIFA. Furthermore, NIFA reserves the right to amend or modify any of the program instructions or procedures contained within the QAP and LIHTC Application and may exercise such right at any time and without liability to any applicant or other party for their expenses incurred in the preparation of a LIHTC Application or otherwise.

As resource availability, project size, LIHTC and AHTC pricing and other circumstances warrant and to comply with the AHTC Act, NIFA reserves the right to make a disproportionate allocation of AHTC (when compared to the LIHTC award) or reduce such allocation of AHTC for a specific development at any time in the application and development process.

## **18. COMPLIANCE MONITORING.**

During the 15-year Compliance Period as set forth in the LURA, NIFA, as part of this LIHTC Allocation Plan, is required to adopt and adhere to compliance monitoring procedures which will: (i) monitor developments for noncompliance and (ii) notify the IRS of any noncompliance of which NIFA becomes aware of in accordance with Section 42(m) of the Code, Treasury Regulation §1.42-5 and any other applicable regulations. All development owners must enter into a LURA with NIFA, binding all parties to comply with Section 42 of the Code, Treasury Regulation §1.42-5 and any other applicable regulations, such as the Violence Against Women Act of 2013. Pursuant to the LURA, development owners (or the management agents thereof) are required to attend, on an annual basis, a compliance seminar sponsored by NIFA. In addition, development owners with items of noncompliance that have not been corrected in a timely fashion may be required to provide quarterly compliance reports to NIFA and may, in NIFA's sole discretion, be ineligible to receive future allocations of LIHTCs.

The following procedures outline NIFA's plans for compliance monitoring by development owners. Such procedures, together with the covenants and representations contained in the LURA (which form of LURA is part of the 2019 QAP) shall constitute the procedures for

compliance monitoring by NIFA. (Capitalized terms used below and not otherwise defined shall have the meanings as set forth in the LURA).

### **18.1 TENANT INCOME CERTIFICATIONS.**

Development owners shall maintain a file for each Qualified Tenant residing in the development (which shall be updated during each year of unit occupancy by the development owner). Each tenant file shall contain a copy of the rent record and a copy of such tenant's executed Application and Tenant Income Certification (a form of which is attached to the LURA) as well as supporting documentation, which is subject to independent investigation and verification by NIFA. Each tenant file shall be submitted to NIFA as set forth below or in such other form and manner as may be required by the applicable rules, regulations or policies now or hereafter promulgated by the Department of the Treasury or the IRS.

### **18.2 TENANT RECERTIFICATIONS FOR INCOME AVERAGING DEVELOPMENTS.**

Developments (100% low income developments) that select IA are neither required nor prohibited from completing annual tenant income recertifications. If a development chooses to perform annual tenant income recertifications household rents can be adjusted (in accordance with lease terms) provided the development still has an IA equal to or less than the percentage represented in the Final Application.

### **18.3 ANNUAL OWNER CERTIFICATIONS.**

Development owners are required to immediately notify NIFA if, at any time, the residential units in a development are not occupied or available for occupancy as provided above. Development owners shall prepare and submit, under penalty of perjury, to NIFA, no later than January 15<sup>th</sup> of each year following the first year in which the minimum set-aside is required to be met, a Certificate of Continuing Program Compliance (a form of which resides on NIFA's website at [www.nifa.org](http://www.nifa.org)) and an Annual Tax Credit Summary Report (a form of which resides on NIFA's website at [www.nifa.org](http://www.nifa.org)), both executed by the development owner stating the number of dwelling units in the development which, as of the first date of such calendar year, were occupied by Qualified Tenants (or were deemed to be occupied by Qualified Tenants as provided in the LURA for all or part of such period), together with copies of annual Certifications of Tenant Eligibility and Income Verification (and supporting documentation) and submission of Certification On-Line (COL) data collected by the development owner.

### **18.4 RECORD KEEPING AND RETENTION.**

Development owners are required to collect and retain records for each qualified low-income building in the development for at least six years after the due date (with extensions) for filing the federal income tax return for such year. Notwithstanding the above, records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for the filing of the federal income tax return for the last year of the 15-year Compliance Period of the building. Such records shall include for each year during the 15-year Compliance Period the following information pertaining to each building in the development:

- (a) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (b) The percentage of residential rental units in the building that are Qualified Units;
- (c) The rent charged on each residential rental unit in the building, including any utility allowances;
- (d) The number of occupants in each Qualified Unit and any changes in the number of occupants in each Qualified Unit;
- (e) The Qualified Unit vacancies in the building and information that indicates when, and to whom, the next available units were rented;
- (f) The annual income certification of each Qualified Tenant per Qualified Unit;
- (g) Documentation to support each Qualified Tenant's annual income certification (for example, a copy of the Qualified Tenant's federal income tax return, Forms W-2 or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is to be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, this documentation requirement is satisfied if the public housing authority provides a statement to the development owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code;
- (h) The Eligible Basis and the Qualified Basis of the building at the end of the first year of the Credit Period; and
- (i) The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

## **18.5 REVIEW PROCESS.**

For each year of the Affordability Period, NIFA will perform a compliance review on the development. Certifications and other information submitted to NIFA (as described above) shall be reviewed for compliance with the requirements of Section 42 of the Code.

## **18.6 ON-SITE INSPECTION AND TENANT FILE REVIEW.**

The LURA provides that NIFA, or its designated agent, shall have the right to perform on-site inspections of each building in the development, inspect each Qualified Unit and review the tenant file for each such Qualified Unit.

NIFA, or its designated agent, will conduct an on-site inspection of each building in the development and inspect at least 20% of the Qualified Units and review the tenant files for such Qualified Units. On-site inspections and tenant file reviews shall be conducted by the end of the second calendar year following the year in which the last building in the development was placed in service. Thereafter, NIFA, or its designated agent, will conduct on-site inspections of all buildings in the development and review the tenant files at least once every three years. NIFA shall notify each development owner in advance of any such on-site inspection and review. NIFA shall randomly select which Qualified Units and tenant records will be inspected and reviewed.

Any duly authorized representative of NIFA, the Department of the Treasury or the IRS may inspect the books and records of the development pertaining to the incomes of the Qualified Tenants residing in the development.

In conjunction with each on-site inspection, development owners must provide to NIFA, or its designated agent, any local health, safety or building code violations reports or notices received on the development. Based on the on-site inspection and NIFA's receipt and review of any local health, safety or building code violations reports or notices provided by the owner, NIFA shall determine whether each building in the development and its Qualified Units are suitable for occupancy.

#### **18.7 NOTIFICATION TO OWNER.**

In the event NIFA discovers a noncompliance issue with any of the provisions of the LURA or Section 42 of the Code, NIFA will immediately notify the development owner in writing. The development owner shall have 60 days from the issuance of such notice (the "Correction Period") to correct the noncompliance.

Noncompliance includes, but is not limited to, the following: (a) NIFA's failure to receive tenant income certifications, supporting documentation and rent records, (b) noncompliance with any provision of Section 42 of the Code and/or (c) any change in the applicable fraction or eligible basis of the development which would result in a decrease in the Qualified Basis of the development. NIFA shall be authorized and entitled, pursuant to the provisions of the LURA, to perform all acts necessary to comply with the monitoring and notification responsibilities set forth in Section 42(m)(i)(B)(iii) of the Code and any Treasury Regulations promulgated thereunder or other interpretations thereof by the IRS or the courts.

#### **18.8 NOTICE TO INTERNAL REVENUE SERVICE AND NEBRASKA DEPARTMENT OF REVENUE.**

Within 45 days after the expiration of the Correction Period, NIFA shall file with the IRS, a copy of Form 8823, setting forth the nature of the noncompliance and whether or not such noncompliance has been corrected. A copy of such Form 8823 shall also be filed with the Nebraska Department of Revenue in connection with the AHTCs allocated to an owner of a development. By submission of an application for LIHTCs, the owner shall be deemed to have agreed to such filing by NIFA with the Nebraska Department of Revenue.

## **18.9 LIABILITY AND DISCLOSURE OF INFORMATION.**

Compliance with the requirements of Section 42 of the Code is the sole responsibility of the development owner. NIFA's obligations to monitor for compliance with the requirements of Section 42 of the Code does not, and will not, make NIFA liable for a development owner's noncompliance.

All LIHTC Applications, materials, exhibits and correspondence submitted to NIFA are the property of NIFA. An agreement may be made between NIFA and any other appropriate federal or state regulatory agency to exchange such information.

## **19. NIFA CONTACT INFORMATION.**

Correspondence and inquiries should be directed to:

Nebraska Investment Finance Authority (NIFA)  
1230 O Street, Suite 200  
Lincoln, NE 68508-1402

Attention: LIHTC Program  
Telephone: (402) 434-3900  
(800) 204-NIFA  
Internet: [www.NIFA.org](http://www.NIFA.org)

## EXHIBIT A

### FAIR HOUSING ACT ACCESSIBILITY CERTIFICATION

The following is a certification regarding design and construction requirements of the Fair Housing Act (the “Act”). This certification represents many, but not all, of the requirements to the Act. This certification is not intended to be exhaustive; rather, it is a helpful guide in determining if the major requirements of the Act have been met in designing and constructing the development. **If a box below is not checked due to the applicability of an exception to the Act, the architect MUST include an explanation of the exception, including a citation to the relevant section of the Act.**

#### GENERAL REQUIREMENTS

- Development has buildings containing 4 or more units and was designed and constructed for first occupancy on or after March 13, 1991.
- If it is an elevator building, all units are “covered units.”
- All units in buildings with elevators have features required by the Act.
- If it is a non-elevator building, all ground-floor units are “covered units.”
- All ground-floor units in buildings without elevators have features required by the Act.

**NOTE:** There is a narrow exception which provides that a non-elevator building in a development need not meet all of the Act’s requirements if it is impractical to have an accessible entrance to the non-elevator building because of hilly terrain or other unusual characteristics of the site.

#### ACCESSIBLE BUILDING ENTRANCE ON AN ACCESSIBLE ROUTE

- The accessible route is a continuous, unobstructed path (no stairs) through the development that connects all buildings containing covered units and all other amenities.
- The accessible route also connects to parking lots, public streets, public sidewalks and public transportation stops.
- All slopes are no steeper than 8.33%.
- All slopes between 5% and 8.33% have handrails.
- Covered units have at least one entrance on an accessible route.

- There are sufficient curb cuts for a person using a wheelchair to reach every building in the development.

#### COMMON AND PUBLIC USE AREAS

- At least two percent of all parking spaces are designated as handicapped parking.
- At least one parking space at each common and public use amenity is designated as handicapped parking.
- All handicapped parking spaces are properly marked.
- All handicapped parking spaces are at least 96" wide with a 60" wide access aisle which can be shared between two spaces.
- The accessible aisle connects to a curb ramp and the accessible route.
- The rental or sales office is readily accessible and usable by persons with disabilities.
- All mailboxes, swimming pools, tennis courts, clubhouses, rest rooms, showers, laundry facilities, trash facilities, drinking fountains, public telephones and other common and public use amenities offered by the development are readily accessible and usable by persons with disabilities.

#### USABLE DOORS

- All doors into and through covered units and common use facilities provide a clear opening of at least 32" nominal width.
- All doors leading into common use facilities have lever door handles that do not require grasping and twisting.
- Thresholds at doors to common use facilities are no greater than 1/2".
- All primary entrance doors to covered units have lever door handles that do not require grasping and twisting.
- Thresholds at primary entrance doors to covered units are no greater than 3/4" and beveled.

#### ACCESSIBLE ROUTE INTO AND THROUGH THE COVERED UNIT

- All routes through the covered units are no less than 36" wide.

#### ACCESSIBLE ENVIRONMENTAL CONTROLS

- All light switches, electrical outlets, thermostats and other environmental controls must be no less than 15" and no greater than 48" from the floor.

REINFORCED BATHROOM WALLS FOR GRAB BARS

- Reinforcements are built into the bathroom walls surrounding toilets, showers and bathtubs for the later installation of grab bars.

USABLE KITCHENS AND BATHROOMS

- At least 30" x 48" of clear floor space at each kitchen fixture and appliance.
- At least 40" between opposing cabinets and appliances.
- At least a 60" diameter turning circle in U-shaped kitchens unless the cooktop or sink at end of U-shaped kitchen has removable cabinets beneath for knee space.
- In bathroom, at least 30" x 48" of clear floor space outside swing of bathroom door.
- Sufficient clear floor space in front of and around sink, toilet and bathtub for use by persons using wheelchairs.

Certification completed by the development architect:

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



