

NEBRASKA INVESTMENT FINANCE AUTHORITY

LOW INCOME HOUSING TAX CREDIT PROGRAM

20132 LIHTC ALLOCATION PLAN



# LOW INCOME HOUSING TAX CREDIT PROGRAM

## 201~~32~~ LIHTC Allocation Plan

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# NEBRASKA INVESTMENT FINANCE AUTHORITY

## 2013~~2~~ LIHTC ALLOCATION PLAN

### 1. INTRODUCTION

#### 1.1 AVAILABLE LOW INCOME HOUSING TAX CREDITS.

In 2013~~2~~, the Nebraska Investment Finance Authority (“NIFA”) will have approximately \$34,090,000 of Low Income Housing Tax Credits (“LIHTC”) based on the Bureau of Census Current Population Report for Nebraska multiplied by [~~\$2.2015~~] (as may be adjusted). The amount of LIHTC’s available may be increased by LIHTC returned to NIFA from prior years or LIHTC allocated to Nebraska from the 2013~~2~~ national LIHTC pool.

#### 1.2 DEVELOPMENT OF LIHTC ALLOCATION PLAN.

The 2013~~2~~ LIHTC Allocation Plan is the result of public dialogue between NIFA and a number of individuals from many parts of Nebraska, with diverse backgrounds and interests in the LIHTC Program. A public hearing on the proposed 2013~~2~~ LIHTC Package (the “LIHTC Package”) which includes the, Allocation Plan, LIHTC Application, Carryover Allocation Procedures Manual, Cost Certification Procedures Manual, LIHTC Forms and Documents and Land Use Restriction Agreement was held in Lincoln, Nebraska (the “LIHTC Program”). All comments received by NIFA were taken into consideration in developing and drafting the LIHTC Package.

The LIHTC Package was approved by the Nebraska Investment Finance Authority Board of Directors and was forwarded to the Governor of the State of Nebraska for approval. The LIHTC Package encourages the selection of developments that serve to address the most pressing housing needs of Nebraska, within the guidelines and requirements under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”). NIFA, at its sole discretion, reserves the right to modify or waive any conditions, which are otherwise not mandated by the Code, contained in the LIHTC Package. 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 LIHTC Package may be amended from time to time as new guidelines and regulations are issued under Section 42 of the Code or as NIFA deems necessary to meet the LIHTC Program goals and objectives.

Persons wishing to apply for LIHTC must complete a 2013~~2~~ LIHTC Application (the “LIHTC Application”). (See “CRANE Application and Allocation Process” below for LIHTC available pursuant to the CRANE Program.) The LIHTC Application can be obtained by contacting NIFA, or by downloading it from NIFA’s Internet Web site ([www.NIFA.org](http://www.NIFA.org)).

**2. APPLICATION FOR LIHTC**

**2.1 LIHTC ALLOCATION ROUNDS/APPLICATION PROCESS.**

Allocation Rounds. There will be at least two (2) Allocation Rounds. For a development to be eligible for review during an Allocation Round, a complete originally executed and three copies of the LIHTC Application and all required supporting information must be received by NIFA by the deadline for that Allocation Round. Developments that do not submit a complete LIHTC Application, with correctly labeled Exhibits, will not be reviewed or scored by NIFA. The LIHTC Application is available from NIFA’s web site at [www.NIFA.org](http://www.NIFA.org).

NIFA will hold the following Allocation Rounds:

<b>2013<del>2</del></b>	<b>Application Deadline (no later than 5:00 p.m. CST)</b>	<b>LIHTC Reservations Issued</b>	<b>Approximate LIHTC to be Reserved*</b>	<b>Approximate HOME funds available through joint application process with Nebraska Department of Economic Development</b>
<b>Round 1</b> Full Application– Threshold Review:	<del>February 4,</del> <u>January 9,</u> 2013 <del>2</del>			
<b>Round 1</b> Final Full Application:	<del>March 18,</del> <u>February 6,</u> 2013 <del>2</del>	<del>April 19,</del> <u>March 9,</u> 2013 <del>2</del> (tentative)	<del>Approximately 50% of Authority</del>	\$1. <del>38</del> million for Round 1 and CRANE
<b>Round 2</b> Full Application– Threshold Review:	<del>May 6,</del> <u>March 26,</u> 2013 <del>2</del>			
<b>Round 2</b> Final Full Application:	<del>June 3,</del> <u>April 23,</u> 2013 <del>2</del>	<del>June 21,</del> <u>May 11,</u> 2013 <del>2</del> (tentative)	Balance of LIHTC	Balance of HOME funds
<b>Additional Round**</b>				

~~\*In the event the Section 1602 program or similar program is approved for 2012 by the federal government, NIFA will evaluate its resources at that time and determine whether any LIHTC’s should be exchanged.~~

\*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.

LIHTC Applications that do not receive a Conditional Reservation in one Allocation Round may be carried over for consideration in a subsequent Allocation Round in the same allocation year provided that:

- (a) Applicant notifies NIFA, in writing, that it still would like the development to be considered in the next Allocation Round;
- (b) The development previously met the threshold criteria established by NIFA;
- (c) Evidence is provided to NIFA showing that site control, financing commitments and any other required time-sensitive documents for the development remain valid; and
- (d) There have been no substantial or material changes to the LIHTC Application.

## **2.2 SCORING OF 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 will be scored SOLELY on information provided in the LIHTC Application.

**NOTE:** Developments receiving financing from the United States Department of Agriculture Rural Development program must have a subsidy layering review and complete underwriting analysis before such developments will be considered eligible for LIHTC.

## **2.3 SET-ASIDE PRIORITIES.**

All Nebraska LIHTC allocations will be based on special set-asides, federal law and the NIFA scoring system, which incorporates various Nebraska housing priorities. Notwithstanding the above, developments receiving an allocation of tax-exempt bonds will not be included for purposes of determining the set-asides, or required to compete with developments not receiving tax-exempt bond financing. Tax-exempt bond financed developments will be required to meet the requirements of this Allocation Plan in order to receive an allocation of LIHTC.

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

NIFA will reserve at least ten percent (10%) of its annual LIHTC authority 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 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 development's 15-year compliance period. The non-profit entity must not have been formed for the principal purpose of competition in the non-profit set-aside.

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

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

<b>Percentage of Total 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.

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

In an effort to encourage economic growth, community development and the provision of affordable housing, NIFA will set-aside up to 33% of Nebraska's annual LIHTC authority to be allocated under the Collaborative Resources Allocation for Nebraska (the "CRANE Program"). All CRANE applications will be scored and compete against other CRANE applications. The maximum LIHTC allocation to any single development in the CRANE set-aside will be no more than 33% of Nebraska's annual LIHTC authority. Further details regarding the CRANE Program can be found at page 13. If the LIHTC's in the CRANE Program are not fully reserved, the unreserved amount will be available for all developments.

**2.4 MAXIMUM ALLOCATION OF LIHTC.**

(a) The maximum LIHTC allocation to any single development in the Allocation Rounds will be no more than 33% of Nebraska's annual LIHTC authority. No



development may be divided into two or more developments to receive more LIHTC in the same year. Multiple applications in the same year determined to be a single development will be returned to the ~~A~~applicant and all fees forfeited.

- (b) No one owner, developer, co-developer, sponsor, any member of the development ~~T~~eam, or an affiliate thereof with an “identity-of-interest” (excluding property management control) will be eligible to receive more than a total of 33% of Nebraska’s annual LIHTC authority (LIHTC received under the CRANE Program will be added to the total LIHTC amount when determining the ratio of LIHTC received under Nebraska’s annual LIHTC authority). An exception to this limitation may be made to ensure maximum distribution and/or effective utilization of LIHTC pursuant to the review and oversight of NIFA’s Executive Director. NIFA’s Executive Director also reserves the right to reduce the total percentage of LIHTC allocated to any one developer.
- (c) Each LIHTC Application will be evaluated by NIFA to determine the amount of LIHTC to be allocated to the 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 develop~~erment~~ and other materials, as NIFA may deem necessary.
- (d) After completion of the Round 2 process, if any LIHTC’s (under either the CRANE Program or the competitive process) have not been reserved, then such remaining LIHTC’s may be either transferred to the competitive process or to the CRANE Program upon recommendation of the Executive Director and approval of NIFA’s Board of Directors.
- (e) For purposes of determining the amount of LIHTC allocable to the 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. In addition, any fees calculated on eligible basis above \$125 per square foot for new construction and \$70 per square foot for rehabilitation will not be included in the allowable eligible basis amount.

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 (Limited to \$125 per square foot for new construction and \$70 per square foot for rehabilitation)

x 24%

= Maximum amount allowable for ~~D~~developer,  
~~C~~ontractor overhead & profit, ~~G~~eneral requirements & ~~C~~onsultant fees

NIFA may modify ~~the above~~ this percentage upon receipt of a written request submitted with the LIHTC Application justifying the variance. If an identity of interest exists between the developer and builder/contractor, NIFA may reduce the total amount of such fees if it deems such fees excessive. Also, developments 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 LIHTC allocable to the development, NIFA will limit the amount of architecture/engineering fees to an amount not to exceed 7% of hard construction costs (not to include contractor overhead/profit or general requirements).

## 2.5 DEVELOPER FEE / ACQUISITION OF EXISTING BUILDING

A developer fee will be allowed on 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 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.

## 2.6 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 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 measure the direct benefit of the Basis Boost to the tenants of the development when evaluating requests. Applicants may request the Basis Boost under the following guidelines~~for the following development types~~ if the Basis Boost is needed to make the development financially feasible:

- a. All developments may request up to a 15% Basis Boost:

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~~a. b. Developments located in non-metro areas (outside of an MSA); or~~

~~b. Developments with 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) may request up to a 20% Basis Boost.~~

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~~e. If a development does not meet the above criteria and can demonstrate extenuating circumstances, the applicant may request up to a 30% basis boost by providing a written narrative detailing why the boost is necessary to make the development financially feasible. NIFA will evaluate each request on a case by case basis.~~

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### **3. LIHTC FEE SCHEDULE**

NIFA reserves the right to review \ restructure the overall fee schedule.

#### **3.1 LIHTC APPLICATION FEE.**

A one time non-refundable fee equal to the greater of 1% of the annual LIHTC requested or \$500 is due to NIFA at the earlier of submission at the Full Application-Threshold Review phase or Final Full Application phase.

#### **3.2 RESERVATION/~~CARRYOVER~~ 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 at the submission of the ~~Carryover Allocation~~Conditional Reservation documentation.

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

A late fee of 1% of the LIHTC conditional reservation amount will be assessed to developments that do not submit the Conditional Reservation Documentation as set forth below in Section 4.4 by the required deadline,

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

A late fee of 1% of the LIHTC conditional reservation amount will be assessed to developments that do not submit the Carryover Allocation Documentation and 10% Test certification by the required deadline as set forth in the Carryover Allocation Procedures Manual

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

A non-refundable fee equal to 2% of the annual LIHTC allocated is due to NIFA at the time of submission of the Final Cost Certification Documentation as set forth in the Final Cost Certification Procedures Manual.

### **3.65 LATE FEE – COST CERTIFICATION**

A late fee of 1% of the LIHTC amount will be assessed to developments that do not submit the Cost Certification Documentation by the required deadline as set forth in the Cost Certification Procedures Manual.

### **3.7 EXTENSION FEE.**

An extension fee of \$500 will be assessed for each request for an extension of any of the following deadlines: Conditional Reservation, Carryover Allocation, 10% Test Certification, and Final Cost Certification.

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Extensions are in NIFA’s sole discretion and are available upon request under the following conditions:

1. A written explanation of why the extension is needed, along with the proposed date that the information will be submitted to NIFA.
2. Based on the facts and circumstances, the request for an extension is reasonable.
3. The request for an extension is submitted to NIFA prior to the deadline for the original submittal.
4. The Extension Fee is paid

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### **3.86 ANNUAL FEE.**

A non-refundable fee equal to the greater of 2% of the annual LIHTC allocated or \$500- is due to NIFA each year of the development’s Compliance Period, which may be reduced at the discretion of NIFA’s Executive Director.

Owners have the option to pay the Annual Fee for each year of the first 15 years upfront as part of their development budget. If an **O**wner chooses to pay the Annual Fee in full for the first 15 years, the Annual Fee will be discounted to 1.5% of the annual LIHTC 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 **O**wner 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 first 15 years, the Annual Fee will be payable as set forth in the Post Year-15 Monitoring Procedures.

### **3.97 LATE PAYMENT PENALTY.**

A late payment penalty equal to 5% of the Annual Fee 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. A LIHTC Application will not be considered by NIFA if the developer or owner of any development has any delinquent fees due or if there are items of substantial noncompliance on any other developments.

### **3.108 TRANSFER/ASSUMPTION FEE.**

A nonrefundable fee of ¼ of 1% of the development's qualified basis may be assessed, at NIFA's discretion, for changes in the ownership structure of the development.

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

### **3.119 LEGAL FEES.**

Extraordinary legal fees incurred by NIFA with respect to the 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

## **4. LIHTC REVIEW AND ALLOCATION PROCESS**

NIFA will use the following process in the allocation of LIHTC:

### **4.1 FULL APPLICATION–THRESHOLD REVIEW.**

To be considered for LIHTC, the **entire** original LIHTC Application plus three (3) copies must be completed, signed and accompanied by the nonrefundable LIHTC Application Fee as set forth in Section 3.1 **and all Development Team members must be current on any fees owed to NIFA for existing or previously awarded developments.** The LIHTC Application must meet all threshold criteria to qualify for the Final Full Application Round. Threshold criteria will require, among other things that the LIHTC Application ~~contain evidence~~ **provide documentation** of the following:

- Architectural Plans
- Site control

- Financing commitments
- Zoning approval
- Affirmative Marketing Plan
- Owner's willingness to enter into a Land-Use Restriction Agreement
- Market study
- Capital Needs Assessment for rehabilitation developments
- Pre-notification of chief executive officer.

#### 4.2 EVALUATION OF FULL APPLICATIONS—THRESHOLD REVIEW.

- Each development will be evaluated based upon the information submitted in its LIHTC Application for the Application Round and such other information as requested by NIFA.
- NIFA will communicate with development ~~O~~wners that do not meet the threshold criteria to provide guidance in how to meet the threshold criteria. Upon meeting the threshold criteria the development can proceed to the Final Full LIHTC Application Round as set forth in Section 2.1.

#### 4.3 EVALUATION OF FINAL FULL APPLICATIONS.

- Each development will be evaluated based upon information submitted in its LIHTC Application and such other information as requested by NIFA.
- Developments will be ranked based upon the total number of points awarded in all criteria categories and placed into the appropriate set-aside priorities.
- NIFA will conduct an initial evaluation to determine the appropriate amount of LIHTC to be reserved, using data provided by the ~~O~~wner and according to NIFA benchmarks and Section 42 of the Code.

#### 4.4 CONDITIONAL RESERVATION.

Successful LIHTC applicants will be notified in writing and receive a Conditional Reservation of LIHTC subject to the conditions set forth in the Conditional Reservation.

Within 90 days of notification of a Conditional Reservation, the development ~~O~~wner must ~~satisfy~~submit to NIFA documentation of the following~~that the following elements of construction and/or rehabilitation have been obtained or completed:~~

- Payment of ~~all~~Reservation Fees and any other fees due ~~to~~ NIFA (including fees from all other developments sponsored by such applicant).
- Syndication commitment (signed by both parties) outlining LIHTC equity contribution commitment or terms (i.e., percentage, proceeds to be received, etc.).
- Updated cost figures (firm bids at minimum, contracts preferred).

- ~~(d) Executed organizational documents of the partnership or ownership entity of the development.~~
- ~~(e) Ownership of the site as evidenced by a recorded warranty deed.~~
- (df) A Phase I Environmental Site Assessment prepared by an unrelated third party professional. For rehabilitation developments such report must include an assessment of the risks relating to lead-based paint, asbestos and radon.
- ~~(g) Executed IRS Form 8821 (Tax Information Authorization Form) for the sharing of information between NIFA and the IRS. Each development will be required to execute a new Form 8821 every 3 years.~~
- (eh) Each development owner must agree to provide complete annual operating data and federal income tax returns to NIFA on a timely basis.
- ~~(i) Certification from an appropriate city official with jurisdiction over the development or from the local Department of Energy that the development meets the local energy conservation code.~~
- ~~(j) Provide to NIFA development status reports, in form and frequency as determined by NIFA, outlining the development's progress towards completion or satisfaction of all requirements necessary to receive a Carryover Allocation Agreement or a final allocation of LIHTC. Information requested by NIFA, may include such items as zoning approvals, construction progress reports, site control documentation and cost analysis updates.~~
- (fk) Firm commitments for all sources of funding (including construction and permanent sources and subsidies, if applicable).
- (gl) ~~Owner of a new construction development must submit a~~ Fair Housing Certification in the form ~~as set forth in attached hereto as~~ Exhibit A signed by the development's Architect certifying that the development will be constructed in compliance with the design and construction requirements set forth in the Fair Housing Act and Americans with Disabilities Act.
- (h) Provide to NIFA development status reports, in form and frequency as determined by NIFA, outlining the development's progress towards completion or satisfaction of all requirements necessary to receive a Carryover Allocation Agreement or a final allocation of LIHTC. The Quarterly Progress Report attached hereto as Exhibit B should be utilized 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.

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- (mi) If the proposed development intends to utilize 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.
- (n) ~~If points are requested under Exhibit 302 (“Supportive Services”) of the LIHTC Application, submit an executed supportive service agreement with a qualified supportive services provider memorializing the terms of the plan submitted with the LIHTC Application.~~
- (ej) Any other documentation required by NIFA.

**NOTE:** Failure to meet the above requirements and/or other conditions imposed by NIFA, in its sole discretion, within the designated time frame will result in the termination of the development’s Conditional Reservation of LIHTC. Extensions are in NIFA’s sole discretion and are available upon request under the following conditions:

1. A written explanation of why the extension is needed, along with the proposed date that the information will be submitted to NIFA.
2. Based on the facts and circumstances, the request for an extension is reasonable.
3. The request for an extension is submitted to NIFA prior to the 90-day deadline.
4. The Extension Fee is paid

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#### 4.5 FIRM COMMITMENT.

Upon satisfaction of the conditions under the Conditional Reservation, NIFA will re-evaluate the LIHTC needs of the development to determine if any changes are warranted and then issue a Firm Commitment, subject to receipt of the following:

- (a) Execution of any disclaimers and other documents as required by NIFA;
- (b) Receipt of all fees due NIFA;
- (c) Firmness of terms for construction and permanent financing; and
- (d) Receipt of plans and specifications that are in conformance with the applicable local energy conservation code, the Fair Housing Amendments Act of 1988 (Pub. L. 100-430) (if applicable) and Americans with Disabilities Act (P.L. 101-336); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

#### 4.6 REVOCATION.



NIFA may revoke a Future Binding Commitment, ~~a~~ Conditional Reservation, Firm Commitment or ~~a~~ LIHTC allocation for any development. Revocation may occur at NIFA's sole discretion due to actions taken by the development Owner, without NIFA's prior written approval~~-,~~ from the time a Future Binding Commitment, Conditional Reservation, or Firm Commitment are 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 named as part of the ownership entity in the LIHTC Application);
- (c) Change in unit design, square footage, unit mix, number of units, number of 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 charged to tenants.

#### **4.7 MODIFICATION OR DENIAL OF LIHTC ALLOCATION.**

NIFA may modify or deny the amount of LIHTC allocated to the development for any of the following reasons:

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

(g) Applicant fails to meet the 10% Test Certification or Placed in Service deadline.

#### 4.8 CARRYOVER ALLOCATION.

Section 42 of the Code provides that NIFA may issue a carryover allocation (the “Carryover Allocation”) to certain qualified developments, which will not be placed in service by December 31, 2012~~2013~~. This provision requires that 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 **two complete copies** of the following to NIFA by the required deadline:

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- (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 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 by June 30, 2014~~within one year from the date of the Carryover Allocation~~. 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.)

All developments receiving a Conditional Reservation must submit the Carryover Allocation Documentation to NIFA by no later than November 1, 201~~32~~<sup>3</sup>. The 10% Test certification must be submitted to NIFA no later than June 30, 201~~43~~<sup>3</sup>. 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 3.3, will be assessed to the development ~~O~~owner. A Carryover Allocation Agreement will not be issued to 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 3.7.

#### 4.9 FINAL LIHTC ALLOCATION/COST CERTIFICATION.

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

**NOTE:** Failure to submit the Final Cost Certification Documentation by the required deadlines set forth in the Final Cost Certification Procedures Manual may result in late fees or the revocation of the LIHTC allocation. Extensions may

~~be requested as set forth in Section 3.7. Under extreme circumstances the development Owner may submit a written request to NIFA for an extension of time in which to submit the Final Cost Certification Documentation.~~

## **5. CRANE PROGRAM APPLICATION AND ALLOCATION PROCESS.**

In an effort to encourage economic growth, community development and the provision of affordable housing, NIFA will set-aside up to 33% of Nebraska's annual LIHTC authority to be allocated pursuant to the CRANE Program (set-aside can be increased as set forth in Section 2.4(e)). The CRANE Program is a strategic alliance between NIFA and other collaborating resource providers. The focus and primary purpose of the CRANE Program is to provide targeted resources to eligible applicants (communities, for profits and non-profits which have joined together) who are able to demonstrate that, through a public process, they have assessed the needs of their particular community with respect to economic development, housing development, community development, special needs populations (i.e., people with mental or physical disabilities) and have identified specific solutions to address those needs. 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 to address the needs identified by a community.

Communities/developers wishing to apply for LIHTC through the CRANE Program must meet with NIFA staff to determine eligibility, and if determined by NIFA to be eligible, complete a CRANE Program application ("CRANE Application"). CRANE Applications may be obtained by contacting NIFA, or downloading the application from the NIFA website ([www.NIFA.org](http://www.NIFA.org)). Developments eligible to apply for LIHTC through the CRANE PROGRAM include the following:

- (a) Developments that provide substantial benefit in one or more of the following areas:
  - Housing for individuals with special needs (such as physical or mental disabilities, substance abuse issues, homeless, or those experiencing severe economic distress), including housing for distressed populations with incomes below 30% of the applicable Area Median Income (AMI);
    - i. Housing for adults with serious mental illness or physical disabilities shall have a priority within each category described below
    - ii. Senior housing is considered special needs housing ONLY if the ~~project~~ development serves households with incomes below 30% of the applicable AMI.

iii. At least 25% of the units must serve individuals with special needs.

- Preservation of an existing affordable housing projectdevelopment that includes an ongoing project-based rental subsidy established under USDA, HUD, or other federal or state program;

OR

A rehabilitation or new construction projectdevelopment that creates a significant, ongoing project-based rental subsidy that is funded by Owner contributions or by a federal or state program.

The structural soundness and financial viability of such projectdevelopments will be evaluated by NIFA and participating funding partners when determining eligibility under the CRANE Program.

- Native American Housing;
- Housing developments response to judicial findings (or settlement agreements or consent decrees) relating to housing deficiencies, housing discrimination or other housing issues; or
- Housing developments that are part of a neighborhood redevelopment plan (which plan has been approved by appropriate city or county authorities) for which there is a significant and material public investment that also include a minimum of 10% market rate units.
- A 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 two-tier process. CRANE Program applicants must submit a complete originally executed and three copies of the CRANE Application with tabbed indexes for each exhibit in the CRANE Application, including the CRANE Application Fee of \$500. NIFA will accept CRANE Applications monthly by the close of the first business day thereof. NIFA will notify the applicant when its CRANE Application has been accepted and 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: In formation
- Category 1: Ready, in all aspects, to proceed (Under contract)

NIFA will notify the applicant when its CRANE Application has satisfied all the categorization status requirements under the CRANE Program, at which time the applicant must submit an

original and three copies of a completed LIHTC Application and the LIHTC Application fee less the \$500 CRANE Application fee within the time periods specified by NIFA. Developments under the CRANE Program that do not submit an original and three copies of the LIHTC Application, with tabbed exhibits by the specified deadline will not be reviewed or scored by NIFA. Upon satisfaction of the requirements under the LIHTC Application, NIFA will issue a Conditional Reservation of LIHTC to the development.

**5.12 MAXIMUM ALLOCATION OF LIHTC UNDER THE CRANE PROGRAM.**

- (a) The maximum LIHTC allocation to any single development in the CRANE set-aside will be no more than 33% of Nebraska’s annual LIHTC authority.
- (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 more than 33% of Nebraska’s annual LIHTC authority (LIHTC received under the CRANE Program will be added to the total LIHTC amount when determining the ratio of LIHTC received under Nebraska’s annual LIHTC authority). An exception to this limitation may be made to ensure maximum distribution and/or effective utilization of LIHTC pursuant to the review and oversight of NIFA’s Executive Director. NIFA’s Executive Director also reserves the right to reduce the total percentage of LIHTC allocated to any one developer.
- (c) Each CRANE Application will be evaluated by NIFA to determine the amount of LIHTC to be allocated to the 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 development and other materials, as NIFA may deem necessary.
- (d) For purposes of determining the amount of LIHTC allocable to a development, NIFA will limit the 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. In addition, any fees calculated on eligible basis above \$125 per square foot for new construction and \$70 per square foot for rehabilitation will not be included in the allowable eligible basis amount.

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 (Limited to \$125 per square foot for new construction and \$70 per square foot for rehabilitation)

x 24%

= Maximum allowable for Developer,  
Contractor overhead & profit, General requirements, & Consultant fees

NIFA may modify this percentage upon receipt of a written request submitted with the LIHTC Application justifying the variance. If an identity of interest exists between the developer and builder/contractor, NIFA may reduce the total amount of such fees if it deems such fees excessive. Also, developments 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.

- (e) For purposes of determining the amount of LIHTC allocable to the development, NIFA will limit the amount of architecture/engineering fees to an amount not to exceed 7% of hard construction costs (not to include contractor overhead/profit or general requirements).

**Developer Fee/Acquisition of Existing Building.** A developer fee will be allowed on 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 of the land. Acquisition costs of existing structure(s) must be supported by an appraisal from an unrelated third party and a settlement statement.

### 5.23 LIHTC BASIS BOOST UNDER THE CRANE PROGRAM

As authorized by the Housing and Economic Recovery Act of 2008 (H.R. 3221), NIFA may increase or “boost” the eligible basis 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 measure the direct benefit of the Basis Boost to the tenants of the development when evaluating requests.

CRANE applicants may request ~~the~~up to a 30% Basis Boost for the following development types if the Basis Boost is needed to make the development financially feasible:

- a. Developments located in non-metro areas (outside of an MSA); or

- b. Developments with 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. If a development does not meet the above criteria and can demonstrate extenuating circumstances, the applicant may request up to a 30% basis boost by providing a written narrative detailing why the boost is necessary to make the development financially feasible. NIFA will evaluate each request on a case-by-case basis.

## **6. CRANE PROGRAM FEE SCHEDULE**

### **6.1 CRANE APPLICATION FEE.**

A non-refundable fee of \$500 is due to NIFA at the time of the submission of the CRANE Application.

### **6.2 LIHTC APPLICATION FEE**

A one time non-refundable fee equal to the greater of 1% of the annual LIHTC requested or \$500 is due to NIFA at the submission of the Full LIHTC Application. The LIHTC CRANE Application Fee of \$500 will be credited to the LIHTC Application Fee amount.

### **6.3 ~~RESERVATION/CARRYOVER~~ 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 at the submission of the ~~Carryover Allocation~~Conditional Reservation documentation.

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

A late fee of 1% of the LIHTC conditional reservation amount will be assessed to developments that do not submit the Conditional Reservation Documentation as set forth below in Section 7.5 by the required deadline.

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

A late fee of 1% of the LIHTC conditional reservation amount will be assessed to developments that do not submit the Carryover Allocation Documentation and 10% Test certification by the required deadlines set forth in the Carryover Allocation Procedures Manual

### **~~6.65~~ ALLOCATION/COST CERTIFICATION FEE.**

A non-refundable fee equal to 2% of the annual LIHTC allocated is due to NIFA at the time of submission of the Final Cost Certification Documentation as set forth in the Final Cost Certification Procedures Manual.

## **6.76 LATE FEE – COST CERTIFICATION**

A late fee of 1% of the LIHTC amount will be assessed to developments that do not submit the Cost Certification Documentation by the required deadline set forth in the Cost Certification Procedures Manual.

## **6.87 EXTENSION FEE.**

An extension fee of \$500 will be assessed for each request for an extension of any of the following deadlines: Conditional Reservation, Carryover, 10% Test Certification, and Final Cost Certification.

Extensions are in NIFA’s sole discretion and are available upon request under the following conditions:

1. A written explanation of why the extension is needed, along with the proposed date that the information will be submitted to NIFA.
2. Based on the facts and circumstances, the request for an extension is reasonable.
3. The request for an extension is submitted to NIFA prior to the deadline for the original submittal.
4. The Extension Fee is paid

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## **6.9 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 of the development’s Compliance Period, which may be reduced at the discretion of NIFA’s Executive Director.

Owners have the option to pay the Annual Fee for each year of the first 15 years upfront as part of their development budget. If an Owner chooses to pay- the Annual Fee in full for the first 15 years, the fee will be discounted to 1.5% of the annual LIHTC allocated multiplied by 15 years with a minimum 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 first 15 years, the Annual Fee will be payable as set forth in the Post Year-15 Monitoring Procedures.



**6.810 LATE PAYMENT PENALTY FEE.**

A late payment penalty equal to 5% of the Annual Fee 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. A LIHTC Application will not be considered by NIFA if the developer or owner of any development has any delinquent fees due or if there are items of substantial noncompliance on any other developments.

**6.119 TRANSFER/ASSUMPTION FEE.**

A nonrefundable fee of ¼ of 1% of the development's qualified basis may be assessed, at NIFA's discretion, for changes in the ownership structure of the development.

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

**6.120 LEGAL FEES.**

Extraordinary legal fees incurred by NIFA with respect to the 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

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

**7.1 CRANE APPLICATION PHASE.**

To be considered under the CRANE Program, the CRANE Application must be completed, signed and submitted to NIFA.

**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 LIHTC. If NIFA determines that significant progress has not been achieved by CRANE Program development, NIFA reserves the right to cancel or suspend the Conditional Reservation of LIHTC. The LIHTC reserved under the Conditional Reservation will be available to other applicants meeting the requirements under the CRANE Program. To the extent of available resources, CRANE Program developments with a suspended Conditional Reservation may be eligible for a preference in a subsequent year's CRANE Program resources.

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

LIHTC Applications submitted under the CRANE Program must be completed and signed. The CRANE Program applicants must meet all threshold criteria specified in the LIHTC Application. Threshold criteria will require, among other things that the LIHTC Application contain evidence of the following:

- Architectural Plans
- Site control
- Financing commitments
- Zoning approval or evidence of material progress toward obtaining zoning approval
- Affirmative Marketing Plan
- Evidence of consistency with the documented housing needs of the community
- Owner's willingness to enter into a Land-Use Restriction Agreement
- Market study
- Capital Needs Assessment for rehabilitation developments

### **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 CRANE Program development will be evaluated based upon information submitted in the CRANE Application and the LIHTC Application 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 of LIHTC to be reserved, using data provided by the applicant and according to NIFA benchmarks and Section 42 of the Code.

**NOTE:** NIFA will only review materials submitted during the appropriate CRANE Program deadline.

## 7.5 CONDITIONAL RESERVATION.

Successful CRANE Program LIHTC applicants will be notified in writing and will receive a Conditional Reservation of LIHTC subject to conditions set forth in the Conditional Reservation and the availability of LIHTC under the CRANE Program.

Within the time period specified by NIFA in the Conditional Reservation, the CRANE Program applicant must ~~satisfy~~submit to NIFA documentation of the following~~that the following elements of construction and/or rehabilitation process have been obtained or completed:~~

- (a) Payment of ~~a~~Reservation Fee and any other fees due to NIFA (including fees from all other developments sponsored by such applicant).
- (b) Syndication commitment (signed by both parties) outlining LIHTC equity contribution commitment or terms (i.e., percentage, proceeds received).
- (c) Updated cost figures (firm bids at minimum, contracts preferred).
- ~~(d) Executed organizational documents of the partnership or ownership entity of the development.~~
- ~~(e) Ownership of the site as evidenced by a warranty deed.~~
- ~~(f) A Phase I Environmental Site Assessment prepared by an unrelated third party professional. For rehabilitation developments such report must include an assessment of the risks relating to lead-based paint, asbestos and radon.~~
- ~~(g) Executed IRS Form 8821 (Tax Information Authorization Form) for the sharing of information between NIFA and the Internal Revenue Service ("IRS"). Each development owner will be required to execute a new Form 8821 every 3 years.~~
- ~~(h) Each CRANE Program owner must agree to provide complete annual operating data and federal income tax returns to NIFA on a timely basis.~~
- ~~(i) Certification from an appropriate city official with jurisdiction over the development or certification from the local Department of Energy must be submitted which states whether the development in the CRANE Program meets the local energy conservation code.~~
- ~~(j) Provide to NIFA development status reports, in form and frequency as determined by NIFA, outlining the development's progress towards completion or satisfaction of all requirements necessary to receive a Carryover Allocation of LIHTC. Information requested by NIFA and may include such items as zoning approvals, construction progress reports, site control documentation and cost analysis updates.~~
- (kf) Firm commitments for all sources of funding (including construction and permanent sources and subsidies, if applicable).

- ~~(lg)~~ ~~Owner of a new construction development must submit a~~ Fair Housing Certification in the form ~~set forth in attached hereto as~~ Exhibit A ~~hereto~~ signed by the development's Architect certifying that the development will be constructed in compliance with the design and construction requirements set forth in the Fair Housing Act and Americans with Disabilities Act.
- ~~(mh)~~ Provide to NIFA development status reports, in form and frequency as determined by NIFA, outlining the development's progress towards completion or satisfaction of all requirements necessary to receive a Carryover Allocation Agreement or a final allocation of LIHTC. The Quarterly Progress Report attached hereto as Exhibit B should be utilized to submit 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.
- (i) If the proposed development intends to utilize 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.
- ~~(n)~~ ~~If Supportive Service are to be provided to tenants as set forth in Exhibit 302 of the LIHTC Application, submit an executed supportive service agreement with a qualified supportive services provider memorializing the terms of the plan submitted with the LIHTC Application.~~
- ~~(oj)~~ Any other documentation required by NIFA.

**NOTE:** Failure to meet the above requirements, and/or other conditions imposed by NIFA in its sole discretion within the designated time frame will result in the termination of the development's Conditional Reservation of LIHTC. Extensions are in NIFA's sole discretion and are available upon request under the following conditions:

1. A written explanation of why an extension is needed, along with the proposed date that the information will be submitted to NIFA.
2. Based on the facts and circumstances, the request for an extension is reasonable.
3. The request for an extension is submitted to NIFA prior to the 90-day deadline.
4. The Extension Fee is paid

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## **7.6 FIRM COMMITMENT.**

Upon satisfaction of the conditions to the Conditional Reservation, NIFA will reevaluate the LIHTC needs of the CRANE Program development to determine if any changes are warranted and then issue a firm commitment, subject to the following:

- (a) Execution of any disclaimers and other documents required by NIFA.
- (b) Receipt of all fees due NIFA.
- (c) Confirmation of firmness of terms for construction and permanent financing.
- (d) Receipt of plans and specifications that are in conformance with the applicable local energy conservation code, the Fair Housing Amendments Act of 1988 (Pub. L. 100-430) (if applicable) and Americans with Disabilities Act (P.L. 101-336); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

## **7.7 REVOCATION.**

NIFA may revoke a Conditional Reservation, Firm Commitment or LIHTC allocation for any development. Revocation may occur at NIFA's sole discretion due to actions taken by the development's ~~Owner~~ Owner without NIFA's prior written approval from the time of a Conditional Reservation, Firm Commitment 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 by the CRANE Program applicant in its LIHTC Application or CRANE Application);
- (c) Change in unit design, square footage, unit mix, number of units, number of residential buildings, etc.;
- (e) Instances of curable non-compliance issues beyond the specified cure period on an applicant's existing LIHTC developments in any state; or
- (f) Change in rents charged to tenants.

## **7.8 MODIFICATION OR DENIAL OF LIHTC ALLOCATION.**

NIFA may modify or deny the amount of LIHTC allocated to a CRANE Program development for any of the following reasons:

- (a) Information submitted to NIFA is determined to be 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) Development receives additional subsidies or financing other than those disclosed in the LIHTC Application or CRANE Application without the written approval of NIFA;
- (e) Subsequent regulations are issued by Department of the Treasury or the IRS pertaining to Section 42 of the Code; or
- (f) CRANE Applicant fails to promptly notify NIFA of any material or adverse changes in either the original LIHTC Application or CRANE Application.

## 7.9 CARRYOVER ALLOCATION.

Section 42 of the Code provides that NIFA may issue a carryover allocation (“Carryover Allocation”) to certain qualified developments, which will not be placed in service by December 31, 2012~~2013~~. This provision requires that 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 two complete copies 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 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 by June 30, 2014~~within one year from the date of the Carryover Allocation~~. 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 (should not be greater than 20% of the total developer fee).

All developments receiving a Conditional Reservation must submit the Carryover Allocation Documentation to NIFA by November 1, 201~~3~~<sup>2</sup>. The 10% Test certification must be submitted to NIFA no later than June 30, 201~~4~~<sup>3</sup>. 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 3.3, will be assessed to the development ~~O~~owner. A Carryover Allocation Agreement will not be issued to 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 6.8.

## 7.10 FINAL LIHTC ALLOCATION / COST CERTIFICATION.

No LIHTC allocation will be made until the development has been placed-in-service and submission of the Final Cost Certification Documentation, as set forth in the Cost Certification Procedures Manual, to NIFA. Final LIHTC 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 amount allocated to the development is based on NIFA's final determination of the qualified basis for the building 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 may result in late fees or the revocation of the LIHTC allocation. Extensions may be requested as set forth in Section 6.8. ~~Under extreme circumstances the development Owner may submit a written request to NIFA for an extension of time in which to submit the Final Cost Certification Documentation.~~

## 8. LIHTC GUIDELINES

Following are general guidelines of the LIHTC Program including the CRANE Program and all 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 the tax law and Section 42 of 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 Owner or anyone else as to:

- (a) compliance with the Code, Treasury Regulations or any other laws or regulations governing LIHTC; 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. LIHTC's will be awarded based on federal tax law and Nebraska's LIHTC Allocation Plan. NIFA reserves, commits and allocates LIHTC to partnerships, corporations, limited liability companies and individuals. LIHTC 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 LIHTC 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 Program. For purposes of this determination, the information taken into account may include, but is not limited to, comments from officials of local governmental jurisdictions, the applicant/sponsor's experience and performance and the applicant/sponsor's prior dealings with NIFA and other states' LIHTC 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 ~~monitoring~~ fees due to NIFA.

NIFA reserves the right not to allocate LIHTC 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 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 adding current LIHTC Applications to 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 Land Use Restriction Agreement (“LURA”) which will be recorded as a restriction running with the land, requiring 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 LIHTC remaining on the development).

All information submitted to NIFA will 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 LIHTC. Applicants who have been barred from any other NIFA program, other state LIHTC programs or any federal programs are also ineligible to apply for LIHTC. Applicants having an identity of interest with any barred entity may also not be eligible to apply for LIHTC at the sole discretion of NIFA. Furthermore, NIFA reserves the right to amend, modify or withdraw its request for proposals and any of the program instructions or procedures contained within the LIHTC Application and may exercise such right at any time without notice and without liability to any applicant or other party for their expenses incurred in the preparation of a LIHTC Application or otherwise.

## **9. COMPLIANCE MONITORING**

During the 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. 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 LIHTC.

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 incorporated in this LIHTC Allocation Plan by reference) 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).

### **9.1 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 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.

### **9.2 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 met, a Certificate of Continuing Program Compliance (a form of which is attached to the LURA) and an Annual Tax Credit Summary Report (a form of which is attached to the LURA), 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.

### **9.3 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 LIHTC 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 Compliance Period of the building. Such records shall include for each year during the 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 ~~Tax~~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).

#### **9.4 REVIEW PROCESS.**

For each year of the Compliance 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.

## **9.5 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 all local health, safety or building code violations reports or notices, NIFA shall determine whether each building in the development and its Qualified Units are suitable for occupancy.

## **9.6 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.

## **9.7 NOTICE TO INTERNAL REVENUE SERVICE.**

Within 45 days after the expiration of the Correction Period, NIFA shall file with the IRS, a copy of Form 8823, explaining the nature of the noncompliance and whether or not such noncompliance has been corrected.

**9.8 LIABILITY.**

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 CRANE Applications and 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 regulatory agency to exchange such information.

Correspondence and inquiries should be directed to:

Nebraska Investment Finance Authority (NIFA)  
Suite 200  
1230 O Street  
Lincoln, NE 68508-1402  
Attention: LIHTC Program  
Telephone: (402) 434-3900  
(800) 204-NIFA  
Facsimile: (402) 434-3921  
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:

By \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

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