

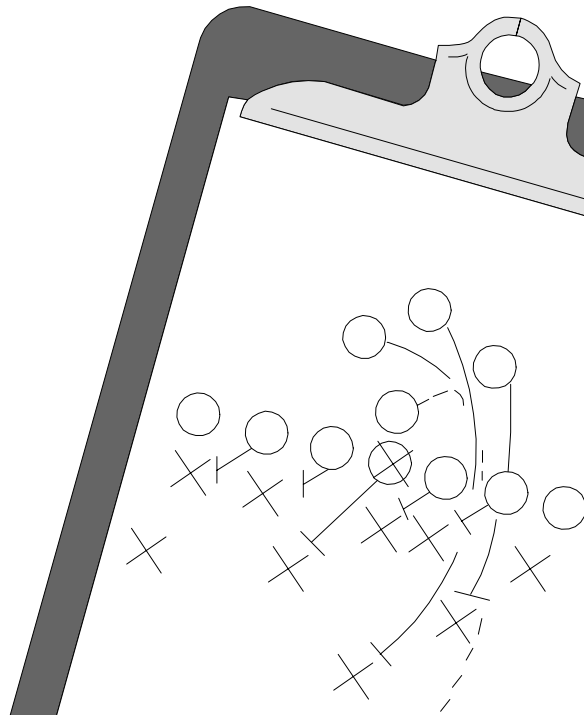
## II.

NEBRASKA INVESTMENT FINANCE AUTHORITY  
(NIFA)

LOW INCOME HOUSING TAX CREDIT PROGRAM

ALLOCATION PLAN

2004



# LOW INCOME HOUSING TAX CREDIT PROGRAM

## 2004 Allocation Plan

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# **NEBRASKA INVESTMENT FINANCE AUTHORITY 2004 LIHTC ALLOCATION PLAN**

## **AVAILABLE LOW INCOME HOUSING TAX CREDITS**

The Nebraska Investment Finance Authority (“NIFA”) has approximately \$2,900,000 of Low Income Housing Tax Credits (“LIHTC”) available for the calendar year 2004. This amount is based on the Bureau of Census Current Population Report for Nebraska multiplied by \$1.75 and indexed as determined by the Internal Revenue Service (“IRS”). This amount may be increased by LIHTC returned to NIFA from prior years or LIHTC allocated to Nebraska from the 2004 national LIHTC pool.

## **DEVELOPMENT OF ALLOCATION PLAN**

The 2004 Allocation Plan was drafted and then reviewed by several work groups consisting of individuals from many parts of Nebraska, with diverse backgrounds and interests in the LIHTC Program (the “LIHTC Program”). Public hearings on the LIHTC Package (the “Package”) which includes the Information Guide, Allocation Plan, Application Form, Carryover Manual, Cost Certification Manual, and Land Use Restriction Agreement were held in Lincoln, Nebraska. Suggestions and comments were accepted from those attending and from those who responded via U.S. mail. Comments were taken into consideration in developing and drafting the final allocation plan.

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. Nebraska’s Allocation Plan encourages the selection of developments that serve to address the most pressing housing needs of Nebraska, within the guidelines and requirements established 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 to the LIHTC Package, 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 may allow for better coordination with other state and federal programs and/or funding sources.

The Allocation Plan, LIHTC Forms and Documents, NIFA Manuals and Guidelines 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 the 2004 NIFA LIHTC application (the “LIHTC Application”). (See “CRANE Application and Allocation Process” below for LIHTC available pursuant to the CRANE Program.) LIHTC Applications may be obtained by contacting NIFA, or downloading the application from the NIFA Internet Web site ([www.NIFA.org](http://www.NIFA.org)).

## LIHTC ALLOCATION ROUNDS/APPLICATION PROCESS

Applicants may apply to receive a reservation of LIHTC by submitting a LIHTC Application. NIFA must receive an original and two copies of the completed LIHTC Application with tabbed indexes for each exhibit as set forth in the LIHTC Application, including all applicable fees, by 5:00 p.m. (central time) on the dates specified below. Applicants who do not submit an original and two copies of the LIHTC Application, with tabbed indexes, will not be reviewed or scored by NIFA. NIFA will hold the following rounds to accept LIHTC Applications:

<b>2004</b>	<b>LIHTC Application Round Opens</b>	<b>Deadline</b>	<b>LIHTC Reservations Issued</b>	<b>Approximate Amount of LIHTC Reserved</b>
Round 1:	September 22, 2003	October 3, 2003	October, 2003*	\$750,000
Round 2:	December 29, 2003	January 30, 2004	February, 2004	\$750,000
Round 3:	March 22, 2004	April 02, 2004	April, 2004	Balance of LIHTC
Round 4:	(If necessary)—to be determined by NIFA**			

\*A future binding commitment of 2004 LIHTC will be issued at this time.

\*\*NIFA may create additional rounds or make changes to the above rounds if necessary to meet LIHTC Program goals and objectives.

LIHTC Applications that do not receive a LIHTC Conditional Reservation in any given round (other than the final round) will be considered in the following 2004 round if:

- (a) Applicant notifies NIFA, in writing, that it still would like the development to be considered for LIHTC;
- (b) The development meets or exceeds the minimum threshold criteria established by NIFA;
- (c) Evidence is provided to NIFA showing that site control, financing commitments and any other required time-sensitive documents remain valid; and

- (d) There have been no substantial or material changes to the LIHTC Application.

## SCORING

NIFA will take the following into account when scoring LIHTC Applications:

- Threshold Criteria
- Other Selection Criteria
- NIFA Scored Criteria

**NOTE:** All Assisted Living Developments will be subject to the same requirements and restriction as all other LIHTC Applications.

**NOTE:** All 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.

## NEBRASKA LIHTC SET-ASIDE PRIORITIES

All Nebraska LIHTC allocations will be based on special set-asides, federal law and the NIFA scoring system, which incorporates the various Nebraska housing priorities. Notwithstanding the above, developments receiving an allocation of tax-exempt bonds will not be included in 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.

**NON-PROFIT SET-ASIDE.** Ten percent (10%) of Nebraska's LIHTC allocation, as required by Code Section 42(h)(5), must be reserved for qualified nonprofit sponsors. To qualify for this set-aside category, 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 an exempt purpose the fostering low-income housing, (iii) own an interest in the development (directly or through a partnership) and (iv) materially participate on a regular, continuous and substantial basis in the development and operation of the development throughout the compliance period. The non-profit must not have been formed for the principal purpose of competition in the nonprofit set-aside.

**METRO/NON-METRO SET-ASIDE.** Metro/Non-Metro distribution will be as follows:

**Percentage of Total  
LIHTC**

<u>Allocation</u>	<u>Area</u>	<u>County</u>
Metro 50%	Lincoln MSA	(Lancaster County)
	Omaha MSA	(Douglas, Washington, Cass and Sarpy Counties)
	South Sioux City MSA	(Dakota County)
Non-Metro 50%	Balance of Nebraska	

The foregoing set-asides are only available to LIHTC Applications submitted for the first and second rounds. Any funds remaining in the set-asides after allocations for the first and second rounds may become part of the general pool and allocated thereunder, modified at the discretion of NIFA’s Executive Director.

**COLLABORATIVE RESOURCES ALLIANCE 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 \$1,000,000 of Nebraska’s LIHTC cap to be allocated under the Collaborative Resources Alliance for Nebraska (the “CRANE Program”). All CRANE applications will be scored and ranked against all other CRANE applications only. Further details regarding the CRANE Program can be found at page 11. Amounts of the LIHTC cap set aside for the CRANE Program may be allocated to the general pool if not allocated under CRANE.

**MAXIMUM ALLOCATION OF LIHTC**

- (a) The maximum LIHTC allocation granted to any single development will be \$600,000. 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 sender and all fees forfeited.
- (b) No one developer, sponsor or party with an identity of interest (excluding property management control) will be eligible to receive Conditional Reservations for more than an aggregate of 34% of NIFA’s annual LIHTC cap (LIHTC received under the CRANE Program will be added to the aggregate LIHTC amount when determining the ratio of LIHTC received under the LIHTC cap). 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 aggregate percentage of LIHTC that any one developer may receive.

- (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 applicant and other materials, as NIFA may deem necessary.
- (d) In the event that LIHTC are returned to NIFA in a manner that requires NIFA to reallocate the LIHTC during the same calendar year, NIFA shall reserve the returned LIHTC for the CRANE Program set-aside
- (e) Each development will be subject to a LIHTC allocation limit based upon LIHTC requested per unit, per bedroom, per occupant or per other measurements NIFA believes most reasonable to use in the allocation of LIHTC among applicants. For purposes of determining the amount of LIHTC allocable to a development, NIFA may limit the developer/contractor overhead, profit fees and consultant fees included in the eligible basis of an amount not to exceed 20% of total eligible basis of the development.

Example:

Total Eligible Basis	
- Builder/Contractor Overhead	
- Builder/Contractor Profit	
- Developer Overhead	
- Developer Fee	
- Tax Credit Consultant Fee	
- Real Estate Consultant Fee	
= Adjusted Eligible Basis	
	<u>x 20%</u>
=	<u>Maximum allowable for Developer, Contractor overhead &amp; profit, &amp; Consultant fees</u>

If the developer fee and the builder/contractor overhead and profit and consultant fees exceed the maximum amount of 20%, the applicant must provide a written explanation detailing the reasons for the increase. Acceptance of such written explanation is at NIFA’s sole discretion. When 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, applicants should be aware that NIFA may reduce the LIHTC allocation to achieve the range of 20% for these fees.

**Contractor.** If a developer of a development *does not* have an in-house staff to construct the development, it is assumed that an intermediary will be hired to perform services as the general

contractor. Among other things, a general contractor may shield the developer of the development from the liabilities of construction. In most cases, the general contractor awards subcontracts to other contractors to facilitate the completion of the development and becomes the clearinghouse for the subcontractor's work.

**NOTE:** If the developer of the development does not have an in-house staff to construct the development, NIFA will not allow the developer of the development to take any contractor overhead and profit fees.

**Developer Fee/Acquisition of Existing Building.** A developer fee will be allowed on the acquisition cost of an existing building that is to be rehabilitated. The 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.

## **LIHTC FEE SCHEDULE**

**LIHTC APPLICATION FEE.** A nonrefundable fee equal to the greater of 1% of the annual LIHTC requested or \$500.

**RESERVATION/COMMITMENT FEE.** A nonrefundable fee equal to the greater of 2% of the annual LIHTC requested or \$500. This fee is due prior to consideration for a formal commitment.

**ALLOCATION FEE.** A nonrefundable fee equal to two percent of the annual LIHTC allocated. A late fee of 1% of the LIHTC amount will be assessed on any development that does not meet the November 1 deadline for carryover.

**ANNUAL FEE.** A nonrefundable fee equal to two percent (2%) of the annual LIHTC allocated with a \$500 minimum (due each year of the development's Compliance Period), which may be reduced at the discretion of NIFA's Executive Director.

**LATE FEE.** There will be a late payment penalty of 5% of the fee assessed for all accounts more than 30 days delinquent. Any fee not collected will be turned over to legal counsel for collection. An application will be not considered by NIFA for LIHTC if the developer or owner of the development has any delinquent fees due or if there are items of substantial noncompliance.

**TRANSFER/ASSUMPTION FEE.** A nonrefundable fee of one fourth of 1% of the development's qualified basis may be assessed, at NIFA's discretion, if the development is transferred to new owners with a different identity of interest.

**NOTE:** 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 ownership requires NIFA's prior written approval** (e.g., addition of a third party or removal of an individual/entity names as part of the ownership entity in the LIHTC Application).

**NOTE:** The transfer/assumption fee will not be assessed to developments changing from one entity type to another entity type if such transfer is to a new entity that is owned or controlled by the transferor.

**LEGAL FEES.** All extraordinary legal fees incurred by NIFA will be assessed and charged for payment against the development owner/developer, 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

## **LIHTC REVIEW AND ALLOCATION PROCESS**

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

1. **LIHTC APPLICATION PHASE.** To be considered for LIHTC, the LIHTC Application must be completed, signed and accompanied by the nonrefundable LIHTC Application Fee. The LIHTC Application must meet all threshold criteria. Threshold criteria will require, among other things, that the LIHTC Application contain evidence of:
  - Site control (options/purchase contracts must be valid for 90 days beyond the submitted application deadline)
  - Financing commitments (commitments must be valid for 6 months beyond the submitted application deadline)
  - Zoning approval or evidence of material progress toward obtaining zoning approval
  - Evidence of consistency with the documented housing needs of the community
  - Owner's willingness to enter into a land-use restriction agreement
  - Comprehensive market study (market study must be dated within one year of the submitted application deadline)
2. **EVALUATION OF LIHTC APPLICATIONS.** LIHTC Applications not meeting the threshold criteria requirements will be rejected without further consideration or review by NIFA.

- (a) Each development will be evaluated based upon information submitted in its LIHTC Application and such other information as requested by NIFA or obtain in the evaluation process.
- (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 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 round. NIFA will not contact any applicant during the review process.

- 3. **CONDITIONAL RESERVATION.** Successful LIHTC applicants will be notified in writing and receive a Conditional Reservation of LIHTC subject to conditions imposed by NIFA.
- 4. **COMMITMENT.** Within 60 days of notification of a Conditional Reservation of LIHTC, the development owner/developer must satisfy to NIFA that the following elements of the construction and/or rehabilitation process have been obtained or completed:
  - (a) Payment of all fees due NIFA (including fees from all other developments sponsored by such applicant).
  - (b) Signed documentation evidencing construction, interim and permanent financing arrangements.
  - (c) Syndication commitment (signed by both parties) outlining LIHTC equity contribution commitment or terms (i.e., percentage, proceeds to be received, etc.).
  - (d) Updated cost figures (firm bids at minimum, contracts preferred).
  - (e) Executed organization documents of the partnership or ownership entity of the development.
  - (f) Ownership of the site as evidenced by a warranty deed.
  - (g) An Environmental Assessment conducted by an unrelated third party. For rehabilitation developments such report must include an assessment of the risks relating to lead-based paint, asbestos and radon.
  - (h) Execution of IRS Form 8821 (Tax Information Authorization Form) for the sharing of information between NIFA and the IRS. Each development owner will be required to execute a new Form 8821 every 3 years. Form 8821 must be from

the development owner to NIFA and list the following on the respective line items:

3(a): Income;

3(b): (i) Partnership or LLC—Form 1065;

(ii) Individual—Form 1040; or

(iii) Corporation—Form 1120;

3(c): Current year and next two years; and

3(d): Any related federal income tax information pertaining to LIHTC, including audit findings and assessments.

- (i) Each development owner must agree to provide complete annual operating data and federal income tax returns to NIFA on a timely basis.
- (j) Certification from an appropriate city official with jurisdiction over the development or from the local Department of Energy that the building(s) meet the local energy conservation code.
- (k) All developments receiving a Conditional Reservation must provide to NIFA development status reports, in a 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 or a final 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.
- (l) Firm commitments for all sources of funding (including both permanent sources and subsidies, if applicable).
- (m) Fair Housing Certification in the form set forth in Exhibit A hereto signed by the development's Architect certifying that the development's plans and specifications conform with the Fair Housing Act and Americans with Disabilities Act.
- (n) If the proposed development intends to utilize Historic Rehabilitation Tax Credits, NIFA will require evidence from the State Historic Preservation Officer (SHPO) of the United States Department of the Interior National Park Service Part I approval of the historic rehabilitation of the development.

- (o) If a point was requested under Exhibit 301 (“Supportive Services”) to the LIHTC Application, an executed supportive service agreement with a qualified supportive services provider memorializing the terms of the plan submitted with the LIHTC Application.

**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 loss of the development’s Conditional Reservation of LIHTC.

5. **FIRM COMMITMENT.** Upon receipt of the above, NIFA will reevaluate 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;
  - (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); and
  
6. **REVOCAION.** Possible revocation of a Conditional Reservation or LIHTC allocation for actions taken by the development owner without prior NIFA approval may occur from the time of a Conditional Reservation up to the placed-in-service date of the development, for, but not limited to, 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 syndication structure and/or terms;
  - (d) Change in unit design, square footage, unit mix, number of units, number of buildings, etc. (unless changes are required by local regulatory codes);
  - (e) Instances of curable noncompliance beyond the specified cure period on an applicant’s existing LIHTC developments in any state; or
  - (f) Change in rents charged to tenants.
  
7. **CHANGE IN OR DENIAL OF LIHTC ALLOCATION.** In accordance with Code Section 42, these evaluations may result in a possible change in the amount of LIHTC allocated to the development or denial of the total LIHTC allocation altogether, due to, but not limited to, one or more of the following reasons:
  - (a) Information in the LIHTC Application is determined to be fraudulent;
  - (b) Conditions in the Conditional Reservation are not met;

- (c) Material and substantial changes in the actual costs and/or square footage of the development;
- (d) Applicant obtains additional subsidies or financing other than those disclosed in the LIHTC Application;
- (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 in the original LIHTC Application.

8. **CARRYOVER ALLOCATION.** Section 42 of the Code provides that NIFA may issue a carryover allocation (“Carryover Allocation”) to certain qualified buildings, which will not be placed in service by December 31, 2004. This provision requires that 10% or more of the expected basis in the development (including land) must be incurred by either (i) the end of 2004 for developments receiving a LIHTC allocation prior to June 30, 2004 or (ii) six months from the date of the LIHTC allocation for developments receiving a LIHTC allocation after June 30, 2004 (the “10% Test”). **The 10% Test must be certified by an independent, third-party certified public accountant or attorney and received in NIFA’s office no later than November 1, 2004 or, in the case of a development receiving an allocation after June 30, 2004, no later than five months from receipt of the LIHTC allocation.** If the 10% Test certification is not received by NIFA by the specified deadlines, a 1% late fee will be assessed. A Carryover Allocation will not be issued to a development prior to payment of all assessed fees. Please note that, even if the date by which the 10% Test must be satisfied falls after November 1, 2004, all other materials required in connection with the issuance of a Carryover Allocation (including, but not limited to, submission of a complete and executed Carryover Allocation Agreement) must be provided by November 1, 2004.

At this time, NIFA will issue a Carryover Allocation if the following have been provided:

- (a) Addresses for each building for which LIHTC are issued; and
- (b) 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 LIHTC allocation was made has been incurred by either (i) the end of 2004 for developments receiving a LIHTC allocation prior to June 30, 2004 or (ii) six months from the date of the LIHTC allocation for developments receiving a LIHTC allocation after June 30, 2004. Carryover cost certification must be submitted on approved NIFA forms no later than the deadlines specified above. If the developer fee is included in the carryover basis, it must be earned and reasonable for the services performed to date and evidenced by an agreement.

**NOTE:** Failure to submit the Carryover Allocation within the designated time frames may result in the loss of the LIHTCs.

9. **FINAL LIHTC ALLOCATION.** No LIHTC allocation will be made until a building or development is placed-in-service, the line item expenditures of the total development costs have been certified by an independent, third-party certified public accountant or attorney and submitted on approved NIFA forms, and all applicable LIHTC fees have been received by NIFA.

Final LIHTC allocations may be requested as soon as an eligible building is placed in service. NIFA requires the submission of an independent, third-party certified public accountant or attorney costs certification no later than 60 days after the completion of 100% of the LIHTC set-aside units in the development. The LIHTC amount allocated to a 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 within the designated time frame may result in the loss of LIHTC's. 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.

10. **SUPPORTING DOCUMENTATION.** As specifically stated in the Carryover Allocation Procedures Manual and the Cost Certification Procedures Manual, NIFA reserves the right to request documentation supporting any cost certification if it determines, in its sole discretion, that such information is necessary to effectuate the allocation of LIHTC.

## **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 \$1,000,000 of Nebraska's LIHTC cap to be allocated pursuant to the CRANE Program. 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 shall 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 complete a CRANE Program application (“CRANE Application”). CRANE Applications may be obtained by contacting NIFA, or downloading the application from the NIFA Internet web site ([www.NIFA.org](http://www.NIFA.org)).

The CRANE Program will utilize a two-tier process. CRANE Program applicants must submit one original and two copies of the CRANE Application with tabbed indexes for each exhibit in the CRANE Application, including all applicable fees. 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 satisfied the categorization status requirements under the CRANE Program, at which time the applicant must submit an original and two copies of a completed LIHTC Application within the time periods specified by NIFA. Developments under the CRANE Program that do not submit an original and two copies of the LIHTC Application, with tabbed indexes, 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 tentative reservation of LIHTC (“Tentative Reservation”) to the development.

## **MAXIMUM ALLOCATION OF LIHTC UNDER THE CRANE PROGRAM**

- (a) Subject to available LIHTC, there is no specific maximum LIHTC allocation that may be awarded to any single CRANE Program development.
- (b) No one developer, sponsor or party with an identity of interest (excluding property management control) will be eligible to receive Tentative Reservations for more than an aggregate of 34% of NIFA’s annual LIHTC cap (LIHTC received under the CRANE Program will be added to the aggregate LIHTC amount when determining the ratio of LIHTC received under the LIHTC cap). 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 aggregate percentage of LIHTC that any one developer may receive.
- (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 applicant and other materials, as NIFA may deem necessary.
- (d) Each CRANE Program applicant will be subject to a LIHTC allocation limit based upon LIHTC requested per unit, per bedroom, per occupant or per other measurements NIFA believes most reasonable to use in the allocation of LIHTC



among applicants. For purposes of determining the amount of LIHTC allocable to a development, NIFA may limit the developer/contractor overhead, profit fees and consultant fees included in the eligible basis of an amount not to exceed 20% of total eligible basis of the development.

Example: Total Eligible Basis

- Builder/Contractor Overhead
- Builder/Contractor Profit
- Developer Overhead
- Developer Fee
- Tax Credit Consultant Fee- Real Estate Consultant Fee= Adjusted Eligible Basis

x 20%

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

If the developer fee and the builder/contractor overhead and profit exceed the maximum amount of 20%, the CRANE Program applicant must provide a written explanation outlining the reasons for the increase. Acceptance of such written explanation is at NIFA's sole discretion. When an identity of interest exists between the developer and builder/contractor, NIFA may reduce the total amount of such fees where it deems the fees excessive. Also, CRANE Program applicants should be aware that NIFA may reduce the LIHTC allocation to achieve the range of 20% for these fees.

**Contractor.** If a CRANE Program developer *does not* have an in-house staff to construct the development, it is assumed that an intermediary will be hired to perform services as the general contractor. Among other things, a general contractor may shield the CRANE Program developer from the liabilities of construction. In most cases, the general contractor awards subcontracts to other contractors to facilitate the completion of the development and becomes the clearinghouse for the subcontractor's work.

**NOTE:** If the CRANE Program developer does not have an in-house staff to construct the development, NIFA will not allow the CRANE Program developer to take any contractor overhead and profit fees.

**Developer Fee/Acquisition of Existing Building.** A developer fee will be allowed on the acquisition cost of an existing building that is to be rehabilitated. The 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.

## **CRANE PROGRAM FEE SCHEDULE**

**LIHTC APPLICATION FEE.** A nonrefundable fee of \$500.

**RESERVATION/COMMITMENT FEE.** A nonrefundable fee equal to the greater of 2% of the annual LIHTC requested or \$500. This fee is due prior to consideration for a formal commitment.

**ALLOCATION FEE.** A nonrefundable fee equal to 2% of the annual LIHTC allocated. A late fee of 1% of the LIHTC amount will be assessed on any development that does not meet the November 1 deadline for carryover.

**ANNUAL FEE.** A nonrefundable fee equal to 2% of the annual LIHTC allocated with a \$500 minimum (due each year of the development's Compliance Period), which may be reduced at the discretion of NIFA's Executive Director.

**LATE FEE.** There will be a late payment penalty of 5% of the fee assessed for all accounts more than 30 days delinquent. Any fee not collected will be turned over to legal counsel for collection. An application will be not considered by NIFA for LIHTC if the developer or owner of the CRANE Program development has any delinquent fees due or if there are items of substantial noncompliance.

**TRANSFER/ASSUMPTION FEE.** A nonrefundable fee of one fourth of 1% of the development's qualified basis may be assessed, at NIFA's discretion, if the CRANE Program is transferred to new owners with a different identity of interest.

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

**NOTE:** The transfer/assumption fee will not pertain to developments changing from one entity to another when such transfer is to a new entity that is owned or controlled by the transferor.

**LEGAL FEES.** All extraordinary legal fees incurred by NIFA will be assessed and charged to for payment against the CRANE Program owner/developer, 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

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

NIFA will use the following process in the allocation of LIHTC under the CRANE Program:

1. **CRANE APPLICATION PHASE.** To be considered under the CRANE Program, the CRANE Application must be completed, signed and submitted to NIFA.
2. **TENTATIVE RESERVATION PHASE.** Successful CRANE Program applicants will be notified, in writing by NIFA, and receive a Tentative Reservation of LIHTC.

All CRANE Program developments receiving a Tentative Reservation 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 Tentative Reservation of LIHTC. The LIHTC reserved under the Tentative 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 Tentative Reservation may be eligible for a preference in the subsequent year's CRANE Program resources.

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:

- Site control (options/contracts to purchase must be valid for 90 days beyond the submitted application deadline)
- Financing commitments (commitments must be valid for 6 months beyond the submitted application deadline)
- Zoning approval or evidence of material progress toward obtaining zoning approval
- Evidence of consistency with the documented housing needs of the community
- Owner's willingness to enter into a land-use restriction agreement
- Comprehensive market study (market study must be dated within one year of the submitted application deadline).

4. **EVALUATION OF LIHTC APPLICATIONS UNDER THE CRANE PROGRAM.** LIHTC Applications submitted under the CRANE Program not meeting the threshold criteria requirements will be either 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.

5. **CONDITIONAL RESERVATION.** Successful CRANE Program LIHTC applicants will be notified in writing and will receive a Conditional Reservation of LIHTC subject to conditions imposed by NIFA and the availability of LIHTC under the CRANE Program.

6. **COMMITMENT.** Within the time period specified by NIFA in the notification of a Conditional Reservation of LIHTC, the CRANE Program applicant must satisfy to NIFA that the following elements of the construction and/or rehabilitation process have been obtained or completed:

- (a) Payment of all fees due NIFA (including fees from all other developments sponsored by such applicant).
- (b) Signed documentation evidencing construction, interim and permanent financing arrangements.
- (c) Syndication commitment (signed by both parties) outlining LIHTC equity contribution commitment or terms (i.e., percentage, proceeds received).
- (d) Updated cost figures (firm bids at minimum, contracts preferred).

- (e) Executed organizational documents of the partnership or ownership entity of the development.
- (f) Ownership of the site as evidenced by a warranty deed.
- (g) An Environmental Assessment conducted by an unrelated third party. For rehabilitation developments such report must include an assessment of the risks relating to lead-based paint, asbestos and radon.
- (h) Execution of 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. Form 8821 must be from the CRANE Program owner to NIFA and list the following on the respective line items:
  - 3(a): Income;
  - 3(b): (i) Partnership or LLC—Form 1065;  
(ii) Individual—Form 1040; or  
(iii) Corporation—Form 1120;
  - 3(c): Current year and next two years; and
  - 3(d): Any related federal income tax information pertaining to LIHTC, including audit findings and assessments.
- (i) Each CRANE Program owner/developer must agree to provide complete annual operating data and federal income tax returns to NIFA on a timely basis.
- (j) 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 residential building(s) in the CRANE Program meets the local energy conservation code.
- (k) All CRANE Program developments receiving a Conditional Reservation must provide to NIFA development status reports, in a 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 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.

- (l) Firm commitments for all sources of funding (including both permanent sources and subsidies, if applicable).
- (m) Fair Housing Certification in the form set forth in Exhibit A hereto signed by the development's Architect certifying that the development's plans and specifications conform with the Fair Housing Act and Americans with Disabilities Act.
- (n) If the proposed development intends to utilize Historic Rehabilitation Tax Credits, NIFA will require evidence from the State Historic Preservation Officer (SHPO) of the United States Department of the Interior National Park Service Part I approval of the historic rehabilitation of the development.
- (o) If a point was requested under Exhibit 301 ("Supportive Services") to the LIHTC Application, an executed supportive service agreement with a qualified supportive services provider memorializing the terms of the plan submitted with the LIHTC Application.

**NOTE:** Failure to meet the above requirements, and/or other conditions imposed by NIFA in its sole discretion within the designated time frame may result in the loss of the development's Conditional Reservation of LIHTC.

7. **FIRM COMMITMENT.** Upon receipt of the above, 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).
- (e) Receipt of the Fair Housing Certification in the form set forth in Exhibit A hereto signed by the development's Architect certifying that the development's plans and specifications conform with the Fair Housing Act and Americans with Disabilities Act.

8. **REVOCATION.** Possible revocation of a Tentative/Conditional Reservation or LIHTC allocation for actions taken by the CRANE Program development owner without prior

NIFA approval may occur from the time of a Tentative/Conditional Reservation up to the placed-in-service date, for, but not limited to, 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 submitted by the CRANE Program applicant in its LIHTC Application or CRANE Application);
- (c) Change in syndication structure and/or terms;
- (d) Change in unit design, square footage, unit mix, number of units, number of residential buildings, etc. (unless changes are required by local regulatory codes);
- (e) Instances of curable noncompliance beyond the specified cure period on an applicant’s existing LIHTC developments in any state; or
- (f) Change in rents charged to tenants.

9. **CHANGE IN OR DENIAL OF LIHTC ALLOCATION.** In accordance with Code Section 42, these evaluations may result in a possible change in the amount of LIHTC allocated to a CRANE Program development or denial of the total LIHTC allocation altogether, due to, but not limited, to one or more of the following reasons:

- (a) Information submitted by the CRANE Program applicant in its LIHTC Application or CRANE Application is determined to be fraudulent;
- (b) Conditions in the Tentative/Conditional Reservation are not met;
- (c) Material and substantial changes occur in the actual costs and/or square footage of the development;
- (d) Applicant obtains additional subsidies or financing other than those disclosed in the LIHTC Application or CRANE Application;
- (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.

10. **CARRYOVER ALLOCATION.** Section 42 of the Code provides that NIFA may issue a carryover allocation (“Carryover Allocation”) to certain qualified buildings, which will not be placed in service by December 31, 2004. This provision requires that 10% or more of the expected basis in the development (including land) must be incurred by either (i)

the end of 2004 for developments receiving a LIHTC allocation prior to June 30, 2004 or (ii) six months from the date of the LIHTC allocation for developments receiving a LIHTC allocation after June 30, 2004 (the "10% Test"). **The 10% Test must be certified by an independent, third-party certified public accountant or attorney and received in NIFA's office no later than November 1, 2004 or, in the case of a development receiving an allocation after June 30, 2004, no later than five months from receipt of the LIHTC allocation.** If the 10% Test certification is not received by NIFA by the specified deadlines, a 1% late fee will be assessed. A Carryover Allocation will not be issued to a development prior to payment of all assessed fees. Please note that, even if the date by which the 10% Test must be satisfied falls after November 1, 2004, all other materials required in connection with the issuance of a Carryover Allocation (including, but not limited to, submission of a complete and executed Carryover Allocation Agreement) must be provided by November 1, 2004.

At this time, NIFA will issue a Carryover Allocation if the following have been provided:

- (a) Addresses for each building for which LIHTC are issued; and
- (b) 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 LIHTC allocation was made has been incurred by either (i) the end of 2004 for developments receiving a LIHTC allocation prior to June 30, 2004 or (ii) six months from the date of the LIHTC allocation for developments receiving a LIHTC allocation after June 30, 2004. Carryover cost certification must be submitted on approved NIFA forms no later than the deadlines specified above. If the developer fee is included in the carryover basis, it must be earned and reasonable for the services performed to date and evidenced by an agreement.

**NOTE:** Failure to submit the Carryover Allocation within the designated time frames may result in the loss of the LIHTC's.

11. **FINAL LIHTC ALLOCATION.** No LIHTC allocation will be made until a residential building or development is placed in service, the line item expenditures of the total development costs have been certified by an independent, third-party certified public accountant or attorney and submitted on approved NIFA forms, and all applicable LIHTC fees have been received by NIFA

Final LIHTC allocations may be requested as soon as an eligible building is placed in service. NIFA requires the submission of an independent, third-party certified public accountant or attorney costs certification no later than 60 days after the completion of 100% of the LIHTC set-aside units in the development. The LIHTC amount allocated to a development is based on NIFA's final determination of the qualified basis for the building or development and a review of the development costs.



**NOTE:** Failure to submit the Final Cost Certification within the designated time frame may result in the loss of LIHTC. 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.

12. **SUPPORTING DOCUMENTATION.** As specifically stated in the Carryover Allocation Procedures Manual and the Cost Certification Procedures Manual, NIFA reserves the right to request documentation supporting any cost certification if it determines, in its sole discretion, that such information is necessary to effectuate the allocation of LIHTC.

## LIHTC GUIDELINES

Following are general guidelines of the LIHTC Program including the CRANE Program and all other set-aside. These guidelines are not conclusive and should not be relied upon as tax advice. NIFA suggests that, prior to completing the LIHTC Application, you consult with an independent, third-party certified public accountant or attorney for a complete interpretation of the tax law. NIFA's review of documents submitted in connection with a LIHTC 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 reservations and commitments are not transferable, and any change in development ownership requires NIFA's prior written approval. NIFA verifies development ownership through closing documents, warranty deeds and title reports.

NIFA reserves the right not to 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 sponsor's experience and performance and the 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 LIHTC Conditional Reservations, development compliance and payment of monitoring fees.

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 applications to existing LIHTC developments and other previously approved and funded (but not yet constructed nor occupied) LIHTC developments would create a disproportional number of low-income housing units.

NIFA recognizes that certain developments may need additional subsidies to encourage the production and ensure the viability of such developments as 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 which utilize tax-exempt bonds issued by NIFA and receive 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. 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. Applicants having an identity of interest with any barred entity may not be eligible 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 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 an application or otherwise.

## **COMPLIANCE MONITORING**

During the time period in which a development must comply with the set-aside unit requirements for low-income tenants, NIFA, as part of this 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 other applicable regulations. All LIHTC 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 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 a future allocation of LIHTC.

The following procedures outline NIFA’s plans for compliance monitoring by owners of LIHTC developments. Such procedures, together with the covenants and representations contained in the LURA (which form of LURA is incorporated in this 2004 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).

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.
2. **ANNUAL OWNER CERTIFICATIONS.** Development owners are required to immediately notify NIFA if, at any time, the dwelling 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 of each year following the first year in which 10% of the units in the development are occupied, 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) collected by the development owner.
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 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 Qualified Development 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).
4. **REVIEW PROCESS.** For each year of the Compliance Period, NIFA will perform a compliance review of each LIHTC 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.
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, 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 each LIHTC 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 each 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 tenants' records are to 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 development building and its Qualified Units are suitable for occupancy.

6. **NOTIFICATION TO OWNER.** In the event NIFA discovers noncompliance 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 for each LIHTC development: 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.

7. **NOTICE TO INTERNAL REVENUE SERVICE.** Within 45 days of 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.
8. **LIABILITY.** Compliance with the requirements of Section 42 of the Code is the sole responsibility of the development owner of the LIHTC development. NIFA's obligation 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 a particular multifamily 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 \_\_\_\_\_