2023 CARRYOVER ALLOCATION AGREEMENT

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| --- | --- |
| Project‑based Allocation | Building‑based Allocation |

THIS AGREEMENT (“Agreement”), is by and between  (the “Owner”) and the Nebraska Investment Finance Authority, a body politic and corporation not a state agency but an independent instrumentality exercising essential public functions organized and existing under the laws of the State of Nebraska (“NIFA”).

WITNESSETH:

WHEREAS, the Owner is the owner of:

Development Name:       (the “Development”) NIFA LIHTC #:

Development Address:      ; and

WHEREAS, the Owner has applied to NIFA for a carryover allocation of low‑income housing tax credits (“LIHTC”) under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”) and in connection therewith has represented that (i) each building in the Development is or will be a qualified building as defined in Section 42(h)(1)(E)(ii) of the Code and each such building will be placed in service no later than December 31, 2025; and (ii) as of the date of this Agreement, the Owner has, or will have within one year from the date of this Carryover Allocation and by no later than June 28, 2024, a basis in the Development of at least ten percent (10%) of the reasonably expected basis in the Development as of December 31, 2025; and

WHEREAS, the Owner also has made representations to NIFA in its Low Income Housing Tax Credit Application, concerning among other things, the number of low‑income units, amenities, tenant services and the term of occupancy restrictions; and

WHEREAS, based upon such representations, NIFA is willing to grant a carryover allocation of LIHTCs to the Owner provided that the Owner, by entering into this Agreement, agrees to comply with the covenants, terms and conditions of this Agreement as a condition precedent to the final allocation of LIHTCs by NIFA.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and NIFA agree as follows:

1. Carryover Allocation. NIFA hereby allocates an amount not to exceed the amount stated in Attachment I of this Agreement of 2023 LIHTCs (the “Carryover Allocation”) to the Owner for the Development described below. This Carryover Allocation is expressly conditioned upon satisfaction of the requirements of Section 42(h)(1)(E) of the Code and, if this is a project‑based allocation, Section 42(h)(1)(F) of the Code. This Carryover Allocation is further expressly conditioned upon the terms and conditions set forth herein. The Building Identification Number to be assigned to each building in the Development is set forth in Attachment I hereto.

Owner Name:

Owner Address:

Owner City, State, Zip Code:

Federal Tax ID Number of Owner:

Development Name:

Development Address:

Development City, State, Zip Code:

1. Total Reasonable Expected Basis. The Owner’s Total Reasonably Expected Basis in the Development is $
2. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants that:
3. The Owner and all parties comprising the Owner are in compliance with all requirements of Section 42 of the Code for all developments subject to Section 42 of the Code owned by any of them.
4. Each building which is the subject of the Carryover Allocation is, or will be, a “qualified building” as defined in Section 42(h)(1)(E)(ii) of the Code, and the Development will constitute a “qualified low‑income housing project” as defined in Section 42(g) of the Code.
5. Each building which is the subject of the Carryover Allocation will be placed in service by December 31, 2025, and the Owner will make timely application to NIFA for a final allocation of LIHTC so as to permit NIFA to issue IRS Form 8609(s) to the Development.

4. Determination of LIHTC Amount. The Owner acknowledges that the LIHTC amount for which NIFA has made this Carryover Allocation is based upon estimates provided by the Owner. The Owner acknowledges and agrees that the LIHTC amount may be reduced based upon NIFA’s final determination pursuant to Section 42(m)(2) of the Code, and that the amount of such reduction shall be deemed returned LIHTC to NIFA pursuant to Section 42(h)(3)(C) of the Code.

5. Conditions; Return of Carryover Allocation. The Owner acknowledges that all terms, conditions, obligations and deadlines set forth herein constitute both continuing conditions of the Carryover Allocation and conditions precedent to a final allocation of LIHTC by NIFA, and the Owner’s or the Development’s failure to comply with all terms and conditions of this Agreement will result in the loss of the Carryover Allocation. In any such event, the LIHTC allocated by this Carryover Allocation shall be returned to NIFA pursuant to Section 42(h)(3)(C) of the Code and Treasury Regulation § 1.42‑14(d), and the Owner acknowledges that neither it nor the Development will have any right to claim LIHTC’s pursuant to the Carryover Allocation.

6. Applicable Credit Percentage. The Owner may elect to lock the “Applicable Percentage” as defined in Section 42(b) of the Code.

If this box is checked, the Owner hereby irrevocably elects, pursuant to Section 42(b)(3) of the Code, to lock the Applicable Percentage at 4% for each acquisition building in the Development that is placed in service on or after January 1, 2021.

If this box is checked, the Owner has made no election pursuant to Section 42(b)(1)(A)(i) of the Code, and accordingly, the Applicable Percentage for each building shall be that for the month in which that particular building is placed in service.

If this box is checked, the Owner hereby irrevocably elects, pursuant to Section 42(b)(2) of the Code, to lock the Applicable Percentage at 9% for each new construction or substantially rehabilitated non-federal subsidized building in the Development.

**NOTE TO OWNER: IF YOU HAVE PREVIOUSLY EXECUTED AN AGREEMENT AND ELECTION STATEMENT WITH NIFA LOCKING THE APPLICABLE PERCENTAGE FOR THE DEVELOPMENT, YOU MAY NOT DO SO AGAIN HERE. THEREFORE, DO NOT CHECK ANY BOX IF THIS STATEMENT APPLIES.**

7. Gross Rent Floor. Section 42(g)(2)(A) of the Code provides that a unit is “rent restricted” if the gross rent for such unit does not exceed 30% of the imputed income limitation applicable to the unit. Under Revenue Procedure 94‑57, the effective date of income limitation used to establish the gross rent floor for purposes of Code Section 42(g)(2)(A) is the date of the Carryover Allocation unless the Owner designates a building’s placed in service date as the effective date for determining the gross rent floor.

If this box is checked, the Owner hereby designates the placed in service date of each building as the date on which the gross rent floor in Code Section 42(g)(2)(A) will take effect.

If this box is checked, the effective date for establishing the gross rent floor is the date of this Agreement.

8. Final Allocation. Upon notification by the Owner to NIFA that the Development has been placed in service and satisfaction of all requirements in the Final Cost Certification Procedures Manual, NIFA will issue IRS Form 8609 to the Owner of such building to the extent required and in accordance with Code Section 42.

9. No Reliance. In making the Carryover Allocation, NIFA has relied solely upon information provided and representations made by the Owner or the Owner’s designee, and the Carryover Allocation does not in any way constitute a representation, warranty, guaranty, advice or suggestion by NIFA as to the qualification of the Development for LIHTCs, or the feasibility or viability of the Development, and may not be relied on as such by any owner, developer, investor, tenant, lender or any other person for any reason. In addition, NIFA’s acceptance of the certifications and representations required in connection with the Owner’s request for the Carryover Allocation does not constitute a representation as to the satisfaction of the requirements under Code Section 42(h)(1)(E) as binding on the Internal Revenue Service.

10. Release and Indemnification. The Owner acknowledges that, in making the Carryover Allocation, NIFA has relied upon information and representations given by or on behalf of the Owner and that NIFA has made no independent investigation and does not have independent knowledge of the basis for such information and representations. Accordingly, to induce NIFA to make the Carryover Allocation, the Owner agrees as follows:

(a) The Owner hereby agrees to release and forever discharge NIFA, its members, employees, agents, officers, successors and assigns of and from any and all claims, demands, causes of actions, judgments and executions which the Owner has or may hereafter have against NIFA or any such other persons, whether in law or in equity, arising or resulting from, or on account of or pertaining to, whether directly or indirectly, NIFA’s making of the Carryover Allocation.

(b) The Owner hereby agrees to indemnify, save harmless and defend NIFA, and its members, officers, agents, employees, successors and assigns, from any obligation, claim, loss, demand, cost, expense (including the costs of the investigation and settlement of any claim, and including reasonable attorneys’ fees) or judgment against NIFA arising or resulting from, or on account of or pertaining to, whether directly or indirectly, NIFA’s making of the Carryover Allocation. If any such claim is asserted, any indemnified party hereunder will give prompt notice to the Owner and will cooperate in the investigation and defense of any such claim. The Owner will assume the defense of any such asserted claim by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld), it being understood that the indemnified party shall have the right to employ its own separate counsel and participate in such proceedings at its own cost and expense.

(c) If the indemnification provided in subsection (b) is, for any reason, either unavailable to NIFA or any of the other persons intended to be indemnified thereby or insufficient to hold it or any of them harmless, then the Owner hereby agrees to contribute to all amounts paid or payable by NIFA and such other persons as a result of any such obligation, claim, loss, demand, cost, expense or judgment. The amount to be contributed by the Owner shall be the amount that is appropriate to reflect both the relative benefits received by the Owner, on the one hand, and by NIFA and such other persons, on the other hand, and the relative degrees of fault of the Owner, on the one hand, and of NIFA and such other persons, on the other hand.

11. Miscellaneous.

(a) The Owner hereby agrees and acknowledges that NIFA reserves, commits, and allocates LIHTCs to partnerships, limited liability companies, corporations, and individuals. Reservations, Commitments and Carryover Allocations of LIHTC are nontransferable, and any change in the ownership structure of the Owner requires NIFA’s prior written approval.

(b) This Agreement shall be governed by the laws of the State of Nebraska and, where applicable, the laws of the United States of America.

12. Effective Date. The Effective Date of this Agreement is the date executed by NIFA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives.

OWNER

By:

Its:

Date:

STATE OF )

) ss.

COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the Authorized Signatory of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for and on behalf of the Owner.

Notary Public

My Commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Nebraska Investment Finance Authority  
1230 “O” Street  
Suite 200  
Lincoln, Nebraska 68508  
Tax ID Number 47‑0613449

By:   
      , Executive Director

Date:

STATE OF NEBRASKA )

) ss.

COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ by Shannon R. Harner, an Authorized Officer of the Nebraska Investment Finance Authority.

Notary Public

My Commission expires:

ATTACHMENTS I

Double click on the icon below to open Attachments I.

Complete all yellow-shaded areas.

[Worksheet in 2023 carryover.xlsx](https://cms.proteus.co/_resources/dyn/files/76868629zfd938018/_fn/6.1%20-%20%202023%20Wksht%20Carryover%20and%2010%20Test%20v1.xlsx)