

# **2023-2025 CARRYOVER ALLOCATION AND 10% TEST PROCEDURES MANUAL**

The Nebraska Investment Finance Authority ("NIFA") Low Income Housing Tax Credit ("LIHTC") Carryover Allocation and 10% Test Procedures Manual (this "Manual"), sets forth the criteria and documentation required for requesting a Carryover Allocation and the submission of documents with respect to the 10% Test. All portions of this Manual must be adhered to when requesting a Carryover Allocation and submission of the 10% Test documentation to NIFA.

## **SECTION 1.1 QUALIFYING FOR A CARRYOVER ALLOCATION**

For developments that will not be placed into service in the year in which a Conditional Reservation is issued, NIFA will grant a Carryover Allocation. To receive a Carryover Allocation, the Owner ("Owner") must (a) submit a copy of all documentation detailed in Section 1.2(b) of this Manual to NIFA (the "Carryover Allocation Documentation") by ~~November 1~~October 31, 2023-2025 and (b) provide evidence to NIFA that the Owner has incurred 10% or more of the reasonably expected basis (including land) in the development ("10% Test Certification") within one year from the date of the Carryover Allocation and by no later than June ~~2830, 2024~~2026.

## **SECTION 1.2 REQUIREMENTS FOR SUBMITTING CARRYOVER ALLOCATION REQUEST AND SUBMISSION OF THE 10% CERTIFICATION**

- (a) All Owners receiving a Conditional Reservation for a development must submit the Carryover Allocation Documentation to NIFA by ~~November 1~~October 31, 2023-2025 and the 10% Test Certification (items 1.2(b)(3) and 1.2(c) noted below) within one year from the date of the Carryover Allocation and by no later than June ~~2830, 2024~~2026.

**NOTE: A Late Fee of 1% of the LIHTC amount will be assessed for any Owner that fails to submit its Carryover Allocation Documentation and/or 10% Test Certification by the specified deadlines.**

- (b) NIFA will grant a Carryover Allocation upon receipt and review of the following completed and executed, as required, Carryover Allocation Documentation meeting the requirements of this Manual, executed by the Owner and notarized by a Notary Public:
- (1) Carryover Allocation Agreement, in the form set forth in Exhibit A, executed by the Owner and notarized by a Notary Public;

- (2) LIHTC Calculation Worksheet, Attachment I of the Carryover Allocation Agreement;
- (3) Executed and filed (with the Secretary of State) organizational documents of the Owner;
- (4) Letter from the IRS evidencing the Owner's federal Employer Identification Number (EIN);
- (5) Certificate of Good Standing for the Owner (dated within 30 days of submission of Carryover Allocation Documentation);
- (6) Executed IRS Form 8821 (Tax Information Authorization Form) for the sharing of information between NIFA and the IRS. Each Owner of a development will be required to execute a new Form 8821 every 3 years. Form 8821 must be from the 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
  - 3(d): Any related federal income tax information pertaining to LIHTC, including audit findings and assessments;
- (7) Updated cost figures (firm bids at minimum, contracts preferred);
- (8) Any additional information requested by NIFA; and
- (9) If applicable, firm commitment for Department of Economic Development HOME Funds or USDA-RD.

When all conditions and requirements of this section have been deemed satisfied by NIFA, NIFA will execute the Carryover Allocation Agreement and return one copy to the Owner.

- (c) The 10% Test Certification in the form of Exhibit B must be completed by an independent third party certified public accountant or qualified tax attorney and submitted by the required deadline as specified above. The 10% Test Certification must demonstrate that 10% or more of the reasonably expected basis in the development has been incurred by the Owner by the submission date. **If the developer fee is included in the**

**10% Test, it must be earned and reasonable, may not be greater than 20% of the total developer fee and may not include any deferred portion of the fee.** If the cost of the acquisition of the land is included in the 10% Test, the Owner must submit a copy of the recorded warranty deed reflecting the Owner as the grantee and a copy of the settlement statement.

Items to submit with the 10% Test Certification which must be acceptable to NIFA:

1. 10% Test Worksheet Certification, Attachment II of the Carryover Allocation Agreement;
2. Copy of the Recorded Warranty Deed in the name of the Owner or long term ground lease to the Owner;
3. Settlement Statement for purchase of the land;
4. Current Certificate of Good Standing for the Owner (dated within 30 days of submission of 10% Test Certification);
5. Certification from the Nebraska Department of Environment and Energy that the plans and specifications meet the state energy conservation code; and
6. Independent Auditor's Report for Applying Agreed Upon Procedures

- (d) Upon review of the Carryover Allocation Documentation submitted and/or the 10% Test Certification, NIFA will notify the Owner of any discrepancies in the submitted documentation and may request additional information to complete its review for the Carryover Allocation request. The Owner will be given a deadline in which to correct any discrepancies and/or submit additional information. Failure to correct any discrepancies or provide additional information within the specified deadline may result in the revocation of the Conditional Reservation.

## **EXHIBIT A**

### **CARRYOVER ALLOCATION AGREEMENT**

**DRAFT**

**2023-2025 CARRYOVER ALLOCATION AGREEMENT**

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, 20252027; 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 2830, 20242026, a basis in the Development of at least ten percent (10%) of the reasonably expected basis in the Development as of December 31, 20252027; 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: \_\_\_\_\_

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2. Total Reasonable Expected Basis. The Owner's Total Reasonably Expected Basis in the Development is \$ \_\_\_\_\_

3. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants that:

(a) 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.

(b) 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.

(c) Each building which is the subject of the Carryover Allocation will be placed in service by December 31, ~~2025~~2027, 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: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_, 20\_\_ by  
\_\_\_\_\_ for and on behalf of the Owner.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_, County of \_\_\_\_\_

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

Nebraska Investment Finance Authority  
1230 "O" Street  
Suite 200  
Lincoln, Nebraska 68508  
Tax ID Number 47-0613449

By: \_\_\_\_\_  
\_\_\_\_\_, Executive Director

Date: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_, an authorized representative of the Nebraska Investment  
Finance Authority.

\_\_\_\_\_

Notary Public in and for the State of Nebraska, County of Lancaster

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

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## ATTACHMENTS I & II

Double click on the icon below to open Attachments I & II.

Complete all yellow-shaded areas.

Worksheet in [2023-2025](#) carryover.xlsx

DRAFT

## Exhibit B

### 10% Test Certification

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**INDEPENDENT AUDITOR'S REPORT ON APPLYING  
AGREED-UPON PROCEDURES**

(to be submitted under accounting firm's letterhead)

**A. General Instructions**

All requested information must be prepared in the format provided below. Submission of this report in any other format or without all requested items will not be accepted by NIFA. If any question is not applicable, mark N/A and if necessary, provide an explanation. The letter should be on the firm's letterhead with an original signature.

**B. Required Format**

Date: \_\_\_\_\_

To: Nebraska Investment Finance Authority ("NIFA")  
1230 "O" Street, Suite 200  
Lincoln, Nebraska 68508-1402  
Attn: Low Income Housing Tax Credit Division

RE: Low Income Housing Tax Credit Carryover Allocation  
Name of Development: \_\_\_\_\_  
NIFA LIHTC #: \_\_\_\_\_  
Owner: \_\_\_\_\_

We have examined the accompanying Certification of Costs Incurred ("Exhibit \_\_\_\_\_") of the Owner for \_\_\_\_\_ (the "Development") as of \_\_\_\_\_, 20\_\_\_\_. Exhibit \_\_\_\_\_ is the responsibility of the Owner and the Owner's management. Our responsibility is to express an opinion on Exhibit \_\_\_\_\_ based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and accordingly, included examining, on a test basis, evidence supporting Exhibit \_\_\_\_\_ and performing such other procedures as we considered necessary in the circumstances.

The accompanying Exhibit \_\_\_\_\_ was prepared in conformity with the accounting practices prescribed by the Internal Revenue Service under the accrual method of accounting and by the NIFA, which is a comprehensive basis of accounting other than generally accepted accounting principles.

The 10% Test includes an estimate prepared by the Owner of total development costs and reasonably expected basis, as defined in Treasury Regulation Section 1.42-6. We have not examined or performed any procedures in connection with such estimated total development costs and reasonable expected basis and, accordingly, we do not express any opinion or any other form of assurance on such estimates. Furthermore, even if the Development is developed and completed there will usually be differences between the projected and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

In our opinion, Exhibit \_\_\_\_ referred to above presents fairly, in all material respects, costs incurred for the Development as of \_\_\_\_\_ 20\_\_\_\_, on the basis of accounting described above.

In addition to examining Exhibit\_\_\_\_, we have, at your request, performed certain agreed-upon procedures, as enumerated below, with respect to the Development. These procedures, which were agreed to by the Owner and NIFA, were performed to assist you in determining whether the Development has met the 10% test in accordance with Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6. These agreed-upon procedures were performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representations regarding the sufficiency of the procedures below either for the purpose for which this report has been requested or for any other purpose.

We performed the following procedures:

- We calculated, based on estimates of total development costs provided by the Owner, the Development's total reasonably expected basis, as defined in Treasury Regulation Section 1.42-6, to be \$\_\_\_\_\_ as of December 31, ~~2025~~2027.
- We calculated the reasonably expected basis incurred by the Owner as of \_\_\_\_\_, 20\_\_\_\_ to be \$\_\_\_\_\_.
- We calculated the percentage of the developer fee incurred by the Owner as of \_\_\_\_\_, 20\_\_\_\_ to be \_\_\_\_\_% of the total development fee.
- We compared the reasonably expected basis incurred as of \_\_\_\_\_, 20\_\_\_\_ to the total reasonably expected basis of the Development, and calculated that \_\_\_\_\_% had been incurred as of \_\_\_\_\_, 20\_\_\_\_.

- We determined that the Owner uses the accrual method of accounting, and has not included any construction costs in carryover allocation basis that have not been properly accrued.
- Based on the amount of total reasonably expected basis listed above, for the Owner to meet the 10% test in accordance with Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6, we calculated that the Development needed to incur at least \$\_\_\_\_\_ of costs prior to \_\_\_\_\_, 20\_\_\_\_. As of \_\_\_\_\_, 20\_\_\_\_, costs of at least \$\_\_\_\_\_ had been incurred, which is approximately \_\_\_\_\_% of the total reasonably expected basis of the Development.

We were not engaged to, and did not, perform an audit of the Owner's financial statements or of the Development's total reasonably expected basis. Furthermore, even if the Development is developed and completed there will usually be differences between the projected and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Owner and the Owner's management and for filing with NIFA and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

City, State

\_\_\_\_\_, 20\_\_\_\_