INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY

**ALLOCATION OF 2019 RENTAL HOUSING TAX CREDITS**

**CARRYOVER AGREEMENT**

**DATE: Insert Month & Day , 2019**

The Indiana Housing and Community Development Authority (the "Authority") has reviewed the Application for 2019 Credits (the "Application") of Insert Legal Name ("Owner") for an allocation of 2019 carryover rental housing tax credits (the "Credits") for the development identified on Schedule A, attached hereto and made a part hereof (the "Development") and hereby issues a carryover allocation to Owner, as set forth on Schedule A, subject to the terms and conditions stated herein (this "Carryover Agreement") and the Conditional Rental Housing Tax Credit Commitment issued by the Authority to Owner on Insert Month & Day of Commitment Letter , 2019 (the "Conditional Commitment").

Owner hereby certifies that each building for which allocation evidenced hereby is being made is a "qualified building" as defined in Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").

If the Authority believes, in its sole discretion, that the Development will not be completed or that any condition set forth in the Application or the Conditional Commitment will not be satisfied within the required time period, or will become unsatisfied or will otherwise cause the Development to fail to qualify for a Credit allocation, Owner agrees that the Authority may rescind and retrieve the Credits from Owner. If Owner determines it is unable to complete the Development within the time frame required under this Carryover Agreement, Owner agrees it shall return the Credits to the Authority, by written notice, at the time of such determination.

Owner hereby estimates that as of **11 months from the execution date of the carryover agreement or June 1, 2020 (whichever is earlier)**, Owner will have an accumulated "basis" (as defined in the Code) of at least $ in the Development, representing % of the total reasonably expected basis of $ in the Development. No later than **11 months from the execution date of the Carryover Agreement or June 1, 2020 (whichever is earlier),** Owner shall demonstrate to the Authority, in a manner satisfactory to the Authority, that such 10% requirement has been satisfied. In connection therewith, Owner shall provide the Authority with an independent certified public accountant's certification (or other professional determination satisfactory to the Authority) demonstrating compliance with the Code and other applicable requirements of the Internal Revenue Service, and which states that at least 10% of Owner's reasonably expected basis in the Development has been incurred to date, together with such other evidence the Authority deems necessary to permit it to make a determination that such requirement has been met. Owner covenants and agrees to timely complete the Development as contemplated in the Application and Conditional Commitment.

**Election to Fix the Credit Percentage at Time of Binding Agreement (Treasury Regulations Section 1.42-8)**

Pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, the Owner and the Authority may enter into an agreement as to the housing credit amount to be allocated to the Project for the purpose of establishing the “Applicable Percentage” as defined in Section 42(b).

If this box is checked, Owner hereby irrevocably elects, pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, to enter into an agreement with the Authority to fix the applicable Credit percentage(s) for the Development at a future time. The form of this Binding Agreement is found at Form F: Binding Lock-In Agreement. Owner acknowledges that if Owner and Authority fail to execute a Binding Lock-In Agreement by the placed in service date of the Development, Owner shall have failed to make an election pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, and accordingly, the applicable percentage for a building shall be that for the month in which the particular building is placed in service.

If this box is checked, Owner hereby irrevocably elects, pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, to enter into an agreement with the Authority to fix the applicable Credit percentage(s) for the Development as the percentage(s) prescribed by the Secretary of the Treasury for the month of Insert Month , 2019, which is the month in which the Authority and the Owner executed this Carryover Agreement with respect to the Development. The applicable credit percentages for the month of Insert Month , 2019 are \_\_\_\_\_% for the 70% present value credit and \_\_\_\_\_% for the 30% present value credit.

*Owner acknowledges the possibility to fix the applicable credit percentage for the Development will be effective only if the Carryover Agreement is, both, (a) executed by Owner and the Authority in the same month and (b) notarized by the fifth (5th) day of Insert Month after Above-listed Month , 2019.*

If no box is checked, Owner has made no election pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, and accordingly, the applicable percentage for a building shall be that for the month in which the particular building is placed in service.

**THIS ELECTION IS IRREVOCABLE.**

If this box is checked, Owner hereby irrevocably elects to set the gross rent floor contemplated under Section 42(g)(2) of the Code for the month of Insert Month , 2019, which is the month in which this Carryover Agreement is executed.

If this box is checked, Owner hereby irrevocably elects to set the gross rent floor contemplated under Section 42(g)(2) of the Code for the month the Development is placed in service. Such election must be made and written notice thereof provided to the Authority no later than the placed-in-service date and must otherwise comply with the requirements of the Code.

The Authority and Owner hereby acknowledge that this Carryover Agreement constitutes an agreement binding upon the Authority, Owner and all successors in interest to Owner as owners of the Development, as to the allocation of 2019 Credit amounts to the building(s) comprising the Development, subject to compliance by Owner with the requirements of the Code, the 2018-2019 Rental Housing Tax Credit Qualified Allocation Plan for the State of Indiana, and such other requirements of the Authority as are stated from time to time.

Owner acknowledges that all terms, conditions, obligations and deadlines set forth in this Carryover Agreement, the Application and in the Conditional Commitment constitute conditions precedent to this Carryover Agreement, and the Development's failure to comply with any of such terms and conditions shall entitle the Authority, in its sole discretion, to deem the allocation evidenced hereby canceled by mutual consent. After any such cancellation, Owner acknowledges that neither it nor the Development will have any right to claim Credits pursuant to this Carryover Agreement or the Conditional Commitment. The Authority reserves the right, in its discretion, to modify and/or waive any such failed condition precedent, so long as such waiver does not violate any Code requirements relating to the Development.

Upon notification by Owner that the Development (or building(s) comprising the Development) has been placed in service, the Authority will issue an IRS Form 8609 for such building(s) to the extent required by, and in accordance with, the Code requirements and other applicable laws. The total dollar amount of the 2019 Credit allocation reflected on Form 8609 will not exceed the housing credit dollar amount allocated to the building(s), as set forth on Schedule A.

In issuing Credits under this Carryover Agreement, the Authority has solely relied upon the information submitted to it by Owner. Owner agrees it shall indemnify, defend and hold harmless the Authority from and against all claims, losses, costs, damages, expenses and liabilities of any nature, including, without limitation, attorney fees whether in connection with the subject matter hereof or the prosecution of the Authority's indemnity rights hereunder, directly or indirectly, resulting from, arising out of or relating to this Carryover Agreement and the allocation of Credits in connection herewith.

Owner acknowledges that the Authority's determination as to satisfaction of the ten percent (10%) requirement, pursuant to Code Section 42(h)(1)(E), is not binding upon the Internal Revenue Service and does not constitute a representation by the Authority to Owner or any other party.

INDIANA HOUSING AND COMMUNITY

DEVELOPMENT AUTHORITY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

J. Jacob Sipe, Executive Director

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

ACKNOWLEDGED, AGREED TO, AND ACCEPTED BY OWNER ON THE DATE SET FORTH BELOW.

The undersigned represents and warrants that he/she has the power to execute, deliver and accept the terms of this Agreement, to enter into the transactions contemplated by this Agreement, and that the acceptance and performance of this Agreement have been duly authorized by all necessary and proper corporate and other action.

Owner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

STATE OF                 )

) SS:

COUNTY OF  )

Subscribed and sworn before me, a Notary Public in and for the State of Indiana, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

County of Residence: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**SCHEDULE A - CARRYOVER ALLOCATION**

**Housing Credit Agency:**  Indiana Housing and Community Development Authority

**TIN of Authority:** 35-1485172

**Address of Authority:** 30 South Meridian Street, Suite 1000

Indianapolis, IN 46204

|  |  |
| --- | --- |
| **Owner Name** |  |
| **Address** |  |
| **City, State, Zip** |  |
| **TIN of Owner** |  |

|  |  |
| --- | --- |
| **Development Name** |  |
| **Address** |  |
| **City, State, Zip** |  |

Pursuant to Code Section 42(h)(l)(F), an allocation of credit may be made on a development basis or on a building-by-building basis; accordingly: **(check appropriate box)**

Owner hereby requests the Authority to assign portions of this allocation to each individual building, as set forth below (i.e. on a building-by-building basis).

Owner hereby requests the Authority to assign portions of this allocation to specific buildings within the development no later than the close of the calendar year in which the buildings are placed in service (i.e. on a development basis).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **BIN\*** | **Address\*\*** | **Housing Credit Dollar Amount to be Allocated** | **Type of Credit (N, A, and/or R)\*\*\*** | **PIS Date\*\*\*\*** |
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| **Total Housing Credit Dollar Amount Allocated:** | |  |  | |

***NOTE:*** *If development has more than 15 buildings, please attach separate document listing all buildings.*

\* “BIN” - Building Identification Number(s) - This is assigned, by the Authority, to each building in the year of allocation

\*\* Include physical street address for each building (or, if none exists, a specific description of its location)

\*\*\* “N” - New Construction; “A” - Acquisition; “R” - Substantial Rehabilitation

\*\*\*\* Expected Placed-in-Service Date

***NOTE:*** *A legal description labeled “Exhibit A” must be attached to this document.*