

**Income Averaging Acknowledgement**

Project Name: \_\_\_\_\_  
Project Number: \_\_\_\_\_

The undersigned intends to elect the average income test described in 26 U.S.C. §42(g)(1)(C) at issuance of the 8609 for the above captioned housing development.

The undersigned agrees to adhere to the Income Averaging Policy attached as Exhibit A and specifically incorporated herein, and as may be modified from time to time. The undersigned will unconditionally comply with all policies, rules, regulations, and guidelines, existing and as may be amended or published, of the Ohio Housing Finance Agency as they relate to the average income test.

The undersigned acknowledges that the Internal Revenue Service may issue rules, requirements, interpretations, decisions, or other guidance that, as a matter of law, modify or invalidate the requirements contained in Exhibit A, and the undersigned agrees to adhere to the Income Averaging Policy that the Ohio Housing Finance Agency may adopt as the result of any rules, requirements, interpretations, decisions or other guidance from the Internal Revenue Service.

The undersigned agrees that the Ohio Housing Finance Agency (including its agents) will at all times be indemnified and held harmless against all losses, costs, damages, expenses, and liabilities whatsoever nature or kind (including, but not limited to attorney's fees, litigation, and court costs, amounts paid in settlement, and amounts paid to discharge judgment, and any loss from judgment from the Internal Revenue Service) directly or indirectly resulting from, arising out of, or related to the requirements contained in Exhibit A and any other statements made regarding the average income test.

IN WITNESS WHEREOF, the undersigned has caused this document to be duly executed in its name on

this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Legal Name of Actual or Proposed Ownership Entity

BY: \_\_\_\_\_  
Authorized Signatory – General Partner

BY: \_\_\_\_\_  
Authorized Signatory – General Partner

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

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

\_\_\_\_\_  
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BY: \_\_\_\_\_  
Authorized Signatory – General Partner

BY: \_\_\_\_\_  
Authorized Signatory – General Partner

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Organization

## **Exhibit A: Income Averaging Policy**

Applicants electing the Income Averaging (IA) option acknowledge OHFA is currently developing application, compliance, and monitoring policies for IA developments and agrees to adhere to all such policies, including any changes to the following requirements that may be necessary to conform to governing law or regulation.

### **Affordability Requirements:**

IA is only permitted if all residential units are designated low-income; developments selecting this option may not contain any unrestricted or market-rate residential units. Manager units are not subject to this restriction and are permitted in IA developments. Developments that condominimize market-rate units into a legally distinct, non-HTC development may utilize IA in the HTC development only.

For Competitive applications only, at least 40 percent of all units must be affordable to and occupied by persons earning 60 percent AMI or less. Additional affordability requirements may be triggered to qualify for competitive consideration, basis boost, developer fee supplements, or HDAP or other OHFA financing.

Non-competitive developments may elect IA provided they simultaneously meet affordability requirements set forth IRC §142. Additional affordability requirements may be triggered to qualify for HDAP or other OHFA financing.

### **Multi-Building Election:**

If the proposed development contains more than one building, the project must make the 8b election on the 8609 form indicating that it will be treated as a multiple building project. Applicants may seek an exception to this requirement, separate projects will only be permitted upon demonstration of a compelling need as determined in OHFA's discretion.

### **Documentation Requirements:**

The market study must demonstrate sufficient market demand for each income bracket proposed. Equity and debt commitment letters must affirmatively demonstrate that they are based upon an IA set-aside. OHFA reserves the right to require a legal opinion verifying the ability to utilize IA in combination with any other subsidy.

### **Design & Architectural Requirements:**

Units of similar size and configuration must have substantially similar design and be reasonably distributed throughout the building(s) regardless of the assigned income restriction.

### **Resyndication Restrictions:**

If an applicant proposes using the IA option at resyndication, it may not increase the rent- or occupancy-restrictions for any units presently subject to a Restrictive Covenant.

### **Timing to Opt Into IA:**

Newly Proposed Developments: If using the IA option, developments must select IA at both proposal and final application; OHFA will not permit IA at either carryover or 8609 if the application was not previously underwritten to that test. With prior written approval from OHFA, OHFA may permit developments that were previously underwritten to IA standards to select the 60-40 or 50-20 tests after final underwriting. Previously Approved Developments: Developments may not elect IA if OHFA already provided an 8609 form, regardless of whether that form was executed by the owner. Projects that already recorded a Restrictive Covenant may not alter the rent and/or income restrictions.

### **Program Compliance Issues:**

All IA developments must submit Annual Owner Certifications and/or any other periodic compliance requirements that may be required as this policy is further developed. All tenants in IA developments must submit annual income certifications.

### **Underwriting Fee:**

Any development approved for tax credit funding prior to 2018 will be assessed a one-time re-underwriting fee of \$5,000.00 if it makes any changes to the rent and/or income restrictions.