DATE: March 15, 2022

TO: Nooksack Indian Housing Authority

FROM: Washington State Housing Finance Commission

RE: Eventual Tenant Ownership Plan for Nooksack Homes I, II, III and IV

On February 28, 2022, in response to the Commission’s letter sent January 20, 2022, the Nooksack Indian Housing Authority (NIHA) provided the Commission with Amended Housing Program Policy and Procedures approved by the Nooksack Tribal Council on June 21, 2021, along with an updated Ownership Plan Report. Based on a review of the Report and Policy and Procedures, the Commission determined that NIHA’s documentation did not cover all items required by NIHA’s Regulatory Agreements and Eventual Tenant Ownership Plan submitted at the time of allocation. Accordingly, Commission staff requested a phone meeting with NIHA staff to discuss the missing information. That call took place on March 11, 2022.

The purpose of this letter is to memorialize the March 11 conversation that took place between Commission staff and NIHA staff and its consultant, RTHawk Housing Alliance, as a component of the Commission’s ongoing compliance review process, as well as to make clear the Commission’s expectations regarding next steps for demonstrating compliance.

During the call, NIHA staff affirmed NIHA’s commitment to achieving successful transfer of the units to qualified tenants as outlined in the Eventual Tenant Ownership Plan. The Commission believes that NIHA is working in good faith to satisfy its obligations under the Regulatory Agreement and therefore concludes that the filing of a Form 8823 would be premature at this time. The Commission and NIHA discussed the difficulty in successfully implementing an Eventual Tenant Ownership Plan, and that no other tribe in Washington State has yet successfully implemented this program of which we’re aware.

NIHA explained that many Tribal members have confused the LIHTC Eventual Tenant Ownership program with another older Tribal program, HUD’s Mutual Help program, and that they have been attempting to educate Tribal members about the differences. NIHA also explained that the Ownership Reserve Accounts described in the Eventual Tenant Ownership Plan were not funded based on a determination made by the tax credit investor that the funding of those accounts would result in a tax liability to the partnership.
The Commission outlined the material that NIHA has provided to date and further identified the missing information, as summarized below:

**Required Item:** First right of refusal - GP should assume 100% ownership. The Commission received information that the limited partnership which owned the Nooksack I Project has been dissolved and that the GP took 100% ownership for Nooksack I Project.

**What we still need:** Provide an interest transfer request with a diagram that shows that the limited partnerships have been dissolved and that NIHA has assumed 100% ownership in Nooksack Homes II, III and IV and/or provide a timeline for when this process will be complete for each property.

**Required Item:** The Property should be free of any loan, lien, or encumbrances.

**What we still need:** Provide documentation that shows NIHA has retired any outstanding debt in its entirety on all four projects.

**Required Item:** Establish unit purchase price; NIHA has stated that the unit price should be a function of what the buyer can afford and should also meet the following:

- a. No more than 20% greater than the last contract rent amount
- b. Provide a purchase price discount on a 5% progression for each successful occupancy of purchase price. Max of 75% discount

**What we still need:** Provide the established purchase price of every unit in the projects (100 percent of the units are designated for eventual tenant ownership).

**Required Item:** In the *Eventual Tenant Ownership Plan*, NIHA agreed to establish and maintain Ownership Reserve Accounts for each tenant. *Please note that the account information provided in your report is for the project replacement reserve accounts and not the Ownership Reserve Account required for each tenant.*

**What we still need:** Although documentation regarding Ownership Reserve Accounts was requested, the Commission heard on the March 11 call that these Ownership Reserve Accounts were not funded based on a determination by the tax credit investor that doing so would create a tax liability to the partnership. Accordingly, the Commission requires information regarding
how NIHA will make the purchase price of the units affordable to tenants in the absence of the reserve accounts.

What we still need: Provide documentation that shows each tenant has participated in homeownership counseling sessions.

What we still need: Provide documentation that shows each tenant has participated in budget and financial training sessions.

Commission staff also explained that pursuant to IRS guidelines, NIHA has 90 days in which to provide the requested information. The 90-day period began running on March 11, 2022 and will end June 9, 2022. The Commission expects that NIHA will have made substantial efforts to provide documented compliance with the Regulatory Agreement and Eventual Tenant Homeownership Plan on or before that date. Commission staff will reach out periodically to check in NIHA’s progress in providing this information.

Thank you for your commitment to providing homeownership opportunities to your residents. Please contact me if you have any questions.

Sincerely,

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