

2022 LOW-INCOME HOUSING TAX CREDIT CARRYOVER ALLOCATION AGREEMENT

Project-based Allocation:

Building-based Allocation:

THIS AGREEMENT, dated as of _____, 2022, is by and between _____, a _____, and its successors and assigns (the "Owner"), and the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (the "Authority").

WITNESSETH:

WHEREAS, the Owner is the owner of a _____ () unit rental housing development located in the [City of] [Town of] _____, County of _____, State of Colorado, known as _____ (the "Project"); and

WHEREAS, the Authority has been designated by the Governor of the State of Colorado (the "State") as the housing credit agency for the State for the allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder (the "Code"); and

WHEREAS, the Owner has applied to the Authority for a carryover allocation of low-income housing tax credits to the Project and, in connection therewith, has represented that (i) each building in the Project which is the subject of such application 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 by the date shown on Attachment I, but in no event later than December 31, 2024; and, (ii) as of the date of this Agreement, the Owner has a basis in the Project of at least \$_____ representing _____ percent (____%) of the reasonably expected basis of \$_____ in the Project as of December 31, 2024; and

WHEREAS, the Owner also has made certain representations to the Authority in its Low-Income Housing Tax Credit Preliminary Reservation Request and the Carryover Allocation Application (collectively, the "Application"), concerning, among other things, the number of Tax Credit Units (as hereinafter defined) and the term of occupancy restrictions; and

[WHEREAS, on _____, the Owner and the Authority entered into certain Binding Agreement and Election Statement, under Section 42(a)(1)(I) of the Code (the "Binding Agreement"); and]

WHEREAS, based upon such representations, the Authority is willing to make a carryover allocation of low-income housing tax credits to the Project 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 tax credits by the Authority.

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

1) Carryover Allocation. The Authority hereby allocates \$ _____ of 2022 housing tax credits (the "Carryover Allocation") to the Owner and building or Project 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, of 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 Project is set forth in Attachment I hereto.

Owner Name: _____

Taxpayer ID Number: _____

Owner Address: _____

Project Name: _____

Project Address: _____

Building Type: _____ **[with or without Federal Subsidies]**

2) Occupancy Restrictions. The Owner covenants and agrees that:

a) For the purpose of Section 42(g)(1) of the Code, the Owner elects the following (select one):

___ At least twenty percent (20%) of the residential rental units in the Project shall be maintained as both rent-restricted and occupied by individuals or families whose income is fifty percent (50%) or less of Area Median Gross Income of the area in which the Project is located as determined by the Secretary of the United States Department of the Treasury for purposes of Section 42 of the Code, including adjustments for family size ("AMI").

___ At least forty percent (40%) of the residential rental units in the Project shall be maintained as both rent-restricted and occupied by individuals or families whose income is sixty percent (60%) or less of AMI.

___ At least forty percent (40%) of the residential rental units in the Project shall be maintained as both rent-restricted and occupied by individuals or families whose average income does not exceed the imputed income limitation designated by the Owner with respect to the Tax Credit Units provided that: (i) the Owner shall designate the imputed income limitation of each Tax Credit Unit taking into account; (ii) the average of the imputed income limitations shall not exceed sixty percent (60%) of AMI, and (iii) the designated imputed income limitations shall be either twenty percent (20%), 30 percent (30%), 40 percent (40%), 50 percent (50%), 60 percent (60%), seventy percent (70%) or 80 percent (80%) of AMI. Any changes to these initial designations may be made only with the Authority's expressed written consent and in accordance with the Authority's [Income Averaging Policy] in place at the time of the request.

b) Additionally, the Owner covenants and agrees that, during the Extended Use Period, as defined in Section 46(h)(6)(D) the Code which shall be no less than the "compliance period" as defined in Section 42(i)(1) of the Code plus an additional 25 taxable years thereafter (the "Extended Use Period"), the Tax Credit Units shall be maintained as both rent restricted and occupied by individuals or families whose income level does not exceed the applicable AMI as follows:

No. of Units	AMI Threshold
___ () units	20% or less of AMI
___ () units	30% or less of AMI
___ () units	40% or less of AMI
___ () units	50% or less of AMI
___ () units	60% or less of AMI
___ () units	70% or less of AMI
___ () units	80% or less of AMI
___ () units	manager

All of the foregoing residential rental units are collectively referred to herein as the "Tax Credit Units", and, with respect to all of such Tax Credit Units, "median gross income" shall be determined in accordance with the Code. The Owner further agrees that additional units in the Project shall be both rent-restricted and occupied by low-income individuals or families whose incomes meet the requirements of subsection (a) to the extent necessary to maintain the "applicable fraction," as defined in Section 42(c)(1)(B) of the Code, at not less than the percentage(s) to be determined at final allocation, for each taxable year of the Extended Use Period. A unit is "rent-restricted" if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit [based upon the income limitations set forth in this subsection (b)], all as determined in accordance with Section 42(g) of the Code.

c) The foregoing occupancy restrictions set forth in Section 2 and the additional agreements, if any, set forth in Section 3 shall be in effect for each building which is part of the Project for the Extended Use Period. The Owner hereby waives any rights under Section 42(h)(6)(E)(i)(II) of the Code to terminate the Extended Use Period.

3) Additional Owner Agreements. The Owner further covenants and agrees that not later than the last day of the first year of the Credit Period, as defined in Section 42(f) of the Code, at least () of the residential rental units in the Project shall be constructed, equipped, set aside and occupied (or held vacant and available for immediate occupancy) by at all times during the term of the Land Use Restriction Agreement, hereinafter defined, and the Owner shall provide evidence to the Authority of all licenses, permits or other governmental approvals required for such occupancy.

4) Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:

a) The Owner:

- i) is duly organized under the laws of the State of , and is qualified to transact business under the laws of the State;
- ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted;
- iii) has the full legal right, power and authority to execute and deliver this Agreement; and
- iv) has good and marketable title to the Project.

b) The Owner and all parties comprising the Owner are in compliance with all requirements of Section 42 for all other properties subject to Section 42 owned by any of them, provided that the foregoing does not apply to properties owned by the Owner's tax credit investors unless the tax credit investor exercises day-to-day control over such properties or the owner of such properties.

c) Each building which is the subject of the Authority's Carryover Allocation is a "qualified building" as defined in Section 42(h)(1)(E)(ii) of the Code, and the Project will constitute a "qualified low-income housing project" as defined in Section 42(g) of the Code.

d) As of the date of this Agreement, the Owner has an accumulated basis in the Project equal to at least ten percent (10%) of the reasonably anticipated total basis in the Project as of December 31, 2024.

e) Each building which is the subject of the Carryover Allocation will be placed in service by December 31, 2024, and the Owner will make timely application to the Authority for a final allocation of credit so as to permit the Authority to issue Internal Revenue Service Form 8609 with respect to the Project.

f) The "eligible basis" of each building has been determined in accordance with Section 42(d) of the Code, and has been reduced by the amount, if any, equal to the portion of the adjusted basis of any building which is attributable to residential rental units in the building which are not Tax Credit Units and which are above the average quality standard of the Tax Credit Units in such building. In determining the "qualified basis" of any building, the "at risk" rules have been applied to the extent and in the manner required by Section 42(k) of the Code.

g) If any building which is the subject of the Owner's Application is an existing building,

i) except as stated below, the building was acquired by purchase (as defined in Section 179(d)(2) of the Code). **[If there are no exceptions, so state.]**

ii) except as stated below, there is a period of at least ten (10) years between the date of the acquisition of the building by the Owner and the later of:

(1) the date the building was last placed in service, or

(2) the date of the most recent "non-qualified substantial improvement" of the building (as that term is defined in Section 42(d)(2)(D)(i) of the Code). **[If there are no exceptions, so state.]**

iii) except as stated below, the Owner or any "related person" did not previously place the building in service (as that term is defined in Section 42(d)(2)(D)(iii) of the Code). **[If there are no exceptions, so state.]**

iv) except as stated below, the Owner will pay or incur rehabilitation expenditures with respect to the Building meeting the requirements of Section 42(e) of the Code. **[If there are no exceptions, so state.]**

v) The Owner shall not discriminate on the basis of race, creed, color, sex, age, marital status, national origin, disability or familial status or any other applicable protected class, in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, and shall not refuse to lease a unit in the Project to the holder of a voucher or certificate for federal housing assistance payments pursuant to Section 8 of the United States Housing Act of 1937, or a successor federal program, on account of the status of the prospective tenant as such holder.

h) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing.

i) The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.

j) If the Owner becomes aware of any situation, event or condition that would result in noncompliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to the Authority.

k) The Owner shall ensure that the Tax Credit Units shall be of comparable quality to other units, if any, in the Project.

l) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.

m) **The Project is one involving a "qualified nonprofit organization" as defined in Section 42(h)(5)(C) of the Code which will both own an interest in the Project and "materially participate," as that term is defined in Section 42(h)(5)(B) of the Code, in the development and operation of the Project and will remain a material participant throughout the Compliance Period. [Delete if for-profit developer].**

n) In connection with its request for the Authority's final allocation of tax credits, the Owner shall provide such information and give such certifications as the Authority reasonably shall determine necessary to evidence compliance with Section 42 of the Code and this Agreement and to permit the Authority to make the determination described in Section 6 hereof.

5) Land Use Restriction Agreement. In connection with the final allocation of low-income housing tax credits to the Project by the Authority, the Owner shall execute and deliver a land use restriction agreement (the "Land Use Restriction Agreement") which shall incorporate the covenants and agreements of the Owner set forth in Sections 2 and 3 hereof, provisions for regulation and enforcement by the Authority, and such additional provisions as may be necessary to assure compliance with Section 42 of the Code or to give effect to requirements of the Authority.

6) Determination of Housing Credit Dollar Amount. The Owner acknowledges that the maximum housing credit dollar amount for which the Authority has made the Carryover Allocation is based upon estimates provided by the Owner of Project costs, "eligible basis," and the number and unit composition of the qualified low-income buildings to be included in the Project. The Owner acknowledges and agrees that said housing credit dollar amount may be reduced based upon the Authority's final determination of the eligible basis of each building as to which a final allocation of tax credits is requested, or as a result of the Authority's final determination pursuant to Section 42(m)(2) of the Code, and that the amount of any such reduction shall be deemed to be returned credit to the Authority pursuant to Section 42(h)(3)(C) of the Code.

7) Applicable Credit Percentage. Pursuant to the Protecting Americans from Tax Hikes Act of 2015, effective January 1, 2015, any new building placed in service after January 1, 2015 which is not federally subsidized for the taxable year, the Applicable Percentage, as defined in Section 42(b) shall not be less than nine percent (9%).

USE THE BELOW LANGUAGE FOR 9% DEALS WITH 4% ACQUISITION CREDIT and delete above paragraph (delete below if N/A)

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, the Owner hereby irrevocably elects, pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, to fix the Applicable Percentage(s) for each building in the Project as the percentage(s) prescribed by the Secretary of the Treasury for the month of this Carryover Allocation Agreement. The Authority and the Owner acknowledge that this Carryover Allocation Agreement constitutes an agreement binding upon the Authority, the Owner, and all successors in interest to the Owner as owners of the Project, as to the allocation of _____ {insert year} tax credits to the building(s) in the Project, subject to compliance by the Owner with the requirements of Section 42 of the Code and the additional requirements, if any of the Authority.

If this box is checked, the Owner has made no election pursuant to 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.

8) Gross Rent Floor. Section 42(g)(2)(A) of the Code provides that a Tax Credit 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 the income limitation used to establish the gross rent floor for purposes of Section 42(g)(2)(A) is the date the Authority initially allocates a housing credit dollar amount to the Project (that is, the date of the Carryover Allocation) unless the owner designates a building's placed-in-service date as the effective date for the gross rent floor.

If this box is checked, the Owner designates the placed-in-service date of each building in the Project as the effective date for establishing the gross rent floor for the Tax Credit Units in such building(s).

If this box is checked, the effective date for establishing the gross rent floor for any Tax Credit Unit in the Project is the date of this Carryover Allocation.

9) Progress Reports. The Owner acknowledges the Authority's public interest in assuring the full utilization of the State's housing credit ceiling as defined in Section 42(h)(3)(C) of the Code, including the timely allocation of returned credits pursuant to Section 42(h)(3)(C)(iii) of the Code. Accordingly, the Owner acknowledges and agrees that timely progress toward completion of the Project so as to permit its placement in service by December 31, 2024 is a continuing condition of the Carryover Allocation. To this end, the Owner agrees to submit to the Authority periodic written progress reports at the times and in the forms required by the Authority evidencing timely progress toward completion. Such progress reports shall evidence, without limitation, to the satisfaction of the Authority that (i) by not later than six (6) months after the date of this Agreement, all required zoning and land use approvals have been obtained and the property shall have been determined to be free of adverse environmental conditions to the satisfaction of interim and permanent lenders; and (ii) by not later than twelve (12) months after the date of this Agreement, the construction or rehabilitation of the development has commenced. Commencement of construction for new construction developments is defined as the completion of fifty percent (50%) of all foundation work for the development. Rehabilitation developments meet the requirement of commencement of construction if at least fifteen percent (15%) of the rehabilitation line item of the development budget is expended.

10) Conditions; Return of Carryover Allocation. The Owner acknowledges that all the terms, conditions, obligations and deadlines set forth herein constitute both continuing conditions of the Carryover Allocation and conditions precedent to a final allocation of tax credits by the Authority, and that the Owner's or the Project's failure to comply with all such terms and conditions, including the requirements of Section 9 hereof, will result in the loss of the Carryover Allocation. In any such event, the credits allocated by the Carryover Allocation shall be returned to the Authority 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 Project will have any right to claim credits pursuant to the Carryover Allocation.

11) Final Allocation. Upon notification by the Owner that the building has been placed in service, and compliance by the Owner with the requirements of the Authority for a final allocation of tax credits, the Authority will issue an IRS Form 8609 with respect to such building to the extent required by, and in accordance with, applicable Federal law then governing allocation of tax credits under Section 42 of the Code. The total dollar amount of 2022 tax credits reflected on such Form 8609 will not exceed the housing tax credit dollar amount allocated to the building(s) as set forth in the Carryover Allocation.

12) No Reliance. In making the Carryover Allocation, the Authority has relied 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 the Authority as to the qualification of the Project for the tax credits, or the feasibility or viability of the Project, and may not be relied on as such by any owner, developer, investor, tenant, lender, or other person, for any reason. In addition, the Authority's acceptance of the certifications and representations required in connection with Owner's request for the Carryover Allocation does not constitute a representation as to the satisfaction of the requirements under Section 42(h)(1)(E) as binding on the part of the Internal Revenue Service.

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

a) The Owner hereby agrees to release and forever discharge the Authority, its members, employees, agents, officers, successors and assigns of and from any and all claims, demands, causes of actions, judgments and executions which any of the Owners has or may hereafter have against the Authority 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, the Authority's making of the Carryover Allocation.

b) The Owner hereby agrees to indemnify, save harmless and defend the Authority, 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 attorney's fees) or judgment against the Authority arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the Authority'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 the Authority 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 the Authority 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 the Authority and such other persons, on the other hand, and the relative degrees of fault of the Owner, on the one hand, and of the Authority and such other persons, on the other hand.

14) Miscellaneous.

a) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

b) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Authority:

Colorado Housing and Finance Authority
1981 Blake Street
Denver, Colorado 80202-1272
Attention: Low Income Housing Tax Credit Program

To the Owner:

Attention:

The Authority and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

c) This Agreement shall be governed by the laws of the State of Colorado and, where applicable, the laws of the United States of America.

15) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by electronic image scan transmission will be effective as delivery of a manually executed counterpart of the Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

OWNER:

By: _____

Its: _____

STATE OF _____)
) ss.
_____ County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022,
by _____ as _____ of _____

My commission expires: _____.

