

Record and Return to:

Colorado Housing and Finance Authority  
1981 Blake Street  
Denver, CO 80202  
Attention: Legal Operations

## LOW-INCOME HOUSING TAX CREDIT LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (this “**Agreement**”), dated as of \_\_\_\_\_, 2023, is by and between \_\_\_\_\_, a Colorado \_\_\_\_, 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**”).

### RECITALS:

A. The Authority was 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 (the “**Code**”), and the Treasury Regulations thereunder (the “**Regulations**”).

B. The Owner applied to the Authority for an allocation of [4%][9%] federal low-income housing tax credits to the Project (the “**Federal Credits**”).

C. The Owner is the owner of a ( ) unit rental housing development located on lands in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Colorado, as legally described in Exhibit A hereto commonly known as \_\_\_\_\_ (the “**Project**”).

D. In connection with its Application (defined below) the Owner made certain representations to the Authority about the Project, including representations as to the number of Tax Credit Units (defined below) and the term of occupancy restrictions, upon which representations the Authority relied on in considering the Application for a reservation and allocation of Federal Credits.

E. The Code requires the Owner to execute and deliver this Agreement and that it be recorded in the official land records of the county in which the Project is located to create covenants running with the land for the purpose of enforcing the Code and Regulations; and certain additional undertakings of the Owner in connection with its Application by regulating and restricting the use and occupancy of the Project as set forth herein.

F. The Authority is unwilling to allocate Federal Credits to the Project unless the Owner enters into this Agreement, and consents to being regulated by the Authority so that the Authority may enforce the occupancy restrictions and other covenants, and terms and conditions of this Agreement in accordance with the Code and the Regulations.

G. The Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project land for the Term (defined below) and binding upon all subsequent owners of the Project for such Term.

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. Incorporation of Recitals. The recitals above are incorporated in and made a part of this Agreement.
  
2. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof, and all words and phrases defined in Section 42 of the Code shall have the same meanings in this Agreement:
  - (a) **“AMI”** means Area Median Gross Income, as defined below.
  - (b) **“Applicable Fraction”** means the applicable fraction as defined in Section 42(c)(1)(B) of the Code.
  - (c) **“Application”** means the application submitted to the Authority by the Owner for a reservation, initial determination, or allocation of Federal Credits for the Project. The Application includes all materials provided to the Authority, as required by the applicable checklist, and any additional materials provided to the Authority that are reviewed as part of the application process.
  - (d) **“Area Median Gross Income”** means the median gross income of the area in which the Project is located as determined by the Secretary for purposes of Section 42 of the Code, including adjustments for family size.
  - (e) **“Compliance Manual”** means the Authority’s Multifamily Program Compliance Manual, as amended from time to time.
  - (f) **“Compliance Period”** has the same meaning as defined in Section 42(i)(1) of the Code.
  - (g) **“Credit Period”** means, with respect to the Federal Credit, the “credit period” as defined in Section 42(f) of the Code.
  - (h) **“Eligible Basis”** means the eligible basis as defined in Section 42(d) of the Code.
  - (i) **“Extended Use Period”** means for each building that is a part of the Project a period of [30/40] consecutive taxable years beginning on the first day in the Compliance Period on which the building is part of a qualified low-income housing project and ending on the date that is [15/25 years] after the close of the Compliance Period]; provided that in no event shall the Extended Use Period be shorter than the Extended Use Period as defined in Section 42(d) of the Code.
  - (j) **“IRS”** means the Internal Revenue Service.
  - (k) **“Materially Participate”** has the same meaning set forth in Section 469(h) of the Code.
  - (l) **“Qualified Low-Income Building”** means a “qualified low-income building” as defined in Section 42(c)(2) of the Code.

- (m) **“Qualified Low-Income Housing Project”** means a “qualified low-income housing project” as defined in Section 42(g)(1) of the Code.
- (n) **“Qualified Nonprofit Organization”** means a qualified nonprofit organization as defined in Section 42(h)(5)(C) of the Code.
- (o) **“Qualifying Tenant”** means a tenant that meets the income requirements of Paragraph 7(b).
- (p) **“Rent Restricted”** 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 as set forth in Paragraph 7(b), all as determined in accordance with Section 42(g)(2) of the Code.
- (q) **“Secretary”** means the Secretary of the United States Department of the Treasury.
- (r) **“Tax Credit Units”** means the rent-restricted units identified in Sections 7(a) and (b).
- (s) **“Term”** means the Term of this Agreement, as defined in Section 5(a).
- (t) **“Tenant Income Certification”** means the certification regarding resident eligibility to live in the Tax Credit Unit; and any successor certification, as required by the Authority from time to time.

3. Recording and Filing: Covenants to Run with the Land.

- (a) This Agreement will be recorded in the real property records where the Project is located, and the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to the Owner and its successors and assigns, the Authority and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the Term.
- (b) The Owner agrees that any and all requirements of the laws of the State that must be satisfied in order for the provisions of this Agreement to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, and any requirements of privity of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land.
- (c) During the Term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement; provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

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.
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- (b) Each building that is the subject of an allocation of Federal Credits is, or by not later than the last day of the first year of the Credit Period, will be a Qualified Low-Income Building and the Project constitutes or will constitute a Qualified Low-Income Housing Project.
  - (c) 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.
  - (d) 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.
  - (e) 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.
  - (f) If the Owner becomes aware of any situation, event or condition that would result in non-compliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to the Authority.
  - (g) The Owner shall ensure that the Tax Credit Units shall be of comparable quality to other units, if any, in the Project.
  - (h) 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.
  - (i) The Owner has obtained or will obtain from any prior recorded lienholder on the Project its consent and partial subordination to this Agreement in a form satisfactory to the Authority.

- (j) The Owner shall not evict or terminate the tenancy of an existing tenant of any Tax Credit Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Tax Credit Unit.
- (k) The Owner shall establish and maintain an operating reserve fund in an amount that is equal to, or greater than, four (4) months of projected annual operating expenses and four (4) months of debt service payments. The operating reserve fund must remain with the Project for a minimum of three (3) years from the time the Project is placed in service. These requirements, as well as provisions for reserve account reductions over time as Project benchmarks are achieved, must be contained in the entity partnership agreement. These requirements may not be modified without the prior written consent of the Authority.
- (l) **A Qualified Nonprofit Organization shall at all times own an interest in the Project (directly or through a partnership) and shall Materially Participate in the development and operation of the Project throughout the Compliance Period.**

5. Term of this Agreement.

- (a) This Agreement shall be in effect for each building that is part of the Project until the end of the Extended Use Period.
- (b) The Owner hereby waives any rights under Section 42(h)(6)(E)(i)(II) of the Code to terminate the Extended Use Period.
- (c) Code Requirements that Survive Foreclosure:
  - (i) This Agreement shall not be terminated with respect to any portion of the Project that is acquired by foreclosure or deed in lieu of foreclosure if the Secretary determines that such acquisition is part of an arrangement with the Owner a purpose of which is such termination.
  - (ii) If this Agreement terminates due to foreclosure or deed in lieu of foreclosure, the Owner shall not evict or terminate the tenancy of an existing tenant of any Tax Credit Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Tax Credit Unit for a period of three (3) years following the termination of this Agreement.
  - (iii) This subsection (c) and the rights granted to the Authority and past, present and future tenants of the Project to enforce this Agreement shall survive any such termination.
  - (iv) In the event foreclosure proceedings are initiated, the Authority shall receive notice of such foreclosure no less than 15 days prior to such foreclosure.

6. Qualified Low-Income Housing Project. From no later than the last day of the first year of the Credit Period through the end of the Extended Use Period, the Owner shall maintain the Project as a Qualified Low-Income Housing Project at all times. To this end, and without limitation, the Owner shall assure that all of the residential units in the Project are available for use by the general public, suitable for occupancy and used on other than a

transient basis unless the Project qualifies as a single room occupancy project or as transitional housing for the homeless pursuant to Section 42(i)(3) of the Code).

7. Occupancy Restrictions.

- (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 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, 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	employee

The Owner further agrees that additional residential units in the Project shall be maintained as both rent-restricted and occupied by low-income individuals or families whose incomes meet the requirements of this subsection (b) to the extent necessary to maintain the Applicable Fraction, at not less than percentage(s) shown on Exhibit B hereto for each taxable year of the Extended Use Period.

- (c) The determination of whether an individual or family is a Qualifying Tenant shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any Tax Credit Unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Tax Credit Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section 7 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such residential unit shall no longer be a Tax Credit Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.
  - (d) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall be required to sign a fully completed Tenant Income Certification prepared by the Owner, and the income and assets of such individual or family must be verified in the manner prescribed by the Authority.
  - (e) The form of lease to be utilized by the Owner in renting any residential unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Tenant Income Certification or the failure by such tenant to execute a certification annually.
8. Additional Agreements. [The Owner agrees that the Authority's award and allocation of Federal Credits is based on the Owner's additional obligations and agreements, as set forth on Exhibit C, attached hereto and incorporated herein by this reference. ][[Because the Owner is obtaining a loan that will be insured by the United States Department of Housing and Urban Development ("HUD"), the parties agree to the additional provisions set forth on Exhibit [D], attached hereto and incorporated herein by this reference.] [Intentionally deleted if N/A]
9. Compliance Monitoring: Fees.
- (a) The Owner acknowledges that Section 42 of the Code requires the Authority to monitor the compliance of the Owner and the Project with the requirements of Section 42 of the Code. The Owner agrees to strictly comply, at all times, with the Compliance Manual, the terms and provisions of which are by this reference incorporated in this Agreement and made a part hereof; and to take all actions required by the Authority pursuant to the Compliance Manual to assist or cooperate with the Authority in monitoring such compliance.
  - (b) The Owner agrees to pay to the Authority: (i) any non-compliance fees as required in the Compliance Manual as of the date of such non-compliance, and (ii) any fees in the amounts and at the times as the Authority shall, in its sole discretion, reasonably require the Owner to pay in order to reimburse the Authority for the costs of such monitoring.
10. Owner Certifications and Reports.
- (a) Within ninety (90) days of filing IRS Form 8609 with the IRS, the Owner shall provide to the Authority a copy of IRS Form 8609, for each building, as filed with the IRS for the first year of the Credit Period.

- (b) The Owner shall provide to the Authority, on the dates required by the Compliance Manual, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided by the Authority.
- (c) The Owner shall maintain in its records and provide to the Authority copies of any and all notices and correspondence from or with the IRS concerning the Project or the Owner upon request.
- (d) In addition to the information provided for in Section 9 and in this Section 10, the Owner shall provide any other information, documents or certifications requested, from time to time, by the Authority with respect to the Project's physical, operational and financial condition and residents which the Authority reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code, including a copy of the IRS Form 8609 Schedule A.

11. Transfer Restrictions.

- (a) The Owner shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of the Authority. Such consent shall be given provided that: (i) the Owner is in compliance with the requirements of this Agreement and Section 42(j)(6) of the Code; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of the Authority, by its performance with respect to other low-income housing tax credit or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Agreement; and (iii) the Authority shall be paid a transfer fee, as determined, from time to time, by the Authority. In no event shall the Owner dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. For the purposes of this subsection, a transfer of any managing member or general partner of the Owner or a transfer of fifty percent (50%) or more of the ownership interests in Owner shall be deemed a transfer of the Project.
- (b) The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee.

12. Physical Maintenance/Management/Books/Records/Inspections.

- (a) The Owner shall maintain each building in the Project such that all residential units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to the Authority.
- (b) The Owner shall provide for the management of the Project in a manner reasonably determined by the Authority to assure compliance with this Agreement. Any management contract entered into by the Owner involving the Project shall provide that it shall be subject to termination, without penalty and with or without cause, upon written request by the Authority addressed to the Owner. Upon such request the Owner shall immediately terminate the contract within a period of not more than thirty (30) days and shall make



arrangements reasonably satisfactory to the Authority for continuing proper management of the Project.

- (c) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with Section 42 of the Code and with this Agreement and to the eligibility of the Owner to claim the Federal Credits with respect to the Project shall at all times be maintained at the Project, or at the Owner's principal place of business in the State of Colorado, in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by the Authority or its authorized agents. The Authority shall also have the right to enter and inspect the Project at any reasonable time.
- (d) Owners are required to keep records for each Qualified Low-Income Building in the Project showing the following:
  - (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
  - (ii) the percentage of residential rental units in the building that are Tax Credit Units;
  - (iii) the gross rent charged on each residential rental unit in the building (including any utility allowance and any non-optional fees);
  - (iv) the number of occupants in each Tax Credit Unit;
  - (v) the Tax Credit Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
  - (vi) the annual income certification of each Qualifying Tenant;
  - (vii) documentation to support each Qualifying Tenant's income certification;
  - (viii) the Eligible Basis and qualified basis of the building at the end of the first year of the Credit Period; and
  - (ix) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project).

Owners are required to keep all records for each building for a minimum of six (6) years after the due date (with extensions) for filing the Owner's federal income tax return for any year; provided, that the records for the first year of the Credit Period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

- (e) The Authority has the right to conduct physical inspections of the Project and to conduct a review of the Owner's files relating to the Project throughout the Extended Use Period.

13. Enforcement.

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code or of this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of the Authority, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the IRS from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Project.
- (b) The Owner shall promptly advise the Authority as to the date each building in the Project is a Qualified Low-Income Building.
- (c) In the event of any failure of the Owner to comply with the provisions of Section 42 of the Code or this Agreement, consistent with the procedures set forth in the Compliance Manual, the Authority shall: (i) inform the Owner by written notice of such failure; and (ii) provide the Owner with a period of time to correct the failure. If any such failure is not corrected to the satisfaction of the Authority within the period of time specified by the Authority, without further notice the Authority may declare a default under this Agreement effective on the date of such declaration of default, and the Authority may (i) apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement; (ii) secure the appointment of a receiver to operate the Project in compliance with this Agreement; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Agreement.
- (d) The Owner and the Authority each acknowledges that the primary purpose of requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the Regulations thereunder, **AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF FEDERAL CREDITS FOR THE PROJECT HEREBY AGREES AND CONSENTS THAT THE AUTHORITY, ANY QUALIFYING TENANT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE BUILDING UNDER THE CODE (WHETHER PRESENT, PROSPECTIVE OR FORMER OCCUPANTS OF THE BUILDING) (ANY OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION,** the Owner hereby further specifically acknowledging that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (e) In the event of the Owner's or Project's failure to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the IRS or the Authority from time to time pertaining to the

obligations of the Owner as set forth therein or herein, the Authority, in addition to all of the remedies provided by law or in equity, shall notify the IRS of such noncompliance.

14. Issuance of Form 8609. The Authority shall prepare and file with IRS Form 8609 with respect to each building in the Project, evidencing the Authority's allocation of Federal Credits with respect to the Project. The Authority shall issue Form 8609(s) to the Owner when the following conditions have been met:
- (a) Each building in the Project for which a Form 8609 is issued is a Qualified Low-Income Building.
  - (b) The Owner and the Project are in compliance with the terms of this Agreement.
  - (c) The Owner shall have provided, on form(s) approved by the Authority, a certification of each building's Eligible Basis and the Authority shall have made its final determination of the Federal Credit amount and its final determination pursuant to Section 42(m)(2) of the Code.
  - (d) The Owner shall have provided a copy of the executed partnership or operating agreement.
  - (e) The Owner shall have provided to the Authority the partial subordination of any prior recorded lien on the Project to this Agreement.
  - (f) The Owner and its management agent and any management staff involved in the certification of residents shall have completed compliance training provided or approved by the Authority.
  - (g) The Owner shall have paid the compliance monitoring fee.
15. Return of Unused Federal Credit. Pursuant to Section 42(h)(3)(C) of the Code and Regulation §1.42-14(d), the Federal Credit amount allocated to the Owner with respect to the Project shall be canceled and returned to the Authority, in whole or in part, if (i) any building in the Project is not a Qualified Low-Income Building within the time period required by Section 42 of the Code, or (ii) the "Qualified Basis" of any building in the Project is less than the qualified basis on which the Federal Credit was allocated by the Authority.
16. Release and Indemnification. The Owner acknowledges that, in issuing IRS Form 8609(s) with respect to the Project, the Authority is relying or will rely upon information and representations given by or on behalf of the Owner and has made or will make no independent investigation and does not and will not have independent knowledge of the basis for such information and representations. Accordingly, to induce the Authority to issue IRS Form 8609(s), the Owner agrees as follows:
- (a) The Owner 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 Owner has or may hereafter have against the Authority, whether in law or in equity, arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the issuance of a Form 8609 with respect to the Project by the Authority.

- (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 issuance of a Form 8609 with respect to the Project. 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.

17. 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: [INSERT INFO]  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

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.

This Agreement may be amended from time to time by any written instruments signed by both the Authority and the Owner. The signing of any such instrument by the Authority shall be deemed for all purposes to be on behalf of, and shall be legally binding on, the Authority, any Qualifying Tenant and any individual who meets the income limitation applicable to the Project under the Code (whether present, prospective or former occupants of the Project).

18. 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.

**[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW]**





2023 Land Use Restriction Agreement  
*Insert Project Name*

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**[to be inserted from title commitment or policy]**

**Also known as: [INSERT STREET ADDRESS] For informational Purposes only**



**EXHIBIT B**

**Minimum Applicable Fraction by Building**

<b>Building Identification Number</b>	<b>Minimum Applicable Fraction</b>

## EXHIBIT C

### Additional Owner Agreements

#### I. State Credits [insert if state credits]

##### RECITALS

A. The Authority is authorized by Part 21 of Article 22 of Title 39, Colorado Revised Statutes, as may be amended from time to time (the “**State Affordable Housing Credit Act**”) to allocate affordable housing tax credits under the State Tax Credit Act.

B. Under the State Affordable Housing Credit Act, the Authority determines the eligibility for and allocates credits in accordance with the standards and requirements set forth in the State Affordable Housing Credit Act and Section 42 of the Code.

C. The Owner applied to the Authority for an allocation of affordable housing credits under the State Affordable Housing Credit Act (the “**State Credits**”).

D. In connection with its Application (defined below) the Owner made certain representations to the Authority about the Project, including representations as to the number of Tax Credit Units and the term of occupancy restrictions, upon which representations the Authority relied in considering the Application for a reservation and allocation of State Credits.

E. The Authority is unwilling to allocate State Credits to the Project unless the Owner enters into this Agreement, and consents to be regulated by the Authority in order that the Authority may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement in accordance with the State Affordable Housing Credit Act.

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. Incorporation of Recitals. The recitals above are incorporated in and made a part of this Agreement.

2. Definitions. All references in the Agreement to the following capitalized terms, shall have the following meaning:

- a. “**Allocation Certificate**” means the Colorado Affordable Housing Tax Credit Allocation Certificate.
- b. “**Application**” means the application submitted to the Authority for a reservation, initial determination, or allocation of Federal Credits and/or State Credits. The Application includes all materials provided to the Authority, as required by the applicable checklist, and any additional materials provided to the Authority that are reviewed as part of the tax application process.

- c. **“Credit Period”** means, with respect to the State Tax Credit, the “credit period” as defined in Section 39-22-2101 of the State Tax Credit Act, and with respect to the Federal Credit, the “credit period” as defined in Section 42(f) of the Code.
  - d. **“Department”** means the Colorado Department of Revenue.
  - e. **“Qualified Development”** means a “qualified development” under Section 39-22-2101 (10) of the State Tax Credit Act.
3. Additional Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:
- a. In compliance with the State Affordable Housing Credit Act:
    - i. Each building that is the subject of an allocation of State Credits is or by not later than the last day of the Credit Period will be a Qualified Low-Income Building and the Project constitutes or will constitute a Qualified Development.
    - ii. The Project will be operated and maintained as a Qualified Development.
    - iii. The Owner shall operate the Project in accordance with the accessibility and adaptability requirements of the Federal Credits and Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, as amended.
    - iv. The Owner will not knowingly take or permit any action that would result in a violation of the State Affordable Housing Act.
  - b. The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of the State Affordable Housing Credit Act.
  - c. If the Owner becomes aware of any situation, event or condition that would result in non-compliance of the Project or the Owner with the State Affordable Housing Credit Act, the Owner shall promptly give written notice thereof to the Authority.
  - d. The Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of the Authority, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department or the Authority from time to time pertaining to the Owner's obligations under the State Affordable Housing Credit Act and affecting the Project.
4. Compliance Monitoring. The Owner agrees that the Authority must monitor the Owner and the Project for compliance with the State Affordable Housing Credit Act in addition to the Code, and may report any non-compliance to the Department in addition to the IRS, and may provide the Department all filings provided to the IRS. As such, the Owner agrees to be bound by all State Credit compliance requirements found in the Compliance Manual and to take all actions required by the Authority pursuant to the Compliance Manual to assist or cooperate with the Authority in monitoring such compliance.
5. Owner Certifications and Reports.

2023 Land Use Restriction Agreement  
*Insert Project Name*

- a. Within ninety (90) days of filing the Allocation Certificate with the Department, the Owner shall provide to the Authority a copy, for each building, of the Allocation Certificate, as filed by with the Department for the first year of the Credit Period.
- b. The Owner shall provide the Department with any documentation, certifications, and/or reports required by the State Affordable Housing Credit Act and/or as required by the Department for its monitoring of the State Credits.
- c. The Owner shall maintain its records and provide the Authority with all notices and correspondence from or with the Department concerning the Project or the Owner, and provide the Authority with any other information, documents or certifications requested, from time to time, by the Authority which the Authority reasonably deems necessary to substantiate the Owner's continuing compliance with the State Affordable Housing Credit Act.

6. Enforcement. All the enforcements rights of the Authority included in this Agreement include the Authority's rights to ensure compliance with the State Credits and the State Affordable Housing Credit Act.

7. Termination in the Event of Foreclosure. This Agreement shall not terminate, with respect to the State Credits, on the date the Project is acquired by foreclosure or instrument in lieu of foreclosure if the Authority determines that such acquisition is part of an arrangement, a purpose of which is to cause such termination.

8. Restrictions on Transfers. In addition to the requirements in Section 11 of the Agreement, the Authority's consent to a transfer of the Project will be conditioned on the Owner's and the Project's compliance with the State Affordable Housing Credit Act.

9. Allocation Certificate. The Authority's issuance of the Allocation Certificate is conditioned upon the satisfaction of the Owner of all requirements in the Qualified Allocation Plan for the issuance of such certificate.

II. Special Populations Served

1. The Owner further covenants and agrees that not later than the last day of the first year of the Credit Period, 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 \_\_\_\_\_ [describe special housing needs resident] at all times during the term of this Agreement, and the Owner shall provide evidence to the Authority of any license, permit or other governmental approval required for such occupancy. **[USE IF SPECIAL NEEDS HOUSING]**
2. [USE IF REQUIREMENT TO ADD LANGUAGE RE SENIOR – PREFERENCE NOT TO INCLUDE, AND IF INCLUDE, NOT TO SPECIFY AGE]
3. The Owner will provide the Authority with notification of any substantial changes in population served.

EXHIBIT D

1. [HUD Financing Provisions] Insert if applicable.

(a) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means \_\_\_\_\_, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(b) Notwithstanding anything herein to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), the provisions of hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or the requirements hereof. In the event of any conflict between the provisions hereof and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of this LURA, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the LURA imposes no terms or requirements that conflict with statutory provisions of the National Housing Act and related regulations.

(c) In the event of foreclosure, this LURA (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the

- exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, or to the extent applicable, as otherwise approved by HUD.
- (d) Borrower and the Authority acknowledge that Borrower's failure to comply with the covenants provided in the LURA does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.
- (e) Except for the Authority's reporting requirement, in enforcing the LURA, the Authority will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
- i. Available surplus cash, if the Borrower is a for-profit entity;
  - ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity;
  - iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity; or
  - iv. A HUD-approved collateral assignment of any HAP contract.
- (f) For so long as the Mortgage Loan is outstanding, Borrower and Authority shall not further amend the LURA, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.
- (g) Subject to the HUD Regulatory Agreement, the Authority may require the Borrower to indemnify and hold the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Authority relating to the subordination and covenants set forth in the LURA, provided, however, that Borrower's obligation to indemnify and hold the Authority harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.
- (h) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low-Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the LURA. Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the LURA. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the LURA arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the LURA.]

[2. HUD Public Housing Provisions.

(a) As used herein, the following terms shall have the following meanings:

- (i) "HUD" means the U.S. Department of Housing and Urban Development.

- (ii) **“Restriction Period” means the period in which the Declaration is in effect.**
- (iii) **“ACC” means the Consolidated Annual Contributions Contract between HUD and the Authority dated as of \_\_\_\_\_, as \_\_\_\_\_ amended by the Mixed Finance ACC Amendment, dated as of \_\_\_\_\_, as the same may be further amended from time to time.**
- (iv) **“Act” means the United States Housing Act of 1937 (42 U.S.C. § 1437, et seq.), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.**
- (v) **“Applicable Public Housing Requirements” means all requirements applicable to public housing, including, but not limited to, the Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the ACC, the HOPE VI grant agreement (if applicable), HUD notices (including any notice of fund availability under which Landlord received an award of HOPE VI funds for use in connection with the Project), the HUD-approved Declaration of Restrictive Covenants in favor of HUD, the Owner’s admissions and occupancy policies applicable to the Project, as set forth in its PHA Plan, and all applicable Federal statutory, executive order and regulatory requirements, as those requirements may be amended from time to time.**
  - (vi) **“Declaration” means the declaration of restrictive covenants required by HUD to be recorded against the Project prior to any mortgage(s) or other encumbrance(s) against the Property.**
- (b) **Notwithstanding anything in this Agreement to the contrary, except for the requirements of 26 U.S.C. 42(h)(6)(E)(ii) of the Code:**
  - (i) **The provisions hereof are expressly subordinate to Applicable Public Housing Requirements. Owner covenants that it will not take or permit any action that would result in violation of Section 42 of the Code, Applicable Public Housing Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the Applicable Public Housing Requirements, HUD shall be and remains entitled to enforce the Applicable Public Housing Requirements. Notwithstanding the foregoing, nothing herein limits the Authority’s ability to enforce the terms of the Restrictive Covenants as required by the Code, provided such terms do not conflict with statutory provisions of the Act or the regulations related thereto. The Owner represents and warrants that to the best of the Owner’s knowledge the Restrictive Covenants impose no terms or requirements that conflict the Act and related regulations.**
  - (ii) **In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure of the Project, this Agreement (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) of the Code.**

- (iii) The Authority expressly reserves the right to: seek specific performance of this Agreement and to report to the Internal Revenue Service, pursuant to Section 42(m)(1)(B)(iii) of the Code and applicable regulations thereunder, any non-compliance with any terms of this Agreement. In addition, pursuant to 26 U. S. C. Section 42(h) (6)(B)(ii), tenants have the right to enforce the Restrictive Covenants.**
- (iv) During the Restriction Period, no amendment to this Agreement shall be effective without the prior written approval of HUD.**
- (v) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low-Income Housing Tax Credits or any portion thereof related to any potential conflicts between the Applicable Public Housing Requirements and this Agreement. Owner represents and warrants that to the best of Owner's knowledge the Applicable Public Housing Requirements impose no requirements which may be inconsistent with full compliance with this Agreement. The acknowledged purpose of the Applicable Public Housing Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of this Agreement is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the Applicable Public Housing Requirements and this Agreement arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of Owner, with advice of counsel, to determine that it will be able to comply with the Applicable Public Housing Requirements and its obligations under this Agreement.]**