

**USE THIS LURA IF THE TAXPAYER HAS NOT WAIVED HIS RIGHT TO TERMINATE THE EXTENDED USE PERIOD BY AGREEING TO ONLY 15 ADDITIONAL EXTENDED USE YEARS**

Record and Return to:

Colorado Housing and Finance Authority  
1981 Blake Street  
Denver, CO 80202  
Attention: Paula Harrison

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

THIS LAND USE RESTRICTION AGREEMENT, dated as of \_\_\_\_\_, 2017, 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").

W I T N E S S E T H:

WHEREAS, the Owner is the owner of a \_\_\_\_\_ ( \_\_\_\_\_ ) unit rental housing development located on lands in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Colorado, more particularly described in Exhibit A hereto, 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 an allocation of low-income housing tax credits to the Project and has made certain representations to the Authority in its Low-Income Housing Tax Credit Preliminary Reservation Request (as the same may have been amended or supplemented by the Owner's Carryover Allocation Application, if any, progress reports and the Owner's Final Allocation Application, collectively, the "Application") about the Project, including representations as to the number of Low-Income Units (hereinafter defined) and the term of occupancy restrictions, upon which representations the Authority relied in considering the Application for a reservation and allocation of credits; and

WHEREAS, the Code requires in connection with the allocation of low-income housing tax credits that the Owner execute and deliver this land use restriction agreement (this "Agreement") and that this Agreement be recorded in the official land records of the county in which the Project is located in order to create covenants running with the land for the purpose of enforcing certain requirements of Section 42 of the Code 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; and

WHEREAS, based upon the Owner's representations, the Authority is willing to allocate low-income housing tax credits to the Project provided that the Owner, by entering into this Agreement, 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; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use and occupancy of the Project shall

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be and are covenants running with the Project land for the term stated herein 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. Recording and Filing; Covenants to Run with the Land.
  - (a) This Agreement shall be placed of record in the real property records of the county in which the Project is located and, except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns, and the Authority and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the period prescribed in Section 3 hereof.
  - (b) The Owner hereby agrees that any and all requirements of the laws of the State to 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 that 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. 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 hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.
  
2. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:
  - (a) The Owner is duly organized under the laws of the State of \_\_\_\_\_, and is qualified to transact business under the laws of the State.
  - (b) The Owner has good and marketable title to the premises constituting the Project.
  - (c) Each building which is the subject of an allocation of low-income housing tax credits is, or, by not later than the last day of the first year of the "credit period," as defined in Section 42(f) of the Code ("Credit Period"), will be, a "qualified low-income building" as defined in Section 42(c)(2) of the Code ("Qualified Low-Income Building"), and the Project constitutes or will constitute a "qualified low-income housing project" as defined in Section 42(g) of the Code ("Qualified Low-Income Housing Project").
  - (d) The Owner shall not discriminate on the basis of race, creed, color, sex, age, marital status, national origin, disability or familial status in the lease, use or occupancy of the Project or in connection with the employment or application for

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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 of eligibility under Section 8 of the U.S. Housing Act of 1937 on account of the status of the prospective tenant as such holder.

- (e) 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.
- (f) 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.
- (g) If the Owner becomes aware of any situation, event or condition which 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.
- (h) The Owner shall insure that the Low-Income Units (as hereinafter defined) shall be of comparable quality to other units, if any, in the Project.
- (i) 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 hereof.
- (j) The Owner has obtained or will obtain from any prior recorded lienholder on the Project its consent and partial subordination to this Agreement.
- (k) During the compliance period and extended use period the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit.
- (l) 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.
- (m) **A "qualified nonprofit organization," as defined in Section 42(h)(5)(C) of the Code, shall own an interest in the Project and shall "materially participate," within the meaning of Section 469(h) of the Code, in the development and**

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**operation of the Project throughout the "compliance period" as defined in Section 42(i)(1) of the Code ("Compliance Period").**

**Double check status of non-profit, if non-profit remove bold, if for profit remove paragraph!**

3. Term of Restrictions.

- (a) Except as otherwise provided herein, this Agreement, including the occupancy restrictions set forth in Sections 5 and 6 hereof, shall be in effect for each building which is part of the Project for the Compliance Period and for an additional period of ( ) taxable years thereafter (the "Additional Compliance Period"). The Owner hereby waives any rights under Section 42(h)(6)(E)(i)(II) of the Code to terminate the "extended use period," as defined in Section 42(h)(6)(D) of the Code ("Extended Use Period") during such Additional Compliance Period.
- (b) If the Additional Compliance Period described in subsection (a) above is less than fifteen (15) taxable years, the Owner shall continue to comply with the occupancy requirements set forth in Section 5 and 6 hereof at all times during the remaining term of the Extended Use Period.
- (c) Except as provided in subsection (d) of this Section 3, this Agreement and the Extended Use Period for any building which is part of the Project shall terminate:
  - (i) on the date the Project or the building is acquired by foreclosure or deed in lieu of foreclosure unless the Secretary (hereinafter defined) determines that such acquisition is part of an arrangement with the Owner a purpose of which is such termination; or
  - (ii) on the last day of the one-year period beginning on the date, after the date which is one (1) year prior to the end of the period described in subsection (a) above, the Owner submits a written request to the Authority to find a person to acquire the Owner's interest in the low-income portion of the building and the Authority is unable to present during such period a "qualified contract" as such term is defined in Section 42(h)(6)(F) of the Code.
- (d) During the period of three (3) years following any termination pursuant to subsection (c) above, the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit. This subsection (d) shall survive any such termination.

4. Qualified Low-Income Housing Project. The Owner shall maintain the Project as a Qualified Low-Income Housing Project at all times, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement. To this end, and without limitation, the Owner shall assure that all of the

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residential units in the Project are available for use by the general public, suitable for occupancy and used on other than a transient basis.

5. Occupancy Restrictions.

- (a) For the purpose of Section 42(g)(1) of the Code, the Owner elects that at least \_\_\_\_\_ percent (\_\_\_\_%) of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is \_\_\_\_\_ percent (\_\_\_\_%) or less of area median gross income.
- (b) Notwithstanding the election described in subsection (a) above, the Owner covenants and agrees that, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement, at least \_\_\_\_\_ (\_\_\_\_) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is \_\_\_\_\_ percent (\_\_\_\_%) or less of area median gross income, at least \_\_\_\_\_ (\_\_\_\_) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is \_\_\_\_\_ percent (\_\_\_\_%) or less of area median gross income and at least an additional \_\_\_\_\_ (\_\_\_\_) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is \_\_\_\_\_ percent (\_\_\_\_%) or less of area median gross income. All of the foregoing residential rental units are collectively referred to herein as the "Low-Income Units", and, with respect to all of such Low Income 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 this subsection (b) to the extent necessary to maintain the "applicable fraction," as defined in Section 42(c)(1)(B) of the Code, at not less than percentage(s) shown on Exhibit B hereto 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 determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section 5) shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section 5 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next

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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 and deliver to the Owner a fully completed Certification of Resident Eligibility in the form provided from time to time by the Authority, 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 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 Income Certification or the failure by such tenant to execute a Certification of Resident Eligibility annually.

6. Additional Owner Agreement. 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 \_\_\_\_\_ [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. **[Omit if no special needs housing]**

7. Compliance Monitoring; Fees.

- (a) The Owner acknowledges that Section 42 of the Code requires the Authority to monitor the compliance by the Owner and the Project with the requirements of said Section 42, and agrees to strictly comply, at all times, with the Authority's Low-Income Housing Tax Credit Compliance Manual, as amended from time to time, (the "Compliance Manual"), the terms and provisions of which are by this reference incorporated in this Agreement and made a part hereof. In the event of any conflict between the provisions of this Agreement and the provisions of the Compliance Manual, this Agreement shall control.
- (b) In addition to its specific agreements and undertakings in this Agreement, the Owner shall take or cause to be taken all other and further actions required of the Owner by the Authority in order to satisfy such monitoring requirement, which actions shall be designated in writing by the Authority to the Owner not less than sixty (60) days (or such other period as may be required by law) prior to the date by which such actions must first be taken.
- (c) The Owner agrees to pay to the Authority such fees in such amounts and at such 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.

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8. Owner Certifications and Reports.

- (a) Within ninety (90) days of the end of the first year of the Credit Period, the Owner shall provide to the Authority a copy of the First Year Certification Part II of IRS Form 8609, as filed or prepared for filing with the Internal Revenue Service and executed by or on behalf of the Owner.
- (b) The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Section 42 of the Code. A copy of such annual certification shall be provided to the Authority.
- (c) The Owner shall provide to the Authority, annually, on each anniversary of the date on which the Project was placed in service, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided, from time to time, by the Authority, together with a copy, for each building, of the most recently filed Schedule A, Annual Statement, IRS Form 8609.
- (d) The Owner shall maintain in its records and provide to the Authority copies of any and all notices and correspondence from or with the Internal Revenue Service concerning the Project or the Owner.
- (e) In addition to the information provided for in Section 7 and in this Section 8, 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.

9. 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 of 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 but not to exceed \$2000. 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, transfer of fifty percent (50%) or more of the ownership interests in Owner shall be deemed a transfer of the Project.

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- (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.

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

- (a) The Owner shall maintain each building in the Project such that all 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 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 Low-Income Units;
  - (iii) the rent charged on each residential rental unit in the building (including any utility allowance);
  - (iv) the number of occupants in each Low-Income Unit;



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- (v) the Low-Income 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 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 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.

11. 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 Internal Revenue Service 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 of this Agreement, the Authority shall inform the Owner by written notice of such failure and provide the Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of the Authority within the period of time specified by the Authority, which shall be at least thirty (30) days after the date any notice to the Owner is mailed, or within such further time as the Authority determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, 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

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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 Treasury Regulations thereunder, **AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF LOW-INCOME HOUSING TAX 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 Internal Revenue Service 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 Internal Revenue Service of such noncompliance.

12. Issuance of Form 8609. The Authority shall prepare and file with the Internal Revenue Service ("IRS") IRS Form 8609 with respect to each building in the Project, evidencing the Authority's allocation of low-income housing tax 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, including particularly, but without limitation, Sections 4 and 5 hereof.
- (c) The Owner shall have provided, on form(s) approved by the Authority, a certification of each building's "eligible basis" as defined in Section 42(d) of the Code and the Authority shall have made its final determination of the credit amount and its final determination pursuant to Section 42(m)(2) of the Code.

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- (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 shall have completed compliance training provided or approved by the Authority.
  - (g) The Owner shall have paid the compliance monitoring fee.
13. Return of Unused Credit. Pursuant to Section 42(h)(3)(C) of the Code and Treasury Regulation §1.42-14(d) thereunder, the housing tax credit dollar 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 credit amount was allocated by the Authority.
14. Release and Indemnification. The Owner acknowledges that, in issuing Internal Revenue Service Form 8609 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 the Form 8609, 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.



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**“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.]

**[16. 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.

(iii) During the Restriction Period, no amendment to this Agreement shall be effective without the prior written approval of HUD.

(iv) 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



Land Use Restriction Agreement  
Property Name

**determine that it will be able to comply with the Applicable Public Housing Requirements and its obligations under this Agreement.]**

Land Use Restriction Agreement  
 Property Name

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 \_\_\_\_\_ )

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
 by \_\_\_\_\_ as \_\_\_\_\_  
 of \_\_\_\_\_  
 \_\_\_\_\_.

My Commission expires: \_\_\_\_\_.

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

Land Use Restriction Agreement  
Property Name

COLORADO HOUSING AND FINANCE  
AUTHORITY

By: \_\_\_\_\_  
Cris A. White, Executive Director/CEO

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Cris A. White as Executive  
Director/CEO of Colorado Housing and Finance Authority.

My Commission expires: \_\_\_\_\_.

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

Land Use Restriction Agreement  
Property Name

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

**EXHIBIT B**

**Minimum Applicable Fraction by Building**

Building Identification Number: \_\_\_\_\_ Minimum Applicable Fraction \_\_\_\_\_%

Building Identification Number: \_\_\_\_\_ Minimum Applicable Fraction \_\_\_\_\_%

Building Identification Number: \_\_\_\_\_ Minimum Applicable Fraction \_\_\_\_\_%

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