

When Recorded Return to:
COLORADO DIVISION OF HOUSING
1313 SHERMAN STREET, ROOM 320
DENVER, CO 80203
Attn: [Name of Asset Manager]

COLORADO DEPARTMENT OF LOCAL AFFAIRS USE COVENANT & REGULATORY AGREEMENT

THIS USE COVENANT AND REGULATORY AGREEMENT (“Covenant”) is made by [Entity Name], a [State] [entity type] (“Grantor”), whose business address is [Street], [City], [State] [Zip] as owner of the real property described below, and is effective as of the date appearing beneath Grantor’s signature at the end of this Covenant.

Grantor is a beneficiary of funds through Loan Agreement #HxHTF00000 (the “Funding Agreement”) from the State of Colorado (“State”), by and through the Department of Local Affairs (“DOLA”), for the benefit of the Division of Housing (“DOH”) and [Name of Borrower] (“Borrower”), which funds were loaned by Borrower to Grantor for use in the [use of funds] of [project name] (the “Project”), whose legal description is as follows:

SEE ATTACHMENT 1

As a condition precedent to the receipt of the funds, Grantor shall promptly record this Covenant with the real property records at the clerk and recorder’s office in the county in which the Property is located to ensure that certain rental and occupancy limitations associated with the Department of Housing and Urban Development (“HUD”) National Housing Trust Fund (“HTF”) program (24 CFR Part 93) are met regardless of ownership.

NOW, THEREFORE, the following is established as a Covenant running with the land:

1. **Use Restriction.** For the term of this Covenant, the Property shall be used primarily to provide housing to Eligible Beneficiaries at Affordable Rents. Grantor shall not demolish any part of the Project or permit any residential unit in the Project to be used for any purpose other than rental housing.
2. **Change in Use.** No change in use is permitted without the express written consent of DOLA.
3. **Affordability Period.** This Covenant shall encumber the Property for the combined term of the HUD Affordability Period and the DOH Affordability Period.
 - 3.1. **HUD Affordability Period.** This Covenant shall encumber the Property, without regard to the term of any mortgage or transfer of ownership, for a term of not less than thirty (30) years (the “HUD Affordability Period”) following the date the Project is complete (the “Project Close-Out Date”) as identified in writing to the original recipient of the funds.
 - 3.2. **DOH Affordability Period.** This Covenant shall encumber the Property, without regard to the term of any mortgage or transfer of ownership, for a term of not less than ten (10) years following the end of the HUD Affordability Period (the “DOH Affordability Period”).
4. **HTF-Assisted Units.** Grantor shall designate number (#) rental housing units at the Project as HTF-Assisted Units. The HTF-Assisted Units shall have the number of bedrooms and be occupied by households whose income is at or below the percentage of Area Median Income (“AMI”) identified in the table in §5. The HTF-Assisted Units shall be floating units over the Affordability Period, meaning that the units at the Property designated by Grantor as

HTF-Assisted Units may change from time-to-time. Grantor shall ensure that the HTF-Assisted Units are, at all times, comparable in terms of number of bedrooms, square footage, and amenities to those units originally designated as HTF-assisted. Whenever the income of a household occupying a HTF-Assisted Unit increases beyond the applicable income limit during the term of the tenancy Grantor shall re-designate the next available unit at the Property as an HTF-Assisted Unit. Grantor shall keep records of all re-designation actions including, without limitation, the effective date of each such action, and make such records available to DOH upon request.

4.1. Existing [Funding Source]-Assisted Units. For the avoidance of doubt, the Existing [Funding Source]-Assisted Units shall be restricted as set forth in that certain Beneficiary and Rent Use Covenant dated [date] and recorded at the clerk and recorder’s office in [county name] County at Reception number [000000].

5. Eligible Beneficiaries. Each HTF-assisted and Other Affordable units listed in the table below shall be affordable to and occupied by an Eligible Beneficiary. “Eligible Beneficiary” means a household that is lawfully present in the United States pursuant to 8 U.S.C. §§1601 and whose annual income (as defined at 24 CFR 5.609) is less than or equal to the applicable income limit in effect at the time such household initially occupies their unit. Pursuant to 24 CFR §93.250(a), Eligible Beneficiaries occupying HTF-Assisted Units must have incomes at or below the HTF limit, which is the greater of 30% of AMI or the poverty line. Income limits are published annually by DOLA, based on indexes published by HUD. If such indexes are no longer published income limits shall be based on an equivalent index designated by DOLA.

Unit Type	1-BR	2-BR	Total	Income Limit
HTF-Assisted	0	0	0	≤ 30% of AMI
Other Affordable	0	0	0	≤ 30% of AMI
Other Affordable	0	0	0	≤ 40% of AMI
Other Affordable	0	0	0	≤ 50% of AMI
Other Affordable	0	0	0	≤ 60% of AMI
Unrestricted	0	0	0	n/a
Total Units	0	0	0	n/a

6. Lawful Presence. Prior to entering into a lease agreement with any tenant for HTF-Assisted Unit, Grantor must confirm that every individual natural person in the applicant household is lawfully present in the United States pursuant to 8 U.S.C. §§1601 et. seq. when such individual applies for public benefits provided by requiring the applicant to:

- 6.1. Produce a verification document in accordance with 62 Fed. Reg. 221 (November 17, 1997), pp. 61,363 - 61,371.
- 6.2. Execute a Residency Declaration, a blank version of which is available by request and on DOLA’s website.

The foregoing notwithstanding, charitable non-profit corporations may be exempt from verifying lawful presence.

7. Income Eligibility Determinations. Grantor shall determine that each household occupying an HTF-Assisted Unit is income eligible by determining the household's annual income (as defined in 24 CFR §5.609) in a manner consistent with the requirements of 24 CFR §93.151.

7.1. Initial Income Determinations. Prior to initially serving such household, Grantor shall examine at least two (2) months of source documents evidencing annual income (e.g. wage statement, interest statement, unemployment compensation statement, etc.) for the household.

7.2. Subsequent Income Determinations. In each year during the Affordability Period, Grantor shall re-examine the annual income of each household occupying a HTF-Assisted Unit in accordance with one of the options in 24 CFR §93.151. For subsequent annual income determinations, Grantor shall:

7.2.1. Determine the household's income according to the method described in §7.1, above, or

7.2.2. Obtain from the household a written statement of the amount of the household's annual income and household size, along with a certification that the information is complete and accurate*. The certification must state that the household will provide source documents upon request. If Grantor accepts the tenant's statement and certification of income, Grantor is not required to further examine the income of the tenant for that year unless there is evidence that the tenant's written statement failed to completely and accurately state information about the household's size or income, or

7.2.3. Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines the annual income of the household each year. The statement must indicate the tenant's household size and state the amount of the household's annual income. Alternatively, the statement must indicate the dollar amount of the current applicable income limit for the tenant household's family size and state that the household's annual income does not exceed this limit.

*If Grantor re-examines a HTF-Assisted Unit tenant's annual income in accordance with §7.2.2 above, Grantor shall examine the source documentation of the income of each tenant every 6th year of the Affordability Period, except that, for units that receive project-based assistance, Grantor must re-examine the tenant's annual income in accordance with the project-based assistance rules. In all other years of the Affordability Period, if Grantor accepts the tenant's statement and certification of income, Grantor is not required to examine the income of tenants, unless there is evidence that the tenant's written statement failed to completely and accurately state information about the household's size or income.

8. Affordable Rents. Pursuant to 24 CFR 93.302(b), the HTF rent plus utilities of extremely low-income tenant shall not exceed the greater of 30 percent of the federal poverty line or 30 percent of the income of a household whose annual income equals 30 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit ("Affordable Rents"). HUD publishes HTF rent limits on an annual basis. If such

indexes are not available rent limits shall be based on an equivalent index designated by DOLA.

The foregoing paragraph notwithstanding, if a HTF-Assisted Unit receives state or federal project-based rental subsidy, and the household pays no more than 30 percent of its adjusted income toward rent and utilities, then the maximum rent (tenant contribution plus project-based rental subsidy) shall be the maximum rent allowable under the state or federal project-based rental subsidy program. Should Grantor opt out of the project-based subsidy during the period of affordability, the HTF-Assisted Units shall have rents that do not exceed the Affordable Rents. In the event of a decrease or termination of the Project-Based rental subsidy for the Project, unless such decrease or termination arises from default by or other material failure to comply with agreements, laws, or regulations applicable to the Project, the State agrees to work in good faith with Grantor to address the Grantor's request to seek alternative sources of funding, and/or, at the State's sole discretion, modify the occupancy restrictions, or increase the rent and income limits required by this Covenant.

The Affordable Rents in effect on the date the Funding Agreement was executed are as follows:

[Name] County, Effective Date: [Date]

Rent Limits	1-Bedroom	2-Bedroom	3-Bedroom
60% AMI	\$0	\$0	\$0
50% AMI	\$0	\$0	\$0
40% AMI	\$0	\$0	\$0
30% AMI	\$0	\$0	\$0

- 8.1. Utility Allowance.** The Utility Allowance for HTF-Assisted Units shall be allowance acceptable to the State, and Grantor shall update annually. Proposed Utility Allowances for HTF-Assisted Units and documentation of the method of determination shall be submitted to DOLA for review and approval annually, prior to their effective date.
- 8.2. Changes in Rents.** Throughout the HUD Affordability Period, Grantor shall notify DOLA of changes it proposes to its rents on HTF-Assisted Units, prior to the effective date of the proposed rents. The proposed rents shall not take effect until DOLA gives its written approval. Grantor shall repay any amounts that exceed the Affordable Rents allowed hereunder to the tenant, housing authority, or other entity from which Grantor has collected such amounts.

9. Tenant Selection. Grantor shall follow written tenant selection policies and criteria that:

- 9.1.** Limit the housing to income-eligible households;
- 9.2.** Are reasonably related to the applicants' ability to perform the obligations of the lease;
- 9.3.** Do not exclude an applicant with a Housing Choice Voucher (pursuant to 24 CFR part 982), or an applicant participating in a HOME tenant-based rental assistance program (pursuant to 24 CFR part 92), or an applicant with a State Housing Vouchers, because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.

- 9.4. Provide for the selection of tenants from a written waiting list in the chronological order of their application, to the greatest extent practicable;
 - 9.5. Notwithstanding §9.4, above, maximize the occupancy of accessible units by persons with disabilities who need the features of such units;
 - 9.6. Give prompt written notification to any rejected applicants of the grounds for their rejection;
 - 9.7. Limit eligibility or give a preference to [insert special population], pursuant to the Funding Agreement; and
 - 9.8. Comply with the VAWA requirements described at §11, below.
- 10. Tenant Protections.** Grantor shall adhere to the following HTF-Assisted Unit tenant protection requirements of the HTF Program, pursuant to 24 CFR 93.303:
- 10.1. **Lease Term.** There must be a written lease between the HTF-Assisted Unit tenants and Grantor that is for a period of not less than one year, unless tenant and Grantor mutually agree to a shorter term, and Grantor maintains written documentation that tenant was offered a full year and preferred a shorter lease term.
 - 10.2. **Prohibited Lease Provisions.** The lease may not contain any of the following provisions:
 - 10.2.1. Agreement to be sued. Agreement by the tenant to be sued, admit to guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
 - 10.2.2. Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining once the tenant has vacated and surrendered possession of the unit;
 - 10.2.3. Excusing owner from responsibility. Agreement by the tenant not to hold owner or owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - 10.2.4. Waiver of notice. Agreement of the tenant that owner may institute a lawsuit without notice to the tenant;
 - 10.2.5. Waiver of legal proceedings. Agreement by the tenant that owner may evict the tenant or household members without a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of both parties;
 - 10.2.6. Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
 - 10.2.7. Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court, a court decision in connection with the tenant's lease;

10.2.8. Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and

10.2.9. Mandatory supportive services. Agreement by the tenant to accept supportive services that are offered.

10.3. Termination of Tenancy. Grantor may not terminate the tenancy or refuse to renew the lease of an HTF-Assisted Unit tenant, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, Grantor must serve written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with state or local law.

11. Violence Against Women Act ("VAWA"). The HTF-Assisted Units are subject to the VAWA requirements at 24 CFR Part 5, Subpart L, including:

11.1. Notification. Grantor shall provide a notice and certification form, substantially similar to the form available on DOLA's website, to each applicant for an HTF-Assisted Unit at the time the applicant is admitted or denied admission to an HTF-Assisted Unit. Grantor shall also provide such notice and certification form with any notification of eviction from an HTF-Assisted Unit.

11.2. Bifurcation of Lease. Grantor may bifurcate the lease or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated or other individual. Grantor may take such action without regard to whether the removed household member is a signatory to the lease, and without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

11.3. VAWA Lease Term/Addendum. Grantor shall execute a VAWA lease addendum, on the form provided on DOLA's website.

12. Ongoing property condition standards. Grantor shall maintain the Property as decent, safe, and sanitary housing in good repair. The Property shall:

12.1. Meet all applicable State and local code requirements and ordinances;

12.2. Be free of all health and safety defects identified in HUD's Uniform Physical Condition Standards, pursuant to 24 CFR Part 5.705;

12.3. Meet the lead-based paint requirements in 24 CFR Part 35;

12.4. Comply with DOLA's ongoing property condition standards in effect at the time this Covenant is executed, which DOLA shall make available by request and on DOLA's website; and

12.5. Meet and maintain the accessibility standards of the Fair Housing Act and Section 504 (42 USC 3601-20 and 29 USC 793, as amended). Section 504 requires selected units

are made accessible to persons with disabilities, and to the maximum extent feasible, these units are to be evenly distributed throughout the Project site and be sufficient in range of size when compared to other units. Specific requirements include:

12.5.1. Handicap Accessible. Number (0) units shall be designated to meet the requirement that at least 10% of total Project units shall be made handicap accessible according to the Uniform Federal Accessibility Standards.

12.5.2. Persons with Hearing or Visual Impairments. Number (0) units, in addition to those required in §12.5.1, above, shall be designated to meet the requirement that at least 4% of the total Project units shall be accessible to persons with hearing or visual impairments as required at 24 CFR § 8.22.

12.5.3. Availability of Units. Grantor or Grantor's agent shall adopt suitable means to ensure persons with disabilities are made aware of the availability of accessible units and to maximize use of accessible units by individuals needing the features of these units, in accordance with 24 CFR §8.27.

13. Tenant Pet Ownership. All tenants at the Property shall be permitted to keep at least two pet animals (cat or dog) for companionship, subject to applicable state and local laws governing public health, animal control, and animal cruelty. Such authorization may be made subject to reasonable conditions permissible under state law for housing developments funded by the Colorado Division of Housing, provided that such reasonable conditions shall not include breed and weight restrictions, except as required by local law.

14. Affirmative Marketing. Grantor shall adopt, maintain, and follow written affirmative marketing procedures that comply with DOLA's affirmative marketing requirements, which DOLA shall make available by request and on DOLA's website. DOLA's affirmative marketing requirements include, without limitation:

14.1. Methods to inform the public, owners, and potential tenants about federal fair housing laws and owner's affirmative marketing procedures;

14.2. Practices owner shall follow in order to carry out DOLA's affirmative marketing requirements;

14.3. Identification of populations in the housing market area that are not likely to apply for tenancy at the Property without special outreach;

14.4. Procedures to inform persons who identify as members of such populations of the availability of housing opportunities at the Property, and to solicit applications from such persons;

14.5. Procedures to inform persons with disabilities of the availability of accessible units and maximize the occupancy of accessible units by individuals who need the features of such units; and

14.6. Maintenance of records describing actions of owner to comply with these affirmative marketing procedures and to assess the results of such actions.

15. Recordkeeping. Grantor shall maintain records documenting compliance with this Covenant for the most recent six-year period, until six years after the completion of the Affordability Period.

- 16. Monitoring.** In accordance with the requirements at 24 CFR 93.404(d), Grantor shall timely respond to and cooperate with all requests from DOLA, or its designee, for information, or to conduct on-site inspections, for the purpose of determining whether the Property is in compliance with the terms of this Covenant. DOLA will notify Grantor or Grantor's agent annually of the form and requirements for that year's monitoring. DOLA will conduct on-site inspections at least once every three years during the HUD Affordability Period, in accordance with its HTF Inspection Procedures, available on DOLA's website. Grantor shall maintain throughout the term of this Covenant a contact person who shall be responsible for responding to any requests from DOLA in connection with this Covenant, and shall notify DOLA of any change of contact person.
- 17. Annual Audit.** Grantor shall annually audit the financial performance of the Project within 180 days of the end of the Project's fiscal year, and submit a copy of such report to DOLA beginning in the first year following Project Close-Out Date through the last year of the Affordability Period.
- 18. Enforcement.** DOLA or HUD, or their representative(s), may take legal action to enforce the terms of this Covenant and shall be entitled to all available remedies in law or in equity including, without limitation, specific performance and injunctive relief.
- 19. Noncompliance.** Loan funds invested in housing that does not meet affordability requirements for the full Affordability Period must be repaid to the DOLA. If the Property is not used to house the above-described Eligible Beneficiaries at the above-described Affordable Rents during the Affordability Period, Grantor or its successors and assignees, heirs, grantees, or lessees, shall repay to the State, within sixty days of the State's request, the full amount of the funds disbursed pursuant to the Funding Agreement. Repayment of loan funds does not terminate the Affordability Period.
- 20. Transfers.** This Covenant is a covenant running with the land and shall be binding on Grantor's successors, assigns, heirs, transferees and lessees. Grantor shall take all steps necessary to ensure that the requirements and restrictions of this Covenant are binding on any successor to Grantor who acquires an interest in the Property. Grantor hereby covenants to include the requirements and restrictions of this Covenant in any document to be executed in connection with the transfer of any interest in the Property to another person or entity to ensure that such transferee has notice of, is bound by, and agrees to abide by the terms of this Covenant. Grantor shall not, without the prior written consent of DOH, Transfer the Property or any interest in the Property.
- 19.1** For purposes of this Covenant, "Transfer" shall mean (i) the sale, assignment, transfer, conveyance, disposition, or alienation of an interest in the Property; (ii) the dissolution of Grantor; or (iii) the sale, transfer, conveyance or other disposition of all of Grantor, a sufficient amount of interest such that another entity gains a controlling interest in Grantor, or the managing general partner or managing member of Grantor.
- 19.2** The foregoing notwithstanding, the consent of DOH shall not be required for the following Transfers (i) the sale of obsolete or worn-out furnishings or equipment, (ii) the direct or indirect transfer of an investor limited partner or investor member interest in Grantor, (iii) the removal and replacement of the managing general partner or managing member of Grantor as permitted in the Operating Agreement or Partnership Agreement of Grantor, but only if the replacement is the investor limited

partner or investor member of Grantor or an affiliate thereof, (iv) the execution, modification, amendment, or assignment of a security interest in the Property recorded prior to or otherwise senior in priority to this Covenant and transfers of the Property after exercise of remedies pursuant to such security interest in the Property. Any subsequent replacement of the managing general partner or managing member of Grantor shall require the prior written consent of DOH, which shall not be unreasonably withheld provided such managing general partner or managing member meets DOH's then current approval standards.

- 21. Early Termination.** This Covenant shall terminate upon foreclosure or transfer in lieu of foreclosure, unless, before the foreclosure or transfer in lieu of foreclosure, the owner of record or any entity that includes the former owner or with whom the former owner has or had family or business ties obtains an ownership interest in the Property through the foreclosure. The foregoing sentence notwithstanding, this Covenant shall not terminate with respect to the HTF-Assisted Units unless foreclosure or transfer in lieu of foreclosure occurs after expiration of the HUD Affordability Period.
- 22. Release.** Upon satisfaction of the terms of this Covenant, DOLA will, upon written request of Grantor or the then current owner of record, execute a release of this Covenant and Grantor, its successors, assignees, heirs, grantees, and lessees shall no longer be bound by the terms of this Covenant.
- 23. Changes in Law.** Until such time as this Covenant is released, Grantor shall comply with all laws, regulations, and ordinances applicable to Grantor under this Covenant, as such laws, regulations, and ordinances may change from time to time.
- 24. Investor Opportunity to Cure.** The State, in its sole discretion, may accept a cure from the Tax Credit Investor of any default with respect to this Use Covenant and Regulatory Agreement within the same time, and in the same manner, as the Grantor; provided, however, the Tax Credit Investor shall have no obligation to cure.

[INSERT INVESTOR'S ADDRESS].

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SIGNATURE PAGE

GRANTOR

[Entity Name]

By: [Entity name]
Its: General Partner

By: _____
[Name of Individual], [Title]

Date: _____

State of _____)
County of _____) ss.

The foregoing instrument was subscribed to and acknowledged before me this _____ day
of _____, 20____, by _____ as _____ of

Witness my hand and official seal

ATTACHMENT 1
Legal Description