

AMENDMENT TO PURCHASE AND SALE AGREEMENT

This AMENDMENT TO PURCHASE AND SALE AGREEMENT (this “Amendment”) is made between CITY AND COUNTY OF DENVER, a municipal corporation and home rule city of the State of Colorado (“City”) and MERCY HOUSING MOUNTAIN PLAINS, INC., a Colorado nonprofit corporation, whose address is 1600 Broadway, Suite 2000, Denver, CO 80202 (“Purchaser”). Seller and Purchaser are collectively referred to herein as the “Parties.”

RECITALS

- A. The Parties are the parties to that certain Purchase and Sale Agreement entered into August 10, 2020 (the “Agreement”).
- B. With this Amendment, the Parties desire to amend the Agreement in accordance with the terms hereof.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **EXHIBIT A.** Exhibit A of the Agreement is replaced with Exhibit A attached hereto and incorporated herein by this reference. The updated legal description attached as Exhibit A to this Amendment supersedes and replaces the legal description attached to the Agreement.

2. **LOW-INCOME HOUSING LAND USE RESTRICTION AGREEMENT.** The first sentence of Section 8 of the Agreement is hereby deleted in its entirety and replaced with the following:

“The City’s agreement to transfer the Property to Purchaser is specifically in reliance on: (i) Purchaser’s willingness to provide the City with a benefit by constructing eighty-two (82) affordable residential dwelling units (the “Residential Facility”) and (ii) Purchaser’s ability to secure and close on the requisite financing for the construction of the Residential Facility on or by December 31, 2021, as may be extended or modified by the Executive Director of the City’s Department of Housing Stability.”

3. **EXHIBIT C.** Exhibit C of the Agreement is replaced with Exhibit C attached hereto and incorporated herein by this reference. The updated Low-Income Housing Land Use Restriction Agreement attached as Exhibit C to this Amendment supersedes and replaces the Low-Income Housing Land Use Restriction Agreement attached to the Agreement.

4. **EFFECT OF AMENDMENT:** The Agreement, as amended by this Amendment, is hereby reaffirmed. Except as expressly modified herein, the Agreement shall remain unmodified and in full force and effect. To the extent any of the provisions of this Amendment are inconsistent with the provisions set forth in the Agreement, the provisions of this Amendment shall govern and control.

5. **SUBJECT TO COUNCIL APPROVAL:** This Amendment is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Amendment shall not take effect until its final approval by City Council, and until signed by all appropriate City officials, including the Mayor, the Clerk and Recorder, the Manager of Finance and the Auditor.

[SIGNATURE PAGES FOLLOW]

Contract Control Number:
Contractor Name:

FINAN-202053697-01 / FINAN-202157898-01
MERCY HOUSING MOUNTAIN PLAINS

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

FINAN-202053697-01 / FINAN-202157898-01
MERCY HOUSING MOUNTAIN PLAINS

By: (See attached)_____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

FINAN-202053697-01 / FINAN-202157898-01
MERCY HOUSING MOUNTAIN PLAINS

By: DocuSigned by:
Dee Walsh
C4A497D9C96C400... _____

Name: Dee Walsh
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A

LEGAL DESCRIPTIONS OF THE PROPERTY

EXHIBIT A LAND DESCRIPTION

A PARCEL OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER (SW1/4) OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; AND LOCATED IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO; BEING A PORTION OF LOTS 15 THROUGH 18 INCLUSIVE, BLOCK 3, EAST COLFAX SUBDIVISION, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 15, WHENCE SOUTH ONE-QUARTER CORNER OF SECTION 33 BEARS S67°48'57"W, 747.92 FEET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 15, N89°58'54"E, 122.98 FEET;

THENCE S00°01'43"W, 23.00 FEET;

THENCE S28°19'08"W, 29.54 FEET;

THENCE S00°01'43"W, 42.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 18;

THENCE S89°58'54"W, 108.99 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 18;

THENCE N00°01'52"E, 91.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,422 SQUARE FEET OR 0.239 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS USED HEREIN ARE BASED ON SOUTHEAST LINE OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 67 W OF THE 6TH P.M., BEING N89°58'11"W USING THE CITY AND COUNTY OF DENVER CONTROL COORDINATES, AS MONUMENTED ON THE WEST BY A FOUND 3.5" ALUMINUM CAP PLS 11434 IN RANGE BOX PER MONUMENT RECORDED DATED 10-18-1995, ACCEPTED AS THE SOUTH 1/4 CORNER OF SECTION 33, AND AS MONUMENTED ON THE EAST BY A 2.5" ALUMINUM CAP PLS 33202 IN RANGE BOX PER MONUMENT RECORDED DATED 7-21-2003, ACCEPTED AS THE SOUTHEAST 1/4 CORNER OF SECTION 33.

LEGAL DESCRIPTION STATEMENT:

I, DOUGLAS H. ORT III, A LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.

DOUGLAS H. ORT III, COLORADO PLS 37066
WILSON & COMPANY
1675 BROADWAY, SUITE 200
DENVER, CO 80202
DHORTIII@WILSONCO.COM
PH 303-501-1221



EXHIBIT A LAND DESCRIPTION

A PARCEL OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER (SW1/4) OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN; AND LOCATED IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO; BEING A PORTION OF LOTS 19 THROUGH 26 INCLUSIVE, BLOCK 3, EAST COLFAX SUBDIVISION, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 19, WHENCE SOUTH ONE-QUARTER CORNER OF SECTION 33 BEARS S75°47'11"W, 714.36 FEET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 19 THROUGH 23 INCLUSIVE, N89°58'54"E, 108.99 FEET;

THENCE S00°01'43"W, 2.00 FEET;

THENCE N89°58'54"E, 81.91 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 26;

THENCE S00°06'28"W, 121.99 FEET TO A POINT 1.00 FEET DISTANT FROM THE SOUTHEASTERLY CORNER OF SAID LOT 26;

THENCE ALONG A LINE PARALLELL WITH AND 1.00 FEET DISTANT FROM THE SOUTHERY LINE OF SAID LOTS 19 THROUGH 26, S89°58'11"W, 190.74 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 19 BEING 1.00 FEET DISTANT FROM THE SOUTHWESTERLY CORNER OF SAID LOT 19;

THENCE N00°01'52"E, 124.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 23,501 SQUARE FEET OR 0.540 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS USED HEREIN ARE BASED ON SOUTHEAST LINE OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 67 W OF THE 6TH P.M., BEING N89°58'11"W USING THE CITY AND COUNTY OF DENVER CONTROL COORDINATES, AS MONUMENTED ON THE WEST BY A FOUND 3.5" ALUMINUM CAP PLS 11434 IN RANGE BOX PER MONUMENT RECORDED DATED 10-18-1995, ACCEPTED AS THE SOUTH 1/4 CORNER OF SECTION 33, AND AS MONUMENTED ON THE EAST BY A 2.5" ALUMINUM CAP PLS 33202 IN RANGE BOX PER MONUMENT RECORDED DATED 7-21-2003, ACCEPTED AS THE SOUTHEAST 1/4 CORNER OF SECTION 33.

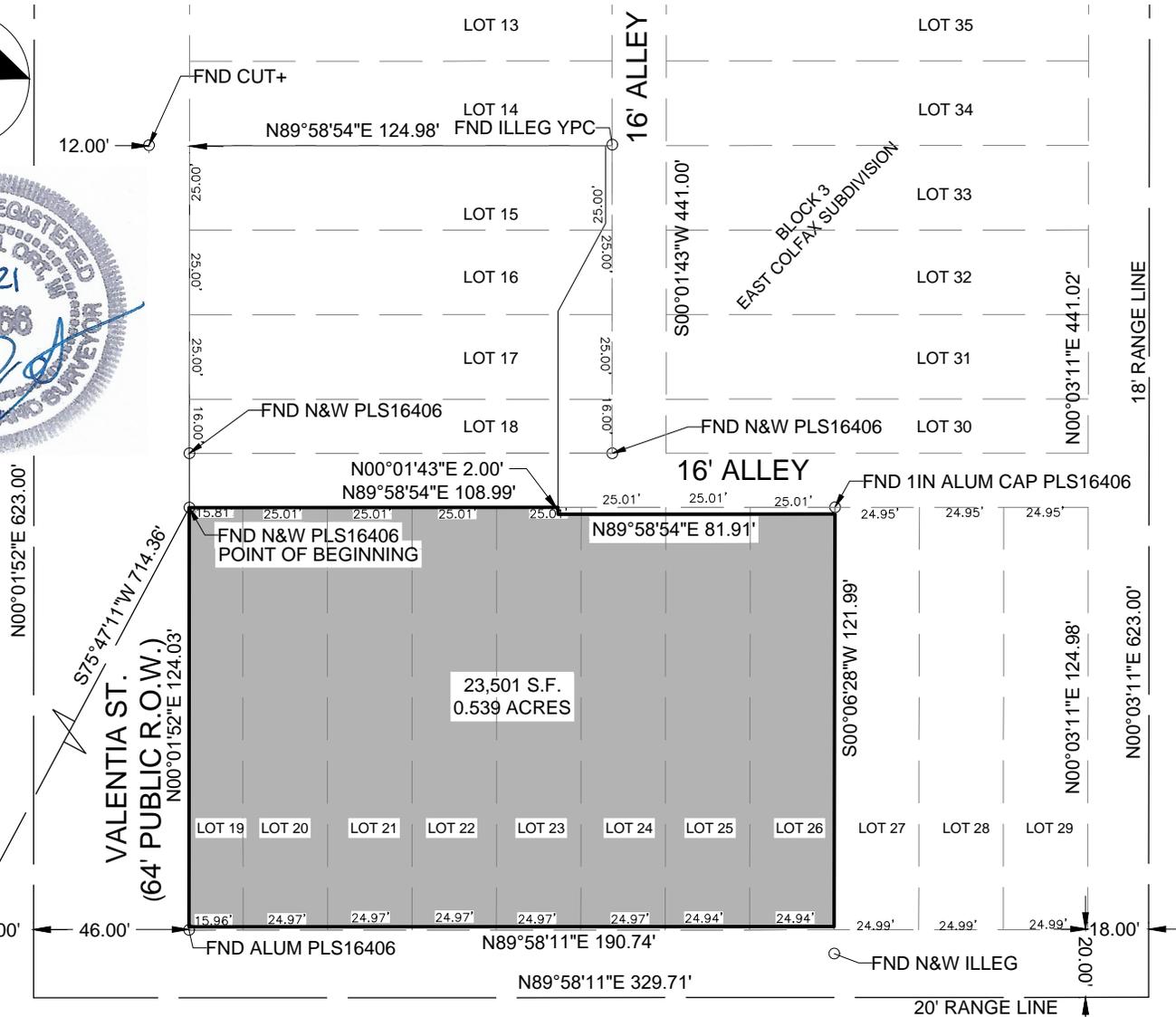
LEGAL DESCRIPTION STATEMENT:

I, DOUGLAS H. ORT III, A LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.

DOUGLAS H. ORT III, COLORADO PLS 37066
WILSON & COMPANY
1675 BROADWAY, SUITE 200
DENVER, CO 80202
DHORTIII@WILSONCO.COM
PH 303-501-1221



EXHIBIT "A"
 LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO



SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 67 W OF THE 6TH P.M.

FND 3.5IN ALUM CAP PLS11434
 PER MONUMENT RECORDED DATED 10-18-1995
 SOUTH 1/4 CORNER OF SECTION 33,
 TOWNSHIP 3 SOUTH,
 RANGE 67 WEST OF THE 6TH P.M.

(BASIS OF BEARINGS)
 N89°58'11"E 2638.71'
EAST COLFAX AVE.
 (PUBLIC R.O.W.)

FND 2.5" ALUMINUM CAO 33202 IN RANGE BOX
 PER MONUMENT RECORDED DATED 7-21-2003
 SOUTHEAST CORNER OF SECTION 33,
 TOWNSHIP 3 SOUTH,
 RANGE 67 WEST OF THE 6TH P.M.

BASIS OF BEARINGS: BEARINGS USED HEREIN ARE BASED ON SOUTHEAST LINE OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 67 W OF THE 6TH P.M., BEING N89°58'11"W USING THE CITY AND COUNTY OF DENVER CONTROL COORDINATES, AS MONUMENTED ON THE WEST BY A FOUND 3.5" ALUMINUM CAP PLS 11434 IN RANGE BOX PER MONUMENT RECORDED DATED 10-18-1995, ACCEPTED AS THE SOUTH 1/4 CORNER OF SECTION 33, AND AS MONUMENTED ON THE EAST BY A 2.5" ALUMINUM CAP PLS 33202 IN RANGE BOX PER MONUMENT RECORDED DATED 7-21-2003, ACCEPTED AS THE SOUTHEAST 1/4 CORNER OF SECTION 33.

NO.	REVISION-DESCRIPTION	BY	DATE	CHK'D	APP'D

SHT. NO:	2 OF 2
SCALE:	1" = 50'
DWN. BY:	TJB
DATE:	1-25-2021
CHK. BY:	
PROJ. MGR:	DHO
CLIENT APP:	1-25-2021

WILSON & COMPANY
 1675 Broadway Suite 200
 Denver, CO 80202
 Phone: 303-297-2976
 Fax: 303-297-2693

EXHIBIT "B"
 8315 E. COLFAX
 DENVER CO, 80220
 STATE OF COLORADO

Exhibit C

Record and Return to:
Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

LOW-INCOME HOUSING LAND USE RESTRICTION AGREEMENT

THIS LOW-INCOME HOUSING LAND USE RESTRICTION AGREEMENT (this "**Agreement**"), dated as of _____, 2021 ("Effective Date"), is by and between [**MERCY HOUSING MOUNTAIN PLAINS OR SINGLE PURPOSE LIHTC ENTITY**], a Colorado [ENTITY TYPE], and its successors and assigns (the "**Owner**"), and the CITY AND COUNTY OF DENVER, a municipal corporation and home rule city of the State of Colorado (the "**City**").

RECITALS:

A. The Owner is the owner of lands in the City of Denver, County of Denver, State of Colorado, as legally described in Exhibit A hereto commonly known as 8315 East Colfax and 1500 Valentia Street, Denver, CO (the "**Property**") on which the Owner intends to construct an eighty-two (82) unit rental housing development (the "**Project**") [together with certain commercial space(s) intended to be operated as an early childhood education facility].

B. The Owner applied to the City for redevelopment and purchase negotiation of the Property via a Request for Proposals on December 13, 2018 and received notice of contingent award by City on June 3, 2019. (collectively the "**Application**").

C. In connection with its Application the Owner made certain representations to the City about the Project as to the number of Restricted Units (defined below), which the parties wish to set forth herein as a binding obligation of Owner.

D. On _____, 2020, the City and Owner entered into a Purchase and Sale Agreement for the Property, and as a condition of the sale the City required the Owner to execute and deliver this Agreement and that it be recorded in the official land records of the City and County of Denver to create covenants running with the land for the purpose of regulating and restricting the use and occupancy of the Property as set forth herein.

E. 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 Property and shall be and are covenants running with the land for the Term (defined below)

and binding upon all subsequent owners of the Property 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 City 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:
 - (a) **“AMI”** means the median gross income of the Denver area as determined by the Secretary of the United States Department of Housing and Urban Development.
 - (b) **“Closing Deadline”** means December 31, 2021, except as may be extended pursuant to Section 6.
 - (c) **“Compliance Period”** means the period beginning on the Construction Completion Date and ending on the ninety-nine (99) year anniversary of the Construction Completion Date.
 - (d) **“Construction Completion Date”** means the earlier of [outside construction completion date] (as it may be extended by a writing duly executed by City), or such sooner date on which construction of the Restricted Units is completed and the Restricted Units are available for occupancy by residential tenants.
 - (e) **“Evidence of Financing”** means such information and documentation sufficient to satisfy the City, in the City’s sole discretion, that the Owner has secured all financing necessary to complete the Project.
 - (f) **“Executive Director”** means the Executive Director the Executive Director’s designee of the City’s Department of Housing Stability or successor agency.
 - (g) **“Qualifying Tenant”** means a tenant that meets the income requirements of Section 7.
 - (h) **“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 Section 7, all as determined in accordance with Section 42(g)(2) of the Internal Revenue Code of 1986, as amended.
 - (i) **“Restricted Units”** means the rent-restricted units identified in Sections 7(a).

(j) “**Term**” means the Term of this Agreement, as defined in Section 5(a).

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

- (a) This Agreement will be recorded in the real property records where the Property 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 City and its successors and assigns, and all subsequent owners of the Property or any interest therein, for the Term.
- (b) The Owner agrees that any and all requirements of the laws of the State of Colorado 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 Property 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 Property, regardless of whether such contract, deed or other instrument conveying the Property 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 Colorado, 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; and
 - (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) 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.

- (c) 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.
- (d) 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, except as expressly approved or consented to by the City.
- (e) The Owner has obtained or will obtain from any prior recorded lienholder on the Project its consent and subordination, or partial subordination as may be applicable, to this Agreement in a form satisfactory to the City.

5. Term of this Agreement

- (a) This Agreement shall be in effect as of the Effective Date until the end of the Compliance Period.

6. Closing Deadline; Right of Re-Entry for Condition Broken

- (a) The Owner shall provide Evidence of Financing to the City on or before the Closing Deadline.
- (b) The Executive Director is authorized to extend or modify such Closing Deadline, provided that such change(s) are acknowledged in writing by the Owner and the City. The Executive Director is authorized to sign such acknowledgement on behalf of the City.
- (c) The City shall have the right, at the discretion of the Executive Director, to re-enter and retake the Property upon thirty (30) days written notice to Owner in the event Owner does not satisfy its obligation to provide Evidence of Financing by the Closing Deadline. Prior to the City exercising its right to re-enter and retake the Property, the Owner shall have the right to cure such deficiencies within thirty (30) days from the date of the City's notice. If such cure is effected within the thirty (30) day period, the right of re-entry for condition broken shall not be exercised.

Determination of whether a cure has been effected shall be at the reasonable discretion of the Executive Director. The City may enforce its right re-entry for condition broken by initiating a forcible entry and detainer action in the event the Owner does not vacate the Property and deliver a deed conveying title to the Property in a form reasonably acceptable to the City.

7. Occupancy Restrictions.

- (a) The Owner covenants and agrees that, during the Compliance Period, the Restricted 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
_____ (82) units	80% or less of AMI
_____ ([#]) units	manager

- (b) 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 Restricted Unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Restricted Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (a) of this Section 7.

8. Owner Certifications and Reports.

- (a) The Owner shall provide to the City upon the City’s request, not more than once annually, a certification of continuing program compliance and an occupancy report, each in the form provided by the City.
- (b) In addition, the Owner shall provide any other information, documents or certifications requested, from time to time, by the City with respect to the Project's physical, operational and financial condition reasonably necessary for the Owner to substantiate the Owner's continuing compliance with the provisions of this Agreement.

9. Transfer Restrictions.

- (a) The Owner shall not sell, assign, convey, transfer, or otherwise dispose of the Property, the Project, or any building in the Project without the prior written consent of the City.
- (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 Property 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. Damage/Destruction/Condemnation.

- (a) If any Restricted Units shall be damaged or destroyed or if any portion of the Project shall be condemned or acquired for public use, Owner shall 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. So long as Owner has used its best efforts to so repair and restore the Project, or to relieve the condemnation, it shall not be in default hereof.

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

- (a) The Owner shall maintain 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 City.
- (b) The Owner shall provide for the management of the Project in a manner reasonably necessary to assure compliance with this Agreement.
- (c) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with this Agreement 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 City or its authorized agents. The City shall also have the right to enter and inspect the Project at any reasonable time.
- (d) Owners are required to keep records for 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 Restricted 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 Restricted Unit;

- (v) the Restricted 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; and
- (viii) the character and use of the nonresidential portion of the building.

Owners are required to keep all such records for the Project for a minimum of [six (6) years].

- (e) The City 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 Compliance Period upon reasonable notice and not more frequently than annually; provided, however, if the City receives a complaint or is otherwise notified that the Owner is or may be violating the terms of this Agreement, the City may conduct a physical inspection of the Project and conduct a review of the Owner's files relating to the Project to verify whether the Owner is in compliance with this Agreement. Owner shall fully cooperate with the City to verify compliance with the requirements of this Agreement.

12. 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 this Agreement.
- (b) In the event of any failure of the Owner to comply with the provisions of this Agreement, the City shall: (i) inform the Owner by written notice of such failure; and (ii) provide the Owner with a reasonable period of time to correct the failure. If any such failure is not corrected to the satisfaction of the City within the period of time specified by the City, without further notice the City may declare a default under this Agreement effective on the date of such declaration of default, and the City may (i) apply to any court, state or federal, for specific performance of this Agreement, an injunction against any violation of this Agreement, or to secure the appointment of a receiver to operate the Project in compliance with this Agreement; or (ii) 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. Any equitable relief provided for in this Section 11 may be sought singly or in combination with such legal remedies as the City may be entitled to, either pursuant to the provisions of this Agreement or under the laws of the State of Colorado.

13. No Discrimination in Employment: In connection with the performance of the work under this Agreement, Owner agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.
14. Defense & Indemnification:
- (a) Owner hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
 - (b) Owner’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Owner’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.
 - (c) Owner will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.
 - (d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Owner under the terms of this indemnification obligation. The Owner shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.
 - (e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
15. 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 City: **[INSERT INFO]**

Attention:

Email:

To the Owner: **[INSERT INFO]**

Attention:

Email:

The City 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.
- (d) No party shall be liable to another party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement to the extent due to any of the following causes beyond such party's reasonable control: (i) acts of God, (ii) flood, fire or explosion, (iii) war, invasion, riot or other civil unrest, (iv) actions, embargoes or blockades in effect on or after the date of this Agreement, (v) national or regional emergency, (vi) strikes, labor stoppages or slowdowns or other industrial disturbances, (vii) shortage of adequate power or transportation facilities, or (x) any other event that is beyond the reasonable control of such party.
- (e) This Agreement may be amended, superseded, canceled, renewed or extended only by a written instrument signed by each of the parties hereto.

- (f) Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein or therein.

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW]

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]

**[NOTE: SIGNATURE BLOCK TO BE
CONFIRMED BY OWNER]**

[City]

**[NOTE: SIGNATURE BLOCK TO BE
CONFIRMED BY OWNER]**

EXHIBIT A

LEGAL DESCRIPTION

[to be inserted from title policy]

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