

PREPARED BY AND AFTER  
RECORDING PLEASE RETURN TO:  
Department of Housing Stability  
201 W. Colfax Ave., Dept. 615  
Denver, CO 80202  
Attention: \_\_\_\_\_

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**AGREEMENT TO BUILD AFFORDABLE UNITS**

**THIS AGREEMENT TO BUILD AFFORDABLE UNITS (“Agreement”)** is made and entered, and effective as of the date set forth below on the City’s signature page by BISHOP MACHEBEUF HIGH SCHOOL, INC., a Colorado nonprofit corporation (“**Owner**”), and the City and County of Denver, a municipal corporation organized pursuant to the Constitution of the State of Colorado with a mailing address of Department of Housing Stability, 201 W. Colfax Avenue, Department 615, Denver, CO 80202 (“**City**”).

**RECITALS:**

- A. Owner is the owner of certain property located on a portion of 8890 East Lowry Boulevard (the “**Subject Property**”) and more particularly described on **Exhibit A** hereto;
- B. Cherrywood Pointe Investment LLC, a Minnesota limited liability company (“**Applicant**”) and Owner have entered into that certain Purchase and Sale Agreement dated November 10, 2020 (“**PSA**”) pursuant to which Owner has agreed to sell, and Applicant or an affiliate of Applicant has agreed to purchase, the Subject Property, all as more particularly described in the PSA;
- C. Applicant desires to rezone the Subject Property in order to construct a senior housing development containing two buildings, one of which will be operated as an active adult senior housing project (“**AA Building**”), which AA Building is estimated to include approximately 156 residential units, and the other of which will be operated as an independent and assisted living and memory care senior housing project (“**ALMC Building**”);
- D. The Subject Property is subject to Second Lowry Redevelopment Authority Amended and Restated Affordable Housing Plan, dated May 6, 2015, and available in the Office of the City Clerk at File No. 2003-0647-B (“**Lowry AHP**”), and as a result is exempt from any obligations to pay the Linkage Fee or include affordable units within the Subject Property;
- E. The ALMC Building operates as a commercial building, whereby fees paid by residents are based on medical and other health and welfare services provided; and

F. In connection with the proposed rezoning and development of the Subject Property and in satisfaction of linkage fee requirements set forth in Chapter 27 of the Denver Revised Municipal Code (“**DRMC**”), the Owner has agreed to construct certain affordable housing within the AA Building, as described herein.

**NOW, THEREFORE**, in consideration of the foregoing, the parties agree as follows:

1. Owner agrees that at least 10% of all residential units constructed in the AA Building will, for a period of not less than ninety-nine (99) years, be income-restricted units (“**IRUs**”). The IRUs will be rented to tenants making not more than 80% AMI (as defined in the DRMC).

2. Owner agrees that the IRUs shall be subject to all requirements of Build Alternative Units as defined in the Rules and Regulations promulgated under the City’s Affordable Housing Permanent Funds Ordinance adopted pursuant to Article V, Chapter 27 of the DRMC (“**Rules and Regulations**”), including that the IRUs will be constructed and marketed concurrently with or prior to any market rate dwelling units on the Subject Property and that the Owner will offer the IRUs for rent in accordance with the requirements of the Rules and Regulations.

3. Owner and City agree that this Agreement qualifies as an exemption under DRMC Sec. 27-154(a), satisfies the requirements of Chapter 27 of the DRMC.

4. The parties agree that prior to and as a condition of the issuance of the first building permit for the AA Building on the Subject Property, Owner will record a Covenant in the form attached to this Agreement as **Exhibit B**, which will run with the land and encumber the AA Building on the Subject Property for a period of not less than ninety nine (99) years in order to ensure that certain rent limitations, occupancy limitations and administrative requirements for the IRUs are met. Given the ninety nine (99) year restriction set forth in this Agreement, the City agrees that none of the Subject Property, AA Building or IRUs shall be subject to a right of first refusal in favor of the City as set forth in Chapter 27 of the DRMC or the Rules and Regulations.

5. The Subject Property is exempt from any obligation to pay the Linkage Fee with respect to residential or non-residential development because it is subject to the Lowry AHP.

6. The numbers and types of IRUs designated above presume that the project on the Subject Property will not receive any subsidy from the City to support development of such IRUs. The parties acknowledge that if any such subsidy is received from the City, additional affordability requirements will likely be imposed in addition to those set forth herein.

7. The City shall record this Agreement upon execution in the real property records for the City and County of Denver. The parties agree to execute such additional documents as may be necessary or required to effectuate the intent and purpose of this Agreement.

8. This Agreement shall encumber the Subject Property from the date of recording hereof and: except as provided below shall not be amended or modified without the express written

consent of the City and County of Denver. The Executive Director of the City's Department of Housing Stability, or the Executive Director's designee, is authorized to execute a release of this Agreement.

9. The approval of the rezoning of the Subject Property is a condition precedent to Owner's obligations under this Agreement. Should the Denver City Council fail to approve the rezoning within one hundred eighty (180) days after the date of this Agreement, then this Agreement is automatically void without further action of the City or the Owner and shall no longer burden title to the Subject Property.

10. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

11. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Owner shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Owner to make disclosures in violation of state or federal privacy laws. Owner shall at all times comply with D.R.M.C. 20-276.

12. Owner consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[Remainder of this page intentionally left blank. Signature page follows.]**


OWNER:

BISHOP MACHEBEUF HIGH SCHOOL, INC.,  
a Colorado nonprofit corporation

By: Dr. Anthony M. Bonta  
Name: Anthony M. Bonta  
Title: President/Principal, Bishop Machebeuf High School.

STATE OF COLORADO            )  
  )ss.  
COUNTY OF DENVER            )

The foregoing instrument was acknowledged before me this 21 day of October 2021 by Dr. Anthony M. Bonta, as President/Principal of Bishop Machebeuf High School, Inc., a Colorado nonprofit corporation.

Notary Signature: 

Christina Marie Buches  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID# 20214025358  
MY COMMISSION EXPIRES JUNE 25, 2025

APPLICANT:

CHERRYWOOD POINTE INVESTMENT LLC,  
a Minnesota limited liability company

By: United Properties Investment LLC,  
a Minnesota limited liability company,  
its Manager

By: [Signature]  
Name: Matt G. Van Slooten  
Title: President and CIO

and

By: [Signature]  
Name: Eric J. Skalland  
Title: Executive Vice President

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 27 day of OCTOBER 20 by Matt G. Van Slooten, as President and CIO of United Properties Investment LLC, a Minnesota limited liability company, as Manager of Cherrywood Pointe Investment LLC, a Minnesota limited liability company.

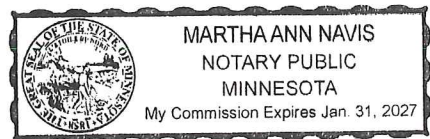
Notary Signature: [Signature]



STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 27 day of OCTOBER 20 by Eric J. Skalland, as Executive Vice President of United Properties Investment LLC, a Minnesota limited liability company, as Manager of Cherrywood Pointe Investment LLC, a Minnesota limited liability company.

Notary Signature: [Signature]



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

A part of the Northeast Quarter of Section 9 and a part of the Northwest Quarter of Section 10, Township 4 South, Range 67 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, being more particularly described as follows:

COMMENCING at the East Quarter corner of said Section 9;

thence North 00°01'11" East, along the easterly line of said Northeast Quarter, a distance of 1729.64 feet to a point on the southerly line of Lowry Filing No. 26, and on Lowry Blvd. (124' right of way), as dedicated per Resolution No. 126, Series of 2014 and the POINT OF BEGINNING.

thence North 53°27'42" East, along said southerly line, a distance of 185.13 feet to a point on southwesterly corner of Lowry Filing No. 14 and said Lowry Blvd as dedicated per Resolution No. 86, Series of 2011;

thence along the southwesterly line of said Lowry Blvd. the following two (2) courses:

1. North 53°27'42" East a distance of 25.19 feet;
2. South 81°43'49" East a distance of 69.63 feet to the southwesterly line of Lowry Filing No. 23, and on Yosemite St. (120' right of way) as dedicated per Resolution No. 149, Series of 2007

thence South 36°32'18" East, along said southwesterly line, a distance of 589.93 feet to a point on the northwesterly line of proposed Sports Blvd;

thence South 53°27'42" West, along said northwesterly line, a distance of 491.72 feet to a point on the southeasterly line of said parcel of land described at Reception No. 2001184498 extended southerly:

thence North 36°28'21" West, along said southerly extension and along the southwesterly line of said parcel of land, a distance of 639.00 feet to a point on said southerly line of Lowry Blvd. (124' right of way);

thence North 53°27'42" East, along said southerly line, a distance of 231.26 feet to the POINT OF BEGINNING.

**EXHIBIT B**  
**FORM COVENANT**

**WHEN RECORDED MAIL TO:**

Department of Housing Stability  
Attention: \_\_\_\_\_  
201 W. Colfax Ave., Dept. 615  
Denver, CO 80202

**SPACE ABOVE THIS LINE IS FOR RECORDER'S USE**

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**RENTAL AND OCCUPANCY COVENANT**

**THIS RENTAL AND OCCUPANCY COVENANT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ (“Owner”), and enforceable by the City and County of Denver, Colorado (“City”).

**RECITALS:**

WHEREAS, Owner is the owner of the following described real property in the City and County of Denver, State of Colorado (the “Subject Property”):

[fill in]

WHEREAS, pursuant to the provisions of the Affordable Housing Dedicated Fund Ordinance as set forth in Article V of Chapter 27 of the Denver Revised Municipal Code as amended from time to time (the “AHDF Ordinance”) and the Affordable Housing Permanent Funds Ordinance Administrative Rules and Regulations as amended from time to time (“AHDF Rules”), and as an alternative to payment of the Linkage Fee (as defined in the AHDF Ordinance), Owner has agreed that certain units within the Subject Property will be built as Income Restricted Units as defined in the [AGREEMENT] (as defined below), and this Covenant);

WHEREAS, in order to document its plan for construction of the Income Restricted Units, the Owner entered into that certain [AGREEMENT] (“Agreement”) with the City and County of Denver, Colorado (the “City”) dated \_\_\_\_\_ and recorded under Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver; and

WHEREAS, Owner has now agreed to record a covenant to run with title to the Subject Property to ensure that certain rental and occupancy limitations, and administrative requirements for the Income Restricted Units are met and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, the following are established as covenants running with the Subject Property:



1. **Definitions.**

- i. “Adjusted Median Income” (AMI) means the area median income, adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development.
- ii. Income Restricted Units (“IRUs”) means those \_\_\_\_\_ rental housing units located within the Subject Property as are designated from time to time by Owner. Income Restricted Units must be restricted as to the rent charged and tenants allowed pursuant to the Covenant.
- iii. “Compliance Report” means the report, the form of which is attached to this Covenant as Exhibit A, that Owner shall prepare and provide to the City pursuant to and at the times specified in Section 5.
- iv. “Eligible Household” means a natural person who, at the time of entering into the lease for a IRU or a renewal of such lease, verifies to Owner on the Income Verification that the total gross income earned by such person is [XX]%, [YY]%, or [FILL IN AS NECESSARY]%) or less of the of AMI for the tenant’s household size.
- v. “Income Verification” means the form attached to this Covenant as Exhibit B.
- vi. “Initial Leasing Period” means the period commencing on the first date a certificate of occupancy is issued for any building within the Subject Property that contains IRUs and ending on the date when all IRUs have been fully leased.

2. **Rent Limitations.** The rent limitation for the IRUs are as follows:

- i. (##) of the IRUs (the “XX% Units”) will have rents not exceeding the amount posted on the website of the City and County of Denver’s Department of Housing Stability (“HOST”), or any successor agency which is assigned responsibility for the City’s AHDF Ordinance, for households earning [XX]% or less of AMI.
- ii. (##) of the IRUs (the “YY% Units”) will have rents not exceeding the amount posted on the website of HOST for households earning [YY]% or less of AMI.
- iii. [REPEAT AS NECESSARY]

- iv. The maximum allowable rents posted on HOST’s website are based upon the Low Income Housing Tax Credit rent by AMI threshold published by the Colorado Housing and Finance Authority (“CHFA”). Any tenant association fees shall be included in the rent calculation. The maximum rent shall deduct utility allowance costs which are published periodically by HUD or CHFA.

3. **Occupancy/Income Limitations.** The occupancy and income limitations for the IRUs are as follows:

- i. The XX% Units shall be occupied by tenants whose incomes are at or below [XX]% of AMI.
- ii. The YY% Units shall be occupied by tenants whose incomes are at or below [YY]% of AMI.
- iii. [REPEAT AS NECESSARY]
- iv. Owner shall have responsibility to assure that a household or individual is anEligible Household before executing a lease contract, and shall complete an Income Verification for each Eligible Household. Owner shall also offer the IRUs to Eligible Households through a fair and equitable system and use good-faith efforts to enter into leases with and marketing to Eligible Households.

4. **Amount of Income Restricted Units.** Owner shall provide no less than () IRUs on the Subject Property. All of the IRUs are floating and are designated as follows:

<b>BEDROOMS</b>	<b>XX% Units</b>	<b>XX% Units</b>	<b>XX% Units</b>	<b>XX% Units</b>	<b>XX% Units</b>	<b>XX% Units</b>
Studio						
1 Bedroom						
2 Bedroom						
3 Bedroom						
<b>TOTAL</b>						

5. **Compliance and Reporting.**

- i. During the Initial Leasing Period, Owner shall submit a Compliance Report by the tenth (10<sup>th</sup>) day of each calendar quarter indicating how many IRUs were made available and leased during the preceding calendar quarter, and a copy of an Income Verification completed by each Eligible Household that entered into a lease during the Initial Leasing Period.
- ii. All IRUs shall be made available to Eligible Households no later than the end of the calendar month in which the certificate of occupancy is issued for the building on the Subject Property containing IRUs.
- iii. Owner shall demonstrate continued compliance with this Covenant after the Initial Leasing Period by submitting to the City a Compliance Report on a semi-annual basis during the Term. Each such Compliance Report shall be accompanied by copies of Income Verifications for any Eligible Household that entered into a new lease or lease renewal during that half year.
- iv. The Income Verifications for each Eligible Household shall be maintained by Owner at the management office at the Subject Property or such other place where Owner's books and records are kept in the Denver metropolitan area for so long as the Eligible Household occupies an IRU.
- v. Upon reasonable notice and during the normal business hours maintained by Owner at the management office at the Subject Property or such other place where the requested books and records are kept in the Denver metropolitan area, Owner shall permit any duly authorized representative of the City to inspect any books or records of Owner pertaining to the project at the Subject Property containing IRUs which reasonably relate to Owner's compliance with the terms and conditions of this Covenant.
- vi. Owner acknowledges that the City may, at its election, hire a compliance agent, to monitor Owner's compliance with this Covenant. In such an event, Owner shall be authorized to rely upon any written representation made by the compliance agent on behalf of the City.

6. **Termination of Lease.** The form of lease to be used by Owner in renting any IRUs to Eligible Households shall also provide for termination of the lease and consent by such tenant to immediate eviction if such tenant subleases the IRU, attempts to sublease the IRU, or provide the IRU as a short term rental as defined by Article III, Chapter 33 of the Denver Revised Municipal Code.

7. **Term.** This Covenant shall encumber the Subject Property for a period of \_\_\_\_\_ (\_\_\_\_) years from the date of recording hereof and shall not be amended or modified without the express written consent of the City and County of Denver.

8. **Run with the Land.** The Covenant shall run with the Subject Property and shall be binding on all persons having or acquiring an interest in title to the Subject Property, all upon terms, provisions, and conditions set forth in this Covenant.

9. **Seniority of Covenant.** The Covenant is senior to all instruments securing permanent financing.

10. **Survivability.** If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

11. **Enforcement.** This Covenant may be enforced by the City and County of Denver, or the Executive Director of HOST.

12. **Memorandum of Acceptance.** Upon any sale of the Subject Property, Owner shall require the grantee of the Subject Property to execute a Memorandum of Acceptance, and shall deliver a copy of such Memorandum of Acceptance to the Executive Director of HOST not less than thirty (30) days after such sale is consummated.

**BALANCE OF PAGE INTENTIONALLY LEFT BLANK**



ACCEPTANCE BY THE CITY AND COUNTY OF DENVER

The foregoing Rental and Occupancy Covenant, and its terms are hereby accepted by the City and County of Denver, Colorado.

CITY AND COUNTY OF DENVER, COLORADO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the City and County of Denver, Colorado.

Witness my hand and official seal.

My commission expires:\_\_\_\_\_.

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Notary Public

EXHIBIT A  
COMPLIANCE REPORT





EXHIBIT B  
INCOME VERIFICATION



# INCOME VERIFICATION & ELIGIBILITY FORM

Return completed application to:  
 Department of Housing Stability  
 Attn: Affordable Housing Program Coordinator  
 201 W. Colfax Avenue - Dept. 204 Denver, CO 80202  
 E-Mail: [housingcompliance@denvergov.org](mailto:housingcompliance@denvergov.org)

Income verification should tie to the period of the property's lease/renewal

### Project Information:

Name of Project: \_\_\_\_\_

Project Address: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

### Household Information:

Provide information for each household member who will be living in the home INCLUDING anyone who will be on the property title or lease and denote such.

Name (list applicant first)	Relationship to Applicant	Age	Date of Birth	Days per year child resides with you	✓ If Employed
					<input type="checkbox"/> Employed
					<input type="checkbox"/> Employed
					<input type="checkbox"/> Employed
<b>Total number of members in household:</b>					

### Projected Annual Income:

Regular Income	Name:	Name:	Name:	Name:	Name:	Total
Wages/Salaries						
<i>How often paid?</i>						
Benefits/Pensions						
<i>How often paid?</i>						
Public Assistance						
<i>How often paid?</i>						
Child Support						
<i>How often paid?</i>						
Alimony						
<i>How often paid?</i>						
Awards:						
<i>How often paid?</i>						
Misc Income: _____						
<i>How often paid?</i>						
<b>Total Anticipated Income:</b>						



Income verification should tie to the period of the property's lease/renewal

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E-Mail: [housingcompliance@denvergov.org](mailto:housingcompliance@denvergov.org)

*Other Income can include  
but is not limited to:*

*Periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, unemployment, disability compensation, welfare (or other similar type of government payments), alimony, child support, pay associated with the armed forces or any other similar type of periodic payments received.*



Income verification should tie to the period of the property's lease/renewal

## INCOME VERIFICATION & ELIGIBILITY FORM

Return completed application to:  
 Department of Housing Stability  
 Attn: Affordable Housing Program Coordinator  
 201 W. Colfax Avenue - Dept. 204 Denver, CO 80202  
 E-Mail: [housingcompliance@denvergov.org](mailto:housingcompliance@denvergov.org)

**Assets:** If any household member has any net income of any kind from assets, being real or personal property, provide the following:

	Name:	Name:	Name:	Name:	Name:	Name:
Interest						
Dividends						
<b>Total Amount of Income</b> (expected in next 12 months)						

**Certifications:**

I, the undersigned, state that I have read and answered fully and truthfully each of the preceding questions for all members of the household who are to occupy the unit in the above named development for which application is made, all of whom are listed in this application.

I have attached one of the following for each household member to support the information supplied in this Income Verification and I certify that what is attached is a true and accurate copy of what it purports to be. *(please check which document submitted)*

Copy of signed, submitted most recent year of federal tax return (including all attachments - such as W-2, etc.)

\_\_\_\_\_

**Only if income information is current; if not, please provide either of the following:**

Two (2) months of most recent pay stubs from current employer.

\_\_\_\_\_

Letter from each current employer regarding current salary - must include average weekly hours worked and at what rate or yearly salary, including bonuses, commissions, etc. (An OED Verification of Employment form may be used as an alternative.)

\_\_\_\_\_

**NOTE:**

- If additional income is denoted, provide supporting documentation.
- If household member is unemployed, provide copy of unemployment award.
- If no income is denoted for a household member, provide signed written explanation

I acknowledge that I have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the owner of the above named project to lease a unit in the same project and will entitle the owner of said project to prevent or terminate my/our occupancy of the unit by institution of an action of ejection or other appropriate proceedings.

**Signatures:**

Applicant	Date
Co-Applicant	Date

**Optional Information:** This information is requested for demographic and statistical purposes only. It is not used in determining your eligibility



**Race:**    Black/African    White    Asian    AIAN\*    Pacific Islander  Other

**Ethnicity:**    Hispanic/Latino   \*American Indian and Alaska Native

**Referred By:**    Developer    Newspaper    Website    Brochure    Word of Mouth  Other



Income verification should tie to the period of the property's lease/renewal

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E-Mail: [housingcompliance@denvergov.org](mailto:housingcompliance@denvergov.org)

*EQUAL OPPORTUNITY: There will be no discrimination against an applicant on the basis of race, age, sex, marital status, sexual orientation, national origin, religion, handicap, or source of income. If you need special accommodations to enable you to apply for, or access to the Income Verification Process, please contact us at 720-913-1800.*