

**FIRST AMENDMENT TO
THE COMMERCIAL CONTRACT TO
BUY AND SELL REAL ESTATE DATED 1995**

THIS FIRST AMENDMENT TO THE COMMERCIAL CONTRACT TO BUY AND SELL REAL ESTATE DATED 1995 (this “**Amendment**”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **FORUM BUILDING HOUSING LP**, a Colorado limited partnership (and successor-in-interest to **FORUM HOUSING CORPORATION**, a Colorado nonprofit corporation) whose address is 2111 Champa Street, Denver, Colorado 80205 (the “**Owner**”), jointly the “Parties” and each individually a “Party.”

RECITALS:

WHEREAS, the Forum Housing Corporation (“Housing Corporation”) entered into a Commercial Contract to Buy and Sell Real Estate (“Original Purchase Agreement”) with the City in or around February, 1995 for the acquisition of that real property legally described as Lots 39 and 40, Block 22, Evans Addition to the City of Denver, also known as The Forum Building, 270 West 14th Avenue, Denver, Colorado (the “Property”); and

WHEREAS, the City conveyed the Property to the Housing Corporation pursuant to that certain Bargain and Sale Deed dated November 22, 1995 and recorded on November 30, 1995 at Reception No. 1995149113 of the real property records of the City and County of Denver; and

WHEREAS, pursuant to the terms and conditions of the Original Purchase Agreement, the Housing Corporation agreed to grant certain option rights and repurchase rights to the City, which were memorialized in that certain City Option Agreement dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149114 of the real property records of the City and County of Denver (the “Option Agreement”); and

WHEREAS, pursuant to the terms and conditions of the Original Purchase Agreement, the Housing Corporation also agreed to impose certain use restrictions on the Property, which were memorialized in in that certain City Use Restriction Agreement dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149116 of the real property records of the City and County of Denver (the “Use Restriction Agreement”); and

WHEREAS, the Original Purchase Agreement and Option Agreement provided the City with a first right of refusal regarding any proposed sale of the Property, as well as three (3) separate options to repurchase the Property upon certain terms and conditions and at certain times specified in the Option Agreement; and

WHEREAS, the Housing Corporation, as permitted by the terms and conditions of the sale of the Property, conveyed the Property to the Owner via that certain Warranty Deed dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149117 of the real property records of the City and County of Denver (the “Forum Deed”); and

WHEREAS, by accepting the Forum Deed and pursuant to the terms of the Forum Deed, the Owner assumed and agreed to perform and be bound by, *inter alia*, the terms and conditions of the Use Restriction Agreement and the Option Agreement, and the Owner became the successor-in-interest to Housing Corporation's interest in obligations under said agreements; and

WHEREAS, the Owner has formally requested that the City terminate its option rights as set forth in the Original Purchase Agreement and Option Agreement; and

WHEREAS, the City has agreed to terminate its option rights as set forth in the Original Purchase Agreement and Option Agreement provided the Owner agrees to amend the use restriction provisions of the Original Purchase Agreement and Use Restriction Agreement to extend the affordability provisions therein and to modify other certain terms as required by the City.

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. The City and the Owner hereby acknowledge that the provisions contained in Section 1, Sections 2.1.1 through 2.1.9, Sections 2.2.1 and 2.2.2 of the Original Purchase Agreement have been achieved or satisfied and do not require further action or impose additional obligations on the Parties by reason of this Amendment.

2. The City and the Owner agree to (i) terminate the option provisions set forth in Sections 2.4.2; 2.4.3; 2.4.4; and 2.4.5 of the Original Purchase Agreement; and (ii) amend the use restriction provisions set forth in Sections 2.2.4 and 2.3.1 of the Original Purchase Agreement to (a) extend the affordability term for a period of sixty (60) years from the date of recording of an Amended and Restated City Use Restriction Agreement and (b) impose affordability restrictions on all dwelling units at the Property.

3. The second sentence of Section 2.3.2 of the Original Purchase Agreement is deleted and replaced with: "The City Deed of Trust will be junior and subordinate only to the security interests and liens of the construction lender and permanent lender against the Property, including the security interests and liens of any lender providing take-out financing or refinancing of such loans (collectively, "Senior Debt") and may be senior to such other liens as the City may consent to in its discretion, which consent shall not be unreasonably withheld so long as the interests of the City are adequately protected as reasonably determined by the City Attorney. The form of such subordination agreement(s) shall be reasonably acceptable to the City Attorney."

4. The following sentence is added to the end of Section 2.3.2 of the Original Purchase Agreement: "The Liquidated Damages Provision shall be junior and subordinate to the Senior Debt."

5. The Parties will execute and record a First Amendment to City Option Agreement and an Amended and Restated City Use Restriction Agreement, substantially in the form of **Exhibits A and B**, respectively, attached hereto and incorporated herein, to effectuate the intent of

this Amendment. Except as otherwise consented to by the City, the Amended and Restated City Use Restriction Agreement shall be recorded prior to the recording of any other lien or encumbrance by Owner against the Property.

6. The Parties expressly acknowledge that the City's first right of refusal, as set forth Section 2.4.1 of the Original Purchase Agreement shall remain in full force and effect.

7. To the extent that additional agreements or documents are necessary and appropriate to accomplish the objectives of this Amendment, the Director of Real Estate is authorized to execute such agreements or documents, so long as (i) the form of such agreements or documents are acceptable to the City Attorney; and (ii) such agreements impose no monetary liability or obligation upon the City.

8. The recitals above are incorporated in and made a part of this Amendment.

9. This Amendment will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by City Council.

10. The Owner consents to the use of electronic signatures by the City. The Amendment, and any other documents requiring a signature under the Agreement, 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 Amendment 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 Amendment 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.

Exhibits:

Exhibit A - Form of First Amendment to City Option Agreement

Exhibit B - Form of Amended and Restated City Use Restriction Agreement

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SIGNATURE PAGES FOLLOW]

Contract Control Number: FINAN-202159656-01
Contractor Name: Forum Building Housing LP

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-202159656-01
Forum Building Housing LP

FORUM BUILDING HOUSING LP
a Colorado limited partnership

By: Forum Housing Corporation
a Colorado nonprofit corporation
Its: General Partner

By:

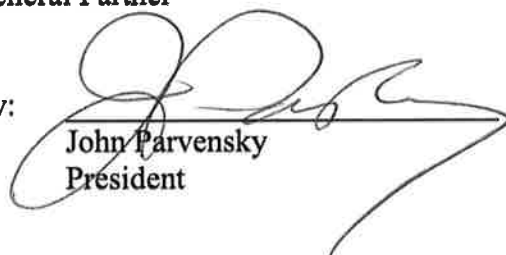

John Parvensky
President

EXHIBIT A
FIRST AMENDMENT TO
CITY OPTION AGREEMENT

Record and Return to:
Department of Finance | Office of Real Estate
City and County of Denver
201 W. Colfax Ave, Dept. 1010
Denver, Colorado 80202
Project: The Forum Building – 270 W. 14th Ave., Denver, CO
Asset Mgmt. #: 21-146

FIRST AMENDMENT TO CITY OPTION AGREEMENT

THIS FIRST AMENDMENT TO CITY OPTION AGREEMENT (“Amended Agreement”) is entered into and effective as of the _____ day of _____, 2021, by and between the City and County of Denver (the “City”), a Colorado home rule municipality, and Forum Building Housing LP, a Colorado limited partnership (“Forum Building Housing”), each a “Party” and collectively the “Parties.”

RECITALS

WHEREAS, the Forum Housing Corporation, a Colorado nonprofit corporation (“Forum Housing Corporation”) purchased from the City that real property legally described as Lots 39 and 40, Block 22, Evans Addition to the City of Denver, also known as The Forum Building, 270 West 14th Avenue, Denver, Colorado (the “Property”); and

WHEREAS, pursuant to the terms and conditions of the sale of the Property, the Forum Housing Corporation agreed to grant certain option rights and repurchase rights to the City pursuant to that certain City Option Agreement dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149114 of the real property records of the City and County of Denver (the “Original Agreement”); and

WHEREAS, the Original Agreement provided the City with a first right of refusal regarding any proposed sale of the Property, as well as three (3) separate options to repurchase the Property upon certain terms and conditions and at certain times specified in the Original Agreement; and

WHEREAS, the Forum Housing Corporation, as permitted by the terms and conditions of the sale of the Property, conveyed the Property to Forum Housing Building via that certain Warranty Deed dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149117 of the real property records of the City and County of Denver (the “Forum Deed”); and

WHEREAS, by accepting the Forum Deed and pursuant to the terms of the Forum Deed, Forum Building Housing assumed and agreed to perform and be bound by, *inter alia*, the terms and conditions of the Original Agreement, and Forum Building Housing is the successor-in-interest to Forum Housing Corporation’s interest in obligations under the Original Agreement, as modified pursuant to this Amended Agreement; and

WHEREAS, Forum Building Housing has formally requested that the City terminate its option rights as set forth in the Original Agreement; and

WHEREAS, the City has agreed to terminate its option rights as set forth in the Original Agreement provided Forum Building Housing agrees to amend that certain City Use Restriction Agreement dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149116 in the real property records of the City and County of Denver (the “City Use Restriction Agreement”) to extend the affordability provisions therein and to modify other certain terms as required by the City; and

WHEREAS, Forum Building Housing has agreed to amend the City Use Restriction Agreement pursuant to separate written instrument, which has been executed by the Parties and recorded in the real property records of the City and County of Denver concurrent with this Amended Agreement.

NOW, THEREFORE, THEREFORE, in consideration of the promises and the mutual covenants and obligations set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Unless the context requires otherwise, references to the “Forum Housing Corporation” in the Original Agreement shall be revised and replaced with “Forum Building Housing LP.”

2. Section 3 of the Original Agreement, entitled “**Twentieth Year Repurchase Option**,” Section 4 of the Original Agreement, entitled “**Thirtieth Year Option**,” Section 5, entitled “**Sixtieth Year Option**,” and Section 6 of the Original Agreement, entitled “**Termination of Option Rights**,” are hereby deleted in their entirety.

3. Section 1 of the Original Agreement, entitled “**First Right of Refusal**,” is amended to add the following sentence to the end of the paragraph: “The First Right of Refusal shall not apply if the Property is sold or conveyed to any entity in which the Colorado Coalition for the Homeless owns or has a controlling interest.”

4. The last sentence of Section 2 of the Original Agreement, entitled “**Exercise of First Right of Refusal**,” is deleted.

5. Section 2 of the Original Agreement, entitled “**Exercise of First Right of Refusal**,” is further amended to add the following paragraph:

“Prior to the end of the compliance period (pursuant to Section 42(i)(1) of the Code) (the “Compliance Period”), any Third Party Offer shall be for a purchase price which is the greater of: (A) the fair market value of the project, or (B) the sum of: (i) the project’s then-outstanding principal indebtedness, and all accrued and unpaid interest thereon (“Mortgage Debt”), if any, (ii) all federal, state and local taxes attributable to the sale (“Taxes”), and (iii) any unpaid amounts, loans or other advances made by a limited partner of Forum

Apartments, LLLP. After the termination of the Compliance Period, the purchase price for any Third Party Offer shall be no less than the sum of any Mortgage Debt plus Taxes and in all events subject to the requirements of Section 42(i)(7) of the Code. As used in this Section, “Code” means the Internal Revenue Code of 1986, as amended; each reference to the Code shall be deemed to include (a) any successor internal revenue law, and (b) the applicable regulations whether final or temporary under the Code or such successor law.”

6. Section 8 of the Original Agreement, entitled “Notices,” is replaced its entirety with the following:

“All notices provided for in this Agreement must be in writing and be personally delivered, or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, or sent via overnight courier service if to Forum Building Housing LP at the addresses listed below and if to the City at the addresses given below. Notices delivered personally are effective when sent. Notices sent by certified or registered mail are effective upon receipt and notices sent by overnight courier are effective the next business day after they are sent. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

If to City:

Department of Finance
Office of Real Estate
Attn: Director of Real Estate
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202

and

Department of Housing Stability
Attn: Executive Director
201 West Colfax Avenue, Department 615
Denver, Colorado 80202

and

Denver City Attorney’s Office
201 W. Colfax Ave. Dept. 1207
Denver, Colorado 80202

If to Forum Building Housing LP:

Forum Building Housing LP

Attn: John Parvensky
2111 Champa Street
Denver, Colorado 80205

and

Forum Housing Corporation
Attn: John Parvensky
2111 Champa Street
Denver, Colorado 80205

7. Section 13 of the Original Agreement, entitled “**Sale and Assignment to LP**,” is replaced with the following:

“The City hereby consents to Forum Building Housing LP’s sale of the Property to Forum Apartments, LLLP, a Colorado limited liability limited partnership, whose general partner is Forum Housing Corporation. Forum Apartments, LLLP shall take title to the Property subject to, and shall be bound by, the terms and conditions of this Agreement.”

8. Except as amended herein, the Original Agreement continues in effect, and is affirmed and ratified in each and every particular. The Parties expressly acknowledge that the City’s first right of refusal, as set forth Section 1 and Section 2 of the Original Agreement, *inter alia*, remain in full force and effect.

9. The City acknowledges that in the event it exercises its first right of refusal and takes title to the Property pursuant to the City Option Agreement, as amended, such conveyance shall be subject to all encumbrances of record at the time of conveyance. Provided further, nothing contained herein shall constitute a modification, limitation, or waiver of any terms or conditions regarding assignment(s), transfer(s), or conveyance(s) of the Property under any documents, instruments, or agreements entered into in connection with the financing of the Property and the City Option Agreement, as amended, shall be subordinate to the rights of mortgagees providing financing to the Property.

10. The recitals above are incorporated in and made a part of this Amended Agreement.

11. This Amended Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required, approved by City Council.

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SIGNATURE PAGES FOLLOW]

EXHIBIT B
AMENDED AND RESTATED
USE RESTRICTION AGREEMENT

Record and Return to:
Department of Finance | Division of Real Estate
City and County of Denver
201 W. Colfax Ave, Dept. 1010
Denver, Colorado 80202
Project: The Forum Building – 270 W. 14th Ave, Denver, CO
Asset Mgmt. #: 21-151

AMENDED AND RESTATED CITY USE RESTRICTION AGREEMENT

THIS AMENDED AND RESTATED CITY USE RESTRICTION AGREEMENT (this “**Agreement**”), dated as of _____, 2021 (“Effective Date”), is by and between **FORUM BUILDING HOUSING LP**, a Colorado limited partnership, 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:

WHEREAS, the Forum Housing Corporation, a Colorado nonprofit corporation (“Forum Housing Corporation”) purchased from the City that real property legally described as Lots 39 and 40, Block 22, Evans Addition to the City of Denver, also known as The Forum Building, 270 West 14th Avenue, Denver, Colorado (the “Property”); and

WHEREAS, pursuant to the terms and conditions of the sale of the Property, the Form Housing Corporation agreed to impose certain use restrictions on the Property as set forth in that certain City Use Restriction Agreement dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149116 of the real property records of the City and County of Denver (the “Original Use Restriction Agreement”); and

WHEREAS, pursuant to the terms and conditions of the sale of the Property, the Forum Housing Corporation also agreed to grant certain option rights and repurchase rights to the City pursuant to that certain City Option Agreement dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149114 of the real property records of the City and County of Denver (the “City Option Agreement”); and

WHEREAS, the City Option Agreement provided the City with a first right of refusal regarding any proposed sale of the Property, as well as three (3) separate options to repurchase the Property upon certain terms and conditions and at certain times specified in the Original Agreement; and

WHEREAS, the Forum Housing Corporation, as permitted by the terms and conditions of the sale of the Property, conveyed the Property to Owner via that certain Warranty Deed dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149117 of the real property records of the City and County of Denver (the “Forum Deed”); and

WHEREAS, by accepting the Forum Deed and pursuant to the terms of the Forum Deed, Owner assumed and agreed to perform and be bound by, *inter alia*, the terms and conditions of the Original Use Restriction Agreement and the City Option Agreement, and Owner is the successor-in-interest to Forum Housing Corporation’s interest in obligations under said agreements, as modified pursuant to this Agreement and the First Amendment to the City Option Agreement (as defined below); and

WHEREAS, Owner has formally requested that the City terminate its option rights as set forth in the City Option Agreement; and

WHEREAS, the City has agreed to terminate its option rights as set forth in the City Option Agreement provided Owner agrees to amend the Original Use Restriction Agreement to extend the affordability provisions therein and to modify other certain terms as required by the City (as executed and recorded, the “First Amendment to the City Option Agreement”); and

WHEREAS, this Agreement is being recorded concurrently with a separate written instrument to amend the City Option Agreement to terminate the City’s options as set forth therein.

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) “**Compliance Period**” means the period beginning on the date of recording of the Original Use Restriction Agreement and ending on the 60th anniversary of the recording of this Agreement.
 - (c) “**Project**” means the one hundred one (101) unit rental housing development located the Property.

- (d) **“Qualifying Tenant”** means a tenant that meets the income requirements of Section 6.
- (e) **“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 6, all as determined in accordance with Section 42(g)(2) of the Internal Revenue Code of 1986, as amended.
- (f) **“Restricted Units”** means Rent Restricted dwelling units.
- (g) **“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. Notwithstanding the foregoing, the City hereby agrees to and approves a Land Use Restriction Agreement (“LURA”) and, if applicable, a Regulatory Agreement, benefiting Colorado Housing and Finance Authority (“CHFA”) to encumber the Property and Project; and the City agrees that any conflicting provision in the CHFA LURA and/or CHFA Regulatory Agreement is controlling so long as such provision is more restrictive than the conflicting provision herein.
- (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 the Agreement:

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

6. Occupancy and Use Restrictions:

- (a) Affordable Housing Restriction:

- (i) The Owner covenants and agrees that, during the Compliance Period, all

dwelling units at the Property, excepting one dwelling unit which may be used as a manager's unit, shall be Restricted Units and shall be maintained as both Rent Restricted and occupied by individuals or families whose income level does not exceed 60% of AMI.

- (ii) 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 6.
 - (iii) Owner has or will enter into a housing assistance payments ("HAP") contract with the Denver Housing Authority, State Division of Housing, or another entity that administers HAP contracts so that the dwelling units at the Project may receive project-based voucher payments in accordance with the provisions of 24 C.F.R. Part 983. The City acknowledges that the HAP contract is vital for the financial viability of the Project. If the HAP contract applicable to the Project expires, is terminated, is not renewed, or the financial terms otherwise change, the City agrees that the City will, in good faith, engage in discussions to renegotiate the affordability provisions contained in this Agreement. Any changes or amendments to the affordability provisions will not be effective or binding on the City until an amendment to this Agreement has been fully executed by all required signatories of the City, and if required by Charter, approved by the City Council.
- (b) Ground Floor Restriction: The ground floor of the building on the Property shall be restricted to non-residential uses, with a preference for a retail use; provided, however, the Owner shall be entitled to use up to 1,000 square feet on the ground floor level as a manager's apartment for the Property (the "Ground Floor Restriction").

7. Owner Certifications and Reports:

- (a) The Owner shall provide to the City annually a certification of compliance with this Agreement 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.

8. 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. This provision is not intended to apply to any sale, transfer, assignment or other conveyance of the Property or Project made pursuant to a foreclosure of a mortgage or deed of trust or any conveyance in lieu thereof. Notwithstanding the foregoing, the City hereby consents to Forum Building Housing LP's sale of the Property to Forum Apartments, LLLP, a Colorado limited liability limited partnership, whose general partner is Forum Housing Corporation II. Forum Apartments, LLLP shall take title to the Property subject to, and shall be bound by, the terms and conditions of this Agreement.
- (b) Notwithstanding the foregoing, the Transfer Restrictions of subsection (a) shall not apply to any sale, assignment, conveyance, transfer, or disposition of the Property to an entity which is controlled or owned by the Colorado Coalition for the Homeless, a Colorado nonprofit corporation.
- (c) 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.

9. 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.

10. 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 execute and maintain in effect a management agreement for the Property with an experienced and qualified manager. Said agreement shall provide for: (a) appropriate tenant rules and responsibilities; (b) screening criteria and procedures; (c) appropriate security measures, policies, and personnel to ensure the safety of residents and the surrounding neighborhood, including by way of example and not by way of limitation, provisions for the installation of security monitoring devices, and on-call or part-time or full-time private security personnel.
- (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) Owner is 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.

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 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.
- (c) The Owner's performance and compliance with this Agreement is secured by a Deed of Trust dated November 29, 1995 and recorded on November 30, 1995 at Reception No. 1995149115 of the real property records of the City and County of Denver (the "City Deed of Trust"). The Director of Real Estate is authorized to execute documents to subordinate the City Deed of Trust to the security interests and liens of the construction lender and permanent lender against the Property, including the security interests and liens of any lender providing take-out financing or refinancing of such loans (collectively, "Senior Debt") and may be senior to such other liens as the City may consent to in its discretion, which consent shall not be unreasonably withheld so long as the interests of the City are adequately protected as reasonably determined by the City Attorney. The form of such subordination agreement(s) shall be reasonably acceptable to the City Attorney.
- (d) The parties acknowledge and agree that the damages which the City might incur upon the Owner's default under this Agreement or any other obligation which has been secured against, or become a lien against, the Property, would likely be, at the

time of the breach, difficult to ascertain, considering, for example, the public purpose which the Property is to serve and other related risks. Owner and the City therefore mutually agree that it is in the best interests of both parties to agree upon an amount of liquidated damages in advance, so as to eliminate the future uncertainties. Owner and the City therefore agree that upon a default by Owner which results in the foreclosure of the City Deed of Trust or the foreclosure of any other lien against the Property, the City shall be entitled to liquidated damages, on a nonrecourse basis to Owner and its general partner and limited partners, in the amount of \$450,000.00 (the "Liquidated Damages Provision"). The Liquidated Damages Provision shall be junior and subordinate to the Senior Debt.

12. 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, protective hairstyle, 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.
13. 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.

14. 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: Department of Finance
 Office of Real Estate
 Attn: Director of Real Estate
 201 West Colfax Avenue, Department 1010
 Denver, Colorado 80202

and

Department of Housing Stability
Attn: Executive Director
201 West Colfax Avenue, Department 615
Denver, Colorado 80202

and

Denver City Attorney's Office
201 W. Colfax Ave. Dept. 1207
Denver, Colorado 80202

To the Owner: Forum Building Housing LP
 Attn: John Parvensky
 2111 Champa Street
 Denver, Colorado 80205

and

Forum Housing Corporation
Attn: John Parvensky
2111 Champa Street
Denver, Colorado 80205

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.
- (g) This Agreement amends and restates, in its entirety, and replaces the Original Use Restriction Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW]