

STATE OF ALABAMA)
)
[COUNTY] COUNTY)

**ADDENDUM TO DECLARATION OF LAND USE RESTRICTIVE
COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS**

**TENANT HOME OWNERSHIP CONVERSION PROGRAM
([OWNER])**

This Addendum to the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits with Alabama Housing Finance Authority (“this Addendum”) dated as of _____, 201__ is executed by and between [Owner], an Alabama limited partnership (“Owner”) and Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama (“AHFA”) and consented to by [First Mortgage Lender], a _____ corporation (“Mortgagee”).

Background

Owner is the current owner of those certain [Number of Units] single family homes being developed in [City], [County] County, Alabama (each such single family home being a “Home” and collectively constituting the “Project”). The Project is a low-income housing development and has received an allocation of federal low-income housing tax credits, subject to the terms and conditions of that certain Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (the “LURC”) executed by Owner, AHFA and Mortgagee and recorded at Book _____, Page _____ in the Office of the Judge of Probate of [County] County, Alabama on _____. The Owner and AHFA now desire to enter into this Addendum to the LURC in order to incorporate a Tenant Home Ownership Conversion Program with respect to the Homes and desire to record this Addendum in said real estate records. Capitalized terms contained herein and not otherwise defined shall have the meaning given to them in the LURC.

Now, therefore, in consideration of the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt of which are hereby acknowledged, Owner and AHFA hereby agree that Owner shall be permitted to sell individual Homes in the Project to Low-Income Tenants but only in accordance with the terms and conditions of this Addendum (collectively, the “Tenant Home Ownership Program”):

1. Conditions to Implementation of Tenant Home Ownership Program. Owner may not begin selling Homes under the Tenant Home Ownership Conversion Program unless and until all of the following items have been completed (collectively, the “Program Conditions”), as evidenced by written certification executed by Owner to AHFA, accompanied by fully executed and recorded (if applicable) photocopies of the items referenced in Sections 1(a), 1(b), 1(c) and 1(d) below:

(a) This Addendum has been fully executed and recorded in the office of the Judge of Probate in the County in which the Project is located.

(b) Owner has recorded a plat in said probate office that establishes each lot on which a Home is located as a separate lot that that can be lawfully conveyed as a separate piece of property, including without limitation compliance with applicable subdivision law.

(c) Each Home has access to all necessary utilities by and through public rights-of-way and/or permanent easements, and such access is not dependent on any exercise or non-exercise of any right or consent by the owner of any other property.

(d) Each Home has direct vehicular and pedestrian access to a lawfully dedicated public street for which the state government or the applicable county or municipal government has accepted maintenance.

(e) Owner has entered into a written agreement with all financial institutions that hold a mortgage on the Property that (i) establishes an agreed release price for each lot on which a Home in the Project is located, such that the aggregate release prices will provide for full payment and satisfaction of the projected outstanding indebtedness secured by such mortgage or mortgages on the last date of the Initial Compliance Period, and (ii) confirms each financial institution's obligation to release its mortgage lien on each lot immediately upon receipt of the release price for that lot. The release price for each lot may be based upon a percentage of the projected outstanding balance of the indebtedness secured by the mortgage on the last day of the Initial Compliance Period (which balance must be expressed in the agreement as a specific dollar figure), and the actual release price for each lot may be adjusted at the time of release according to the actual principal balance of the mortgage loan at that time. The mortgagee's or mortgagees' commitment to release each lot may be contingent upon Owner's making all scheduled debt service payments on the mortgage loan up to and including the date of release.

2. Qualifying Tenants and Purchase Price. Beginning on the first day following the end of the Initial Compliance Period (or such later date on which all Program Conditions have been satisfied) and continuing thereafter until the earlier of (i) the date on which all Homes in the Project has been sold to Low-Income Tenants in accordance with this Addendum, or (ii) the termination of the Extended Use Period, individual Homes may be sold to Low-Income Tenants as follows:

(a) Any person who (i) is identified as a Low-Income Tenant under a current lease for a Home, (ii) has rented such Home for a period of not less than six consecutive months at any time following the date that is six months prior to the end of the Initial Compliance Period, and (iii) has completed a homeownership counseling workshop described in Section 3 below, shall be entitled to purchase the Home such Low-Income Tenant is then occupying for a purchase price equal to the higher of (x) _____% of the then current fair market value of the Home¹ or (y) the price determined under Section 2(c) below.

(b) Fair market value for each Home will be determined in accordance with real estate industry standards, including without limitation comparing market-comparable single family homes that recently sold in the area, including Homes in the Project, and obtaining a current, standard residential appraisal for the Home.

(c) Notwithstanding anything in this Addendum to the contrary with respect to the purchase price of a Home, the minimum purchase price for each Home shall be not less than an amount equal to the sum of (i) the principal amount of indebtedness secured by the Home (determined according to the release prices established by Owner and mortgage holder as described in Section 1(e) above), and (ii) all Federal, State and local taxes attributable to the sale of such Home.

¹ Owner may propose a discounted price as a percentage of fair market value or an alternative pricing schedule.

(d) Upon each sale of a Home in accordance with this Addendum, (i) upon AHFA's written approval of the items delivered by the Owner pursuant to Section 5 below with respect to HOME that is sold pursuant to this Addendum, each Home that is sold and the land on which it is located shall be released from compliance with the terms and conditions of the LURC, and (ii) Owner shall no longer be required to monitor or enforce the Home's compliance with the LURC; provided, however, that such release shall be effective only if the deed conveying the Home to such Low-Income Tenant contains a title restriction that (A) the initial purchaser will not sell or attempt to sell the Home for a period of 5 years following the date of the deed, and (B) in the event that the initial purchaser does sell the Home within such 5 year period, the initial purchaser must pay to Owner at the closing an amount equal to the amount by which the initial purchaser's net sales price for the Home (gross sale price less the initial purchaser's closing costs and payoff of existing mortgage on the Home) exceeds the price paid by such initial purchaser to Owner in accordance with this Addendum. This deed restriction shall apply only to the first sale of each Home by the initial purchaser if it occurs within the referenced five-year period.

3. Counseling. Annually for each of the last five (5) years of the Initial Compliance Period and continuing thereafter so long as the Homes are being offered to Low-Income Tenants for sale, the Owner will conduct a homeownership workshop during which aspects and benefits of homeownership will be discussed with any Low-Income Tenants that desire to participate. Written notice of each workshop will be delivered to each Low-Income Tenant in the Project reasonably in advance of the workshop. Low-Income Tenants that intend to exercise a purchase option and acquire a Home will be required to attend a workshop. In addition, Low-Income Tenants must meet with a certified credit counselor to assist them in achieving the necessary credit standing and financial stability required for home loan qualification and may participate in on-site maintenance workshops emphasizing homeownership maintenance responsibilities.

4. Neighborhood Association. The Owner will organize a neighborhood association within the Project prior to the end of the Initial Compliance Period for the benefit of Low-Income Tenants and future homeowners. The association will allow the Low-Income Tenants and homeowners the opportunity to participate in neighborhood watch programs, community beautification projects, and neighborhood unification projects.

5. Owner Reporting Requirements. Upon each initial sale of a Home in the Project, Owner will deliver the following information to AHFA within five (5) business days following each such sale:

(a) Owner's written certification under penalty of perjury (i) identifying the lot that was sold, (ii) stating the building identification number (for tax credit purposes) of each building that was sold, (iii) identifying the Low-Income Tenant who is the purchaser, (iv) stating the Low-Income Tenant's purchase price and (v) confirming that both the Owner and the Low-Income Tenant have complied with all requirements of this Addendum for such sale.

(b) A photocopy of the fully executed deed conveying title to the initial purchaser, which deed must contain the language required by Section 2(d) above.

(c) A photocopy of a fully executed release evidencing that the lot on which the Home is located has been released from any mortgage lien then encumbering the Project.

6. Owner Agreements and Representations. In consideration of AHFA's execution and delivery of this Addendum, Owner ratifies, confirms and agrees as follows:

(a) The LURC remains in full force and effect, except as expressly amended by this Addendum, and Owner covenants to enforce the terms and conditions of the LURC and this

Addendum at Owner's sole cost and expense, including without limitation, taking legal action in appropriate cases.

(b) Owner may not sell any Home to a buyer other than Low-Income Tenants that resided in such Home for a period of not less than six months prior to the date of purchase of such Home.

(c) Owner will not list or offer for sale any Home that is occupied by a Low-Income Tenant except (i) for sale to that Low-Income Tenant, or (ii) upon receipt of notice that such Low-Income Tenant does not intend to renew the lease or intends otherwise to terminate the lease in accordance with the terms thereof. Owner will not evict or attempt to evict any Low-Income Tenant in order to sell the Home occupied by such Low-Income Tenant or in order to lease such Home to another Low-Income Tenant who wishes to buy it.

(d) Low-Income Tenants in the Project are third party beneficiaries of Owner's obligations under this Addendum and shall have the right to enforce the terms and conditions of this Addendum against Owner by means of any available legal remedy, including without limitation actions for specific performance in appropriate cases.

(e) Owner hereby agrees to hold AHFA harmless and to indemnify AHFA from and against any and all claims, liabilities or expenses of any type or description, known or unknown, arising under any circumstances from the Tenant Homeownership Conversion Program established by this Addendum. Owner will notify AHFA within 5 business days of its receipt of any information concerning an actual or potential claim, liability or expense against Owner or AHFA in connection with such program and will defend AHFA at Owner's sole cost and expense against any and all such matters; provided, however, that AHFA shall be entitled in its sole discretion to select its own legal counsel to participate in or monitor the defense of any such claim at Owner's sole cost and expense. Notwithstanding any other provision of this Addendum, Owner shall not be required to indemnify AHFA for AHFA's own gross negligence or willful misconduct in connection with this Addendum.

(f) Owner acknowledges that it is possible for a Low-Income Tenant's purchase price for a Home under this Addendum to be less than the Home's mortgage release price established under Section 1(e). **OWNER SHALL PAY ANY SUCH SHORTFALL DIRECTLY TO THE MORTGAGE HOLDER FROM ITS OWN FUNDS WITHOUT COLLECTING, DIRECTLY OR INDIRECTLY, ANY PORTION OF SUCH FUNDS FROM THE LOW-INCOME TENANT.**

7. Refinancing of Mortgage Loan. Nothing in this Addendum shall prohibit the Owner from refinancing the indebtedness secured by a mortgage on the Project in accordance with AHFA's policies and procedures; provided, however, that if the Tenant Homeownership Conversion Program is in effect for the Project at the time of the refinancing, Owner must obtain from all mortgagees who hold mortgage loans on the Project after giving effect to the refinancing (a) a written agreement that complies with the requirements of Section 1(e), and (b) a Consent of Mortgagee in recordable form substantively identical to the form executed below by the existing Mortgagee.

[Remainder of this page intentionally blank.]

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed by their respective duly authorized representatives, as of the day and year first written above.

[OWNER]

By: [Name of General Partner]
Its general partner

By: _____

Name: _____

Title: _____

STATE OF ALABAMA)

_____ COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of [Name of General Partner], an Alabama corporation, a general partner of [Owner], an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he/she, acting in his/her capacity as such _____ and with full authority, executed the same voluntarily on the date hereof, for and on behalf of said corporation acting in its capacity as general partner of said limited partnership.

Given under my hand and official seal this _____ day of _____, 201__.

(SEAL)

Notary Public
My Commission Expires: _____

This Instrument Prepared by:

S. Douglas Williams, Jr.
Maynard, Cooper & Gale, P.C.
2400 AmSouth/Harbert Plaza
1901 6th Avenue North
Birmingham, Alabama 35203
(205) 254-1000

ALABAMA HOUSING FINANCE AUTHORITY

(CORPORATE SEAL)

By: _____
David C. Young
Multifamily Administrator

STATE OF ALABAMA)

MONTGOMERY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that David C. Young, whose name as Multifamily Administrator of Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such Multifamily Administrator and with full authority, executed the same voluntarily on behalf of said corporation on the date hereof.

Given under my hand and official seal this _____ day of _____, 201__.

(SEAL)

Notary Public
My Commission Expires: _____

Consent of Mortgagee

Mortgagee, by executing and delivering this Addendum hereby (a) accepts and approves all terms and conditions of the LURC, as amended by this Addendum (collectively, the "Declarations"), (b) acknowledges and agrees that the Mortgagee's mortgage lien on the Project, whether now or hereafter filed of record and as amended from time to time, is subject and subordinate in all respects to the Declarations and, (c) further agrees that the Mortgagee and any other purchaser of the Project pursuant to such mortgage lien, whether by foreclosure or deed in lieu of foreclosure or otherwise, shall comply with the Declarations in accordance with the terms set forth therein; provided, however, that nothing in this Addendum or the Mortgagee's consent hereto shall be construed to obligate Mortgagee to establish release prices for the Project or for any Home located therein on the date of this consent, it being the understanding and intention of Owner and Mortgagee that they will establish such release prices only upon request by Owner pursuant to a subsequent written agreement in compliance with Section 1(e) above.

[FIRST MORTGAGE LENDER]

(CORPORATE SEAL)

By: _____

Name: _____

Title: _____

STATE OF ALABAMA)

MONTGOMERY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of [First Mortgage Lender], a _____ corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he/she, as such officer and with full authority, executed the same voluntarily on behalf of [First Mortgage Lender] on the date hereof.

Given under my hand and official seal this _____ day of _____, 201__.

(SEAL)

Notary Public
My Commission Expires: _____