

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR LOW INCOME HOUSING TAX CREDITS
AND SUBORDINATION AGREEMENT**

**KY-Insert Project Number
Insert Owner Tax ID no.**

THIS **DECLARATION OF LAND USE RESTRICTIVE COVENANTS AND SUBORDINATION AGREEMENT** ("Agreement"), dated as of Insert Date, is given by Insert Owner's Legal Name, a Insert Entity Type and its successors and assigns ("Owner") and by Banks Involved ("Lender") as a condition precedent to the allocation of Low Income Housing Tax Credits by **KENTUCKY HOUSING CORPORATION**, a de jure municipal corporation and political subdivision of the Commonwealth of Kentucky, together with any successor to its rights, duties and obligations ("KHC").

WITNESSETH:

WHEREAS, Owner is or shall be the owner of a Insert total number of units unit rental housing development located on lands in the City of Insert City, County of Insert County, Commonwealth of Kentucky, more particularly described in Exhibit A attached hereto and made a part hereof, known as or to be known as Project Name ("Project"); and

WHEREAS, KHC has been designated by the Governor of the Commonwealth of Kentucky as the housing credit agency for the Commonwealth of Kentucky for the allocation of Low Income Housing Tax Credit Dollars ("Credit"); and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (hereinafter ARRA) appropriated additional funds from the Home Investment Partnership Program ("HOME") provided that such funds are to be used for Low Income Housing Tax Credit projects pursuant to Section 42 of the Internal Revenue Code ("Section 42 of the Code");

WHEREAS, the Housing and Urban Development Cabinet ("HUD") created the Tax Credit Assistance Program (hereinafter "TCAP" and with regard to any appropriation there under the "TCAP Funds") as the program outlet for these additional HOME funds appropriated under ARRA;

WHEREAS, the obligations, rules, and requirements of ARRA and Section 42 of the Code are applicable to TCAP Funds in lieu of the corresponding requirements of the HOME program; and

WHEREAS, Owner has represented to KHC in Owner's Application for Allocation of Low Income Housing Tax Credit ("Application") that Owner shall lease Insert Percent percent (Percent%) of the units in the Project to individuals or families whose income is Insert Percent percent (Percent%) or less of the area median gross income (including adjustments for family size) ("Low-Income Tenants") as determined in accordance with Section 42 of the Internal Revenue Code of 1986, as amended ("Code"); and

WHEREAS, KHC has determined the Project would support a Credit allocation in the amount of Insert Tax Credit Allocation Dollars (\$Insert Dollar amount); and

WHEREAS, the Code has required as a condition precedent to the allocation of the Credit that the Owner execute, deliver and record this Agreement in the official land records of the county in which the Project is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code and the KHC Occupancy Restrictions found in Section 5 hereof by regulating and restricting the use and occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Code has required that Lender subordinate its rights to Section 42(h)(6)(B) the "Extended Use Provisions" during the extended use period subject to Section 42(h)(6)(E); and

WHEREAS, 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 Project shall be and are covenants running with the Project for the term stated herein and binding upon all subsequent owners of the Projects for such term and are not merely personal covenants of Owner.

NOW THEREFORE, in consideration of the premises and the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner agrees as follows:

SECTION 1 - DEFINITIONS

All words and phrases defined in Section 42 of the Code and by the United States Department of the Treasury ("Treasury") or the United States Department of Housing and Urban Development ("HUD") regulations pertaining thereto shall have the same meanings as in this Agreement.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

(a) Upon execution and delivery by Owner, Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land records of the county in which the Project is located and shall pay all fees and charges incurred in connection therewith. Upon recording, Owner shall immediately transmit to KHC an executed original of the recorded Agreement showing the date, deed book and page numbers of record. Owner agrees that KHC will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until KHC has received the recorded executed original of the Agreement.

(b) Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project for the term of this Agreement, binding upon Owner's successors in title and all subsequent owners and operators of the Project; (ii) are not merely personal covenants of Owner; and (iii) shall bind Owner (and the benefits shall inure to KHC and, only with respect to the benefits of the Section 42 Occupancy Restrictions contained in Section 4 hereof, any past, present or prospective tenant of the Project who meets the income limitation applicable under Section 42) and its respective successors and assigns during the term of this Agreement. Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Kentucky to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied or, in the alternative, that an equitable servitude has been created to ensure that these restrictions run with the land. For the longer of the period this Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying full possessory interest in the project (or portion of the Project) shall expressly provide that such conveyance is subject to this Agreement; provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying full possessory interest in the project (or portion of the Project) provides that such conveyance is subject to this Agreement.

(c) Owner covenants to obtain the consent of any prior recorded lien holder on the Project to this Agreement. For Rural Housing Services Section 515 projects, evidence of submission of notification will constitute consent. Such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit. For projects receiving financing from KHC, the issuance of this Agreement constitutes consent.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF OWNER

Owner hereby represents, covenants and warrants as follows:

- (a) Owner (i) is a Insert Entity Type, duly organized under the laws of the Insert State or Commonwealth, and is qualified to transact business under the laws of the Commonwealth of Kentucky; (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 execution and performance of this Agreement by Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation or any order of any court or other agency or governmental body; (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which Owner is a party or by which it or the Project is bound; and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project or other permitted encumbrance).
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.
- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations.
- (f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless).
- (g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.
- (h) Owner will comply fully with the requirements of the Fair Housing Act as it now exists or may from time to time be amended.
- (i) During the term of this Agreement, each low-income unit is and will remain suitable for occupancy, subject to normal maintenance and repair.
- (j) Subject to the requirements of Section 42 of the Code and this Agreement, Owner may sell, transfer or exchange the entire Project at any time, but Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and the requirements of Section 42 of the Code and applicable regulations and the KHC Occupancy Restrictions. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project. KHC may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.
- (k) Owner will notify KHC in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

(l) 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 during the term of this Agreement unless required by law.

(m) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, Owner will 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.

(n) Except as allowed by subsection 10(d) below, Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement, and that 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 requirements in conflict herewith.

(o) Owner will not refuse to lease a unit to a holder of a Voucher or Certificate of Eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

(p) Throughout the term of this Agreement, Owner shall not evict or terminate the tenancy of any existing tenant of any low-income unit other than for good cause.

SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS

Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restrictions") that:

(Check applicable percentage election)

(a) (1) At least twenty percent (40%) or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median income.

(2) At least forty percent (40%) or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is sixty percent (60%) or less of area median income.

(b) Owner acknowledges that the percentage election selected in Section 4(a) above is required by Section 42 of the Code to determine eligibility under the tax credit program. Notwithstanding the percentage election selected in section 4(a) above, Owner has agreed in its Application that Owner shall lease **Insert Actual Percent Election** percent (**Insert percent**%) of the units in the Project to Low Income Tenants.

(c) Owner will extend the income and rental restrictions of Section 42 of the Code for fifteen (15) years after the close of the compliance period.

Owner agrees not to charge rents in excess of 90% of the rent limit applicable to (a) or (b) above.

SECTION 5 - KHC OCCUPANCY RESTRICTIONS (OPTIONAL)

This section is intended to make enforceable those extended use covenants ("KHC Occupancy Restrictions") or other Project Selection Criteria (as defined in the Application) which Owner represented to KHC in its Application.

Owner represents, warrants and covenants throughout the term of this Agreement that:

(Check if applicable)

(a) Regardless of any provision in Section 6 of this Agreement to the contrary, the KHC Occupancy Restrictions provided by this section shall remain in place for a period of thirty (30) years, except in the case of foreclosure or deed in lieu of foreclosure or when an eligible tenant exercises their Right of First Refusal under a program established by the Owner to provide home ownership opportunities.

(b) Regardless of any provision in Section 6 of this Agreement to the contrary, the KHC Occupancy Restrictions provided by this section shall remain in place for a period of forty (40) years, except in the case of foreclosure or deed in lieu of foreclosure, for all Projects receiving Credit under the KHC Multifamily Initiative.

(c) Owner will comply with the following Project attributes which Owner elected in its Application and for which the Project was awarded points under Project Selection Criteria:

(Check applicable box(es))

- | | |
|--------------------------|---|
| <input type="checkbox"/> | 90% rent limit |
| <input type="checkbox"/> | Elderly set-aside |
| <input type="checkbox"/> | Elderly amenities |
| <input type="checkbox"/> | Large family units (3 bedrooms or more) |
| <input type="checkbox"/> | Family amenities |
| <input type="checkbox"/> | Handicapped accessible |
| <input type="checkbox"/> | Homeless |
| <input type="checkbox"/> | Assisted Living |

SECTION 6 - TERM OF AGREEMENT

(a) Except as hereinafter provided, this Agreement and the Section 42 Occupancy Restrictions specified herein shall commence with the first day in the Project period on which any building which is part of the Project is placed in service and shall end on the date which is fifteen (15) years after the close of the compliance period.

(b) Notwithstanding subsection (a) above, the extended use period for any building which is part of this Project shall terminate:

(1) On the date the building is acquired by foreclosure or deed in lieu of foreclosure; or

(2) When a tenant exercises their Right of First Refusal to purchase a unit for home ownership at the close of the fifteen (15) year period as defined in Internal Revenue Code 42(i)(1) and at a minimum purchase price as specified in Internal Revenue Code 42(i)(7)(B); or

(3) On the last day of the compliance period if Owner has properly requested that KHC assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project and KHC is unable to present a qualified contract.

(c) Notwithstanding subsection (b) above, for a period of three (3) years following the termination of the extended use requirement pursuant to the procedures specified in subsection (b) above, Owner shall not evict or terminate the tenancy of any existing tenant of any low-income unit

other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit.

(d) Except as provided in subsection (b)(1) above, if Owner has agreed to optional KHC Occupancy restrictions as reflected in Section 5(a) of this Agreement, this Agreement shall not terminate until the time period for compliance with such KHC Occupancy Restrictions has expired.

SECTION 7 - ENFORCEMENT OF OCCUPANCY RESTRICTIONS

(a) Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of KHC to inspect any books and records of Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the KHC Occupancy Restrictions specified in this Agreement.

(b) Owner shall submit, at least annually, any information, documents or certifications requested by KHC which KHC shall deem reasonably necessary to substantiate Owner's continuing compliance with: i) the provisions of the KHC Occupancy Restrictions specified in this Agreement, (ii) the information required by [Housing and Economic Recovery Act of 2008](#), (iii) and/or any other applicable law. At a minimum, such information shall include race, ethnicity, family composition, age, income, use of rental assistance (under section 8(o) of the United States Housing Act of 1937 or other similar assistance), disability status, and monthly rental payments of households residing at the Project.

SECTION 8 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS

(a) Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and applicable regulations or this Agreement. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary in the opinion of KHC) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated by the Treasury or the Internal Revenue Service or HUD from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project.

(b) Owner acknowledges that the primary purpose for requiring compliance by Owner with the restrictions provided in this Agreement is to ensure compliance of the Project and Owner with Section 42 of the Code and the applicable regulations, AND BY REASON THEREOF, OWNER IN CONSIDERATION FOR RECEIVING LOW INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT IN THE EVENT OF A BREACH OF THE PROVISIONS OF THIS AGREEMENT THAT KHC AND, ONLY WITH RESPECT TO THE BENEFITS OF THE "SECTION 42 OCCUPANCY RESTRICTIONS" CONTAINED IN SECTION 4, HEREOF, ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. Owner hereby further specifically acknowledges that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(c) Owner hereby agrees that the representations and covenants set forth herein may be relied upon by KHC.

(d) Owner agrees that, if at any point following execution of this Agreement, Section 42 of the Code or regulations implementing said Section require KHC to monitor the Section 42 Occupancy Restrictions or, alternatively, KHC chooses to monitor Section 42 Occupancy Restrictions or KHC Occupancy Restrictions, Owner will take any and all actions reasonably necessary and required by KHC to substantiate Owner's compliance with the Section 42 Occupancy Restrictions or KHC Occupancy Restrictions and will pay a reasonable fee to KHC for such monitoring activities performed by KHC or its designated representative.

SECTION 9 - SUBORDINATION OF LENDER'S LIEN

Lender hereby agrees that notwithstanding the sequence of recording or any other matter, the liens and security interests afforded to Lender under any loan documents secured by all or any part of the Project are and shall continue to be subordinate and inferior to the rights afforded KHC under Section 42(h)(6)(B) the "Extended Use Provisions" during the extended use period subject to Section 42(h)(6)(E).

SECTION 10 - MISCELLANEOUS

(a) **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) **Notices.** 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 at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To KHC: Kentucky Housing Corporation
1231 Louisville Road
Frankfort, KY 40601
ATTENTION: LOW INCOME HOUSING TAX CREDIT PROGRAM

To Owner: **Owner Name**
Address
City, State ZIP CODE
ATTENTION: Owner or Contact

(c) **Amendment.** Owner agrees that it will take all actions necessary to effectuate amendment of this Agreement as may be necessary to comply with the Code and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.

(d) **Subordination of Agreement.** This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar as Section 42 of the Code requires otherwise, as in the three-year (3-year) period described in subsection 6(c) above.

(e) **Governing Law.** This agreement shall be governed by the laws of the Commonwealth of Kentucky and, where applicable, the laws of the United States of America.

(f) **Survival of Obligations.** The obligations of Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

IN WITNESS WHEREOF, Owner has caused this Agreement to be signed by its duly authorized representative, as of the day and year first written above.

Insert Company Name

BY: name of agent/owner

By: _____

Title: _____

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 19__, by _____ as _____ of _____, a _____ for and on behalf of the _____, the Owner.

My commission expires: _____.

Notary Public, State at Large, Kentucky

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 19__, by _____ as _____ of _____, a _____ for and on behalf of the _____, the Lender.

My commission expires: _____.

Notary Public, State at Large, Kentucky

THIS INSTRUMENT PREPARED BY:

Lisa A. Beran, General Counsel
Kentucky Housing Corporation
1231 Louisville Road
Frankfort, KY 40601
(502) 564-7630

**EXHIBIT A
LEGAL DESCRIPTION**

Insert Deed Description