

HOUSING TAX CREDIT PROGRAM

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS (LURA) with Use of  
Tax Credit Exchange Program Funds**

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Texas Department of Housing and Community Affairs

**NOTICE:**

**THIS LURA MUST BE EXECUTED AND DELIVERED TO THE  
DEPARTMENT PRIOR TO ANY EXCHANGE FUNDS BEING RELEASED**

**GENERAL INSTRUCTIONS**

This LURA must be fully executed and recorded in the county where the Development is located. The following steps should be followed to record the document.

1. Development owner should complete the form as described below and provide their notarized signature.
2. All entities with liens on the property should execute a *Consent and Subordination of Lienholder* form.
3. The entire original LURA should be sent to the Department for execution before filing.
4. After providing its execution, the Department will return the original document to the owner for recording.
5. After the document is recorded, the original must be returned to the Department.

**INSTRUCTIONS FOR COMPLETING THE FORM**

(1) Paragraph 1

(A) Item 1 - The date of execution of the covenant by the Development Owner.

(B) Item 2 - The complete name of the ownership entity. Do not abbreviate.

(2) Paragraph 2

(A) Item 1 - The complete name of Development. Do not abbreviate. Note any changes from application.

(B) Item 2 - The city in which the Development is located.

(C) Item 3 - The county in which the Development is located.

(3) Paragraph 4

(A) Item 1 - The total percentage of units to be set-aside for low income occupancy as specified in the application. This is not the 20/50 or 40/60 "Set-Aside Election." This is a unit based percentage and may not necessarily tie with the development's applicable fraction. Refer to the Department's real Estate Analysis Report or the latest Board approved amendment.

(B) Item 2 - The income category, as per Section 42(g)(1) of the Code to be served by the Development.

(4) Section 3

(A) Paragraph (a), Item 1 - The form of ownership entity for the Development.

(B) Paragraph (a), Item 2 - The state in which the ownership entity's organizational documents are filed.

(5) Section 4

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

- (A) Paragraph (a), Items 1 and 2 - The low income set-aside category elected pursuant to Section 42(g)(1) of the Code at the time of application. This is the 20/50 or 40/60 election.
- (B) Paragraph (c), Item 1 – The total number of units in the development including owner and employee occupied units.
- (C) Paragraph (c), Item 2 - The percentage of residential units (not including owner and employee occupied units) that will be set aside for low income occupancy, pursuant to Section 42(c)(1)(B) of the Code.
- (6) Section 8, Paragraph (b) - The name and full address of the Development Owner. P.O. Box numbers will not be accepted. Also provide a contact person name.
- (7) Signature Block, This space must be executed by the Development Owner or the authorized party of the ownership entity. It must be also be executed by TDHCA prior to recording.
- (8) Addendum A to Declaration - Consent and Subordination of Lienholder - Must be executed by each Lienholder on the Development as of the effective date of the Declaration.
- (9) Exhibit A, Legal Description – A full legal description must be included. Include 911 address.
- (10) Exhibit B, Permitted Encumbrances and Exceptions - Any encumbrances in addition to those listed in the legal description would be listed.
- (11) Appendix A, Additional Use Restrictions - All Additional Use Restrictions as identified in the property’s final underwriting report in accordance with Title 10, Part 1, Chapter 60, Subchapter A. The 8609s will not be released until all applicable Additional Use Restrictions are selected.
- (12) Appendix A, Public Housing Waiting Lists - Enter the name of the Housing Authority local to the development from which a waitlist will be referred.
- (13) Appendix B, Accessibility Requirements.
- (14) Appendix C, Amenity Requirements
- (15) Appendix D, Right of First Refusal
- (16) Appendix E, Minimum Applicable Fraction by Building - Table must be completed with correct BINs and applicable fraction for each building. For Intergenerational developments, state beside each BIN number, if the building is designated “FAMILY” or “ELDERLY”.

TDHCA #: \_\_\_\_\_

Type of Development:     New Construction         Acquisition/Rehab         Reconstruction

Target Population:         Family                             Elderly (See Appendix A)         Intergenerational Housing  
Date of Acquisition \_\_\_\_\_

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS/LAND USE RESTRICTION AGREEMENT FOR LOW-INCOME HOUSING TAX CREDITS  
With Use of Tax Exchange Program Funds**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS/LAND USE RESTRICTION AGREEMENT FOR LOW-INCOME HOUSING TAX CREDITS (this "Declaration"), dated as of \_\_\_\_\_, is made by and between \_\_\_\_\_ (together with its successors and assigns, the "Development Owner") and The Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas. (Together with any successor to its rights, duties and obligations, the "Department"), and is given by Development Owner as an inducement to the Department to allocate Exchange Award funds as a condition precedent to the determination that the Development, as defined herein, satisfies the requirements of the State of Texas's Qualified Allocation Plan and the allocation of low-income housing tax credits (the "Tax Credits"), pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto (the "Code"), by the Department. This Declaration incorporates the extended low-income housing commitment required by Section 42(h)(6) of the Code and is promulgated in accordance with the provisions of Chapter 2306, Tex. Gov. Code, (the "Act"), as may be amended from time to time.

**WITNESSETH:**

WHEREAS, the Development Owner is or shall be the Development Owner of a low income rental housing development, known as or to be known as \_\_\_\_\_ (the "Development Improvements"), on real property located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Texas, more particularly described in Exhibit A hereto (the "Development Land") (the Development Improvements and the Development Land being collectively referred to herein as the "Development");

WHEREAS, the Department has been designated by the Legislature and Governor of the State of Texas as the housing credit agency for the State of Texas for the allocation of Tax Credits and is a "designated State housing credit agency" within the meaning of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5);

WHEREAS, the Department has entered into a grant agreement with Internal Revenue Service for a grant of funds in lieu of Tax Credits under Section 42 of the Code, pursuant to the Tax Credit Exchange Program under Sections 1404 and 1602 of the American Recovery and Reinvestment Act of 2009;

WHEREAS, the Department has the authority to make subawards of Exchange Program funds to eligible applicants in accordance with the Tax Credit Exchange Program under Sections 1404 and 1602 of the American Recovery and Reinvestment Act of 2009;

WHEREAS, the Development Owner has represented to the Department in the Development Owner's Low-Income Housing Tax Credit Application and the Exchange Award Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules (the "Department Rules"), that the Development Owner shall lease \_\_\_\_\_ % of the units in the Development to individuals or families whose income is \_\_\_\_\_ % or less of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application being incorporated herein by reference for all purposes;

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

WHEREAS, the Department and Development Owner have entered into a Tax Credit Exchange Program Subaward Agreement in the aggregate amount of \$ \_\_\_\_\_ to assist in the financing of the Development as submitted in the Application;

WHEREAS, the Development Owner has represented to the Department in the Application that it will impose additional rent, occupancy, and ownership restrictions as shown in Appendix A of this document;

WHEREAS, the Development Owner has represented that it will use the Exchange Program funds to finance the Development of a "qualified low-income building" within the meaning of Section 42 of the Code;

WHEREAS, the Development Owner is subject to the regulatory and oversight powers of the Department and other terms and conditions of Chapter 2306, Tex. Gov. Code;

WHEREAS, as a condition precedent to the release of funds under the allocation from the Exchange Award, that the Development Owner execute, deliver and record in the real property records of the county in which the Development is located this Declaration in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code and Chapter 2306 of the Act by regulating and restricting the use, occupancy and transfer of the Development as set forth herein; and

WHEREAS, the Development Owner, under this Declaration, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Development shall be and are covenants running with the Development Land for the Term stated herein, are binding upon all subsequent owners and operators of the Development during such Term, and are not merely personal covenants of the Development Owner.

NOW, THEREFORE, in consideration of the premises set forth above, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Development Owner and the Department agree as follows:

## **SECTION 1 - DEFINITIONS**

(a) Unless the context otherwise requires, and in addition to those terms defined in the recitals set forth above, capitalized terms used in this Declaration shall have the following meanings:

"Act" means the Texas Government Code, Chapter 2306, as amended or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

"Area Median Gross Income" means the median gross income of the area in which the Development is located as determined by the Secretary of Housing and Urban Development for purposes of Section 42 of the Code, including adjustments for family size.

"Asset Management Fee" means the annual fee payable for the services of the Asset Manager pursuant to Section 10.3 of the Tax Credit Exchange Program Subaward Agreement, as in effect from time to time.

"Assumption Agreement" is an agreement regarding the transfer of the property that meets the requirements of Section 3(i) hereof.

"Board" means the governing board of the Department.

"Business Day" means Monday through Friday excluding state and federal holidays.

"Compliance Period" means the period of 15 consecutive taxable years beginning with the first taxable year of the Credit Period, unless a longer period shall be specified in Appendix A hereto.

"Credit Period" means, with respect to any building in the Development, the period of ten taxable years beginning with the taxable year in which such building is placed in service or (at the election of the Development Owner) the following taxable year.

"Department Compliance Monitoring Procedures" means those procedures and requirements adopted or imposed by the Department, and modified by the Department from time to time, for the purpose of discharging its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code to monitor compliance by the Development Owner and the Development with the provisions of Section 42 of the Code and to notify the Service of instances of noncompliance.

## **DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

"Exchange Award" means the funds provided under the grant provided to the TDHCA and awarded in relationship to the Development Improvements described in the recitals of this LURA as inducement to agree to this LURA.

"Exchange Award Application" means the application submitted by or on behalf of the Development Owner to the Department in connection with the award of the Exchange Program Funds to the Development, as amended and supplemented from time to time.

"Extended Use Period" means the period beginning with the first day of the Compliance Period and ending on the date which is 15 years after the end of the Compliance Period, unless a later date shall be set forth at Appendix A hereto or unless terminated earlier in accordance with Section 5 hereof.

"Gross Rent" means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

"Income" means the income of a Tenant determined in a manner consistent with the requirements of Section 42(d)(2)(B) of the Code.

"Low-Income" means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, adjusted for family size, as provided in Section 4 hereof, unless an alternative income level shall be set forth at Appendix A hereto.

"Low-Income Tenant" means a Tenant who, when the Tenant originally occupied the Unit, had an Income qualifying as Low-Income. For so long as the Tenant occupies the particular Unit, the Tenant will remain a Low-Income Tenant if the Tenant's Income, upon the most recent income certification, does not exceed 140% of the applicable Low-Income level.

"Low-Income Unit" means a Unit in the Development that is occupied by a Low-Income Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(i)(3).

"Minimum Applicable Fraction" means the percentage with respect to a building in the Development, calculated as the lesser of the percentage of Units in such building which are Low-Income Units or the percentage of floor space of all Units in such building which is in Low-Income Units, all calculated as required pursuant to Section 42(c)(1) of the Code, which serves as the basis for the Department's allocation of Tax Credits to the building as provided in Section 4(c) hereof.

"Principal" means any person or entity that holds an ownership interest in the Development Owner and (i) has the power to direct any aspect of the operations of the Development Owner or (ii) is entitled to at least a 25% share in any of the profits, losses, cash flow or residual value of the Development.

"Rent-Restricted" means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code.

"Secretary" means the Secretary of the Treasury of the United States.

"Service" means the United States Internal Revenue Service and any successor thereto.

"State" means the State of Texas.

"Tenant" means the individual or individuals entitled to occupy a Unit in the Development by lease or other legal relationship with the Development Owner.

"Term" means the length of time this declaration shall remain in effect as set out in Section 5 hereof.

"Unit" means any residential rental unit in the Development consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy housing used on a non-transient basis may be treated as one or more Units.

(b) Any term or phrase which is used in this Declaration and not defined herein shall have the meaning, if any, assigned thereto in Section 42 of the Code, and if no meaning is assigned thereto in Section 42 of the Code, the meaning, if any, assigned in the Department Rules. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of Section 42 of the Code.

#### **DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

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

(a) The Development Owner shall, at its own cost, cause this Declaration and all amendments hereto to be recorded and filed in the official real property records of the county in which the Development is located. Upon recording, the Development Owner shall immediately transmit to the Department an executed original of the recorded Declaration stamped by the county to show the date, volume and page numbers of record. The Development Owner agrees that the Department will not release funds from the Exchange Award, , unless and until the Department has received the original of the Declaration executed by all parties.

(b) The Development Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Development during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Development (i) shall be and are covenants running with the Development Land, encumbering the Development Land for the Term of this Declaration and binding upon the Development Owner's successors in title and all subsequent owners and operators of the Development Land, and (ii) shall bind the Development Owner (and the benefits shall inure to the Department and any past, present or prospective Tenant of the Development) and its respective successors and assigns during the Term of this Declaration. The Development Owner hereby agrees that any and all requirements of the laws of the State of Texas to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges 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 Development Land. For the Term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Development or portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Development or portion thereof provides that such conveyance is subject to this Declaration.

(c) The Development Owner shall obtain the written consent of any existing lienholder of record (each an "Existing Lienholder") on the Development to this Declaration and the requirements hereof, including specifically the requirements of Section 5(b)(1) and Section 5(c) with respect to provisions which survive or may be revived after foreclosure, and such consent shall be in a form promulgated by the Department from time to time and shall be a condition precedent to the issuance by the Department of Internal Revenue Service Form 8609, evidencing final allocation of the Exchange Award. The Development Owner represents and warrants to the Department that attached hereto as Addendum A and made a part hereof is an executed and acknowledged Lienholder's Consent from each Existing Lienholder, if any, as of the effective date hereof.

## SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE DEVELOPMENT OWNER

The Development Owner hereby represents, covenants and warrants as follows:

(a) The Development Owner (i) is a \_\_\_\_\_, duly organized and validly existing under the laws of the State of \_\_\_\_\_, and is duly authorized and qualified to transact in the State any and all business contemplated by this Declaration and the Department Rules; (ii) possesses all requisite power, authority, licenses and permits to own its properties and assets and to conduct its business; and (iii) has all legal right, power and authority to execute and deliver this Declaration.

(b) The execution and performance of this Declaration by the Development 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 department of the State 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 the Development Owner is a party or by which it or the Development is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Development Owner has, at the time of execution and delivery of this Declaration, good and indefeasible fee simple title to or a leasehold interest extending at least ten years beyond the end of the Extended Use Period in the premises constituting the Development, free and clear of any lien or encumbrance, except those created by any loan documents relating to the Development, those which are created pursuant to this Declaration and those which are otherwise permitted encumbrances, as specifically set forth at Exhibit B hereto.

## DECLARATION OF LAND USE RESTRICTIVE COVENANTS

(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 the Development 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 Declaration) or would materially adversely affect its financial condition.

(e) The Development constitutes or will constitute, and the Development Owner covenants, that commencing with the last day of the first year of the Credit Period and continuing throughout the Term of this Declaration, it shall maintain the Development as, a "qualified low-income housing Development", as defined in Section 42(g) of the Code.

(f) Each Unit in the Development contains separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation (unless the Development qualifies as a single-room occupancy Development) which is to be used on other than a transient basis as provided in Section 42(i)(3) of the Code.

(g) The Development Owner will comply fully and at all times with the Department Rules.

(h) During the Term of this Declaration, the Development Owner covenants, agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy in accordance with regulations prescribed by the Secretary, taking into account local health, safety, and building codes.

(i) The Development Owner covenants that it will not without prior written approval from the Department sell, transfer or exchange any portion of any building in the Development unless it sells, transfers or exchanges the entire building to the same person. Subject to the requirements of Section 42 of the Code and this Declaration, the Development Owner may sell, transfer or exchange the entire Development or any building in the Development at any time, provided that the Development Owner shall require, as a condition precedent to any such sale, transfer or exchange, that the successor owner and operator assume, in writing, in an Assumption Agreement acceptable to the Department, the Development Owner's obligations hereunder and under Section 42 of the Code, which Assumption Agreement shall be delivered to the Department in executed, recordable form prior to any such sale, transfer or exchange. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Development or any building in the Development. The Development Owner agrees that the Department may void any sale, transfer or exchange of the Development if the successor owner and operator fails to execute and deliver an Assumption Agreement or if the Development Owner or the successor owner and operator otherwise acts in contravention of this Section 3(i). This Declaration and the covenants contained herein shall survive and be effective regardless of whether any such successor owner and operator or intended successor owner and operator shall have assumed them pursuant to an executed Assumption Agreement.

(j) The Development Owner agrees to notify the Department in writing prior to any sale, transfer or exchange of the entire Development or any building therein, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of the prospective successor owner and operator of the Development or building, so the Department can determine the economic viability of such prospective successor and such Development or building and whether such prospective successor is acceptable as Development Owner under the Department Rules. The Development Owner further agrees to notify the Department in writing prior to any change in the identity of a General Partner or other Principal of the Development Owner, and to provide to the Department the name(s), address(es), and financial reports, as applicable, of any successor or additional General Partner or Principal, so the Department can determine whether such party is acceptable in such role with the Development Owner under the Department Rules.

(k) The Development Owner shall not demolish any part of the Development or substantially subtract from any real or personal property of the Development or permit the use of any Unit for any purpose other than rental housing during the Term of this Declaration, unless required by law.

(l) The Development Owner represents, warrants and agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Development Owner will use its best efforts to repair and restore the Development 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 Development in accordance with the terms of this Declaration.

(m) The Development Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(n) The Development Owner agrees, warrants, and covenants to comply with all law, ordinances, statutes, codes, orders, rules, regulations and decrees of the United States, the State and any other Governmental Authority applicable to the Owner of the Development, including, without limitation, the following: the Civil Rights Act of 1964 (42 U.S.C. 2000(d); Executive Order 11-63, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 et seq.); the Davis-Bacon Act (40 U.S.C. § 276a et seq.); Sections 103 and 107 of the Work Hours and Safety Standards Act. (40 U.S.C. § 327 et seq.); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4201 et seq.); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); (“NEPA”); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4321 et seq.); the State of Texas Senate Bill 1356; Title 8, and Chapter 92 of the Texas Property Code; Solid Waste Disposal Act TEX. HEALTH & SAFETY CODE Ann. Ch. 361 (Vernon’s 1992); Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act. TEX. HEALTH & SAFETY CODE Ann. Ch 363 (Vernon’s 1992); County Solid Waste Control Act. TEX. HEALTH & SAFETY CODE Ann. Ch 364 (Vernon’s 1992); Texas Clean Air Act, TEX. HEALTH AND SAFETY CODE Ann. Ch. 382 (Vernon’s 1992); and Hazardous Communication Act, TEXAS HEALTH AND SAFETY CODE Ann. Ch. 502 (Vernon’s 1992); and such Governmental Requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

(o) The Development Owner agrees to apply for and accept renewal of any rent subsidy contracts from which the Development benefits, if such subsidies are sufficient to maintain the economic viability of the Development.

#### **SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS**

The Development Owner represents, warrants and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that:

(a) (1)  At least 20% or more of the Units in the Development are and will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 50% or less of Area Median Gross Income; or

(2)  At least 40% or more of the Units in the Development are and will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income.

*(Check applicable percentage election)*

(b) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Development Owner according to current rules on the basis of the current income of such Low-Income Tenant. The Development Owner shall utilize forms as permitted from time to time by the Department for providing this certification. If, upon any such certification, the Tenant of a Low-Income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building in which such Unit is located is rented to a person who is not a Low-Income Tenant. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Development are rented to persons who are not Low-Income Tenants. In no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 151(c)(4) of the Code); provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code.

(c) The Development will contain a total of \_\_\_\_\_ Units (including Units occupied by a resident manager or other employee, such that they are not treated as “residential rental units” for purposes of Section 42 of the Code), of which \_\_\_\_\_ Units treated as residential rental units will be Low-Income Units. The amount of Tax Credits allocated to the Development is based on the requirement that the Minimum Applicable Fraction for each building in the Development will be as specified, building-by-building, at Appendix E hereto. During the Term of this Declaration, Units at the Development shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants, such that each building in the Development shall at all times satisfy the Minimum Applicable Fraction for such building. The Development Owner's failure to ensure that each building in the Development complies

#### **DECLARATION OF LAND USE RESTRICTIVE COVENANTS**



with such requirement will cause the Department to report such fact to the Service and may result in the reduction and recapture by the State of Exchange Award funds, as well as other enforcement action.

(d) The Development and the Development Owner are subject to additional and/or modified requirements, if any, set forth at Appendix A, which requirements are incorporated herein and made a part hereof.

(e) The Development Owner shall not discriminate on the basis of race, color, national origin, religion, sex, familial status, or disability in the lease, use or occupancy of the Development Improvements or in connection with the employment or application for employment of persons for the operation and management of the Development and shall not deny admission to any person exclusively on the basis of such person receiving rental assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended.

(f) The Development Owner acknowledges that whether a Tenant is a Low-Income Tenant is a matter of fact, to be determined in accordance with applicable law, and the Development's Owner's determination as to such matter is not binding upon the Department or the Service.

(g) During the Compliance Period and the Extended Use Period, the Development Owner, notwithstanding anything herein to the contrary, shall not (1) evict or terminate the tenancy of a Tenant of any Low-Income Unit other than for good cause nor (2) increase the gross rent with respect to a low-income unit not otherwise permitted by Section 42 of the Code.

## **SECTION 5 - TERM OF DECLARATION**

(a) This Declaration shall be executed prior to funding under an Exchange Award. For purposes of this Declaration, the terms relating to actions involving Low Income Tenants shall become effective with respect to a building in the Development on the first day of the Compliance Period for such building and shall terminate on the last day of the Extended Use Period, unless this Agreement is earlier terminated pursuant to Section 5(b) hereof (the "Term").

(b) Notwithstanding subsection (a) above, but subject to any modified or additional requirements set forth in Appendix A, in which event the terms of this Agreement shall be modified as applicable, this Declaration shall terminate:

(1) with respect to any building in the Development, on the date such building is acquired by foreclosure (or instrument in lieu of foreclosure), upon the recorded declaration of termination of the party so acquiring the building, unless the Secretary or his delegate determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period. If any party acquiring a building by foreclosure (or instrument in lieu of foreclosure) fails to record a declaration terminating this Declaration, the building shall remain subject to this Declaration, and the eligibility of such party to receive Tax Credits shall not be adversely affected, if such party continues to comply with Section 42 of the Code and the terms of this Declaration; or

(2) following the end of the Compliance Period, but not later than 30 years following the date upon which the Development was first placed in service pursuant to the requirements of this Declaration, if the Development Owner has properly requested that the Department assist in procuring a "Qualified Contract", as defined in the Code, for the acquisition of a building and the Department is unable to present a Qualified Contract. To properly request the Department's assistance in procuring a Qualified Contract for the acquisition of a building, the Development Owner must submit a written request to the Department no earlier than one (1) year prior to the expiration of the Compliance Period, or on the last day of any subsequent year of the Extended Use Period. The Department will have one (1) year from the date of the Development Owner's written request to find a buyer to acquire the Development Owner's interest in the building. The Department will attempt to procure a Qualified Contract for the acquisition of any building only once during the Extended Use Period.

(3) following the end of the Compliance Period, subject to the consent of the Department, upon the acquisition of the Development by the Tenants of the Development, a qualified nonprofit organization or a government agency pursuant to a right of first refusal under Section 42(i)(7) of the Code.

(c) If this Declaration is terminated pursuant to subsection (b) above and notwithstanding anything herein to the contrary, the Tenant of any Low-Income Unit on the date of such termination shall be entitled to occupy such Unit in accordance with the provisions of this Declaration for a period of three years following such termination date, provided, however, that upon a showing of good cause, such Tenant's tenancy may be terminated or such Tenant evicted.

## **DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

## **SECTION 6 - ENFORCEMENT, ADMINISTRATION AND COMPLIANCE**

(a) The Development 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 or this Declaration. Moreover, the Development Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary in the sole opinion and at the request of the Department) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Service, or the United States Department of Housing and Urban Development, from time to time, pertaining to the Development Owner's obligations under Section 42 of the Code and affecting the Development.

(b) The Development Owner acknowledges that the primary purpose for requiring compliance by the Development Owner with the restrictions provided in this Declaration is to assure compliance of the Development and by the Development Owner with Section 42 of the Code and the Department Rules, AND BY REASON THEREOF, THE DEVELOPMENT OWNER, IN CONSIDERATION FOR RECEIVING THE EXCHANGE AWARD FOR THIS DEVELOPMENT, HEREBY AGREES THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE APPLICABLE INCOME LIMITATION UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER TENANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE DEVELOPMENT OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Development Owner hereby further specifically acknowledges that the beneficiaries of the Development Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. The Development Owner, still further, acknowledges and agrees that any party which brings an action to enforce any requirement of this Declaration, whether by specific performance or otherwise, shall be entitled, if successful, to recover such party's reasonable attorney's fees.

(c) The Development Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Development compliance under Section 42 of the Code.

(d) The Development Owner acknowledges that the Department is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Development Owner's and the Development's compliance with the requirements of Section 42 of the Code, and (ii) to notify the Service in accordance with the Code and the rules of the Service of any noncompliance which is found. The Development Owner agrees (I) to maintain records that substantiate and document such compliance, (II) to take all actions required by the Department pursuant to the Department Compliance Monitoring Procedures to assist or cooperate with the Department in monitoring such compliance, and (III) to pay the fee prescribed by the Department with respect to such monitoring.

(e) The Development Owner agrees that the Department may enforce all state and federal law, the Department Rules and the terms of any allocation of Exchange Award through this Declaration, and utilize for such purposes any and all remedies available to the Department including but not limited to administrative or judicial action, appointment of trustee or receiver, or assume the management and operations of the Development.

(f) The Development Owner agrees the Department may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or operation of the Development, enter and inspect the Development to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

(g) The Development Owner agrees the Department may, at reasonable times and upon adequate notice, examine all books and records, and request and receive from the Development Owner one or more reports, relating to the ownership, operations, capitalization, reserve funds, income, expenses and other financial and regulatory matters of the Development or the Development Owner. This includes compliance with the Annual Owner's Certification of Development Completion, Fair Housing Sponsor report, and Owner's Financial Certification in a form and timeline as prescribed by the Department.

(h) The Development Owner agrees that the Department may at any time order it and/or its managing agent or Development manager to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, Department Rules, or term of an agreement regarding the Development, and that the Department may file and prosecute a complaint against a managing agent, Development manager, or the Development Owner for a violation of any applicable law or ordinance. The Development Owner acknowledges and agrees that, in the event that the Development Owner is found to have violated an applicable law, ordinance, Department Rules, or term of an agreement regarding the Development, the Department shall have the right, among other remedies and without limitation, to limit

or deny participation by the Development Owner in any of the programs operated or administered by the Department; and/or assess appropriate monetary penalties.

(i) Upon a determination by the Department that the Development Owner has failed to maintain the Development in good and habitable condition and suitable for occupancy as hereinabove required, the Development Owner agrees, upon the Department's direction, to establish a reserve for replacement and repairs to the Development in such initial amount and with such monthly deposits as the Department may direct. Such reserve shall be held for the benefit of the Development Owner and the Development by such party as the Department shall direct, and disbursements shall be made there from only upon direction of or approval by the Department.

(j) The Development Owner agrees to indemnify and hold harmless the Board members, Department officers, directors and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Department as a result of any material inaccuracy in any of the representations and warranties contained in this Declaration, or as a result of any action or inaction by the Development Owner, including claims by third parties.

(k) The Development Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Declaration, Development Owner will cooperate fully with the Department in the defense or other disposition thereof.

(l) The Development Owner agrees to furnish the Department within 10 days of receipt with copies of all correspondence between the Development Owner and the Service with respect to the Development, other than tax returns and routine, periodic reports filed with the Service.

(m) The Development Owner agrees to notify the Department and modify the credit allocation identified on the IRS form 8609, if necessary, if any federal grant or loan of below market rate federal funds is received with respect to the Development at any time during the Compliance period.

## **SECTION 7 - FEES**

(a) To compensate the Department for its responsibilities pursuant to the Act and the Code, the Development Owner shall pay to the Department an annual compliance monitoring fee for the first twelve month period of this Declaration in the amount of \$40 per Low-Income Unit in the Development. In no event shall the fee be less than \$100.

(b) In addition to the compliance monitoring fee required by Section 7(a), the Development Owner shall pay to the Department a building inspection fee for any inspections that the Department requires or performs. The amount of such fee(s) will be determined by the Department in accordance with Department Rules.

(c) In addition to the compliance monitoring fee, Development Owner hereby agrees to pay to the Department an annual Asset Management Fee reasonably adjusted from time to time by the Department. The Asset Management Fee may be changed by the Department on thirty (30) days' prior written notice if necessary to cover any projected or actual increase in costs to the Department attributable to the performance of its asset management duties hereunder. The Asset Management Fee shall be payable commencing January 1st following the year in which Closing occurs, or such other date as may be specified by the Department. Upon receipt of an invoice for the amount of Asset Management Fee that has accrued for services rendered during the period of time described therein (which may be quarterly or annually), the Development Owner shall have until the first Business Day following thirty (30) calendar days to remit payment to the Department.

(d) If the Department shall find the Development not to be in compliance with the terms hereof, the Development Owner shall pay to the Department (i) an additional administrative fee in an amount prescribed from time to time by the Department, which amount for the first twelve month period of this Declaration, shall not exceed \$25 per Unit (without regard to the number of Low-Income Units), for additional monitoring and enforcement activities undertaken with respect to the Development and (ii) all amounts required to reimburse the Department for its expenses in performing such additional monitoring and enforcement activities. The administrative fee payable in the event of noncompliance shall be in addition to, and distinct from, the amount due pursuant to Section 7(a), as well as any reimbursements of costs and legal fees to which the Department may be entitled as a result of judicial enforcement action, and such fee shall be payable without respect to whether the Department undertakes or succeeds in judicial enforcement activities, and any right to be compensated therefore, for a period of up to three years following its most recent finding of noncompliance with respect to the Development.

## **DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

(e) For each successive twelve month period following the initial twelve month period of this Declaration, the administrative fees payable to the Department hereunder shall be the amounts established for the most recent administrative fee, multiplied by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor (or generally recognized successor to such Index) for the same twelve month period of time.

(f) The Development Owner agrees that it will pay the annual compliance monitoring fee, the Asset Management Fee and the building inspection fee(s) at the times required by the Department therefore and that it will pay all additional charges, fees, and expenses assessed hereunder by the Department within ten (10) days of receipt of written notice of any such assessment.

**SECTION 8 - MISCELLANEOUS**

(a) Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

(b) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, delivered by hand, or delivered by any other method permitted by law, 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 Department:** Texas Department of Housing & Community Affairs  
P O Box 13941  
Austin, Texas 78711-3941  
Attn: Compliance and Asset Oversight

**To the Development Owner:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

The Department, and the Development Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) Amendment. This Agreement may not be amended or modified except by written instrument executed by both Development Owner and Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the real property records in the county where the Property is located. Upon request by the Department, the Development Owner agrees that it will take all actions necessary to effect any amendment of this Declaration which may be necessary in the Department's sole discretion to comply with the Code, and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the operations of Low Income Affordable Housing under §42 of the Code and Chapter 2306 of the Act.

(d) Governing Law. This Declaration shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.

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

(f) Interpretation. The Department's interpretation of this Declaration shall be controlling for purposes of determining whether (i) the Compliance Period and/or Credit Period shall have commenced, (ii) this Declaration shall have been terminated in accordance with Section 5 hereof, and (iii) the Additional Use Restrictions elected at Appendix A hereto, if any, shall have been complied with.

IN WITNESS WHEREOF, the Development Owner and the Department have caused this Declaration to be signed by their duly authorized representatives, as of the day and year first written above.

**DEVELOPMENT OWNER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_,  
a \_\_\_\_\_, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE STATE OF** \_\_\_\_\_ §  
§  
**COUNTY OF** \_\_\_\_\_ §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, general partner of \_\_\_\_\_, a \_\_\_\_\_ limited partnership, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said limited partnership, and that he/she executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**DEPARTMENT:**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas

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

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

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

**THE STATE OF TEXAS**           §

§

**COUNTY OF TRAVIS**           §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas, on behalf of such agency.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**ADDENDUM A TO DECLARATION - CONSENT AND SUBORDINATION OF LIENHOLDER**

**[To be executed by each lien holder on the Development as of the effective date of the declaration.]**

The undersigned lien holder ("Lien holder") hereby consents to the execution by Development Owner of the foregoing Declaration for \_\_\_\_\_ (the "Development Improvements").

Lien holder hereby subordinates its lien(s) to the rights and interests created pursuant to Section 5(c) of the Declaration such that a foreclosure of its lien(s) shall not extinguish such rights and interests.

Lien holder acknowledges and agrees that, pursuant to Section 5(b)(1) of the Declaration, the Declaration will terminate on the date the Development is acquired by foreclosure or deed in lieu of foreclosure, upon the recorded declaration of the party so acquiring the building (unless it is determined that such acquisition is part of an arrangement with Borrower a purpose of which is to terminate such period); provided, however, Lien holder hereby acknowledges and agrees that the acquisition of the Development by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 5(c) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the Development.

Executed to be effective the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**LIENHOLDER:** \_\_\_\_\_

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

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, being informed of the contents of such document, executed the same voluntarily. Given under my hand, official seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**EXHIBIT A TO DECLARATION - LEGAL DESCRIPTION and 911 address**



**EXHIBIT B – PERMITTED ENCUMBRANCES AND EXCEPTIONS**

List all applicable

**APPENDIX A - ADDITIONAL USE RESTRICTIONS**

(Check all restrictions which were elected at the time of Application.)

**Additional Rent and Occupancy Restrictions**

At least \_\_\_\_ Units in the Development must be occupied by Tenants with incomes and rents at or below 30% of Area Median Gross Income.

At least \_\_\_\_ Units in the Development must be occupied by Tenants with incomes and rents at or below 40% of Area Median Gross Income.

At least \_\_\_\_ Units in the Development must be occupied by Tenants with incomes and rents at or below 50% of Area Median Gross Income.

If at re-certification the Tenant's household income exceeds the applicable limit, to maintain compliance, the owner agrees to comply with the compliance rules in Title 10, Part 1, Chapter 60, Subchapter A, as amended from time to time.

**Additional Rent and Occupancy Restrictions for Developments with below market rate HOME funding included in the total eligible basis and utilizing the "9%" Applicable Percentage**

At least 40% of the Units in each Federal Subsidized Building must be occupied by Tenants whose incomes are at or below 50% of Area Median Gross Income.

**Longer Compliance Period and Extended Use Period**

In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year period. Development Owner indicates below that the Development will extend the affordability period beyond the 30 years required in the Code as follows:

- Add 5 years affordability after the extended use period for a total affordability period of 35 years
- Add 10 years affordability after the extended use period for a total affordability period of 40 years
- Add \_\_\_\_ years affordability after the extended use period for a total affordability period of \_\_\_\_ years

**Material Participation by Qualified Nonprofit Organization**

The development received an allocation from the Non Profit Set Aside. Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall hold a controlling interest in the Development as required by the Department Rules, shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Development and shall otherwise meet the requirements of Section 42(h)(5) of the Code. At the time this Declaration is filed, the qualified nonprofit organization which shall own such interest and shall so materially participate in the development and operation of the Development is \_\_\_\_\_ .

The Development Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Development and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

**Historically Underutilized Businesses (HUB)**

Throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall hold an ownership interest in the Development. The HUB must also maintain regular, continuous, and substantial participation in the development and operation of the Development. At the time this Declaration is filed, the HUB which holds an ownership interest in the Development is \_\_\_\_\_

\_\_\_\_\_. The Development Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Development and (ii) if such organization is proposed to be replaced by a different qualified HUB.

**Tenant Supportive Services**

**Coordination with State Programs. (2006 and 2007 allocations only)**

The Development Owner agrees to coordinate their tenant services with those services provided through state workforce development and welfare programs.

The Development Owner will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be selected from the list of services identified below. No fee may be charged to tenants for any of the services. Services will be provided on-site or transportation to off-site services must be provided. (2006, 2007 and 2008 allocations)

A. Number of Services. Owner must provide, at a minimum, \_\_\_\_\_ the following number of services from the list in paragraph B:

B. Service options include: Child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs, youth programs; scholastic tutoring; any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§ 601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; any other services addressed by 2306.254 of Texas Government Code; or any other services approved in writing by the Department.

**Notary Public Services to Tenants of the Development (Allocations made in 2008 or after only)**

The Development will provide Notary Public Services to tenants at no cost to the tenant.

**Public Housing Waiting Lists**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner shall consider prospective Tenants referred to from the waiting list of the Housing Authority of \_\_\_\_\_.

**Qualified Elderly Developments (2000 and later)**

Throughout the Compliance Period, unless otherwise permitted by the Department, this Development must conform to the Federal Fair Housing Act and must be a Development which:

(i) is intended for, and solely occupied by Persons 62 years of age or older; or

(ii) is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older.

**Tenant Populations with Special Needs**

At least \_\_\_\_\_ % of the Units are set aside for Persons with Special Needs. "Persons with Special Needs" include all of the following:

A person who:

- has a physical, mental or emotional impairment that:
  - is expected to be of a long, continued and indefinite duration,
  - substantially impedes his or her ability to live independently, and
  - is of such a nature that the disability could be improved by more suitable housing conditions,
- has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. Section 15502); or
- has a disability, as defined in 24 CFR § 5.403; or
- has alcohol and/or drug additions; or
- is a Colonia resident; or
- is a victim of domestic violence; or
- has HIV/AIDS; or
- is homeless; or
- is a migrant farm worker.

Throughout the Compliance period, unless otherwise permitted by the Department, the Development owner agrees to affirmatively market Units to persons with special needs. In addition, the Department will require a minimum 12 month period during which units must either be occupied by person with Special Needs or held vacant. The 12 month period will begin on the date each building receives its Certificate of Occupancy. For buildings that do not receive a Certificate of Occupancy, the month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market units to households with special needs.

## APPENDIX B - ADDITIONAL USE RESTRICTIONS - ACCESSIBILITY REQUIREMENTS

### Accessibility for 2002 and later Allocations

The Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C.

**Accessibility Requirements for New Construction, rehabilitation of properties built after 7/11/88 and substantial alterations:**

A minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS), meets this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for persons with hearing or vision impairments. At the time this declaration is filed, the following units are fully UFAS accessible:

- Mobility Accessible: \_\_\_\_\_
- Hearing or Visual Impairment Accessible: \_\_\_\_\_

Additionally, for new construction Developments where some Units are two-story dwelling Units, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and include a minimum of one bedroom and one bathroom or powder room at the entry level. At the time this declaration is filed, the following units meet this requirement: \_\_\_\_\_

**Accessibility Requirements for Rehabilitation of Developments built prior to 7/11/88 or rehabilitations that do not meet the definition of substantial alterations:**

To the maximum extent feasible, 5% of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS), meets this requirement. If it is not possible to make 5% of the units fully accessible, all other alterations will be made in an accessible manner until 5% of the Development's units are accessible for persons with mobility impairments. At the time the declaration is filed, the following units are UFAS accessible:

- Mobility Accessible: \_\_\_\_\_

The owner understands and agrees that if the above reflected Unit listing does not equal 5% of the total dwelling units, that any and all alterations made to any element within any Unit during the above specified Affordability Period must be in compliance with UFAS until 5% of the total dwelling units are in compliance with UFAS.

All requirements under this section shall comply with Title 10 of the Texas Administrative Code Subchapter B.

## APPENDIX C - ADDITIONAL USE RESTRICTIONS - AMENITY REQUIREMENTS

All of the following amenities must be compliant with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Texas Property Code, Title VIII of the Civil Rights Act of 1968 (§42 U.S.C. §3601 et seq.), and the Fair Housing Amendments Act of 1988 (§42 U.S.C. §3601 et seq.); the Civil Rights Act of 1964 (§42 U.S.C. §2000a et seq.); the Americans with Disabilities Act of 1990 (§42 U.S.C. §12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards (§2306.257; §2306.6705(7)). In addition, Pursuant to §2306.6722, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. (§2306.6722 and §2306.6730). At the time this declaration is filed, the owner has provided a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist that the above stipulations have been sufficiently met as required in the Qualified Allocation Plan (QAP) and Rules for the program year for which the application was submitted.

### Unit Amenities- Threshold:

The owner has represented that the following amenities will be present at the property through the extended use period. ***Fees in addition to rent may not be charged for any of the amenities marked below throughout the extended use period.*** The amenities selected must be made available for the benefit of all tenants. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department. Complete the following section to reflect those amenities elected at the time of application to meet the minimum threshold of points required:

- All New Construction Units must be wired with 6 pair CAT5e wiring or better to provide phone and data service to each unit and wired with COAX cable to provide TV and high speed internet data service to each unit ***\*applicable to 2007 and later allocations***
- Dishwasher and Disposal ***\*2008 and later allocations must be energy-star or equivalently rated***
- Refrigerator ***\*2008 and later allocations must be energy-star or equivalently rated (Not required for SRO)***
- Oven/Range (not required for SRO)
- Exhaust/vent fans in bathrooms
- Ceiling fans in living areas and all bedrooms
- Energy-Star or equivalently rated lighting in all Units
- Emergency 911 or public telephone accessible and available to tenants 24 hours a day
- Blinds or Window coverings for all windows
- 

### Unit Amenities- Selection Criteria:

The owner has represented that the following amenities will be present at the property through the extended use period. ***Fees in addition to rent may not be charged for any of the amenities marked below throughout the extended use period. The owner was awarded points based on providing specific amenity and quality features in every Unit at no extra charge to the tenant.*** Complete the following section to identify those amenities elected at the time of application to reflect those items for which the Development was awarded points:

- 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EFIS or synthetic stucco
- 14 SEER HVAC for New Construction or radiant barrier in the attic for Rehabilitation
- Ceiling fixtures in all rooms (light with ceiling fan in all bedrooms) 2007 and prior years
- Covered entries
- Covered parking (including garages) of at least one covered space per Unit
- Covered patios or covered balconies
- Energy Star or equivalently rated refrigerators and dishwashers 2007 and prior years

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR HOUSING TAX CREDITS**

- Fire sprinklers in all Units
- Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EFIS or synthetic stucco
- High Speed Internet service to all Units at no cost to residents
- Laundry connections
- Laundry equipment (washers and dryers) for each individual unit
- Microwave ovens
- Nine foot ceilings
- R-15 Walls / R-30 Ceilings (rating of wall system)
- Refrigerator with icemaker
- Self-cleaning or continuous cleaning ovens
- Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets– does not need to be in the Unit but must be on the property site
- Thirty year architectural shingle roofing
- Use of energy efficient alternative construction materials (for example, Structurally Insulated Panel construction) with wall insulation at a minimum of R-20
- fireplaces, individual water heater, eight foot ceilings

### **Development Amenities- Threshold Criteria:**

The owner has represented that the following amenities will be present at the property through the extended use period. ***Fees in addition to rent may not be charged for any of the amenities marked below throughout the extended use period.*** The following amenities were elected by the owner in accordance with the applicable Qualified Allocation Plan (QAP) for the year of allocation. Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. *The owner has been awarded points based on providing specific amenities at no extra charge to the tenant* All amenities must meet accessibility standards. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population. Complete the following section to identify those amenities elected at the time of application to reflect those items for which the Development was awarded points:

- Accessible walking path
- Barbecue grills and picnic tables – at least one for every 50 Units
- Community Dining Room w/full or warming kitchen - Only Qualified Elderly Developments Eligible
- Community gardens
- Community laundry room
- Controlled gate access
- Covered pavilion that includes barbecue grills and tables
- Enclosed sun porch or covered community porch/patio
- Equipped Business Center (computer and fax machine) or Equipped Computer Learning Center
- Full perimeter fencing
- Furnished Community room
- Furnished fitness center
- Gazebo w/sitting area
- Health Screening Room
- Horseshoe, Lawn Bowling Courts, Croquet Courts, Bocce Ball Courts, Putting Green or Shuffleboard Court – Only Qualified Elderly Developments Eligible
- Library (separate from the community room)
- Public telephone(s) available to tenants 24 hours a day
- Secured Entry (elevator buildings only)
- Senior Activity Room (Arts and Crafts, etc.) – Only Qualified Elderly Developments Eligible
- Service coordinator office in addition to leasing offices
- Swimming pool
- Two Children’s Playgrounds Equipped for 5 to 12 year olds, two Tot Lots, or one of each - Only Family

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR HOUSING TAX CREDITS**

- Developments Eligible (2 points) or one point for one playground or one tot lot
- Furnished and staffed Children's Activity Center - Only Family Developments Eligible
- Sport Court (Tennis, Basketball or Volleyball) - Only Family Developments Eligible
- One children's Playscape equipped for 5 to 12-year-olds or one Tot Lot- Only Family Developments Eligible
- Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating
- Green Building (for example, evaporative coolers, passive solar heating/cooling, water conserving fixtures, collected water (at least 50 %) for irrigation purposes, sub-metered electric meters, exceed Energy Star standards, photovoltaic panels for electricity and design and writing for the use of such panels, construction waste management, provide recycle service, water permeable walkways and parking areas, or other Department approved items)
- Hot Tub/Jacuzzi
-



## APPENDIX D - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL

(Only Developments which made a Right of First Refusal election after 2001 should include this page as part of the LURA.)

### **Right of First Refusal to a Tenant or Qualified Nonprofit Organizations for 2001 and later allocations**

The Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization (as defined in §42 (h) (5) (C) of the Code), the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization").

The following terms are hereby incorporated into this Declaration:

(i) Upon the earlier to occur of:

(I) the Development Owner's determination to sell the Development, or (II) the Development Owner's request to the Department, pursuant to §42 (h)(6)(E)(i)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42 (h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to the date upon which the Development Owner intends to sell the Development.

(ii) During the two years following the giving of Notice of Intent, the Development Owner may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(I) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department;

(II) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(III) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(IV) If, during such two year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in subparagraphs (I) – (III) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (I) – (III) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organization it shall choose.

(iii) At any time after the fifteenth year of the Compliance Period, but no earlier than two years after delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by this Declaration if: (x) no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or (y) a period of 120 days has expired from the date of acceptance of such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(iv) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in paragraph (ii) of this section.

(v) The Department shall, at the request of the Development Owner, identify in this Declaration a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in paragraph (ii) of this section.

(vi) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

APPENDIX E- MINIMUM APPLICABLE FRACTION BY BUILDING

Building Number	Building Identification Number (BIN)	Minimum Applicable Fraction
1.	TX-	
2.	TX-	
3.	TX-	
4.	TX-	
5.	TX-	
6.	TX-	
7.	TX-	
8.	TX-	
9.	TX-	
10.	TX-	
11.	TX-	
12.	TX-	
13.	TX-	
14.	TX-	
15.	TX-	
16.	TX-	
17.	TX-	
18.	TX-	
19.	TX-	
20.	TX-	
21.	TX-	
22.	TX-	
23.	TX-	
24.	TX-	
25.	TX-	
26.	TX-	
27.	TX-	
28.	TX-	

29.	TX-	
30.	TX-	
31.	TX-	
32.	TX-	
33.	TX-	
34.	TX-	
35.	TX-	
36.	TX-	
37.	TX-	
38.	TX-	