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**AFTER RECORDING RETURN TO:**

Arkansas Development Finance Authority  
Attn: Federal Housing Program Manager  
P.O. Box 8023  
Little Rock, Arkansas 72203-8023

# DECLARATION OF RESTRICTIVE COVENANTS

**[PROJECT OWNER]**

EXECUTION DATE: \_\_\_\_\_

# DECLARATION OF RESTRICTIVE COVENANTS

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## SECTION I – RECITALS

This **DECLARATION OF RESTRICTIVE COVENANTS** (the “Declaration”) is made and entered into as of the date represented by the date of the last signature of either party executing the Declaration (the “Execution Date”), by and between Arkansas Development Finance Authority, a body corporate and politic of the State of Arkansas, P.O. Box 8023, Little Rock, Arkansas 72203 (“ADFA”) and [PROJECT OWNER], [ENTITY DESCRIPTION] (the “Owner”). All capitalized terms not otherwise defined but referenced herein shall have the meaning ascribed to them in Exhibit A.

**WHEREAS**, The HOME Investment Partnerships Act found at Title II of the Cranston–Gonzalez National Affordable Housing Act of 1990, as amended (the “Act”) and regulations promulgated by the United States Department of Housing and Urban Development implementing the Act, which are found in the Code of Federal Regulations at Title 24, Part 92, provide funds to participating jurisdictions to increase the supply of decent, safe, sanitary, and affordable housing for very low-income and low-income households (the Act and implementing regulations are collectively referred to as “HOME” or the “HOME Program”):

**WHEREAS**, ADFA is a participating jurisdiction under the HOME Program and has adopted a Consolidated Plan to administer HOME Funds received from HUD to carry out housing activities eligible under the HOME Program; and

**WHEREAS**, in connection with its proposed development of a [NUMBER] (\_\_\_) unit multifamily housing project (the “Project” as defined in Exhibit A) located on property in [CITY], Arkansas (the “Property” as described in Exhibit B), Owner has submitted its Application (as defined in Exhibit A) to ADFA for HOME Funds (as defined in Exhibit A) for [NUMBER] (\_\_\_) HOME Units (as defined in Exhibit A); and

**WHEREAS**, the parties have entered into that certain HOME Agreement (as defined in Exhibit A) which constitutes a “written agreement” under the HOME Program; and

**WHEREAS**, pursuant to the HOME Program and the HOME Agreement, Owner is required to provide this Declaration which gives ADFA the right and remedy, among others, to require specific performance of the covenants contained herein for the duration of the Affordability Period (as defined in Section II B. below).

**NOW, THEREFORE**, Owner hereby declares that the Property is held and shall be held, conveyed, encumbered, leased, rented, used, occupied, improved and sold subject to the HOME Program, including, but not limited to, those set out herein below, and applicable to ADFA’s HOME Program guidelines.

## **SECTION II – KEY ENFORCEMENT PROVISIONS**

### **A. Covenant Running with the Land**

This Declaration shall be deemed and shall constitute a covenant running with the land for the benefit of ADFA and its successors and assigns and shall pass to and be binding upon all heirs, successors and assigns in title to the Property, or if Owner shall have only a leasehold interest in the Property, this Declaration shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, successors and assigns to any leasehold interest and the underlying fee simple interest. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof or any interest therein (excepting only leases of units in the Project) shall conclusively be held to have been executed, delivered, and accepted subject to this Declaration, regardless of whether any or all of such covenants contained herein are set forth in such contract, deed or other instrument. If a portion or portions of the Property, or interest or interests in the Property are conveyed, all such covenants contained herein shall run to each portion of or interest in the Property.

### **B. Duration**

The period during which Owner must maintain compliance with the HOME Program rules (the “Affordability Period”) shall begin with the Project Completion Date of the Project and shall run for **five/ten/fifteen/twenty (5/10/15/20) years** following the Project Completion Date (as defined in Exhibit A) which will require that construction be complete, all HOME Funds (as defined in Exhibit A) have been disbursed by ADFA and drawn from the United States Treasury, and required completion data has been entered in IDIS (as defined in Exhibit A). As such, the term of this Declaration shall begin on the Execution Date (as defined in Exhibit A) and shall expire upon completion of the Affordability Period (the “Term”).

Upon entering all required information in IDIS, ADFA will notify Owner of the Project Completion Date and the exact date of the expiration of the Affordability Period, which shall be calculated based on the Project Completion Date. If necessary, Owner shall execute an amendment to this Declaration and/or the HOME Agreement identifying the exact date of expiration of the Affordability Period.

### **C. Default and Remedies**

The violation of any provision of this Declaration by Owner, or the heirs, successors or assigns of Owner, shall be a default under this Declaration, the HOME Agreement, and the Loan Documents (as defined in Exhibit A). ADFA may give written notice of such default to Owner, by registered or certified mail, addressed to the address stated in this Declaration, or such other address as may subsequently, upon appropriate written notice thereof to ADFA, be designated by Owner as its legal business address. If the default is not corrected to the satisfaction of an Authorized Officer of ADFA within thirty (30) days after the day such notice is mailed or within such further time as an Authorized Officer of ADFA reasonably determines is necessary to correct the default, ADFA, without further notice, may avail itself of any remedy provided in the HOME Agreement, Loan Documents, or any other remedy it may have at law or in equity in the event of such a default.

ADFA's election to pursue any one or more of the remedies available to it shall not be construed to preclude or be a waiver of ADFA's right to pursue any of the other remedies with respect to the default for which such remedy was pursued or with respect to any default prior or subsequent to such remedy. The waiver of any default by ADFA shall not be deemed a waiver of any further or different default.

#### **D. Specific Performance**

Owner acknowledges that the primary purpose of this Declaration is to assure compliance of the Project and Owner with the ongoing requirements of the HOME Program. Owner hereby further specifically acknowledges that ADFA and the eligible beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. By reason thereof, Owner, in consideration for receiving the HOME Loan, hereby agrees and consents that ADFA and any individual who meets the income limitations applicable under 24 CFR Part 92 (whether prospective, present, or former occupant of the Project) 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 Owner of its obligations under this Declaration in a state or federal court of competent jurisdiction. The right to seek specific performance is in addition to and may be exercised independently from, or in concert with, any other remedies available under this Declaration, the HOME Agreement, the Loan Documents, or any other agreement between ADFA and Owner or its successors in interest, and at law or in equity.

### **SECTION III – PROJECT DESCRIPTION**

A summary of the Project and the HOME Investment, including unit breakdowns and unit and on-site amenities is attached as Exhibit D. The legal description of the Property is contained in Exhibit B.

### **SECTION IV – FINANCING, OPERATIONAL AND PERFORMANCE REQUIREMENTS**

#### **A. HOME LOAN**

Contingent upon Owner's compliance with disbursement and cost certification requirements more particularly set out in the HOME Agreement and Loan Documents, ADFA will provide the HOME Loan as a construction and permanent loan to the Project. The unpaid balance of the amount shown as the Home Investment in Exhibit D hereto, or the exact amount advanced to or for the account of Owner including any amounts drawn to reimburse ADFA for soft costs in accordance with the HOME Agreement, will be repaid to ADFA by Owner upon maturity **five/ten/fifteen/twenty (5/10/15/20) years** after the date which is one (1) year after the date of Project Completion and prior to maturity at in installments of principal and interest, if any, in accordance with the terms of the Note.

#### **B. Ownership Entity**

ADFA's willingness to provide HOME Funds as anticipated herein is contingent upon and made with specific reliance on the evaluation of the specific individuals and entities making up Owner (the "Ownership Entity").

Owner agrees that no sale or transfer of the Property itself, or an interest in the general or limited partnership, member interests, managing member interest, or other interest in Owner will be made to person or an entity that, at the time of transfer, has no interest in the Ownership Entity, without first following ADFA's ownership transfer process and acquiring the prior written consent of ADFA.

If there is a proposed sale or transfer of general or limited partnership interests, member interests, managing member interest, or other interest in Owner that would be made to a person or an entity that, at the time of transfer, has an interest in the Ownership Entity, Owner shall provide ADFA with at least thirty (30) days prior written notice of such transfer occurring.

#### **C. Insurance, Casualty, and Condemnation**

##### **1. General**

During construction and throughout the Term, Owner will maintain insurance as required and approved by ADFA, including property insurance which will be no less than replacement value for the Project. ADFA shall be named as a loss payee on such insurance.



In the event of loss, Owner shall give prompt notice by mail to the insurance carrier and ADFA, and ADFA may make proof of loss, if not made promptly by Owner. Subject to any senior Permitted Encumbrances (as described in Exhibit C) recorded against the Property, ADFA is hereby authorized in the event of loss to compromise and settle all loss claims on said policy on such terms as it deems appropriate. Owner shall promptly furnish to ADFA a copy of any proof of loss given to the insurance carrier.

If the Project, or any part thereof, shall be damaged by fire or other insured hazard, subject to any senior Permitted Encumbrances recorded against the Property, the amounts paid by any insurance company shall be paid to ADFA, to the extent of the indebtedness on the HOME Loan then remaining unpaid, and, at the option of ADFA, all or any part of such amount may be applied in reduction of the indebtedness or released for the repairing or rebuilding of the Project. If in ADFA's determination restoration is financially feasible and desirable, any insurance proceeds shall first be applied to such restoration. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to ADFA as additional security for the payment of the indebtedness due under the HOME Loan. In the event of foreclosure of the Project, all right, title and interest of Owner in and to any insurance policies then in effect shall pass to the purchaser on foreclosure.

## **2. Condemnation**

Subject to any senior Permitted Encumbrances, Owner hereby irrevocably assigns to ADFA any award or payment which becomes payable by reason of any taking of the Property, Project, or any part thereof, either temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings.

Owner will file and prosecute in good faith and with due diligence, its claim in any such award or payment, and subject to the senior Permitted Encumbrances, will cause the same to be collected and paid over to ADFA, and Owner irrevocably authorizes and empowers ADFA, in the name of Owner or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for, and retain the same.

The proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by ADFA in the collection thereof, at the sole discretion of ADFA, be released to Owner, applied to restoration of the Project, or applied in reduction of the indebtedness due under the HOME Loan. If, in ADFA's determination, restoration is financially feasible and desirable, any condemnation proceeds shall first be applied to such restoration.

## **3. Application of Proceeds in an Event of Default**

Subject to any senior Permitted Encumbrances, in the event of a default under this Declaration or any other Loan Document, ADFA may apply insurance and condemnation

proceeds to the reduction of the indebtedness due under the HOME Loan in any manner selected by ADFA but, unless otherwise agreed by ADFA in writing, no application of such proceeds to the HOME Loan, or to other obligations secured by the Loan Documents, or any of them, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the HOME Loan, or any such other obligations.

#### **D. Property Management**

Initially, and throughout the Term, ADFA must approve of any property management company, or another similar agent, employed by Owner. ADFA's approval of a specific property management company or agent may be withdrawn at any time, and upon notice of same Owner will identify and contract with a property manager otherwise acceptable to ADFA.

#### **E. Reserves and Other Accounts**

Owner must establish and shall maintain a Replacement Reserve Account and an Operating Reserve Account (collectively, the "**Reserve Accounts**") and such other accounts for the Project as described in this section for the Term of this Declaration. All accounts required by this section shall be held in interest-bearing segregated accounts. All accounts are to be held in banks or credit unions fully licensed to do business in the State of Arkansas and in accounts insured to the maximum limit of either the Federal Deposit Insurance Corporation or the National Credit Union Association. Any interest earned on the Reserve Accounts shall remain within the Reserve Accounts.

##### **1. Replacement Reserve Account**

Owner shall fund a Replacement Reserve Account as required by ADFA. Owner shall use the Replacement Reserve Account only for eligible capital costs of the Project as defined from time to time by ADFA. Following completion of construction, Owner shall make monthly deposits to the Replacement Reserve Account at no less than an annualized rate of Two Hundred Fifty and 00/100 Dollars (\$250.00) per unit per year. Thereafter, the minimum annual deposit shall be increased each year by 3%. Disbursements from the Replacement Reserve Account shall be for the purpose of effecting replacement of structural elements and mechanical equipment of the Project or for other similar purposes for the benefit of the Project.

ADFA has the right to conduct physical inspections of the Project at any time during the Term of this Declaration. Based on ADFA's physical inspections, ADFA may periodically require Owner to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by ADFA. Alternatively, ADFA may conduct inspections using its own staff or contractors. Such inspections shall be used for the purposes of determining the adequacy of the Replacement Reserve Account, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project. ADFA, at its discretion, may authorize paying the cost of a capital needs assessment from the Replacement Reserve Account if operating funds are not otherwise available.

If the capital needs assessment indicates that the Replacement Reserve Account is not sufficient to address anticipated capital costs during the Term of this Declaration, Owner shall, at ADFA's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding.

## **2. Operating Reserve Account**

Prior to the final disbursement of the HOME Loan and not later than the completion of construction, Owner shall fund and maintain an Operating Reserve Account in the amount described in the approved Project Budget (as defined in Exhibit A). After Stabilized Occupancy (as defined below), the Operating Reserve Account may be used to pay the operating costs and expenses to the extent the collected gross receipts are insufficient for such purpose. Further, the Operating Reserve Account may not be used to pay any identity of interest costs, including management fees.

"Stabilized Occupancy" shall be defined as the date upon which the Project has achieved all of the following benchmarks:

- a) Initial occupancy of all HOME Units;
- b) Physical occupancy of no less than 93% of all units;
- c) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and
- d) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments).

## **3. Escrow for Property Taxes and Insurance**

In general, ADFA will allow any senior lender approved by ADFA to manage one or more escrows for the payment of anticipated taxes and insurance premiums. However, in its sole discretion, ADFA reserves the right, upon issuance of notice to Owner, to require Owner to establish and make monthly payments toward a reserve account held by ADFA for tax and insurance payments.

## **4. Term of Reserve Accounts**

All required Reserve Accounts must be maintained for the full Term or so long as ADFA's HOME Loan is outstanding, whichever is longer.

## **5. ADFA Approval and Access**

Any withdrawal or transfer from the Reserve Accounts shall require the written approval of ADFA, by and through its designee. ADFA's approval or request for additional

information to substantiate the need for the withdrawal or transfer shall be provided within ten (10) business days of its receipt of a request for such action. Owner must establish the Reserve Accounts to require the signature of ADFA and Owner for all withdrawals and transfers. Further, Owner shall authorize the financial institutions in which Reserve Accounts are held to provide ADFA, when requested, verified statements reflecting account balances and transactions.

#### **F. Operating Receipts and Expense Account**

Owner shall establish and maintain an Operating Receipts and Expense Account to be reviewed by ADFA periodically. All rents and other receipts of the Project shall be deposited in such account in the name of Owner and the Project. Owner shall, upon collection of all Project receipts from whatever source derived from the operation of the Project, hereinafter referred to as “Operating Receipts”, forthwith deposit the same in the Operating Receipts and Expense Account. Thereafter on a monthly basis, Owner shall pay, or cause to be paid, all expenses in a timely manner out of Operating Receipts of the Project, in the order and priority as set forth below unless otherwise directed by ADFA, at its sole option, in writing:

- a) All of the amortized principal, interest, and mortgage insurance premium, if any, required to be paid under the Note and Mortgage (as both terms are defined in Exhibit A) to ADFA or secured financing instruments associated with other ADFA-approved permanent sources (see Exhibit C for Permitted Encumbrances); and
- b) All amounts required to be deposited in any Replacement Reserve Account required by this Declaration; and
- c) All of the real estate tax and insurance premium escrow payments required of Owner, which payment shall be deemed to be part of the “Operating Expenses” of the Project for the purpose of this Declaration; and
- d) The fee of the Project’s property manager as set forth in the management agreement (“Management Agreement”) submitted to ADFA prior to execution of this Declaration between Owner and any ADFA-approved property management agent, excepting any fee to an identity of interest managing agent which shall only be paid after the remaining Operating Expenses (as defined below); and
- e) All remaining Operating Expenses of the Project (which specifically exclude the HOME Loan principal, interest, and annual fee payments), including but not limited to, taxes other than those for which an escrow payment is required under the HOME Loan or any permitted senior mortgage, maintenance, utilities, water and sewage, management, administration, legal, audit, and all other reasonable and customary expenses associated with the day-to-day operations of affordable rental housing, unless other funds for payment are set aside or deferment of payment has been approved by ADFA, which along with items (b) through (d) above shall be deemed to be the “Operating Expenses” of the Project.

**G. [RESERVED]**

**H. Occupant Security Deposits**

Owner shall segregate or cause to be segregated all occupant security deposits, to be held in a separate depository account (hereinafter referred to as the “Security Deposit Account”).

**I. [RESERVED]**

**SECTION V – HOME PROGRAM REQUIREMENTS**

**A. Affordability Period Requirements**

The Project must comply with all requirements of 24 CFR § 92.252 and 24 CFR § 92.253 for the duration of the Affordability Period. The Project must also maintain compliance with the physical standards of 24 CFR § 92.251 and be operated consistent with applicable tenant protection, affirmative marketing, and fair housing requirements of Subpart F of 24 CFR Part 92.

**B. HOME Units**

**1. Designation of HOME Units**

Exhibit D sets forth the following designations:

- (a) the total number of HOME Units;
- (b) the number of HOME Units designated as High HOME Units;
- (c) the number of HOME Units designated as Low HOME Units; and
- (d) whether the HOME Units will be fixed or floating as described in 24 CFR § 92.252.

ADFA reserves the right to adjust the number of HOME Units if the sources and uses of funds change during the development period.

**2. Income Restrictions**

At all times, all Low-HOME Units must be rented exclusively to tenants with household incomes at or below 50% of the AMI (as defined in Exhibit A) as adjusted for household size. At initial occupancy (i.e., when leasing units to the first tenant following completion of construction) all High-HOME Units must be rented exclusively to tenants with household incomes at or below 60% AMI as adjusted for household size.

HUD releases updated HOME income charts annually, for which ADFA will provide notification and access. The most current income chart must be used when determining

eligibility for a prospective tenant or determining the income at recertification for in-place tenants.

The Project must determine tenant income qualification utilizing the definition of annual income defined in 24 CFR § 5.609 (“Section 8 Annual Income”) and with exclusions from income applied, per 24 CFR § 5.611. Annual income of the family must be calculated by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible, and all other requirements per 24 CFR 92.203 must be followed. Prior to signing a lease with any tenant, Owner must obtain and examine at least two (2) months of source documents evidencing annual income for the family at move-in and annually thereafter.

As a reference, Owner should consult the most recent version of the HUD publication: *Technical Guide for Determining Income and Allowances for the HOME Program*.

The HOME income limits and the Section 8 Annual Income limits upon which the low income housing tax credit program authorized by 26 USC § 42 (“LIHTC Program”) relies are released annually by HUD on independent schedules. To the extent that HOME income limits are published and made effective later than the Section 8 limits, Owner acknowledges that the qualifying incomes for HOME Units will not be changed until updated HOME income limits are published. When income limits applicable to HOME and the LIHTC program conflict, the more restrictive (i.e., lower) income limit will apply.

### **3. Rent Restrictions**

The gross rent for each High-HOME Unit may not exceed the current High-HOME rent, as adjusted for unit size and published annually by HUD, regardless of whether there is a project-based rental subsidy.

The gross rent for each Low-HOME Unit may not exceed the current Low-HOME rent, as adjusted for unit size and published annually by HUD, except that properties with units receiving federal or state project-based rental subsidy, and where the very low-income tenant pays as a contribution toward rent not more than 30% of the household’s adjusted income, then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.

The HOME rent limit is a gross rent limit. The total of rent paid to Owner (inclusive of any subsidy) plus the allowance for tenant-paid utilities may not exceed the applicable Low-HOME or High-HOME rent.

In the event other financing sources, including but not limited to the LIHTC program, allow a higher rent, the HOME rent limits shall continue to apply to any HOME Units.

### **4. Re-certifying Incomes**

Owner shall re-certify the income of in-place tenants on an annual basis with source documentation. All in place tenants shall be recertified using at least two (2) months of source documentation.

## **5. Treatment of Over-Income Tenants**

*{Use this segment for Floating HOME Units}*

In the event an in-place tenant, upon re-certification of the tenant's income, has a household income above the applicable 50% AMI HOME income limit for Low-HOME tenants or the applicable 80% AMI HOME income limit for Low-HOME or High-HOME tenants, Owner shall take the following actions:

If a Low-HOME tenant's income at re-certification is greater than 50% AMI but less than or equal to 80% AMI, then Owner must substitute another unit that is comparable or larger by designating another unit in the Project occupied by an eligible Low-HOME tenant. If no such unit is available, Owner shall rent the next available unit as a Low-HOME Unit. After substituting another Low-HOME Unit, Owner may, with ADFA approval, raise the rent for the over-income tenant to an amount not to exceed the applicable High-HOME rent for such unit. Any increase in rent shall be subject to the terms of the lease and the provisions of Section V.C.1 below.

If a HOME tenant's income increases at re-certification to greater than 80% of AMI, and the unit is not subject to LIHTC rent restrictions, Owner shall first increase the rent for the over-income tenant to the lesser of (i) 30% of the tenant's adjusted income, or (ii) the "market rent" for the unit (i.e., what the unit would be projected to rent for in the local market absent any income or rent restrictions imposed by HOME, LIHTC, or other such programs). Owner shall then substitute another unit that is comparable or larger by either designating another unit in the Project occupied by an eligible Low- or High-HOME tenant as the Low- or High-HOME Unit being replaced. If no such unit is available, Owner shall rent the next available unit as a Low-or High-HOME Unit as needed to maintain the correct mix of units.

**LIHTC Projects:** If the unit occupied by an over-income tenant is subject to LIHTC rent restrictions, Owner will not be required to raise the rent beyond the applicable LIHTC rent for the unit.

*{Use this segment for Fixed HOME Units}*

If a Low-HOME tenant's income at re-certification is greater than 50% AMI but less than or equal to 80% AMI, then Owner must replace the unit by designating a High-HOME Unit in the Project otherwise occupied by an eligible Low-HOME tenant at or below the applicable Low-HOME rent. If no such unit is available, Owner shall rent the next available High-HOME Unit as a Low-HOME Unit. After substituting another Low-HOME Unit, Owner may, with ADFA approval, raise the rent for the over-income tenant



to an amount not to exceed the applicable High-HOME rent for such unit. Any increase in rent shall be subject to the terms of the lease and the provisions of Section 5.3.1 below.

If a HOME tenant's income increases at re-certification to greater than 80% of AMI, and the unit is not subject to LIHTC rent restrictions, Owner shall first increase the rent for the over-income tenant to 30% of the tenant's adjusted income. Owner shall then rent the next available HOME Unit as a Low-or High-HOME Unit as needed to maintain the correct mix of units.

**LIHTC Projects:** If the unit occupied by an over-income tenant is subject to LIHTC rent restrictions, Owner will not be required to raise the rent beyond the applicable LIHTC rent for the unit.

## **6. ADFA Approval of Rent, Utility Allowances, and Fees**

Pursuant to the requirements of 24 CFR § 92.252(d) and (f), ADFA must approve the rents and utility allowances applied to the Project on an annual basis. Owner may not increase the rents of HOME Units without prior approval of ADFA. Utility allowances must be determined by a method consistent with the requirements at 24 CFR § 92.252(d).

If other fees are charged, Owner shall provide a fee schedule, consistent with requirements of this Declaration, for review and approval by ADFA on an annual basis. Any mandatory tenant fees not otherwise approved by ADFA shall be considered rent and are subject to the gross rent limits outlined herein.

## **C. Project Requirements**

Owner must operate the Project in compliance with all applicable state and local landlord-tenant laws and the requirements of Subpart F of 24 CFR Part 92.

### **1. Lease**

Owner must have a written lease with each tenant of a HOME Unit, in a form acceptable to ADFA. If directed by ADFA, Owner shall include any required lease addenda, as may be updated from time to time, on all HOME leases. The lease must, at a minimum, provide all HOME tenants with at least thirty (30) days written notice prior to (i) increasing the rent, or (ii) terminating or refusing to renew the lease.

All tenants must be offered leases with a minimum period of one (1) year. Owner cannot terminate or refuse to renew the lease of any tenant for other than good cause. Good cause does not include an increase in a tenant's income or a tenant's failure to accept or participate in supportive services being offered now or in the future to residents of the Project.

Good cause for terminating or refusing to renew the lease shall include material violations of the lease or violations of applicable federal, state, or local laws.



The lease may not include any provisions prohibited by 24 CFR § 92.253(b).

## **2. Prohibition on Certain Fees to Tenants**

Owner shall not charge tenants fees to cover operating costs of the Project or administrative costs related to complying with the HOME Program. Specifically, Owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owner may charge fees approved by ADFA for the following:

- a) Reasonable application fees to prospective tenants;
- b) Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are customary for rental housing projects in the area and not excessive;
- c) Parking fees to tenants only if such fees are determined by ADFA to be customary for rental housing projects in the neighborhood and not excessive; and
- d) Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, provided such services are voluntary and fees are charged only for services provided.

## **3. No Mandatory Services**

Owner must ensure that any supportive services being offered to tenants of the Project are voluntary. Tenants may not, as a condition of their initial lease or continued occupancy, be required to accept, participate in, or comply with the requirements of any supportive services program.

## **4. Tenant Selection Plan**

Owner must develop a tenant selection plan meeting the requirements of 24 CFR § 92.253(d). The tenant selection plan will be subject to review and approval by ADFA both prior to initial occupancy of the HOME Units and during the Term.

Owner cannot refuse to lease to a holder of a Section 8 Housing Choice Voucher, or a prospective tenant receiving similar assistance under another similar federal, state, or local program solely because of the tenant or prospective tenant's participation in such program.

Potential tenants whose applications for occupancy are rejected must be notified in writing of the reasons for such denial.

## **5. Target Population**

*{Use only one of the following paragraphs as appropriate and modify as necessary to reflect project specifics.}*

The Project has been designated for general occupancy. Occupancy will not be limited to, nor preference in tenant selection given to, any particular segment of the low-income population. All otherwise eligible applicants may occupy the HOME Units in the Project.

*(OR for senior but otherwise general projects)*

The Project has been designated for occupancy only by tenants who are aged 55/62 or older. Other than the age limits herein, occupancy will not be limited to nor preference in tenant selection given to any particular segment of the low-income population. All otherwise eligible applicants may occupy the HOME Units in the Project.

*(OR for exclusively special needs projects)*

Consistent with findings in the State's Consolidated Plan and as approved by ADFA, the Project has been designated for occupancy only by otherwise eligible tenants who are {describe special populations, e.g. homeless households, disabled households, victims of domestic violence, etc.}.

*(OR for projects with preferences for special needs tenants)*

Consistent with findings in the State's Consolidated Plan and as approved by ADFA, the Project's tenant selection plan will provide priority to otherwise eligible tenants who are {describe special populations, e.g. homeless households, disabled households, victims of domestic violence, etc.}. By providing a priority in tenant selection, such tenants may be offered available units ahead of potential tenants who are otherwise eligible but are not members of this target population.

## **6. Leasing of Accessible Units**

Notwithstanding the provisions of sub-section C.5 above for units designed to be physically accessible or accessible to tenants with sensory impairments, Owner may provide a preference to any existing or potential tenant who, by virtue of a disability, requires or would benefit from the provision of an accessible unit. When an accessible unit becomes available, Owner shall offer it first to an existing tenant in need of such a unit and second to the next applicant on the Project's waiting list who otherwise needs such a unit. Only if no existing tenants or waiting list applicants require an accessible unit may such a unit be offered to an applicant not otherwise requiring an accessible unit.

## **7. Conditions for Faith-Based Organizations**

Faith-based organizations are eligible to participate in the HOME Program on the same basis as any other organization but must comply with the requirements of 24 CFR § 5.109.

Among other requirements, Owner may not require participation in inherently religious activities such as worship, religious instruction, or proselytization, and must offer any such activities separately from the HOME Units. Owner shall not discriminate against a tenant or prospective tenant on the basis of religion or religious belief.

## **SECTION VI – PROPERTY STANDARDS**

### **A. Ongoing Maintenance of the Property**

Owner must maintain the Project in compliance with all applicable state and local codes and ordinances throughout the Term.

Owner shall certify in its HOME Annual Owners Certification to ADFA that the Project has remained compliant with all state and local codes and ordinances and has documentation of the property condition standards, where those standards can be found, and the name and contact information for the person and department responsible for enforcement of those standards.

Additionally, Owner must maintain the Project in compliance with Uniform Physical Condition Standards as set forth and described in 24 CFR § 92.251 (“UPCS”). In the event of conflicting requirements between state and local codes and UPCS on any given inspectable item or building component, the stricter standard will apply. ADFA reserves the right to periodically update the inspection protocol and standards to comply with current federal, state, or local requirements.

In addition to any other oversight by ADFA, Owner must annually certify to ADFA that the Property meets all applicable property standards and is suitable for occupancy in a HOME Annual Owners Certification. ADFA will provide the required HOME Annual Owners Certification with a due date for submission.

### **B. Broadband Infrastructure**

All buildings of five (5) or more residential units in the Project must include the installation of “broadband infrastructure” as defined by 24 CFR § 5.100.

## **SECTION VII – OTHER FEDERAL REQUIREMENTS**

### **A. Other Federal Requirements**

Owner agrees to develop and operate the Project in full compliance with all other applicable federal requirements of 24 CFR § 92 Subpart H and 24 CFR § 5 Subpart A and the nondiscrimination requirements of section 282 of the Act. This includes, but is not limited to, compliance with the drug-free workplace requirements of 2 CFR § 2429.

### **B. Equal Opportunity and Fair Housing Requirements**

In accordance with Sections 24 CFR § 92.350 and 24 CFR § 92.351, except for specific exceptions allowing elderly designated projects to apply age restrictions, no person shall on the ground of race, color, religion, sex, disability, familial status, national origin, or age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program activity funded in whole or in part from HOME Funds. In addition, Owner shall develop, operate, and maintain the Project in accordance with the following:

- a) The requirements of the Fair Housing Act (42 U.S.C. §§3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR § 1958-1963 Comp., P. 652 and 3 CFR § 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- c) The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- d) The requirements of 24 CFR § 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting owners (or their agents) from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity;
- e) The requirements of Executive Order 11246 (3 CFR § 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;
- f) The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Owner must make efforts

to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. Owner will cooperate with ADFA in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services; and

g) The nondiscrimination requirements of section 282 of the Act.

Nondiscrimination: Owner agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees of the Project. All solicitations or advertisements for employees, placed by or on the behalf of Owner, shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, familial status, national origin, or age.

### **C. Affirmative Marketing**

Owner must adopt and implement affirmative marketing procedures for the Project consistent with the requirements of 24 CFR 92.351. Owner must submit an Affirmative Fair Housing Marketing Plan ("AFHMP"), using form HUD-935.2A, or on another such form as ADFA may reasonably require, for ADFA review prior to marketing and leasing the HOME Units.

ADFA reserves the right to require Owner to update the Project's AFHMP from time to time to ensure it remains appropriate given potentially changing demographic characteristics of the market area and is updated based on the operational experience with the Project.

### **D. Conflict of Interest**

No officer, employee, agent, or consultant of Owner or immediate family members thereof (known as covered persons) may occupy a HOME Unit. However, this provision does not apply to an employee or agent of Owner who occupies a housing unit in the Project as a project manager or maintenance worker.

Notwithstanding, ADFA may approve a waiver to allow a covered person to occupy a unit in the Project based on a written request from Owner if, in ADFA's sole discretion, a waiver would be appropriate under the provisions of 24 CFR § 92.356(f)(2).

While the conflict of interest provisions in 24 CFR § 92.356 do not technically apply to Owner's procurement of goods and services associated with the development or operation of the Project, Owner agrees to notify ADFA in writing and seek ADFA's approval prior to entering into any contract with an entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by Owner, any controlling entities of Owner, any of the underlying individual owners of the controlling entities. ADFA will review the proposed contract to ensure that the contractor or vendor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in ADFA's sole discretion.

Notwithstanding, ADFA initially acknowledges and approves Owner's use of **[PROPERTY MANAGEMENT COMPANY NAME]** as the property manager for the Project.

### **E. Certification Regarding Lobbying**

In accordance with the requirements of 24 CFR Part 87, Owner certifies, to the best of its knowledge and belief, that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b) If any funds other than federal-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Owner shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
- c) Owner shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such lower-tier parties shall certify and disclose accordingly; and
- d) Owner acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and not more than One Hundred Thousand Dollars (\$100,000) for each such failure.

### **F. VAWA Compliance**

Owner agrees to comply with the provisions of the Violence Against Women Act of 1994, as amended and reauthorized (34 USC 12491.) ("VAWA") as applied by 24 CFR § 92.359 and, as applicable, 24 CFR Part 5, Subpart L. Owner further acknowledges that, despite its name, VAWA provisions apply without regard to an individual's sex, gender identity, or sexual orientation.

#### **1. Core VAWA Protections**

Unless included in the limitations on VAWA protections delineated in 24 CFR § 5.2005(d), the following VAWA protections will apply to all applicants for or tenants of HOME Units:

- a) No individual may be denied admission or evicted on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or continued occupancy.
- b) Further, no individual may be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:
  - i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and
  - ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.
- c) In no case shall an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall be construed as:
  - i) A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
  - ii) Good cause for terminating the tenancy or occupancy rights of the victim or threatened victim of such incident.

## **2. VAWA Notice**

Owner must provide an ADFA-approved or specified VAWA notice and certification form to:

- a) Any tenant admitted to a HOME Unit at the point the tenant is admitted to the unit;
- b) Any prospective tenant for a HOME Unit whose application for occupancy is being denied based on Owner's tenant selection policies or criteria as part of the written notification of denial otherwise required by 24 CFR § 92.253; and
- c) Any existing tenant of a HOME Unit whose lease is being terminated, or for whom Owner is refusing to renew the lease, at the point the tenant is being provided with notice of termination or non-renewal.

## **3. Lease Bifurcation**

Owner may seek to evict, remove, or otherwise terminate a household member from a HOME Unit on the basis of such member's criminal activity relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual, as defined in 24 CFR § 5.2003, or other individual. Such action may be taken without regard to whether the individual being removed is a signatory to the lease. In any such case, however, if necessary to avoid evicting, removing, or otherwise penalizing any victim of such activity who is also a lawful occupant of the HOME Unit Owner must bifurcate the lease to allow continued occupancy by remaining members of the household.

## **4. Emergency Transfer Plan**



Owner must comply with the terms of ADFA's VAWA Emergency Transfer Plan, as may be updated from time to time, which among other items will:

- a) Allow for an internal emergency transfer to another available and safe unit in the Project by any tenant or other lawful resident of a HOME Unit who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. In such cases, the transferring tenant(s) may transfer to the new unit without having to undergo an application process and will, in all other respects, be treated as an in-place tenant.
- b) In cases where an immediately available and safe unit is not available for internal transfer, require Owner to notify ADFA of the tenant's request for an external emergency transfer, to cooperate and assist in providing information to the tenant about other units potentially available in ADFA's portfolio of HOME Units, and waive any early termination or other similar fee for tenants requiring an emergency transfer that results in the breaking of the lease.

## **5. Documentation**

Owner may request that an individual seeking protection under the VAWA provisions provide documentation demonstrating that he/she is a victim of domestic violence, dating violence, sexual assault, or stalking. Owner's seeking such documentation must accept any of the following:

- a) A signed tenant certification, using HUD Form 5382 or such subsequent form document HUD may publish pursuant to 24 CFR § 5.2005;
- b) A document signed by the tenant and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "Professional") from whom the tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the Professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR § 5.2003;
- c) A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or
- d) Further, Owner may choose to accept other reasonable documentation from the individual seeking VAWA protections.

Nothing in this section shall be construed to require Owner to document an individual's status as a victim. Instead Owner may extend the VAWA protections broadly to any person requesting VAWA protections based on a presumption of their status without requiring documentation of their victimization.

## **6. Confidentiality**

Any information submitted to Owner under these VAWA provisions, including but not limited to an individual's request for VAWA protections or the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, is confidential information and shall be maintained in strict confidence.

## SECTION VIII – REPORTING

### A. General Requirements

Owner agrees to provide reports to ADFA and to maintain records documenting compliance with this Declaration, the Loan Documents and regulatory agreements, 24 CFR § 92.1 *et seq.*, and all other applicable federal, state, and local laws and regulations. Owner also agrees to provide ADFA, HUD, HUD’s Office of Inspector General, and the Comptroller General of the United States as the head of the Government Accountability Office (“GAO”), or their representatives access to the Project and its records for the purpose of monitoring Owner’s compliance with applicable requirements.

### B. Reports

Owner shall submit periodic reports to ADFA—and three of these reports (the Pre-Construction Report, Monthly Construction Report, and Monthly Occupancy Report) shall be submitted to ADFA via the ADFA Programs Portal, in such form as administered by ADFA (the “**Portal**”). ADFA reserves the right to unilaterally alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, address changes to HOME regulations, or address findings related to noncompliance regarding the Project.

Initially, ADFA may require reports as follows:

- a) Prior to the commencement of construction, Owner will be required to submit quarterly Pre-Construction Reports through the Portal not less than quarterly on progress toward commencement of construction. Quarterly reports will be due on the 15<sup>th</sup> of the month following the end of the prior quarter (e.g., by April 15<sup>th</sup>, reports on the first quarter are due);
- b) During the construction period, Owner will be required to (1) submit a Monthly Construction Report through the Portal monthly on the construction progress, (2) submit invoices being paid, and (3) provide evidence of appropriate lien waivers to ADFA regardless of whether Owner is requesting a draw from ADFA during that month;
- c) Upon completion of construction and prior to reaching Stabilized Occupancy (as defined in Section IV.G.1), Owner will be required to submit a Monthly Occupancy Report through the Portal on the progress toward leasing units. The report will also provide monthly income/expense reports and any marketing changes completed for the reporting month;
- d) Following the completion of construction, Owner shall provide a HOME Annual Owners Certification showing that (1) the Property complies with HOME Program regulatory requirements, (2) Owner has maintained the Property with all applicable state and local codes and ordinances, and (3) the Property is suitable for occupancy. The HOME Annual Owners Certification will be required throughout the Affordability Period;
- e) Owner shall submit annual required documents and forms that verify compliance with regulatory requirements and any administrative changes to the Project. The documentation and

forms will validate the HOME Annual Owners Certification, and changes to the Project will be recorded. ADFA will provide a complete list of the required documents and forms; and

- f) Additionally, Owner shall submit copies of its statement of cash flows and annual project audit, prepared by an independent certified public accountant, within one hundred-eighty (180) days of the end of its fiscal year or statement of financial condition, as applicable. Such information shall include copies of bank account statements and proof of current insurance and payment of property taxes due.
- g) Owner shall submit an updated Affirmative Fair Housing Marketing Plan not less than every five (5) years from the date of ADFA's initial approval.

### **C. Recordkeeping and Inspections**

Owner shall maintain detailed records of all persons served pursuant to this Declaration. Representatives of ADFA, HUD, GAO, or their designees may examine any records or information accumulated pursuant to this Declaration. During the Affordability Period, ADFA will conduct on-site inspections to verify compliance with 24 CFR § 92.252 as required by 24 CFR § 92.504. All confidential information shall be treated as such by all aforementioned ADFA, HUD, or GAO representatives or designees.

Owner shall maintain administrative and financial records as required by 24 CFR § 92.508, applicable to the activities to be carried out under this Declaration, including but not necessarily limited to:

- a) Property description and location;
- b) Records regarding project requirements that apply for the duration of the Affordability Period (all of Subpart F of 24 CFR Part 92);
- c) Documentation that the amount of investment in each housing unit is in compliance with the requirements in 24 CFR § 92.205(c) and maximum subsidy limits in 24 CFR § 92.250;
- d) Information about contractors, vendors and other lenders to include, but not necessarily be limited to, verification of non-debarment and suspension, verification of qualifications and experience, legally binding contracts and agreements, invoices and payment records and related correspondence (see 24 CFR Part 24 and 2 CFR § 2424);
- e) Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and operating budgets;
- f) Project records in accordance with 24 CFR § 92.508(a)(3) that demonstrate that each HOME Unit and each housing unit leased meets the requirements of the HOME Program;

- g) Other records that include documentation of compliance with other federal requirements in accordance with 24 CFR § 92.508 that include the following requirements to the extent applicable to the funded activity:
- i) Documentation of efforts to affirmatively further fair housing;
  - ii) Records documenting compliance with federal law regarding displacement, relocation and property acquisition in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601 et seq.), and amendments thereto;
  - iii) Records demonstrating compliance with labor requirements set out in 24 CFR § 92.354, including contract provisions and payroll records;
  - iv) Records concerning lead-based paint set out in 24 CFR Part 35;
  - v) Records supporting requests for waivers of the conflict of interest prohibition set out in 24 CFR § 92.356;
  - vi) Records demonstrating compliance with environmental requirements under 24 CFR § 92.352 and 24 CFR § 58, including applicable flood insurance requirements;
  - vii) Records of emergency transfers requested under 24 CFR § 5.2005(e) and 24 CFR § 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests; and
  - viii) Records related to any decision to terminate or refuse to renew the lease of a tenant, including documentation of the specific lease violations leading to termination or non-renewal.

#### **D. Records Retention**

Owner shall retain all applicable administrative and project records and records pertinent to other federal requirements as follows:

- a) General project records pertaining to the development of the Project must be retained for not less than five (5) years beyond the date of Project Completion. These include, but are not limited to, construction contracts and associated documents, invoices and payment records, records documenting compliance with applicable property standards, and the like.
- b) Records relating to ongoing operations of the Project must be maintained for not less than the most recent five-year period. Such records must be maintained until five (5) years beyond the end of the Affordability Period.
- c) This Declaration, the HOME Agreement, and all Loan Documents must be retained for not less than five (5) years beyond the end of the Affordability Period.
- d) Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five (5) year retention period, whichever occurs later.

## **E. Inspections**

Owner will provide ADFA, applicable federal authorities, and their representatives with access to the Project for the purposes of conducting physical inspections, including individual apartments, common spaces, and the grounds. ADFA will conduct periodic physical inspections during construction to ensure the Project is progressing and construction activity meets applicable property standards. After construction completion, ADFA will inspect the Project every three (3) years to ensure that the Project is being maintained in compliance with all appropriate property standards.

## **F. [Reserved]**

## **SECTION IX – ENFORCEMENT AND TERMINATION**

### **A. Default**

The events and circumstances set forth below shall constitute an Event of Default by Owner hereunder. ADFA may give written notice of default to Owner, by registered or certified mail, addressed to the address stated in this Declaration, or such other address as may subsequently, upon appropriate written notice thereof to ADFA, be designated by Owner as its legal business address:

- a) Failure to comply with the terms and conditions hereof;
- b) Failure to comply with HOME Program regulations, fair housing laws, and other federal requirements related to the Project, or any applicable state or local law, regulation, ordinance, or requirement;
- c) A default by Owner under this Declaration, the HOME Agreement or any other of the Loan Documents;
- d) Any event of fraud, misrepresentation, gross negligence, or willful misconduct by Owner in the execution or performance of this Declaration or in its application for participation in the HOME Program;
- e) Owner's dissolution or other termination of existence; merger or consolidation with any other entity; change in control of the Project or Owner, or any of its partners, shareholders, members, or owners without ADFA's prior written consent as required herein, except as permitted herein; insolvency; forfeiture of right to do business in the State of Arkansas or business failure; abandonment of the Project for more than thirty (30) days; appointment of a receiver of any part of Owner's property; the calling of any meetings of, or the assignment for the benefit of, creditors of Owner; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Owner which are not dismissed within sixty (60) days;
- f) Except any judgment or lien resulting from liability that is fully payable from the proceeds of an insurance policy maintained by Owner, Owner allows any judgment or lien against the Property to remain for more than sixty (60) days after the entry of such judgment or lien without being paid, stayed on appeal, discharged, bonded, or dismissed within sixty (60) days;
- g) A sale, transfer, or further encumbrance of all or part of the Project without ADFA's prior written consent; and
- h) Any default under any documents evidencing other financing for the Project, whether junior or senior to the HOME Loan or in effect as of the date of this Declaration or at any future point, including but not limited to, the Permitted Encumbrances. This may include, but is not limited to, the failure to maintain any reserve account required by another lender.

## B. Remedies

In the Event of Default by Owner hereunder, which, if capable of being cured, is not cured within thirty (30) days of the mailing of written notice by ADFA as described herein (unless such cure is not practicable within thirty (30) days and Owner, to ADFA's satisfaction, has commenced and is diligently, pursuing a cure within the thirty (30) days in which case ADFA may extend the cure period by up to sixty (60) days), ADFA may seek any combination of the following remedies:

- a) Withhold any further payments to be made under the HOME Agreement until such time as Owner's breach has been cured in accordance with the terms and conditions of any cure period provided by ADFA (but ADFA may, in its sole discretion, make disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder);
- b) Apply to any appropriate court, state or federal, for specific performance, in whole or in part, of the covenants and agreements contained herein, or for an injunction against any violation of such covenants and agreements;
- c) Enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of Owner, as the attorney-in-fact of Owner (which authority is coupled with an interest and is irrevocable by Owner), to complete or cause to be completed the Project, at the cost and expense of Owner;
- d) Require the use of or change in professional property management;
- e) Require the replacement of Owner's general partner(s) or managing member(s) or equivalent, as applicable, in which case not less than sixty (60) days' notice of such intent to replace Owner's general partner(s) or managing member(s) will be provided to Owner. In general, the investor member/limited partner shall have the right to nominate the replacement general partner or managing member subject to ADFA's approval rights herein;
- f) Pursue the appointment of a receiver to collect rents and profits or to take possession of the Project;
- g) Declare immediately due and payable all unpaid principal, accrued interest, and annual fees on the Note, together with all other sums payable thereunder and the same being immediately due and payable without presentment or other demand, protest or notice of protest, notice of dishonor, or any other notice of any kind, all of which are hereby expressly waived;
- h) Apply sanctions set forth in 24 CFR Part 92, if determined by ADFA to be applicable;
- i) Apply to any appropriate court, state or federal, for such other relief as may be appropriate and allowed by law, since the injury to ADFA arising from a default under any of the terms of this Declaration would be irreparable and the amount of damage would be difficult to ascertain; and



- j) Terminate the HOME Agreement by giving written notice to Owner of such termination and specifying the effective date of such termination. If the HOME Agreement is terminated by ADFA as provided herein, Owner shall have no claim of payment or claim of benefit for any incomplete activities undertaken thereunder.

Any delay by ADFA in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as the occasion therefor arises.

## SECTION X – INDEMNIFICATION

Owner hereby agrees to reimburse, indemnify, save and hold ADFA and its successors and assigns harmless from and against any damage, liability, loss, penalty, charge, cost, or deficiency, including but not limited to any repayment obligation to HUD incurred by ADFA under 24 CFR § 92.503(b) or 24 CFR § 92.551, reasonable attorney's fees, and other costs and expenses incident to monitoring, remedial actions, proceedings or investigations and the defense of any claim, arising out of, resulting from or related to, and to pay to ADFA or its successor in interest, on demand, the full amount of any sum which ADFA or its successor has paid or becomes obligated to pay on account of:

- a) Any misrepresentation, omission, or the breach of any representation or warranty of Owner under this Declaration, the HOME Agreement, or any other Loan Document;
- b) Any failure of Owner to fully perform or observe or cause to be performed or observed any term, provision, covenant, or agreement to be performed or observed by Owner, or, after an assumption, by a subsequent Owner, pursuant to this Declaration, the HOME Agreement, or any other Loan Document;
- c) Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by Owner, or, after an assumption, Owner's successors to the Property or Project; or
- d) The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by Owner or any of its past or present affiliates on the Property which occurs prior to possession passing from Owner pursuant to a deed received upon completion of a foreclosure or upon acceptance of a deed in lieu of foreclosure.

The provisions of this Section X shall survive the termination of this Declaration, the HOME Agreement, the other Loan Documents, the payment of the HOME Loan, and the liabilities and the exercise of any right or remedy under this Declaration, the HOME Agreement, or any other Loan Document.

## SECTION XI – NOTICES

Except in the case of notice of default under this Declaration, notices due to Owner hereunder will be deemed delivered four (4) business days after being placed in the United States mail, postage pre-paid, addressed to Owner as follows:

OWNER NAME  
OWNER ADDRESS  
CITY, STATE ZIP

Notices due to Owner may also be transmitted through electronic means and deemed delivered upon the sending of such transmittal.

Notices due to ADFA shall be in writing and must be personally delivered or placed in the United States mail. Notices to ADFA delivered via the mail must be delivered via certified mail with return receipt requested and will be deemed delivered upon signature of an ADFA representative. Notices to ADFA should be addressed as follows:

Arkansas Development Finance Authority  
P.O. Box 8023  
Little Rock, Arkansas 72203  
Attn: Federal Housing Program Manager

Notices due to ADFA may also be transmitted through electronic means and deemed delivered upon the sending of such transmittal.

## **SECTION XII – MISCELLANEOUS PROVISIONS**

### **A. Interpretation**

This Declaration shall not be merged with any subsequent agreement between ADFA and Owner, including, but not limited to, ADFA's Loan Documents or regulatory agreements related to Project. Any question or dispute regarding the interpretation of the terms of this Declaration shall be decided by ADFA. ADFA's decision shall be final and binding. In the event of a conflict between this Declaration, the HOME Agreement, the Loan Documents, and/or the regulatory agreements, ADFA reserves the right to resolve the conflict and determine which provision will take precedence. In general, the more restrictive provision will apply.

### **B. Applicable Law**

This Declaration shall be construed and interpreted in accordance with Arkansas law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and federal courts of the State of Arkansas shall have jurisdiction and that the proper forum for such action shall be Little Rock, Arkansas.

### **C. Amendment**

This Declaration may be modified or amended only with the written consent of ADFA.

#### **Automatic Amendments**

Notwithstanding any terms within this Declaration, in the event that (i) HUD imposes new or modified requirements on existing HOME-assisted projects through regulation, administrative notice, publication, or other notice, or (ii) HUD specifically identifies violations of HOME Program requirements pertaining to this Declaration or the Project, Owner agrees to comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements, whether or not the new or modified requirements are stated in the Declaration or in subsequent amendments. If ADFA determines that such new or modified requirements should be included in the Declaration by way of an amendment, Owner further agrees to execute any such amendment. ADFA reserves the right to implement additional policies as needed.

### **D. Headings and Pronouns**

The headings of the paragraphs in this Declaration are for convenience only and do not affect the meanings or interpretation of the contents. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and singular nouns used herein shall include the plural and vice versa.

### **E. Severability**

If any provision of this Declaration shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Declaration is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

#### **F. Authority**

Except as otherwise provided herein, at any time during the Term, whenever any approval or notice by ADFA is required under this Declaration, or whenever any action by ADFA is required or permitted, the ADFA Federal Housing Program Manager, its successor or its authorized delegate, shall have the power and right to approve, give notice or act on behalf of ADFA, as the case may be.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed by the duly authorized representative of Owner on the date set opposite his/her signature below.

By:

By:

Its:

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

Its:

Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

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

)

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

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named \_\_\_\_\_ (being the person authorized by said [corporate/partnership/limited partnership/limited liability company] to execute such instrument, stating his/her capacity in that behalf), to me personally well known (or satisfactorily proven to be such person), who stated that he/she was the [TITLE] of [PROJECT OWNER], [ENTITY DESCRIPTION], and was duly authorized in his/her capacity to execute the foregoing instrument for and in the name and behalf of said [corporate/partnership/limited partnership/limited liability company], and further stated and acknowledged that he/she had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

## EXHIBIT A: DEFINITIONS

“*Act*” means the HOME Investment Partnerships Act at Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended.

“*ADFA*” means the Arkansas Development Finance Authority, a body corporate and politic of the State of Arkansas.

“*Affordability Period*” has the meaning as set forth in Section 2 B.

“*Declaration*” means this Declaration of Restrictive Covenants to be filed of record with the Circuit Clerk and Recorder of [COUNTY], Arkansas, whereby Owner has declared the Property is subject to the requirements of the Act and the regulations promulgated thereunder at 24 CFR Part 92.

“*AMI*” the area median income as determined by HUD.

“*Application*” means the ADFA Multifamily Housing Application and other information provided by Owner to ADFA upon which ADFA has approved the use of HOME Funds for the Project.

“*Consolidated Plan*” means the current Consolidated Plan adopted by ADFA pursuant to 24 CFR § 91.1 *et seq.* to carry out housing activities eligible under the HOME Program.

“*Execution Date*” means the last date on which Owner or ADFA executed the HOME Agreement.

“*High-HOME Unit*” means the type of HOME Units that must be rented exclusively to tenants with household incomes at or below 60% of the AMI described in Section V. B. 2 of the Declaration.

“*HOME*” or “*HOME Program*” means the program authorized by the Act as implemented by regulations promulgated by HUD at 24 CFR Part 92.

“*HOME Agreement*” means the HOME Agreement dated as of the Execution Date by and between ADFA and Owner relating to the Project.

“*HOME Funds*” mean the HOME funds administered by ADFA as a participating jurisdiction under the HOME Program which have been allocated to the Project.

“*HOME Investment*” means the allocation by ADFA to Owner of HOME Funds for use in the Project in an amount not to exceed \$ [REDACTED].

“*HOME Loan*” means the construction and permanent loan made by ADFA to Owner pursuant to the HOME Agreement.

“*HOME Units*” mean the Project rental units which have received allocations of HOME Funds which have been designated in the Declaration as either fixed or floating units.

“*HUD*” means the United States Department of Housing and Urban Development.

“*IDIS*” means HUD’s Integrated Disbursement and Information System.

“*Loan Documents*” means the Note, the Mortgage, appropriate UCC financing statements, and ancillary documents pertaining thereto.

“*Low-HOME*” means the type of HOME Units that must be rented exclusively to tenants with household incomes at or below 50% of the AMI described in Section V. B. 2 of the Declaration.

“*Note*” means the promissory note given by Owner to ADFA evidencing the HOME Loan.

“*Owner*” means [REDACTED].

“*Ownership Entity*” has the meaning as defined in Section IV B of the Declaration.

“*Permitted Encumbrances*” means the liens, encumbrances and other instruments affecting title to the Property as shown in Exhibit C to the Declaration.

“*Portal*” shall mean the ADFA Programs Portal as defined in Section VIII B of this Declaration.

“*Project*” means the [REDACTED] unit multifamily housing project described in Exhibit D to the Declaration.

“*Project Budget*” means the Project Budget attached to the HOME Agreement as Exhibit E.

“*Project Completion Date*” means the date that ADFA determines Owner has achieved “project completion” as that term is defined in 24 CFR § 92.2.

“*Property*” means the property upon which the Project is located described in Exhibit B to the Declaration.

“*Reserve Accounts*” shall mean the accounts as set forth in Section IV, E of the Agreement.

“*Security Deposit Account*” shall mean the accounts as set forth in Section IV, E of the Agreement.

“*Stabilized Occupancy*” shall have the meaning as defined in Section IV, E, 2 of the Declaration.

“*State*” means the State of Arkansas.



## **EXHIBIT B: LEGAL DESCRIPTION**

## EXHIBIT C: PERMITTED ENCUMBRANCES

Owner acknowledges and agrees to the following order of priority as related to the anticipated liens, covenants, and other encumbrances upon the Project:

1. Existing encumbrances (e.g. easements and restrictions) of record as identified in Schedule \_\_ of the title insurance policy issued by [TITLE COMPANY] to ADFA, effective as of the date of the mortgage related to the HOME Loan is recorded;
2. The Land Use Restriction Agreement in favor of ADFA related to the award of Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code;
3. The Declaration of Restrictive Covenants in favor of ADFA by Owner;
4. The anticipated mortgage (and related security documents) of \$[ ] from the [SENIOR LENDER];
5. The mortgage (and related security documents) related to the HOME Loan; and
6. List any other subordinate loans, etc.

## EXHIBIT D: PROJECT DESCRIPTION

### Section A – Project Overview

**Project Name:** PROJECT NAME

**Address:** PROJECT ADDRESS, CITY, Arkansas ZIP CODE

**Owner:** OWNERSHIP ENTITY

**CHDO Set-Aside:** ☐ Yes ☐ No

**CHDO Role:** ☐ N/A ☐ Owner ☐ Developer ☐ Sponsor

**HOME Investment:** Up to \$HOME AMOUNT

**Total Buildings:**

**Total Low-Income Buildings:**

**Total Units:**

**Total Low-Income Units:**

**Unit Mix:**

	Low-HOME	High-HOME	HTF	LIHTC-Only	Manager	Market	Subtotal
1-Bed							
2-Bed							
3-Bed							
4-Bed							
Subtotal							Total: XXX

### Targeting:

Project is for ☐ elderly occupancy by tenants 55/62 or ☐ family occupancy (i.e. not age restricted)

Units are additionally ☐ preferred or ☐ set-aside exclusively for describe special population targeting.

**Fixed/Floating:** HOME Units are ☐ Floating or ☐ Fixed.

If Fixed, HOME Units are: IDENTIFYHOMEUNITS (EF #301, #534, etc.)

### Accessibility:

Physically Accessible Units: X Units – IDENTIFYHOMEUNITS (EG #207 (2-bedroom, #101 (3-bedroom))

Sensory Accessible Units: X Units – IDENTIFYHOMEUNITS (EG #207 (2-bedroom), #101 (3-bedroom))

### Employee Units:

Manager Units: X Units IDENTIFY UNITS

Maintenance Units: X Units IDENTIFY UNITS

Security Units: X Units IDENTIFY UNITS

### Initial HOME Rent Limits:

Following the completion of construction and lease-up, Owner must seek ADFA's approval of rents annually. HOME rents may increase or decrease in a given year. Notwithstanding decreases in the HUD-published HOME rents, pursuant to 24 CFR § 92.252(f), Owner shall not be required to reduce the rent of HOME Units below the gross HOME rents in effect as of the date of this Declaration. In effect, this sets a floor rent for HOME Units. However, the actual rent to Owner, after accounting for utility allowances may still decrease. The HOME rents in effect as of the date of this Declaration are as follows:

	Utility Allowance	Low-HOME			High-HOME		
		Gross Limit	Subsidized Contract Rent Limit	Underwritten Gross Rent	Gross Limit	Subsidized Contract Rent Limit	Underwritten Gross Rent
1-Bed							
2-Bed							
3-Bed							
4-Bed							

### Section B – Compliance /Development Factors

The Project, as planned, includes the following elements which may require specialized compliance with cross-cutting federal requirements and/or additional care in the construction process:

- |   |  |
|---|--|
| <input type="checkbox"/> Land assembly and subdivision        | <input type="checkbox"/> Extension/installation of off-site infrastructure               |
| <input type="checkbox"/> Relocation of existing/prior tenants | <input type="checkbox"/> Demolition of existing structures                               |
| <input type="checkbox"/> Environmental conditions             | <input type="checkbox"/> Remediation of Lead Base Paint hazards                          |
| <input type="checkbox"/> Labor Standards (Davis-Bacon)        | — Using: <input type="checkbox"/> Interim Controls or <input type="checkbox"/> Abatement |

### Section C – Additional Features, Amenities, and Requirements

The Project was funded, in part, on the basis of Owner's agreement to provide various features, amenities, or services beyond those explicitly required by the HOME regulations at 24 CFR Part 92. Owner therefore agrees to the following requirements as a condition of receiving HOME Funds and agrees that failure to provide or maintain such features, amenities, or services or other failures to comply with such conditions will be a violation of the Declaration:

[Insert special conditions... e.g. construction buildings to 5-Star Energy Start standard; provide after-school programming and a computer lab for the duration of the agreement; etc.]

#### a) Requirement 1