

**THIS INSTRUMENT PREPARED BY:  
ARKANSAS DEVELOPMENT FINANCE AUTHORITY  
GENERAL COUNSEL  
900 WEST CAPITOL AVENUE, SUITE 310  
LITTLE ROCK, ARKANSAS 72201**

**LAND USE RESTRICTION AGREEMENT and  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW-INCOME HOUSING TAX CREDITS**

THIS LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (this "AGREEMENT"), dated as of \_\_\_\_\_, is entered into by \_\_\_\_\_ and its successors and assigns (the "Development Owner") and the Arkansas Development Finance Authority, a public body politic and corporate of the State of Arkansas, together with any successor to its rights, duties and obligations (the "Authority"). This AGREEMENT is entered to comply with Section 42 of the Internal Revenue Code of 1986, as amended, 26 USC § 1 *et seq.*, (the "Code"), and serves as the "extended low-income housing commitment" required by Section 42(h)(6)(A) of the Code.

**WITNESSETH:**

WHEREAS, the Development Owner is the owner of a low-income rental housing development, known as \_\_\_\_\_ (the "Development") located on land in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Arkansas, more particularly described in Exhibit A hereto; and

WHEREAS, the Authority has been designated as the housing credit agency for the State of Arkansas for the allocation of federal low-income housing tax credit ("Tax Credits") pursuant to Section 42 of the Code; and

WHEREAS, the Development Owner filed its Multi-Family Housing Application for Tax Credits, dated \_\_\_\_\_ (the "Application") by which the Authority has determined the Development would support an allocation of Tax Credits in an amount not to exceed \$ \_\_\_\_\_ annually; and

WHEREAS, the Development Owner has represented to the Authority in the Application that it will impose additional rent and occupancy restrictions and will maintain the Section 42 rent and income restrictions for the period of time evidenced in Section 5 of this AGREEMENT; and

WHEREAS, the Code requires as a condition precedent to the allocation of Tax Credits that the Development Owner execute, deliver and record this AGREEMENT in the official real property records of the county in which the Development is located in order to create certain covenants running with the Development land, as particularly described in Exhibit A hereto, for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use and occupancy and transfer of the Development as set forth herein; and

WHEREAS, the Development Owner declares and covenants that the regulatory and restrictive covenants set forth in this AGREEMENT shall govern the use, occupancy and transfer of the Development and are covenants running with the Development for the term of the AGREEMENT stated herein and shall be binding upon all subsequent owners of the Development during such term, and are not merely personal covenants of the Development Owner.

NOW THEREFORE, in consideration of the representations and covenants set forth in this AGREEMENT, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Development Owner and the Authority agree as follows:

## **SECTION 1 – DEFINITIONS**

“Development,” as used in this AGREEMENT, shall mean, in addition to the real property described in Exhibit A, attached hereto, any building, structure, fixture and improvement located on said real property.

“Term of this AGREEMENT” shall have the meaning set forth in Section 5 herein.

Each word and phrase used in this AGREEMENT, not defined herein, shall have the same definition or meaning and effect as used within Section 42 of the Code or within rules, regulations, or other official notices or statements promulgated by the United States Department of the Treasury or the Internal Revenue Service.

## **SECTION 2 – RECORDING AND FILING: COVENANTS TO RUN WITH THE LAND**

- (a) Following execution by the Development Owner and the Authority, the Development Owner shall cause this AGREEMENT and all amendments hereto to be recorded and filed in the office of the Circuit Clerk and Ex-Officio Recorder of the County in which the Development is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Development Owner shall immediately transmit to the Authority an executed original of the recorded AGREEMENT showing the date, record book and page numbers of record or record of instrument number, as applicable. The Development Owner agrees that the Authority will not issue the Internal Revenue

Service Form 8609 constituting final allocation of the Tax Credits unless and until the Authority has received the recorded executed original of this AGREEMENT.

- (b) The Development Owner intends, declares and covenants on behalf of itself and all future Development Owners or successors in interest of the Development during the term of this AGREEMENT, that this AGREEMENT and the covenants and restrictions set forth in this AGREEMENT regulating and restricting the use, occupancy and transfer of the Development (i) shall be and are covenants running with the Development, encumbering the Development for the term of this AGREEMENT, binding upon the Development Owner's successors in title and all subsequent Development Owners of the Development, (ii) are not merely personal covenants of the Development Owner, and (iii) shall bind the Development Owner (and the benefits shall inure to the Authority and any past, present or prospective tenant of the Development) and its respective successors and assigns during the term of this AGREEMENT. The Development Owner hereby agrees that any and all requirements of the laws of the State of Arkansas that must be satisfied in order for the provisions of this AGREEMENT to constitute valid restrictions and covenants running with the Development are deemed satisfied in full, and that any requirements or privileges of estate are satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions and covenants run with the Development. For the term of this AGREEMENT, each and every contract, deed or other instrument hereafter executed conveying the Development, or any building (or interest therein) a part of the Development, shall expressly state that such conveyance is subject to this AGREEMENT. However, the covenants contained herein shall survive and be effective regardless of whether or not such contract, deed or other instrument hereafter executed conveying the Development states that such conveyance is subject to this AGREEMENT.
- (c) The Development Owner shall obtain from all lien holders of record on the Development, other than the Authority, and submit with this AGREEMENT, the written consent of each such lien holder, other than the Authority, to the execution of this AGREEMENT and to the subordination of its lien(s) to the rights and interests established pursuant to Section 42(h)(6)(E)(ii) of the Code as detailed in subsection 5(c) herein. The Development Owner agrees that such written consent is a condition precedent to the Authority's issuance of Internal Revenue Service Form 8609 constituting the final allocation of the Tax Credits. The Development Owner represents and warrants that attached hereto and incorporated herein as Exhibit B is an executed and acknowledged Lien Holder's Consent for each lien holder, if any, other than the Authority, existing the date this AGREEMENT is filed of record in the county in which the Development is located.

### **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 \_\_\_\_\_ (*Type of Entity: e.g., Corporation, Limited Liability Company; Partnership; Limited Partnership*) duly organized under the laws of the State of \_\_\_\_\_, and is qualified to transact business

under the laws of the State of Arkansas; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted; and (iii) has the full legal right, power and authority to execute and deliver this AGREEMENT.

- (b) The execution and performance of this AGREEMENT by 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 agency or governmental body; (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which 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 AGREEMENT, good and merchantable fee simple title to the Development, or a long term leasehold on the Development, free and clear of any lien or encumbrance except for those created pursuant to this AGREEMENT or those loan documents relating to the Development and acknowledged as permitted encumbrances in mortgages existing on the Development as of the date of execution of this AGREEMENT.
- (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 own right to carry on business substantially as now conducted (and as contemplated by this Agreement) or would materially adversely affect its financial condition.
- (e) The Development constitutes or will constitute a “qualified low-income building” or a “qualified low-income housing project,” as applicable, as those terms are defined and intended in Section 42 of the Code and regulations promulgated thereto.
- (f) Each unit in the Development contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the unit qualifies as a single-room occupancy unit or transitional housing for the homeless), and used on other than a transient basis. Each unit in the Development shall comply with all habitability standards required by law with the Authority’s Minimum Design Standards in effect during the year in which tax credits were awarded to the Development, except for any waivers granted by the Authority.
- (g) During the term of this AGREEMENT, all low-income units shall be leased or rented to members of the general public who qualify for such units pursuant to Section 42(g) of the Code.
- (h) During the term of the AGREEMENT, the Development Owner covenants, agrees and warrants that:
  - (1) each low-income unit is and will remain suitable for occupancy;
  - (2) any existing tenant(s) in any low-income unit will not be evicted or have her/his/their occupancy terminated for other than good cause; and
  - (3) the gross rent of any low-income unit will not be increased except as permitted under Section 42 of the Code.

- (i) The Development Owner covenants that it will not sell, transfer, or exchange a portion of any building in the Development. The Development Owner may sell, transfer or exchange an entire building(s) or all buildings in the Development (or interest therein) subject to the requirements of Section 42 of the Code and of this AGREEMENT. The Development Owner is required, as a condition precedent to any such sale, transfer, or exchange, to obtain a written assumption from any buyer or successor in interest of the requirements and obligations under of Section 42 of the Code and this AGREEMENT. The Development Owner agrees that the Authority may void any sale, transfer or exchange of the Development if the buyer or successor in interest fails to execute and file of record any such assumption. This AGREEMENT and the covenants contained herein shall survive and be effective whether or not any buyer or successor in interest executes and files of record any such assumption.
- (j) Prior to any sale, transfer or exchange of the entire Development or any building a part of the Development, the Development Owner agrees to notify the Authority in writing of such intended sale, transfer or exchange and the names and addresses of the prospective buyer(s) or successor(s) in interest.
- (k) The Development Owner shall not demolish any part of the Development or substantially subtract any real or personal property of the Development or permit the use of any residential rental unit for any purpose other than rental housing during the term of this AGREEMENT, unless required by law.
- (l) The Development Owner represents, warrants and agrees that if the Development, or any part thereof, shall be damaged; destroyed; 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 damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this AGREEMENT. Owner agrees to promptly notify the Authority of any event described herein and to keep the Authority fully informed.
- (m) The Development Owner agrees that it will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code during the term of this AGREEMENT.
- (n) The Development Owner agrees to comply fully with the requirements of the Fair Housing Act, 42 U.S.C. 3601 *et seq.*
- (o) To ensure compliance with Section 42(h)(6)(B)(iv) of the Code, the Development Owner will not refuse to lease any residential unit in the Development to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 USC § 1437f, because of the status of the prospective tenant as such a holder.
- (p) The Development Owner warrants that it has not and will not execute any other agreements with provisions contradictory to, or in opposition to, the provisions herein, and that in any event, the requirements of this AGREEMENT are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict herewith.

## SECTION 4 – INCOME RESTRICTIONS; RENTAL RESTRICTIONS

In order to satisfy the requirements of Section 42 of the Code and representations made in the Application, the Development Owner represents, warrants, and covenants that throughout the term of this AGREEMENT that, as more specifically detailed in Exhibit D which is incorporated herein word for word,:

*(Mark all boxes designating percentage elections that apply to the Development)*

- (a) (1) At least 20%, \_\_\_\_\_, (*minimum number of units so restricted*) of the residential units in the Development are both rent-restricted and occupied by individuals whose income is 50% or less of the area median gross income.
- (2) At least 40%, \_\_\_\_\_, (*minimum number of units so restricted*) of the residential units in the Development are both rent-restricted and occupied by individuals whose income is 60% or less of the area median gross income.
- (3) At least 15%, \_\_\_\_\_, (*minimum number of units so restricted*) of the residential units in the Development are both rent-restricted, as described at Section 142(d)(ii) and 142(d)(iii) of the Code and occupied by individuals whose income is 40% or less of the area median gross income. (“Deep rent skewed” development.)
- (4) At least 5%, \_\_\_\_\_, (*minimum number of units so restricted*) of the residential units in Development are both rent-restricted and occupied by individuals whose income is 30% or less of the area median gross income.
- (b) The determination of whether a tenant meets the low-income requirements of the Code shall be made by the Development Owner at least annually to the Authority on the basis of the current income of such low-income tenant.
- (c) The Development Owner agrees that the amount of Tax Credits allocated to the Development is premised on the requirement that the Applicable Fraction for each building, a part of the Development, will be specified, building-by-building, at Exhibit D, hereto. The Development Owner further agrees that it is subject to the requirements set forth in Exhibit D, which are incorporated into this AGREEMENT and made a part hereof; and that it will not reduce the Applicable Fraction for any low-income building a part of the Development during the term of this AGREEMENT.
- (d) The actual number of units restricted and type of restriction is stated on Exhibit D and incorporated herein.

- (e) The Section 1602 Exchange percentage (*from CPA Cost Certification*), if development was awarded 1602 Funds is \_\_\_\_\_% (if development not awarded 1602 Funds, enter 0).

## **SECTION 5 – TERM OF THIS AGREEMENT**

- (a) This AGREEMENT shall become effective the first day of the Compliance Period on which any low-income building becomes a part of the Development. This AGREEMENT shall remain effective for a period of \_\_\_\_\_ (*minimum 30 years*) years following the first day of the Compliance Period for any low-income building a part of the Development. All low-income buildings, a part of the Development, are identified in Exhibit D hereto.
- (b) Notwithstanding subsection 5(a) above, this AGREEMENT may terminate for any low-income building, a part of the Development, on the date such building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the U.S. Secretary of Treasury determines that such acquisition is part of an arrangement, a purpose of which is to terminate this AGREEMENT, with the Development Owner.
- (c) Notwithstanding termination of this AGREEMENT pursuant to subsection 5(b) above, no existing tenant in an affected low-income unit will be evicted or have her/his occupancy terminated, other than for good cause, for a 3-year period following termination of this AGREEMENT; nor will the gross rent of any such affected low-income unit be increased above the amount permitted by Section 42 of the Code for a 3-year period following termination of this AGREEMENT.
- (d) Notwithstanding subsection 5(a) above, pursuant to the requirements of Section 42(i)(7) of the Code, this AGREEMENT shall terminate, at any time following completion of the Compliance Period of any low-income building, a part of the Development, upon the acquisition of such building by its tenant(s), a qualified nonprofit organization, or a government agency.

## **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, any regulations, rules, notices or rulings or other official statements promulgated thereto and of the requirements of this AGREEMENT. Moreover, the Development Owner covenants to take any lawful action (including amendment of this AGREEMENT as may be necessary in the opinion of the Authority) to comply fully with the Code and with all applicable regulations, rules, notices or rulings, policies, procedures or other official statements promulgated by the United States Department of the Treasury, the Internal Revenue Service, or the United States Department of Housing and Development, from time to time, which affect the Development or pertain to the Development Owner's obligations under Section 42 of the Code.

- (b) The Development Owner acknowledges that the Authority is required, pursuant to Section 42(m)(1)(B)(iii) of the Code,; (1) to monitor the Development's compliance with the requirements of Section 42 of the Code and any rules, regulations, rulings, notices and other official statements promulgated thereto by the United States Department of the Treasury or the Internal Revenue Service; and (2) to report any noncompliance to the Internal Revenue Service. The Development Owner agrees that it will assist or cooperate with the Authority in monitoring such compliance and take all actions required by the Authority pursuant to such monitoring including the submission of any information, documentation or certifications which the Authority shall deem reasonably necessary to substantiate the Development Owner's compliance with the requirements of Section 42 of the Code and any rules, regulations, rulings, notices and other official statements promulgated thereto by the United States Department of the Treasury or the Internal Revenue Service.
- (c) The Development Owner represents, covenants, and warrants that, during the term of this AGREEMENT, it will adhere to and comply with all rules, regulations, policies and procedures as required by the Authority's Qualified Allocation Plan in effect at the time of the Development's award of tax credits, "Compliance Monitoring Policies and Procedures Manual for the Low-Income Housing Tax Credit Program;" including but not limited to: the creation and maintenance of low-income unit and tenant files and records for all such Development units and tenants; the preparation and submission to the Authority, no later than January 15 of each year following the first taxable year of the Development Owner's tax credit period, an "Owner's Certificate of Continuing Program Compliance"; and the preparation and submission to the Authority no later than February 1 of each year following the Development Owner's first taxable year of the Development Owner's tax credit period, the "LIHTC Compliance Monitoring Status Report." The Development Owner further represents, covenants and warrants that, during the term of this AGREEMENT, it will comply with all record keeping and record retention requirements, applicable to the Development, as required by the Authority's "Compliance Monitoring Policies and Procedures Manual for the Low-Income Housing Tax Credit Program."
- (d) The Development Owner shall permit the Authority, at reasonable times and upon adequate and reasonable notice, to enter upon the Development and inspect the Development to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance, including but not limited to: the inspection of any books and records of the Development Owner regarding the Development with respect to the incomes of low-income tenants which pertain to compliance with Section 42 of the Code and any rules, regulations, rulings, notices and other official statements promulgated thereto by the United States Department of the Treasury or the Internal Revenue Service and compliance with the Authority's "Compliance Monitoring Policies and Procedures Manual for the Low-Income Housing Tax Credit Program."
- (e) In the event of a violation or attempted violation of any of the covenants and provisions herein, any one or more of the following may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to recover monetary damages caused by such violation or attempted violation: (1) the Authority or any governmental entity succeeding to the Authority's functions, or (2) any individual who meets the income limitation applicable to any building a part of the

Development under Section 42 of the Code, whether that individual is a prospective, present or former occupant of any such building. The covenants and provisions herein are imposed upon and made applicable to the Development, shall run with the Development, and shall be enforceable against the Development Owner and each purchaser, grantee, owner, lessee or successor in interest of the Development or any low-income building, a part of the Development, or interest therein. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or obtain relief against or recover for the continuation or repetition of such breach or violation of any similar breach or violation thereof at any later time or times.

## **SECTION 7 – NOTIFICATION**

In the event the Authority discovers any noncompliance with this AGREEMENT or with Section 42 of the Code and any rules, regulations, rulings, notices and other official statements promulgated thereto by the United States Department of the Treasury or the Internal Revenue Service, the Authority will notify the Development Owner in writing of such noncompliance as well as the time period within which compliance must be met. In turn, the Authority will notify the Internal Revenue Service, no later than 45 days after the end of the designated time for correction, of any noncompliance. The Development Owner agrees that the Authority is authorized and entitled to do all acts necessary to comply with monitoring the notification responsibilities set forth in Section 42(m)(1)(B)(iii) of the Code and any rules, regulations, rulings, notices and other official statements promulgated thereto by the United States Department of the Treasury or the Internal Revenue Service.

## **SECTION 8 – MISCELLANEOUS**

- (a) Fees, Release and Indemnification. The Development Owner will pay any legal fees incurred by the Authority with respect to the Development. The Development Owner hereby agrees to pay, indemnify and hold the Authority harmless from any and all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the Authority in enforcing, attempting to enforce, or defending this AGREEMENT. The Development Owner agrees to release the Authority from any claim, loss, demand or judgment as a result of the allocation of Tax Credits to the Project or the recapture of same by the Internal Revenue Service, and to indemnify the Authority for any claim, loss, demand or judgment against the Authority as a result of an allocation of Tax Credits to the Development or the recapture of same by the Internal Revenue Service.
- (b) Severability. If any term, clause, part, provision or section of this AGREEMENT shall be deemed unenforceable or invalid by operation of law, the remaining terms, clauses, parts, provisions or sections of this AGREEMENT shall remain in full force and effect during the term of this AGREEMENT.
- (c) Notice. All notices given pursuant to this AGREEMENT shall be in writing 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 Authority: Arkansas Development Finance Authority  
ATTN: LOW-INCOME HOUSING TAX CREDIT  
COMPLIANCE and MONITORING SECTION  
P.O. Box 8023  
Little Rock, Arkansas 72203-8023

To the Development Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Limited Partner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (d) Amendment. Except for the designation of a different notice address as provided for in subsection 8(c) above, this AGREEMENT may not be amended or modified except by written instrument signed by the Development Owner and approved by the Authority, or their respective heirs, successors, or assigns, which instrument shall not be effective until it is recorded as required within subsection 2(a) above. The Development Owner agrees that it will take all actions necessary to effect the amendment of this AGREEMENT as may be necessary to comply with Section 42 of the Code and all applicable rules, regulations, policies, procedures, notices, rulings or other official statements promulgated by the United States Department of the Treasury or the Internal Revenue Service.
- (e) Governing Law. The laws of the State of Arkansas shall govern this AGREEMENT.

This space left blank intentionally.

IN WITNESS WHEREOF, the Development Owner has caused this AGREEMENT to be signed by its duly authorized representative as of the day and year provided herein for the consideration and purposes contained herein.

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

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

**ACKNOWLEDGMENT**

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

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

On this day before me the undersigned notary public, personally appeared the within named \_\_\_\_\_ who acknowledged that she/he was the \_\_\_\_\_, of \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ and was authorized in such capacity to execute the foregoing instrument on behalf of \_\_\_\_\_ and so executed the foregoing instrument for the consideration and purposes therein contained.

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

\_\_\_\_\_  
(Notary Public Signature)

My commission expires:

\_\_\_\_\_  
(Seal)

IN WITNESS WHEREOF, the Authority has caused this AGREEMENT to be signed by its duly authorized representative as of the day and year provided herein for the consideration and purposes contained herein.

**ARKANSAS DEVELOPMENT FINANCE AUTHORITY**

BY: \_\_\_\_\_  
Mac Dodson, President

**ACKNOWLEDGMENT**

STATE OF ARKANSAS

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

On this day before me the undersigned officer, personally appeared Mac Dodson, the President of the Arkansas Development Finance Authority, who acknowledged that he was authorized in such capacity to execute the foregoing instrument on behalf of the Arkansas Development Finance Authority and so executed the foregoing instrument for the consideration and purposes therein contained.

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

\_\_\_\_\_  
(Notary Public Signature)

My commission expires:

\_\_\_\_\_  
(Seal)

**Exhibit A – LEGAL DESCRIPTION**

**Exhibit B – Lien Holder’s Consent**

(Executed by each Lien Holder on the Development as of the effective date of this AGREEMENT)

The undersigned Lien Holder hereby consents to the execution by the Development Owner of this AGREEMENT for \_\_\_\_\_

*(Name of the Development as it appears in this AGREEMENT)*

The undersigned Lien Holder hereby subordinates its lien(s) to the rights and interests of any existing tenant as described in subsection 5(c) of this AGREEMENT such that a foreclosure of its lien(s) shall not extinguish such rights and interests. The undersigned Lien Holder further 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 subsection 5(c) of this AGREEMENT, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition.

Executed to be effective as of the effective date of this AGREEMENT.

**Lien Holder:**

\_\_\_\_\_

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

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

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

**ACKNOWLEDGMENT**

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

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

On this day before me the undersigned officer, personally appeared the within named \_\_\_\_\_, who acknowledged that she/he was the \_\_\_\_\_ of \_\_\_\_\_ and was authorized in such capacity to execute the above “Exhibit B – Lien Holder’s Consent” on behalf of \_\_\_\_\_ and so executed the foregoing instrument for the consideration and purposes therein contained.

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

My Commission Expires: \_\_\_\_\_  
Notary Public

Seal:

## EXHIBIT C

### **Material Participation by a Qualified Nonprofit Organization**

Throughout the Compliance Period, a “qualified nonprofit organization” within the meaning of Section 42(h)(5)(C) of the Code shall have an ownership interest in the Development, 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 of the execution of this AGREEMENT, 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 Authority (i) of any change in the status or role of such nonprofit organization with respect to the Development and (ii) if such nonprofit organization is proposed to be replaced by a different qualified nonprofit organization.

### **Supportive Services**

Throughout the term of this AGREEMENT, unless otherwise permitted by the Authority, the Development Owner has contracted for the provision of the following special supportive services that would not be otherwise available free of charge to the occupants of the Development:

At the time of the execution of this AGREEMENT, the organization(s) providing these services is/are:

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

### **Senior Development**

Throughout the term of this AGREEMENT, unless otherwise permitted by the Authority, the Development must conform to the Federal Fair Housing Act and must be a development that:

is intended for, and solely occupied by persons 62 years of age or older;

OR

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 Development Owner to provide housing for persons 55 years of age or older;

OR

is a development under a program by United States Department of Housing and Urban Development and is specifically designed and operated to assist elderly persons as defined by that program;

OR

is a development under a program by United States Department of Agriculture Rural Development and is specifically designed and operated to assist elderly persons as defined by that program;,

(NOTE: The Federal Fair Housing Act requires, generally, that developments which are limited to occupancy by older persons either (i) be restricted to households in which all members are 62 years or older or (ii) to households in which at least one member is 55 years or older. See 24 C.F.R. §§ 100.300-100.304 for requirements. All developments must comply with these requirements, as applicable under Federal law, in addition to this AGREEMENT.)

### **Assisted Living Facility**

Throughout the term of this AGREEMENT, unless otherwise permitted by the Authority, the Development Owner will maintain the Development as an Assisted Living Facility, licensed as such by the Arkansas Department of Human Services, as set forth in the Application.

**EXHIBIT D  
BUILDING DESIGNATION & ADDRESS; UNIT & INCOME DESIGNATION; APPLICABLE FRACTION**

Each Building Designation & Address (Include BIN Number from Carryover Documentation)	# LIHTC Units	Total # of Units	# of HOME Units	# of Market Units	# of Mgr. Units	# of Units Based Upon % Income Restriction			Applicable Fraction
						*30%	50%	60%	
									%
									%
									%
									%
									%
									%
									%
									%
									%
									%

\*Separately identify units serving as both HOME units and as a 30% AMI, tax credit unit.