

**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 or will covenant to maintain the Section 42 rent and income restrictions for an additional period of time as evidenced in Appendix A, hereto. The Development Owner agrees that it is subject to the terms and requirements set forth in Appendix A, which are incorporated into this AGREEMENT, and made a part hereof (Initial if applicable _____); 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

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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

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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 any lien holder of record on the Development, and submit with this AGREEMENT, the written consent of each such lien holder 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(d) 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, 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 99-year 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.

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- (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.
- (m) The Development Owner agrees to comply fully with the requirements of the Fair Housing Act, 42 U.S.C. 3601 *et seq.*
- (n) 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.
- (o) 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 Appendix B which is incorporated herein word for word,:

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

- (a) (1) At least 20% (_____) of the residential units in the
(minimum number of units so restricted)
 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% (_____) of the residential units in the
(minimum number of units so restricted)
 Development are both rent-restricted and occupied by individuals whose income is 60% or less of the area median gross income.

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(3) At least 15% (_____) of the residential units in the
(minimum number of units so restricted)
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% (_____) of the residential units in the
(minimum number of units so restricted)
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 Appendix B, hereto. The Development Owner further agrees that it is subject to the requirements set forth in Appendix B, 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.

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 _____ years following the first day of the Compliance Period
(minimum 30 years)
for any low-income building a part of the Development. All low-income buildings, a part of the Development, are identified in Appendix B 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 subsection 5(a) above, this AGREEMENT may terminate for any low-income building, a part of the Development, pursuant to the provisions of Section 42(h)(6)(E)(i)(II) of the Code.

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- (d) Notwithstanding termination of this AGREEMENT pursuant to subsections 5(b) and 5(c) 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.
- (e) 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 “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

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 (*Development Owner*)

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.

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(Development Owner)

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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: _____
(Signature of Authority Representative)

Mac Dodson
(Printed Name of Authority Representative)

President
(Title/Position of Authority Representative)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

On this day before me the undersigned officer, personally appeared Mac Dodson personally known to me to be 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 _____, 200____.

My Commission Expires:

(Notary Public Signature)

Seal:

LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS
BETWEEN _____, and
(Development Owner)

APPENDIX A – ADDITIONAL USE RESTRICTIONS
(Mark the block beside each restriction elected in the Application)



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:

_____ .

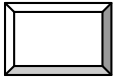
At the time of the execution of this AGREEMENT, the organization(s) providing these services is/are:

_____ .

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.

(Development Owner)

APPENDIX A – ADDITIONAL USE RESTRICTIONS
(Mark the block beside each restriction elected in the Application)



Elderly 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



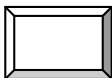
is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and adheres to policies and procedures which demonstrate an intent by the Development Owner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

APPENDIX A – ADDITIONAL USE RESTRICTIONS
(Mark the block beside each restriction elected in the Application)



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.



Elected to Extend the “Compliance Period.”

The Development Owner elected to extend the applicable Section 42 income and rent restrictions for additional _____ years beyond the close of the Compliance Period.
(number)

(NOTE: As a result of this election by the Development Owner, the period referred to in Section 42(h)(6)(I) of the Code is delayed for an equal number of years as that extending the Compliance Period.)

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Exhibit A – LEGAL DESCRIPTION

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BETWEEN _____, and

(Development Owner)

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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(d) 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, as described in subsections 5(b) and 5(c), by any party shall be subject to the provisions of subsection 5(d) 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: _____
(Signature of Lien Holder’s Representative)

Printed Name: _____

Title/Position: _____

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
(Name of Lien Holder’s Representative)

_____ of _____
(Title/Position Held) *(Lien Holder)*

a _____, and was authorized in such capacity to
(E.g., Corporation, Limited Liability Company; Partnership; Limited Partnership)

execute the above “Exhibit B – Lien Holder’s Consent” on behalf of _____
(Lien Holder)

_____ 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 _____, 2008.

My Commission Expires: _____
(Notary Public Signature)

Seal:

LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS
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(Development Owner)