

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

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (the "AGREEMENT") dated as of ***, 2005 by *** (the "Owner") and its successors, assigns, is given as a condition precedent to the allocation of low-income housing credits ("Credit") by Kansas Housing Resources Corporation (KHRC), a corporation organized in the State of Kansas together with any successor to its rights, duties and obligations, (the "Corporation").

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of a low income rental housing development located on lands in the City of ***, County of***, State of Kansas, more particularly described in Exhibit A hereto, known as or to be known as *** (the "Project"); and

WHEREAS, Owner has applied to the Corporation for an allocation of Credit to the Project in an amount not to exceed \$***; and

WHEREAS, the Owner has represented to the Corporation in Owner's Low-Income Housing Tax Credit Application (the "Application") that Owner shall lease 100% of the units in the Project to individuals or families whose income is 60% or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the Internal Revenue Code at the time of their initial occupancy of the unit ("Low-Income Tenants"); and

WHEREAS, the Owner has represented to the Corporation in Owner's application that it will covenant to maintain the Section 42 rent and income restrictions for an additional period of time; and

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

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

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

SECTION 1 - DEFINITIONS

- (a) All words and phrases defined in Section 42 of the Code and by Treasury or HUD regulations pertaining thereto shall have the same meanings in this Agreement.
- (b) Compliance period is defined, with respect to any building, as the period of 15 taxable years beginning with the first taxable year of credit period.
- (c) Placed in Service is defined according to IRS Notice 88-116 for a new or existing building, as that date when the first unit of the building or project is certified as available for occupancy in accordance with state or local law, or for rehabilitation expenditures treated as a separate new building are placed-in-service at the close of any 24 month period, over which such expenditures are aggregated. Placed In Service date will be as indicated on the issued IRS Form 8609.

SECTION 2 - RECORDING & FILING: COVENANTS TO RUN WITH THE LAND

- (a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Corporation an executed original of the recorded Agreement showing the date, deed book and page numbers of record. The Owner agrees that the Corporation will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until the Corporation has received the recorded executed original of the Agreement.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project Land during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project Land and the Project (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the term of this Agreement, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project Land, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the Corporation and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Kansas to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that

an equitable servitude has been created to insure that these restrictions run with the land, for the longer of the period this Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

- (c) The Owner covenants to obtain the consent of any present or prior recorded lien holder on the Project, still in effect, to this Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

SECTION 3 - REPRESENTATIONS, COVENANTS & WARRANTIES OF OWNER

The Owner hereby presents, covenants and warrants as follows:

- (a) The Owner (i) a ***, duly organized under the laws of the State of Kansas, and is qualified to transact business under the laws of Kansas, (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 Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any or other corporation or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, Loan Documents relating to the Project or other permitted encumbrances).
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other corporation now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially, adversely affect its financial condition.

- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations.
- (f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.
- (g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.
- (h) The Owner agrees to comply fully with the requirements of the Fair Housing Act and as it may be amended. The Owner shall not refuse to lease any unit in the Project to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder. The Owner further agrees to accept Section 8 certificate or voucher holders if the advertised rent is less than the fair market rent, or, in the event the advertised rent is greater than the fair market rent, if the voucher holder is willing to pay the additional rent amount. The Owner agrees to not use a minimum income test in making this determination. The Owner may use other reasonable and prudent tests to determine tenant eligibility and acceptability.
- (i) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy.
- (j) Subject to the requirements of Section 42 of the Code and this Agreement, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the project or any low-income portion of the Project. The Owner agrees that the Corporation may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code. It is understood that no building in the Project may be sold or otherwise disposed of to any person unless all of such building is disposed of to such person.
- (k) The Owner agrees to notify the Corporation in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

- (l) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.
- (m) The Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use. The Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.
- (n) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (o) The Owner agrees that the representations made in the Application for credits and the specific property characteristics, which are enumerated in Exhibit B, are incorporated into this Agreement.

SECTION 4 - INCOME RESTRICTIONS: RENTAL RESTRICTIONS

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

- (a)
 - (1) ___ At least 20% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 50% or less of area gross median income.
 - (2) X At least 40% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 60% or less of area gross median income.
 - (3) ___ As represented in the Application, at least ___% of the residential units in the Project are both rent-restricted and occupied by individuals or families whose income is ___% or less of the area gross median income.
- (b) The determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant.

SECTION 5 - TERM OF AGREEMENT

- (a) Except as hereinafter provided, this Agreement and the Section 42 Occupancy Restrictions specified herein shall commence with the first day in the Project compliance period on which any building which is part of the Project is Placed-In-Service (see Section 2 for Definition) and shall end on the date which is 15 years after the close of the compliance period.
- (b) Notwithstanding subsection (a) above, the Owner shall comply with the requirements of Section 42 relating to the extended use period for an additional 15 years, provided, however, the extended use period for any building which is part of this Project shall terminate:
 - (1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or
 - (2) On the date the building is acquired by purchase by qualified Low Income Tenants; or
 - (3) On the last day of the compliance period if the Owner has properly requested pursuant to Section 42 that the Corporation assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project and the Corporation is unable to present a qualified contract.
- (c) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of 15 years following the termination of the extended use requirement pursuant to the procedures specified in subsection (b) (1) and (b)(3) above. During such 15 year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed the Code with respect to such low-income unit.

SECTION 6 - ENFORCEMENT OF KHRC OCCUPANCY RESTRICTIONS

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Corporation, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the KHRC Occupancy Restrictions specified in this Agreement.
- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES

- (d) Governing Law. This Agreement shall be governed by the laws of the State of Kansas, and, where applicable, the laws of the United States of America.
- (e) Survival of Obligation. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.
- (f) Interpretation. The provisions of this Agreement are intended to comply with Code section 42 as the same may be amended or interpreted from time to time by regulation or public pronouncement issued by the IRS. If any provision of this Agreement is inconsistent with any provisions of section 42 or official IRS interpretations thereof, as the same may be amended or interpreted, then such inconsistent provision shall be construed and applied in a manner so as to comply with Code section 42.

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

Kansas Housing Resources Corporation:

By: _____ Date: _____
Norma Phillips
Executive Vice President

State of Kansas)
) ss.
County of Shawnee)

This Agreement was acknowledged, subscribed, and sworn to by Norma Phillips, Executive Vice President of the Kansas Housing Resources Corporation, before me, a notary public, on the _____ day of _____ 200__.

Notary Public

My Commission Expires: _____

Owner:

By: _____ Date: _____

State of Kansas)
) ss.
County of)

This Agreement was acknowledged, subscribed, and sworn to by
_____,
before me, a notary public, on the _____ day of _____ 200__.

Notary Public

My Commission Expires: _____

EXHIBIT A

The said real property subject to said Extended Use Agreement is situated within the State of Kansas, County of *** and is legally described as follows:

Exhibit B

The specifications and characteristics of this project as represented in the application are as follows:

1. The project shall consist of *** low-income units and *** unrestricted units.
2. *** units are set-aside for general *** occupancy.
3. *** unit(s) is set-aside for a transitional, homeless family for a term of no more than 2 years per family during the period of this agreement.
4. The low income rent structure for the project is:

	<u>Rent</u>	<u>Utility Allowance</u>	<u>Gross Rent</u>
One Bedroom (*** Units)	***	***	***
Two Bedroom (*** Units)	***	***	***
Three Bedroom (*** Units)	***	***	***

Rents may be increased with the prior written approval of the Corporation.

5. Annual replacement reserves for this project are:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1	***	9	***
2	***	10	***
3	***	11	***
4	***	12	***
5	***	13	***
6	***	14	***
7	***	15	***
8	***		

6. Amenities include but are not limited to: ***