



2020/2021

2022/2023

LIHTC

Land Use Restriction Agreement (LURA)

**LAND USE RESTRICTION AGREEMENT
FOR LOW INCOME HOUSING TAX CREDITS**

Between

NEBRASKA INVESTMENT FINANCE AUTHORITY,
as Authority

and

[_____]
as Owner

WHEN RECORDED RETURN TO:

Nebraska Investment Finance Authority
Suite 200
1230 O Street
Lincoln, NE 68508-1402
Attention: Executive Director

**LAND USE RESTRICTION AGREEMENT
FOR LOW INCOME HOUSING TAX CREDITS**

THIS LAND USE RESTRICTION AGREEMENT (this “Agreement”) is entered into as of the date set forth on the Summary Page hereof among the **NEBRASKA INVESTMENT FINANCE AUTHORITY** (the “Authority”), a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions under the constitution and laws of the State of Nebraska, the **OWNER IDENTIFIED ON THE SUMMARY PAGE HEREOF** (the “Owner”) and the Lender or Lenders identified on the Summary Page hereof (the “Lender”).

W I T N E S S E T H:

WHEREAS, the Authority has been designated by the Governor of the State of Nebraska as the housing tax credit entity for the State of Nebraska for the allocation of low income housing tax credit dollars; and

WHEREAS, the Owner is or shall be the owner of the rental housing development located and as described on the Summary Page hereof and in Exhibit A hereto (the “Project”); and

WHEREAS, the Owner has applied to the Authority for an allocation of federal low income housing tax credit (“LIHTC”) to the Project in an amount not to exceed the amount set forth on the Summary Page hereof; and

WHEREAS, the Owner has applied to the Authority for an allocation of Nebraska state affordable housing tax credit (“AHTC”) to the Project in an amount not to exceed the amount set forth on the Summary Page hereof; and

WHEREAS, the Owner and the Project must continuously comply with Section 42 and other applicable sections of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder (the “Regulations”); and

WHEREAS, compliance by the Owner and the Project with Section 42 of the Code is in large part within the control of the Owner; and

WHEREAS, the Authority is unwilling to allocate LIHTC or AHTC to the Project unless the Owner shall, by entering into this Agreement, consent to be regulated by the Authority in order that the Authority may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement in accordance with the Code and the Regulations; and

WHEREAS, the Owner has represented to the Authority in the Owner’s LIHTC, AHTC, HOME, CDBG-DR and National Housing Trust Fund Application (the “Application”), the provisions of which are deemed incorporated in this Agreement as if set forth herein, that the Owner shall lease at least the Applicable Set-Aside Percentage of the Dwelling Units in the Project to individuals or families whose income is the Applicable Income Percentage or less of area median gross income (including adjustments for family size) as determined in accordance with the Code (“Qualified Tenants”); and

WHEREAS, the Owner 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 the land for the term stated herein and binding upon all subsequent owners of the Project for such term and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Authority agree as follows:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof, and all words and phrases defined in Section 42 of the Code shall have the same meanings in this Agreement:

“Affordability Period” means the period beginning on the Occupancy Date and ending on the date which is the Required Number of Years after the Occupancy Date as set forth on the Summary Page.

“Applicable Income Percentage” means the percentage stated on the Summary Page hereof as the percentage of area median gross income, which may not be exceeded by individuals or families qualifying as Qualified Tenants.

“Applicable Set-Aside Percentage” means the percentage stated on the Summary Page hereof as the percentage of Dwelling Units in the Project to be leased to Qualified Tenants.

“Dwelling Units” means the units of multifamily residential rental housing comprising the Project.

“Functionally Related and Subordinate” means and includes facilities for use by tenants; for example, laundry facilities, parking areas and recreational facilities, provided that the same are of a character and size commensurate with the character and size of the Project.

“Occupancy Date” means the first day on which the Project is placed in service, as set forth on the Summary Page hereof.

“Project” means the Project Site and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the Project Site.

“Project Site” means the real property described in Exhibit A attached hereto.

“Qualified Basis” as set forth on the Summary Page.

“Qualified Contract Required Number of Years” means the minimum number of years after the Occupancy Date, as set forth on the Summary Page (or if an election is made by the Owner pursuant to Section 42(f)(1) of the Code, after the succeeding taxable year set forth on the Summary Page), after which this Agreement shall terminate subject to the terms of Section 5 of this Agreement, provided that the Owner has requested that the Authority assist in procuring a

“qualified contract” in accordance with Section 42(h)(6) of the Code and that the Authority or other entity has been unable to present such a qualified contract.

~~“Qualified Project Period” means the period beginning on the Occupancy Date and ending on the date which is the Required Number of Years after the Occupancy Date as set forth on the Summary Page.~~

“Qualified Tenants” means and includes individuals and families whose income is equal to or less than the Applicable Income Percentage of area median gross income (including adjustments for family size) as elected and determined in accordance with the Code and Regulations. Except as otherwise provided herein, the occupants of a Dwelling Unit shall not be considered to be of low income if any occupant is a student (as defined in Section 151(c)(4) of the Code). Notwithstanding the foregoing, a Dwelling Unit is not disqualified as a Qualified Unit merely because it is occupied (i) by a student receiving AFDC or TANF assistance under Title IV of the Social Security Act, (ii) by a student who was previously under the care and placement responsibility of the state agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, (iii) by a student in a government-supported job training program, (iv) entirely by full-time students who are single parents and their children, provided such occupants are not dependents (as defined in Code Section 152, determined without regard to subsection (b)(1), (b)(2), and (d)(1)(B) thereof) of another person or (v) by full-time students who are married and file a joint return. The determination of whether an individual or family is a Qualified Tenant shall be made at least annually on the basis of the current income of such occupants. Any Dwelling Unit occupied by an individual or family who is a Qualified Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Qualified Tenant, provided that, should such Qualified Tenant’s income subsequently exceed 140% of the applicable income limit, such tenant shall no longer be a Qualified Tenant if, after such determination of income, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualified Tenant.

“Qualified Unit” means a Dwelling Unit in the Project designated for occupancy by Qualified Tenants.

“Related Persons” means two or more persons related within the meaning of Section 147(a)(2) of the Code, including, but not limited to, familial and trust relationships, actual or attributed partnership interests, related corporations and certain corporate shareholders.

“Rent Restricted Unit” means a Dwelling Unit if the gross rent with respect to the Dwelling Unit does not exceed 30% of the imputed income limitation applicable to such Dwelling Unit (based on the number of bedrooms therein in accordance with Section 42(g)(2)(C) of the Code).

“Required Number of Years” means the number of years after the Occupancy Date on which the ~~Qualified Project Affordability~~ Period expires and as set forth on the Summary Page.

“Supportive Services and Amenities” means the supportive services and amenities provided by the Owner to the tenants as set forth in the Application or on the Summary Page.

Section 2. Representation, Covenants and Warranties of the Owner. The Owner makes the following representations and warranties to induce the Authority to enter into this Agreement and further represents, warrants and covenants that:

(a) The Owner (i) is a legal organization as described on the Summary Page hereof organized under the laws of the State identified on the Summary Page thereof and is qualified to transact business under the laws of the State of Nebraska, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as contemplated by this Agreement) and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(b) The execution and performance of this Agreement by the Owner will not (i) violate or, as applicable, has not violated any provision of law, rule or regulation or any order of any court or other agency or governmental body, (ii) violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Owner is a party or by which it or its property is bound and (iii) result in the creation or imposition of any prohibited lien, charge or 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 prior lien or encumbrance.

(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 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 contemplated by this Agreement) or would materially adversely affect its financial condition.

(e) The Owner will take any lawful action (including the amendment of this Agreement as may be necessary, in the opinion of the Authority) to comply fully with the Code and all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury, the IRS, or the United States Department of Housing and Urban Development.

Section 3. Residential Rental Project. The Owner hereby agrees that the Project is to be developed, owned, managed and operated for the Qualified Project Affordability Period as “residential rental property,” as such phrase is used in Section 42(d) of the Code, on a continuous basis during the Qualified Project Affordability Period. To that end, the Owner hereby represents, covenants, warrants and agrees as follows:

(a) The estimated cost (or final cost, if applicable) of the acquisition, construction and rehabilitation of the Project will be equal to or in excess of the amount set forth on the Summary Page.

(b) The Project constitutes and will continue to constitute “residential rental property,” as defined in Section 42 of the Code and the Regulations, the Dwelling Units of which will be rented or available for rental on a continuous basis to members of the general public.

(c) If the Owner becomes aware of any situation, event or condition, which would result in noncompliance of a Dwelling Unit, the Project or the Owner with Section 42 of the Code or the Regulations, the Owner shall promptly give written notice thereof to the Authority.

(d) That all of the Dwelling Units will be similarly constructed and that each Dwelling Unit in the Project shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family (unless the Project qualifies as a single-room occupancy project or as transitional housing for the homeless pursuant to Section 42(i)(3) of the Code).

(e) That each building in the Project will remain suitable for occupancy taking into account all federal, state and local health, safety and building codes (or other habitability standards).

(f) That none of the Dwelling Units in the Project shall at any time be utilized on a transient basis (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless pursuant to Section 42(i)(3) of the Code); that none of the Dwelling Units in the Project shall be leased or rented for a period of less than six (6) months (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless pursuant to Section 42(i)(3) of the Code); and that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer park, trailer court, mobile home park, or recreational vehicle park or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code).

(g) That once available for occupancy each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public on a non-transient basis (except for transitional housing for the homeless or single-room occupancy units provided under Section 42(i)(3)(B)(iii) and (iv) of the Code) for the Qualified Project Affordability Period.

(h) That the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with the Code and this Agreement, except for any units rented under the housing program pursuant to Section 8 of the United States Housing Act of 1937, as amended, which will be leased to eligible tenants in accordance with the constraints and regulations of such housing program.

(i) That the Project shall consist of one or more proximate buildings or structures located on a single tract of land which have similarly constructed units financed pursuant to a common plan (unless the Project qualifies as a scattered site project under

Section 42(g)(7) of the Code), together with functionally related and subordinate facilities which shall be owned by the Owner or a Related Person.

(j) That the Owner shall not discriminate on the basis of race, religion, color, sex, sexual preference, age, handicap, marital status, national origin, familial status, source of income or disability in the lease, use or occupancy of the Project or in employment of persons for the operation and management of the Project.

(k) That the Owner will accept as tenants, on the same basis as all other prospective tenants, persons who are holders of vouchers or certificates for federal housing assistance payments for existing housing pursuant to Section 8 of the United States Housing Act of 1937 or a successor federal program, and, in connection therewith, the Owner will not apply tenant selection criteria to such voucher or certificate holders which are more burdensome than the criteria applied to any other prospective tenants.

(l) That the Owner will not discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, state or local program or on the basis that they have a minor child or children living with them.

(m) That the Owner will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of subjecting the Owner of the Project to noncompliance with Section 42 of the Code and the Regulations.

(n) That the Owner (i) will not dispose to any person or entity any portion of the Project to which this Agreement applies, unless all of the Project is disposed of to such person or entity and (ii) may sell, transfer or exchange the entire Project at any time, ~~but provided~~ the Owner shall notify obtain the prior written consent of the Authority as set forth in writing Section 14 hereof prior to such sale, transfer or other disposition of the Project and shall 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. The Owner shall promptly notify the Authority of such transfer. This provision shall not act to waive any other restriction on such sale, transfer or exchange of the Project.

(o) That the Owner (or its property manager with respect to the Project) shall attend in each year of the Qualified Project Affordability Period at least one of the property management/compliance monitoring sessions sponsored by the Authority.

(p) For each year of the Qualified Project Affordability Period, the Owner will submit to the Authority a copy of the Project's filed IRS Form 1065.

Section 4. Occupancy Restrictions. For the purpose of satisfying the requirements of Section 42 of the Code and the requirements of the Authority, for the duration of the Qualified Project Affordability Period, the Owner hereby represents, covenants and agrees as follows:

(a) At least the Applicable Set-Aside Percentage of the completed Dwelling Units in the Project (excluding Dwelling Units not previously occupied) shall be both Rent Restricted Units and occupied solely by Qualified Tenants, prior to the satisfaction of

which no additional units shall be rented or leased to any other tenants after initial rental occupancy of Dwelling Units by Qualified Tenants, as required by Section 42 of the Code. For purposes of satisfying the requirement that not less than the Applicable Set-Aside Percentage of the Dwelling Units be occupied by Qualified Tenants, no Qualified Tenant shall be denied continued occupancy because, after admission, the Qualified Tenant's family income exceeds the applicable qualifying income level set forth in the definition of "Qualified Tenant" herein. The Owner shall at all times during the Qualified Project Affordability Period maintain the percentage requirements of this Agreement by providing the next available unit of comparable or smaller size to Qualified Tenants as needed to achieve compliance with the foregoing requirements. If necessary, the Owner shall refrain from renting Dwelling Units in the Project to persons other than Qualified Tenants in order to avoid violating the requirement that at all times during the Qualified Project Affordability Period at least the Applicable Set-Aside Percentage of the completed Dwelling Units in the Project shall be both a Rent Restricted Unit and occupied by Qualified Tenants.

(b) To obtain and maintain on file for each Qualified Tenant residing at the Project (which shall be obtained and updated each year during occupancy by such tenant), a copy of such tenant's executed Certification of Tenant Eligibility and Income Verification (in such form and manner as may be required by the applicable rules, regulations or policies now or hereafter promulgated by the Authority, the Department of the Treasury or the Internal Revenue Service (the "IRS")), as well as supporting documentation, which is subject to independent investigation and verification by the Authority and which shall be submitted to the Authority as set forth in (c) below.

(c) The Owner will immediately notify the Authority if at any time any of the Qualified Units in the Project are not occupied or available for occupancy as provided above. In addition, the Owner will prepare and submit to the Authority, no later than January 15 of each year following the first year of the Qualified Project Affordability Period, (i) a Certificate of Continuing Program Compliance (the form of which is published on the website of the Authority or otherwise available from the Authority) and (ii) an Annual Tax Credit Summary Report (the form of which is published on the website of the Authority or otherwise available from the Authority), both executed by the Owner stating the number of Dwelling Units in the Project which, as of the first date of each previous calendar year, were occupied by Qualified Tenants (or were deemed to be occupied by Qualified Tenants as provided in subparagraph (a) above for all or part of such period), together with copies of annual Certifications of Tenant Eligibility and Income Verification (and supporting documentation) collected by the Owner.

(d) The Owner shall collect and keep records for each qualified low income building in the Project, and submit to the Authority as required by this Section 4, which show for each year during the Qualified Project Affordability Period the following information for each building in the Project and shall retain such records for at least six (6) years after the due date (with extensions) for filing the federal tax return for that year (provided, however, that the records for the first (1st) year of the Qualified Project Affordability Period must be retained for at least six (6) years beyond the due date

(with extensions) for filing the federal income tax return for the last year of the compliance period of the building):

(i) the total number of Dwelling Units in each building (including the number of bedrooms and the size in square feet of each residential rental unit);

(ii) the percentage of Dwelling Units in each building that are Qualified Units;

(iii) the rent charged for each Dwelling Unit in the building, including any utility allowances;

(iv) the Supportive Services and Amenities, as set forth in the Application and on the Summary Page, including any amendments thereto agreed to by the Authority and the Owner. The Owner shall specify the ongoing monthly cost of each Supportive Service and Amenity, per Dwelling Unit, and, for any Supportive Services and Amenities which are not fully paid by the Owner, as applicable, the monthly cost to Qualified Tenants of each Supportive Service and Amenity available if a Qualified Tenant elects to pay for such Supportive Services or Amenities.

(v) the number of occupants in each Qualified Unit and any changes in the number of occupants in each Qualified Unit;

(vi) the Qualified Unit vacancies in each building and information that indicates when and to whom the next available units were rented to;

(vii) the annual income certification of each Qualified Tenant per Qualified Unit;

(viii) documentation to support each Qualified Tenant's annual income certification (for example, a copy of the Qualified Tenant's federal income tax return, Forms W-2 or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is to be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8") and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this subsection 4(d)(vii) is satisfied if the public housing authority provides a statement to the Owner declaring that the tenant's income does not exceed the applicable income limit under Code Section 42(g);

(ix) the eligible basis and the Qualified Basis of each building at the end of the first year of the Qualified Project Affordability Period; and

(x) the character and use of the nonresidential portion of each building included in the eligible basis of the building under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which

no separate fee is charged for use of the facilities or facilities reasonably required by the Project);

(e) Throughout the Qualified Project Affordability Period, the Authority, or its designated agent, shall have the right to perform inspections of the Project, (including each building in the Project and each unit in each building), in any manner determined by the Authority, including, but not limited to, onsite inspections and virtual inspections.

(f) The form of lease to be used by the Owner in renting any Dwelling Units in the Project to Qualified Tenants shall provide for termination of the lease and consent by such person to immediate eviction proceedings in accordance with state law for failure to meet the requirements of a Qualified Tenant, as applicable, as a result of any material misrepresentation made by such person with respect to his or her income, the failure to provide supporting income verification or failure by such person to annually update the Certification of Tenant Eligibility and Income Verification.

(g) To permit any duly authorized representative of the Authority, the Department of the Treasury or the IRS to inspect the books and records of the Owner pertaining to the incomes of the Qualified Tenants residing in the Project, including, but not limited to, each tenant file.

(h) Throughout the Qualified Project Affordability Period, to target rents, to comply with targeted rent levels and to comply all other conditions of targeting as set forth on the Summary Page hereof.

Section 5. Term of Restrictions.

(a) The term of the occupancy restriction set forth in Section 4 of this Agreement shall (i) commence on the Occupancy Date and (ii) end on the date which is the Required Number of Years after the Occupancy Date (the "Qualified Project Affordability Period"). During the Qualified Project Affordability Period, the Owner shall not evict or terminate the tenancy of an existing tenant of any Dwelling Unit other than for good cause and shall not increase the gross rent above the maximum allowed under Section 42 of the Code with respect to any Qualified Unit.

(b) For the duration of the Qualified Project Affordability Period, the Owner shall comply with the requirements of Section 42(h) of the Code relating to an extended use period (a minimum of 15 years or such greater number of years as set forth on the Summary Page hereof) for a total Required Number of Years as set forth on the Summary Page; provided, however, that, with respect to any building that is part of the Project, this Agreement shall terminate:

(i) on the date such building is acquired by foreclosure or instrument in lieu of foreclosure (including a deed of trust), if the foreclosure or instrument in lieu of foreclosure is determined to be in compliance with Section 42(h)(6) of the Code; or

(ii) after the expiration of the Qualified Contract Required Number of Years, but only if the Owner has properly requested, in accordance with Section 42(h)(6) of the Code, that the Authority assist in procuring a qualified contract for the acquisition of the non-low income portion of the building for fair market value and the low income portion of such building for an amount not less than the price specified in Section 42(h)(6) of the Code, and the Authority is unable to present a qualified contract within one (1) year after the date the written request submitted to the Authority, and the request has been reviewed by the Authority and determined to be in compliance with the requirements of the Authority and Section 42(h)(6) of the Code. **[If the option to request a Qualified Contract has been waived pursuant to the Application, delete (ii) above.]**

In the event foreclosure proceedings are initiated, the Authority shall receive notice of such foreclosure from the Owner no less than 30 days prior to such foreclosure.

(c) Notwithstanding the foregoing in subsections (a) and (b) above, the rent requirements set forth in Section 42 of the Code shall continue with respect to the Qualified Units for a period of three (3) years following the termination or expiration of this Agreement. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any Qualified Unit other than for good cause and shall not increase the gross rent above the maximum allowed under Section 42 of the Code with respect to such Qualified Unit (the “Vacancy Decontrol Rule”), regardless of whether the tenant is an existing tenant or a new tenant occupying the Qualified Unit subsequent to the termination of this Agreement. In addition, during such three-year period, the Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are holders of vouchers or certificates for federal housing assistance payments for existing housing pursuant to Section 8 of the United States Housing Act of 1937 or a successor federal program or similar state or local voucher or certificate program, and, in connection therewith, the Owner will not apply tenant selection criteria to such voucher or certificate holders which are more burdensome than the criteria applied to any other prospective tenants.

(d) If the Project experiences financial trouble the Owner may request a waiver from the Authority of the applicable rent restrictions stated on the Summary Page of this Agreement. The right to grant a rent restriction waiver is vested in the Executive Director of the Authority. A waiver will be based on written evidence submitted to the Authority by the Owner which must be evaluated and certified by an independent third-party CPA. The Authority may waive or adjust the rent restrictions stated on the Summary Page for a period not to exceed 36 months. After 30 months, a review by the Authority of the current evidence will be conducted to determine if the waiver should be extended.

Conditions justifying a waiver of the rent restrictions include, but are not limited to the following:

(i) Extraordinary changes in the operating expenses of the Project;

(ii) Capital requirements that are necessary to maintain a safe and sanitary Dwelling Unit, suitable for occupancy; or

(iii) A Project lender originates changes to the financial conditions and debt arrangement that substantially impacts the debt service coverage ratio requirements of the Project.

Any dispute of a waiver decision by the Executive Director of the Authority can be appealed by the Owner of the Project and settled by arbitration. Absent agreement to a different forum or arbitration panel, such arbitration proceeding shall be conducted under the Commercial Rules of the American Arbitration Association. Regardless of the forum, the prevailing party (if there is a prevailing party as determined by the arbitration panel) shall be entitled to reimbursement of its filing fees and arbitrator's fees from the non-prevailing party, to be assessed as part of the arbitration award. The arbitration panel shall consist of the following mutually acceptable representatives:

(A) A representative selected by the Executive Director of the Authority, which representative shall not have any interest, direct or indirect, in the Project but shall have expertise in the area related to the dispute (e.g., finance, construction management or property management);

(B) A representative selected by the Owner of the Project, which representative shall not have any interest, direct or indirect, in the Project but shall have expertise in the area related to the dispute (e.g., finance, construction management or property management); and

(C) A representative from the American Arbitration Association or other agreed upon, certified mediator or arbitrator (moderator or voting member).

Under no circumstances shall the waiver process provide an opportunity for the Project to deviate from the rent restrictions stated on the Summary Page because of improved market conditions or for any reason other than an increase in the Project's county area median income, without the prior approval of the Executive Director of the Authority.

Section 6. Internal Revenue Service Notification. In the event the Authority discovers any noncompliance of any provisions of this Agreement, the Authority shall immediately give written notice to the Owner. The Owner shall have sixty (60) days from the date of such notice (the "Correction Period") to correct such noncompliance. Following the Correction Period, the Authority will file with the IRS a copy of IRS Form 8823, explaining the nature of the noncompliance and whether or not such noncompliance has been corrected. Noncompliance includes, but is not limited to (a) failure to receive or failure to permit the Authority to inspect tenant income certifications, supporting documentation and/or rent records, (b) upon inspection, noncompliance with provisions of Section 42 of the Code, and (c) any change in the applicable fraction or eligible basis of the Project that would result in a decrease in the Qualified Basis.

Section 7. Covenants Run With the Project Site. The Owner hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the Project Site and shall pass to and be binding upon the Owner's

successors in title including any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

Section 8. Uniformity; Common Plan. The provisions of this Agreement shall apply uniformly to the entire Project to establish and carry out a common plan for the use, development and improvement of the Project Site.

Section 9. Remedies; Enforceability. In the event of a violation or attempted violation of any of the provisions of this Agreement, 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: (a) the Authority or any governmental entity succeeding to the Authority's functions, or (b) any individual who meets the income limitation applicable under Section 42 of the Code (whether prospective, present or former occupant). The provisions of this Agreement are imposed upon and made applicable to the Project and shall run with the Project Site and shall be enforceable against the Owner and each purchaser, grantee, owner or lessee of the Project or any portion thereof or interest therein, at any time and from time to time, and the respective heirs, legal representatives, successors and assigns of the Owner and each such purchaser, grantee, owner or lessee. No delay in enforcing the provisions of this Agreement 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. In addition, if any violation of this Agreement is not corrected on a timely basis, the Authority may impose quarterly reporting responsibilities pertaining to such matters as the Authority deems reasonable upon the Owner. Failure by the Owner to comply with any such reporting responsibilities shall constitute a violation of this Agreement.

Section 10. Amendment; Termination. Except as set forth in Section 2(e) hereof, the provisions of this Agreement shall not be amended, revised or terminated (except as provided in Sections 5 and 7 of this Agreement) prior to the stated term hereof except by an instrument in writing duly executed by the Authority and the Owner (or its successors in title) and duly recorded. The Authority's consent to any such amendment, revision or termination, other than a termination pursuant to Section 5 of this Agreement, shall be given only if (a) there shall be attached to the document evidencing such amendment, revision or termination an opinion of Owner's counsel satisfactory to the Authority that such amendment, revision or termination will not result in noncompliance of the Project or the Owner with Section 42 of the Code or (b) evidence satisfactory to the Authority has been submitted to the Authority demonstrating that there has occurred an involuntary noncompliance caused by fire, seizure, requisition, change in federal law, action of a federal agency which prevents the Authority from enforcing this Agreement or

condemnation or similar event. Notwithstanding the foregoing, this Agreement shall not terminate by reason of the aforementioned foreclosure, transfer of title by deed in lieu of foreclosure or other similar event if the Owner or any related person or any person with whom the Owner has had family or business ties obtains an ownership interest in the Project for federal tax purposes during the period in which the restrictions of this Agreement are or would be in effect.

Section 11. No Conflict With Other Documents. The Owner represents, warrants, and covenants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement 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 herein.

Section 12. Fees, Release and Indemnification. The Owner agrees to pay the Authority the various fees at the times and in the amounts set forth in the Authority's qualified allocation plan related to the LIHTC and the AHTC. Any extraordinary legal fees incurred by the Authority with respect to the Project will be paid by the Owner. The Owner hereby agrees to pay, indemnify and hold the Authority harmless from any and all costs, expenses and fees, including all reasonable attorneys' fees which may be incurred by the Authority in enforcing or attempting to enforce this Agreement, including, but not limited to (a) in the event that the various reports are not submitted as required hereunder and the Authority conducts an on-site inspection of the Owner's book and records and/or (b) following any default on the part of the Owner hereunder or its successors, whether the same shall be enforced by suit or otherwise, together with all costs, fees and expenses which may be incurred in connection therewith; and/or (c) all costs, fees and expenses which may be incurred in connection with any interpretation of or amendment to this Agreement or otherwise by the Authority at the request of the Owner (including, but not limited to, the reasonable fees and expenses of the Authority's counsel in connection with any opinion to be rendered hereunder). The Owner agrees to release the Authority from any claim, loss, demand or judgment as a result of the allocation of tax credit dollars to the Project or the recapture of same by the IRS and to indemnify the Authority for any claim, loss, demand or judgment against the Authority as the result of an allocation of LIHTCs or AHTCs to the Owner related to the Project or the recapture of same by the IRS or the State of Nebraska.

Section 13. Right of First Refusal. If the Summary Page to this Agreement indicates that the Owner has agreed to provide a right of first refusal to a non-profit entity (the "Right of First Refusal"), the Owner agrees and represents the following:

(a) the representations made by the Owner in connection with the submission of the Application and Final Cost Certification regarding the Right of First Refusal are hereby ratified in their entirety and the materials submitted with the Application and Final Cost Certification regarding the Right of First Refusal remain true and correct.

(b) In the event the non-profit entity designated by the Owner ceases to exist, an alternative non-profit entity shall be proposed by the Owner with respect to the Right of First Refusal. Such alternative non-profit entity must, at a minimum, meet the same requirements set forth in the Application with respect to the non-profit entity being granted the Right of First Refusal (including that such non-profit entity

have an organizational purpose that includes the development, ownership or operation of affordable housing for low income persons and families), must meet any additional requirements of the Code and must be acceptable to, and approved in writing by, the Authority.

Section 14. Sale, Transfer or Other Disposition of the Project. (a) Any transfer, sale or other disposal by the Owner of the Project requires the prior written consent of the Authority and payment of the fee set forth in the Authority's qualified allocation plan related to the LIHTC and the AHTC. Such notice of proposed sale, transfer or disposition shall be provided by the Owner to the Authority ~~no later than~~ at least 60 days prior to the date of the proposed sale, transfer or disposition of the Project.

(b) Upon any such transfer, sale or other disposal of the development, any existing right of the Owner to request, in accordance with Section 42(h)(6) of the Code, that the Authority assist in procuring a qualified contract for the acquisition of the Project, shall terminate with respect to the Project as of the date of such transfer, sale or disposition of the Project. Such termination of the right to proceed through the qualified contract process shall be binding on all subsequent owners of the Project. No transferee/subsequent owner of the Project shall have any right to request a qualified contract pursuant to Section 42(h)(6) of the Code.

~~**Section 13.**~~ **Section 15. Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

~~**Section 14.**~~ **Section 16. Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below or to such other place, or in such other manner, as a party may from time to time designate in writing:

Owner: To the name and address set forth on the Summary Page hereof.

Authority: Nebraska Investment Finance Authority
Suite 200
1230 O Street
Lincoln, NE 68508
Attention: Executive Director

~~**Section 15.**~~ **Section 17. Governing Law.** This Agreement shall be governed by the laws of the State of Nebraska.

~~**Section 16.**~~ **Section 18. Recording and Filing.** Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments and supplements hereto to be duly recorded in the office of public records in the County where the Project is located as an encumbrance upon the Project Site and provide a copy to the Authority.

~~**Section 17.**~~ **Section 19. Termination.** Notwithstanding any other provisions hereof, this Agreement and the restrictions and other provisions hereunder shall terminate on the

termination of the ~~Qualified Project~~Affordability Period without any further action being taken by any party hereto.

~~Section 18.~~ **Section 20.** **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

~~Section 19.~~ **Section 21.** **Subordination.** The Owner has borrowed funds from Lender, and such amounts are secured by the Project. In order to ensure the viability of the Project's federal low income housing tax credits pursuant to Section 42 of the Code, Lender hereby agrees to subordinate its rights prior to foreclosure to the provisions of this Agreement throughout the term of this Agreement, as set forth in Section 5, and to the Vacancy Decontrol Rule following foreclosure.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives as of the day and year first written above on the Summary Page.

DRAFT

[Remainder of page left blank; signature pages to follow]

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__
by _____, the Authorized Signatory for and on behalf of
_____.

Notary Public

My Commission expires: _____

DRAFT

EXHIBIT A

DESCRIPTION OF PROJECT SITE
(including exact legal description)

DRAFT

SUMMARY PAGE

Date:

THE OWNER -

Legal Name of Owner:

Type of Legal Organization:

State of Organization:

Business Address of Owner:

Contact Person:

Phone Number:

E-mail address:

THE PROJECT -

Name of Project:

NIFA Project Number:

Project Address and Legal Description: (See Attached Exhibit A)

Total Number of Buildings:

Building Identification Numbers(s):

BIN	Applicable Fraction	Occupancy Date(s)

Total Number of Dwelling Units:

Total Number of Qualified Units:

One unit is occupied by a resident property manager: Yes/No

Cost of acquisition, construction and rehabilitation: \$

TAX CREDIT INFORMATION -

Allocation of Federal Low Income Housing Tax Credits: \$

Allocation of Nebraska Affordable Housing Tax Credits: \$

Occupancy Date: The date(s) set forth in the Table above under THE PROJECT.

Nonprofit Set-Aside: Yes/No

Project Subject to a Right of First Refusal: Yes/No

Name of Entity entitled to the Right of First Refusal: _____

Contact Information: _____

Income Election Set-Aside for IRS purposes

Applicable Set-Aside Percentage: %

Applicable Income Percentage: %

Income Averaging Set-Aside (The average area median income designation of all units must be 60% or less): _____

(Complete the table below if the Income Averaging Set-Aside has been elected and the Project has an applicable fraction of 100%)

Number of Units	Number of Bedrooms	AMI Designation

Targeted Rent Levels

____% of the Qualified Units (__ units) will have overall rents affordable at or below ____ % of the applicable area median income.
 ____% of the Qualified Units (__ units) will have overall rents affordable at or below ____ % of the applicable area median income.

Qualified Project Affordability Period

Required Number of Years: _____ Total Years (Compliance Period: 15 years plus Extended Use period _____ years)

Qualified Contract

Qualified Contract Required Number of Years : _____ Years

Additional Targeting Commitments All commitments of the Owner (as set forth in the Application and which are incorporated herein by reference), including, but not limited to the following:

[Insert a template of the various targeting commitments]

Supportive Services and Amenities Supportive Services and Amenities (as set forth in the Application and which are incorporated herein by reference), for which points were awarded during the scoring process:

Supportive Services: Total of _____ points Amenities: Total of _____ points

Other Signatories to the Agreement

Lender(s):

TABLE OF CONTENTS

	Page
Section 1. Definitions.....	2
Section 2. Representation, Covenants and Warranties of the Owner	3
Section 3. Residential Rental Project.....	4
Section 4. Occupancy Restrictions	6
Section 5. Term of Restrictions	9
Section 6. Internal Revenue Service Notification.....	11
Section 7. Covenants Run With the Project Site.....	11
Section 8. Uniformity; Common Plan	11
Section 9. Remedies; Enforceability.....	11
Section 10. Amendment; Termination.....	12
Section 11. No Conflict With Other Documents	12
Section 12. Fees, Release and Indemnification	12
<u>Section 13. Right of First Refusal.....</u>	<u>13</u>
<u>Section 14. Sale, Transfer or Other Disposition of the Project.....</u>	<u>13</u>
Section 15 ³ . Severability	13
Section 16 ⁴ . Notices	13
Section 17 ⁵ . Governing Law	13
Section 18 ⁶ . Recording and Filing.....	13
Section 19 ⁷ . Termination.....	13
Section 18 ²⁰ . Counterparts.....	13
Section 19 ²¹ . Subordination.....	13

EXHIBIT A LEGAL DESCRIPTION OF PROJECT SITE