

## ANNEX K: DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING CREDITS

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

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (this "Agreement"), dated as of    by   , a [*limited partnership or limited liability company*] organized and existing under the laws of the State of   , and its successors and assigns (the "Owner") is given as conditions precedent to the allocation of low-income housing tax credits by Puerto Rico Housing Finance Authority, a public corporation subsidiary of the Government Development Bank, and an instrumentality of the Commonwealth of Puerto Rico (together with any successor its rights, duties and obligations, the "Authority").

#### WITNESSETH

WHEREAS, the Authority has been designated by the Governor of the Commonwealth of Puerto Rico as the housing tax credit agency for the Commonwealth of Puerto Rico for the allocation of low-income housing tax credit dollars pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Owner holds or will hold [*fee simple title or leasehold title*] to the real property located in the Municipality of   , of the Commonwealth of Puerto Rico, as more fully described in **Exhibit A** attached hereto and made a part hereto (the "Land"), known as or to be known as [*name of the project*] (the "Project");

WHEREAS, Owner has applied to the Authority for an allocation of low-income housing tax credit dollars (the "Tax Credits");

WHEREAS, the Owner has represented to the Authority in Owner's application that it will impose additional rent restrictions or will covenant to maintain the rent and income restrictions under Section 42 of the Code for a period of time of [*15 years plus the number of additional years beyond the original compliance period*] years;

WHEREAS, the Code has required as a condition precedent to the allocation of the Tax Credit that the Owner execute, deliver and record in the appropriate Registry of the Property the deed covering 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 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 will 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 promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

**SECTION 1 - DEFINITIONS**

All words and phrases defined in Section 42 of the Code and all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the Department of Housing and Urban Development from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project (the "Regulations") will have the same meanings in this Agreement.

**SECTION 2 - FILING AND RECORDING; COVENANTS TO RUN WITH THE LAND**

a) Upon execution and delivery by the Owner, the Owner will cause this Agreement and all amendments hereto to be filed and recorded in the appropriate Registry of Property, and will pay all fees and charges incurred in connection therewith. Upon filing, the Owner will immediately transmit to the Authority a certified copy of the filed deed showing the date, volume and page numbers of record. The owner agrees that the Authority will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Tax Credit unless and until the Authority has received the filed certified copy of the deed containing the land use in this Agreement.

b) The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Project 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 Land and the Project (i) will be and are covenants running with the Land, encumbering the Project for the term of this Agreement, binding upon the Owner's successors in title and all subsequent owners and operators of the Project, (ii) are not merely personal covenants of the Owner, and (iii) will bind the Owner (and the benefits will inure to the Authority 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 Commonwealth of Puerto Rico to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land will be deemed to be satisfied in full, and that any requirements of privileges of estate are

intended to be satisfied. For the longer of the period this Tax 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 will expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein will 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 prior recorded lienholder on the Project to this Agreement and such consent will be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Tax Credit.

### **SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

The Owner hereby represents covenants and warrants as follows:

(a) The Owner (i) is a [limited partnership or limited liability company] duly organized and existing under the laws of the State of   , and is qualified to transact business under the laws of the Commonwealth of Puerto Rico, (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 court or other agency 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 to 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 Land constituting the Project free and clear on any lien or encumbrance (subject of encumbrances created pursuant to this Agreement, any 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 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 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 the 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 Tax Credit will 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 as it may from time to time be amended.

(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 will notify in writing and obtain the agreement in writing 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 the Regulations. This provision will 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 Authority 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.

(k) The Owner agrees to notify the Authority in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

(l) The Owner will 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, will be damaged or destroyed or will 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 it will not refuse to lease any low-income 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, as amended, because of the status of the prospective tenant as such a holder.

#### **SECTION 4 - INCOME RESTRICTION; 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 median income; or

2  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 median income.

(b) The determination of whether a tenant meets the low-income requirement will be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant.

(c) The applicable fraction (as defined in Section 42(c)(1)(B) of the Code for each taxable year during the term of this Agreement will be not less than 1 %.

(d) Throughout the term of this Agreement the low-income units will rent for at least 1 % lower than the maximum gross rent allowed under Section 42 of the Code.

#### **SECTION 5 - TERM OF THE AGREEMENT**

(a) Except as hereinafter provided, this Agreement herein will commence with on first day in the Project period on which any building which is part of the Project is placed in service and will end on the date which is 1 years after the close of the compliance period (the "Extended Use Period").

(b) Notwithstanding subsection (a) above, the Owner will comply with the requirements of Section 42 of the Code relating to the Extended Use Period; provided, however, the Extended Use Period for any building which is part of this Project will terminate on the date the building is acquired by foreclosure or instrument in lieu of foreclosure unless the Secretary of the United States Treasury Department determines

that such acquisition is part of an arrangement with Owner a purpose of which is to terminate such period.

(c) Notwithstanding subsection (b) above, the Owner will not evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit and will not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit for the entire term of the Extended Use Period, regardless of whether such Extended Use Period is terminated by foreclosure or instrument in lieu of foreclosure relating to such building (such restrictions collectively referred to as the "Vacancy Controls").

**SECTION 6 - ENFORCEMENT OF THE OCCUPANCY RESTRICTIONS**

(a) The Owner will permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority, 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 Section 42 Occupancy Restrictions and the Vacancy Controls specified in this Agreement.

(b) The Owner will submit any other information, documents or certifications requested by the Authority, which the Authority will deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Occupancy Restrictions and the Vacancy Controls specified in this Agreement.

**SECTION 7 - ENFORCEMENT OF SECTION 42 OF THE CODE OCCUPANCY RESTRICTIONS**

(a) The 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 and the Regulations. Moreover, 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 the Regulations.

(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 Regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE AUTHORITY AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 OF THE CODE (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) WILL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations



Vacancy Controls specified herein and insofar Section 42 of the Code and the Regulations require otherwise.

(e) Governing Law. This Agreement will be governed by the laws of the Commonwealth of Puerto Rico and, where applicable, the laws of the United States of America.

(f) Survival of Obligation. The obligations of the Owner as set forth herein and in the Application will survive the allocation of the Tax Credit and will not be deemed to terminate or merge with the awarding of the allocation.

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

[ ]

BY: [ ] , [General Partner or Managing Member]

BY: \_\_\_\_\_

[ ]  
[Title ]

**PUERTO RICO HOUSING FINANCE AUTHORITY**

BY: \_\_\_\_\_

    
Executive Director