

## RESTRICTIVE COVENANT RUNNING WITH THE LAND

After recording return to:  
Boulder County Attorney's Office  
Attention: BCHA Attorney  
P.O. Box 471  
Boulder, CO 80306

This Restrictive Covenant Running with the Land ("Covenant") is made and entered into to be effective this [DAY] day of [MONTH], [YEAR] by and between Housing Authority of the County of Boulder, State of Colorado, a public body, corporate and politic ("BCHA") and County of Boulder, State of Colorado, a body corporate and politic ("Grantor").

### Recitals

- A. This Covenant applies to the real property commonly known as [ADDRESS] (the "Restricted Property"); the legal description of which is:  
  
[INSERT LEGAL DESCRIPTION]
- B. Grantor will own, operate and manage a recovery housing project on the Restricted Property (the "Project").
- C. Pursuant to that certain Intergovernmental Agreement effective December 17, 2019, as amended ("RHF IGA"), between BCHA and Boulder County's Department of Housing and Human Services (BCDHHS), BCDHHS provided \$600,000 in funding to BCHA to be used for recovery housing purposes ("RH Funds").
- D. The Project satisfies the requirements of the RHF IGA.
- E. Pursuant to an Intergovernmental Agreement effective [July \_\_ 2022] between BCHA and Grantor, BCHA will disburse the RH Funds to Grantor, and Grantor will use the RH Funds purchase the Restricted Property.
- F. Grantor desires to grant to BCHA a restrictive covenant running with the land over the Restricted Property in exchange for, and in consideration of, inter alia, BCHA providing the RH Funds to Grantor.
- G. Grantor and BCHA desire that this Covenant be recorded in the official land records of Boulder County to create covenants running with the land for the purpose of enforcing

certain undertakings of Grantor by regulating and restricting the use and occupancy of the Restricted Property as set forth herein.

- H. Grantor, by entering into this Covenant, consents BCHA enforcement of the occupancy restrictions and covenants, terms, and conditions of this Covenant.
- I. Grantor, under this Covenant, intends, declares and covenants that the restrictive covenants set forth herein governing the use and occupancy of the Project shall be and are covenants running with the Project land for the term stated herein and binding upon all subsequent owners of the Project for such term.
- J. Grantor acknowledges that it has or will benefit from the RH Funds.
- K. Grantor hereby acknowledges and agrees that this Covenant is a deed restriction pursuant to C.R.S. 38-12-301(2)(b) that limits rent on the Restricted Property and is designed to provide affordable recovery housing pursuant to an Intergovernmental Agreement between Grantor and BCHA.

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

1. Recording and Filing; Covenants to Run with the Land.
  - a. This Covenant shall be placed of record in the real property records of Boulder County, Colorado. Except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, Grantor and its successors and assigns, and BCHA and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the period prescribed herein under Term of Restriction.
  - b. Grantor hereby agrees that any and all requirements of the laws of Colorado to be satisfied in order for the provisions of this Covenant to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, including without limitation that this Covenant does not constitute an unreasonable restraint on alienation of the Project or any interests therein, and that any requirement of privity of estate are intended to be satisfied or, in the alternative, that an equitable servitude has been created to insure that the covenants, conditions, and restrictions herein run with the land.
  - c. During the term of this Covenant, 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 Covenant, provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Project, 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 Covenant.

- d. Grantor agrees to use the Restricted Property only for the Project.
2. Representations, Covenants and Warranties of Grantor. Grantor covenants, represents and warrants the following to BCHA, as a material inducement to BCHA to execute this Covenant, which representations and warranties shall survive the execution and delivery of this Covenant and any termination of this Covenant.
- a. Grantor is political subdivision of the State of Colorado, and is qualified to undertake the Project under the laws of the State.
  - b. To the extent required by law, Grantor is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Project and the Restricted Property.
  - c. Execution of this Covenant and performance thereof is within Grantor's duly authorized powers.
  - d. Any individual executing this Covenant for Grantor is authorized to do so.
  - e. Grantor is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to perform its obligations under the Covenant.
  - f. Grantor will have, on the date this Covenant is recorded, good and marketable title to the premises constituting the Project.
  - g. Grantor shall not discriminate on the basis of race, creed, color, gender, gender identity, age, marital status, national origin, disability or familial status, religion, sexual orientation, genetic information, or any other status protected by applicable federal, state, or local law in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.
  - h. Grantor shall not permit the use of any residential rental unit for any purpose other than recovery housing.
  - i. Grantor has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.
  - j. If Grantor becomes aware of any situation, event, or condition which would result in noncompliance of the Project or Grantor with Colorado law, Grantor shall promptly give written notice thereof to BCHA.

- k. If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, Grantor 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 hereof.
  - l. During the term of this Covenant, Grantor shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under this Covenant with respect to such Low-Income Unit.
3. Term of Restrictions.
- a. Except as otherwise provided herein, this Covenant shall run with the land and be in effect in perpetuity commencing on the date this Covenant is fully executed.
  - b. Except as provided in subsection (c) of this Section 3, this Covenant shall terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure unless BCHA determines that such acquisition is part of an arrangement with Grantor a purpose of which is such termination.
  - c. Notwithstanding the termination of occupancy restrictions and this Covenant under subsection (b) above, during the period of three years following any termination pursuant to subsection (b) above, Grantor shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under this Covenant with respect to such Low-Income Unit. This subsection (c) and the rights granted to BCHA and tenants of the Project to enforce this Covenant shall survive any such termination of this Covenant.
4. Occupancy Restrictions.
- a. Grantor represents and warrants that one hundred percent (100%) of the residential rental units in the Project (other than manager's units) shall be both rent-restricted (as hereinafter defined) and occupied by individuals whose income is sixty percent (60%) or less of area median gross income.
  - b. All of the foregoing residential rental units are collectively referred to herein as the "Low-Income Units", and, with respect to all of such Low-Income Units, "median gross income" shall be determined in accordance with the Internal Revenue Code (the "Code"). A unit is "rent-restricted" if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit based upon the income limitations set forth in subsection (a), all as determined in accordance with Section 42(g) of the Code.
  - c. The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section) shall be made

at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

- d. The form of lease to be utilized by Grantor in renting any unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification.
5. Compliance Monitoring. Grantor acknowledges that BCHA may monitor the compliance by Grantor and the Project with the requirements of Colorado law. In addition to its specific agreements and undertakings in this Covenant, Grantor shall take or cause to be taken all other and further actions required of Grantor by BCHA in order to satisfy such monitoring requirement, which actions shall be designated in writing by BCHA to Grantor not less than 60 days (or such other period as may be required by law) prior to the date by which such actions must first be taken.
  6. Grantor Certifications and Reports. BCHA has the right to request any information or documentation related to the Project from the Grantor. Grantor shall provide any information, documents or certifications requested, from time to time, by BCHA with respect to the Project's physical, operational and financial condition and residents which BCHA reasonably deems necessary to substantiate Grantor's continuing compliance with the provisions of this Covenant and Colorado law.
  7. Transfer Restrictions.
    - a. Grantor shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of BCHA. Such consent shall be given provided that: (i) Grantor is in compliance with the requirements of this Covenant and of Colorado law; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of BCHA, by its performance with respect to other government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Covenant; and (iii) BCHA shall be paid a transfer fee, as determined from time to time by BCHA, not to exceed

\$500.00, as adjusted for inflation from the effective date of this Covenant. In no event shall Grantor dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. For the purposes of this subsection, transfer of 50% or more of the ownership interests in Grantor shall be deemed a transfer of the Project.

- b. Grantor shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Covenant in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Covenant by any such transferee.
8. Physical Maintenance/Management/Books/Records/Inspections.
- a. Grantor shall maintain each building in the Project such that all units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to BCHA.
  - b. Grantor is required to keep records for each building in the Project intended for occupancy by persons of low income showing the following:
    - i. the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
    - ii. the percentage of residential rental units in the building that are Low-Income Units;
    - iii. the rent charged on each residential rental unit in the building (including any utility allowance);
    - iv. the number of occupants in each Low-Income Unit;
    - v. the Low-Income Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
    - vi. the annual income certification of each Qualifying Tenant;
    - vii. documentation to support each Qualifying Tenant's income certification; and
    - viii. the character and use of the nonresidential portion of the building.
  - c. Grantor is required to keep all records for each building for a minimum of five years after the due date (with extensions) for filing Grantor's federal income tax return for any year. Records may be maintained in electronic format.
9. Enforcement.
- a. Grantor covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of this Covenant.
  - b. BCHA shall be permitted access to, and entrance upon, the Restricted Property at all reasonable times, but solely for the purpose of inspection in order to enforce and

assure compliance with the terms and conditions herein contained. BCHA shall provide Grantor with five days' advance notice of its intention to enter the Restricted Property, except if BCHA determines there is an immediate need to take emergency action to prevent a violation of this Covenant.

- c. In the event of any failure of Grantor to comply with the provisions of this Covenant, BCHA shall inform Grantor by written notice of such failure and provide Grantor a period in which to correct such failure. If any such failure is not corrected to the satisfaction of BCHA within the period of time specified by BCHA, which shall be at least 90 days after the date any notice to Grantor is mailed, or within such further time as BCHA determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice BCHA may declare a default under this Covenant effective on the date of such declaration of default, and BCHA may (i) apply to any court, state or federal, for specific performance of this Covenant or an injunction against any violation of this Covenant; (ii) secure the appointment of a receiver to operate the Project in compliance with this Covenant; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Covenant.
- d. **Grantor and BCHA each acknowledges that the primary purpose of requiring compliance by Grantor with the restrictions provided in this Covenant is to assure compliance of the Project and Grantor with the language and purpose of the RHF IGA, as described and referenced in the above Recitals, AND BY REASON THEREOF, GRANTOR IN CONSIDERATION OF RECEIVING THE BENEFIT OF THE RH FUNDS HEREBY AGREES AND CONSENTS THAT BCHA SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY GRANTOR OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION,** Grantor hereby further specifically acknowledging that the beneficiaries of Grantor's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

10. Miscellaneous.

- a. Notices. All notices to be given pursuant to this Covenant shall be in writing, signed by a person duly authorized to provide such notice, and shall be deemed given when sent by (i) first class registered or certified mail, return receipt requested, (ii) facsimile transmission, or (iii) electronic mail, read receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. All notices shall be deemed sufficient (i) upon

receipt after dispatch by registered or certified mail, (ii) upon confirmation of receipt when transmitted by facsimile transmission, or (iii) upon confirmation of receipt when transmitted by electronic mail.

For BCHA: Boulder County Housing Authority  
P.O. Box 471  
Boulder, CO 80306  
Attn: \_\_\_\_\_

For Grantor: Boulder County Community Services  
P.O. Box 471  
Boulder, CO 80306  
Attn: \_\_\_\_\_

- b. Severability. The invalidity of any clause, part or provision of this Covenant shall not affect the validity of the remaining portions thereof.
- c. Governing Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Covenant. Any litigation that may arise between the Parties involving the interpretation or enforcement of the terms of this Covenant shall be initiated and pursued by the Parties in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts or within courts of the United States District Court for the District of Colorado, if appropriate.
- d. Amendments. This Covenant may be amended from time to time by any written instruments signed by both Parties.
- e. Breach. Any waiver of a breach of this Covenant shall not be held to be a waiver of any other or subsequent breach of this Covenant. All remedies afforded in this Covenant shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
- f. Invalidity Provision. Should any of the provisions of this Covenant be held to be invalid or unenforceable, then the balance of the agreement shall be held to be in full force and effect as though the invalid portion was not included; provided, however, that should the invalidity or unenforceability go to the essence of the agreement or be of substantial nature, then the Party or Parties who would receive the benefit of the provision, were it not invalid or unenforceable, shall have the option to terminate this Covenant, forthwith.



- g. Headings. Headings in this Covenant are for convenience or reference only and shall not be used in the interpretation or construction of this Covenant.
- h. Governmental Immunity. Nothing in this Covenant shall be construed in any way to be a waiver by either Party of its immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.
- i. No Waiver; Remedies. No failure on the part of any of the Parties to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Covenant shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy under this Covenant preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
- j. Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be a single agreement.
- k. Electronic Signatures and Electronic Records. Each of the Parties consents to the use of electronic signatures by each of the other Parties. The Covenant, and any other documents requiring a signature hereunder, may be signed electronically by any of Parties in the manner specified by such signing Party. The Parties agree not to deny the legal effect or enforceability of the Covenant solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Covenant in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- l. Complete Agreement. This Covenant represents the complete agreement between the Parties hereto and shall be fully binding upon the successors, heirs, and assigns of the Parties, if any, during the term hereof. This Covenant supersedes, as of the Effective Date, any and all prior agreements between the Parties relating to the subject matter of this Covenant, whether written or oral or partly written and partly oral.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, Grantor has caused this agreement to be signed by its respective duly authorized representative, as of the day and year first written above.

COUNTY OF BOULDER, STATE OF COLORADO, a  
public body, corporate and politic

\_\_\_\_\_  
Marta Loachamin  
Chair

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF BOULDER        )

The foregoing instrument was signed before me this [DAY] day of [MONTH], 2022, by [NAME], as Chair of the Board of County Commissioners of the County of Boulder, State of Colorado, a public body, corporate and politic. .

Witness my hand and official seal.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public