

**EXHIBIT D**  
**FORM OF RESTRICTIVE COVENANT**

**AFFORDABLE HOUSING DECLARATION OF RESTRICTIVE COVENANT**  
**FOR THE MOUNTAIN VIEW MOBILE HOME COMMUNITY, IN THE**  
**CITY OF LAFAYETTE, BOULDER COUNTY, COLORADO**

This Affordable Housing Declaration of Restrictive Covenant for the Mountain View Mobile Home Community, located in the City of Lafayette, Boulder County, Colorado (this "Restrictive Covenant") is made as of \_\_\_\_\_, 20\_\_ ("Effective Date"), by La Luna Community Cooperative, a Colorado cooperative association, hereinafter referred to as "Declarant."

**RECITALS:**

WHEREAS, Declarant is the owner of that certain real estate located in the County of Boulder (the "County"), State of Colorado, and legally described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, pursuant to (a) a Loan Agreement dated as of the Effective Date between Declarant and the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic (the "County") (such Loan Agreement hereinafter referred to as the "County Loan"), accompanying a promissory note in the original principal amount of \$1,055,000.00 ("County Note") and secured by a deed of trust ("County Deed of Trust") recorded or to be recorded in the real estate records of the County of Boulder, State of Colorado for the benefit of the County, and (b) a Loan Agreement dated as of the Effective Date between Declarant and the City of Lafayette, a home-rule municipality of the State of Colorado (the "City") (such Loan Agreement hereinafter referred to as the "City Loan"), accompanying a promissory note in the original principal amount of \$495,000.00 ("City Note") and secured by a deed of trust ("City Deed of Trust") recorded or to be recorded in the real estate records of the County of Boulder, State of Colorado for the benefit of the City, Declarant was obligated to provide this Restrictive Covenant;

WHEREAS, it is a condition of both the County Loan and the City Loan that the Declarant create a valid and enforceable covenant running with the Property which assures that the Mountain View Mobile Home Community ("Community") remain primarily a resident owned manufactured home community dedicated to serving the needs of Owners (defined below) that qualify as Low Income and Moderate Income (as defined herein) and that the operation of the Community is structured in such a manner to allow for rental rates for the Lots (defined below) within the Community to remain as low as possible; and

WHEREAS, Declarant intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use of the Community described and provided for herein shall be and are hereby made covenants running with the Property and are intended to be and shall be binding upon the Declarant and all subsequent Owners of Homes within the Community for the stated term of this Restrictive Covenant, unless and until this Restrictive Covenant is released and terminated in the manner hereafter described.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares that the Property shall hereafter be held, sold, and conveyed, and mortgaged subject to the following covenants, restrictions, and conditions, all of which shall be covenants running with the land, and which are for the purposes of ensuring that the Homes or Lots remain available for purchase and lease by persons as set forth herein and which covenants, restrictions, and conditions shall be binding on all parties having any right, title, or interest in the Property, or any part thereof, and their heirs, successors, and assigns.

## **ARTICLE 1**

### **DEFINITIONS**

1.1 Definitions. The following words, when used in this Restrictive Covenant, shall have the following meanings and the use of capitalization or lower-case letters in references to the following terms shall have no bearing on the meanings of the terms:

A. "AMI" means the median annual household income for Boulder County, as adjusted by household size, and published annually by the Colorado Housing Finance Agency (CHFA), or comparable standard as approved by city council resolution.

B. "Foreclosure ROFR" means the first right of refusal of the County and the City or either of them to acquire the debt or other senior lien position of a Senior Lender in the event such Senior Lender commences a Senior Foreclosure action against the Property.

C. "Home" means a manufactured home placed upon a Lot within the Community.

D. "Listing Date" means the date a Home is first made available for Sale or any subsequent date that the Terms are materially modified in the Sale activities. In the event of a marketing effort listing a Home for Sale, the Listing Date shall be the date of the first marketing of the Home for Sale. In the event of a bona fide offer to purchase a Home, the Listing Date shall be the date the Owner receives such bona fide third-party offer. Listing Date shall mean, for purposes of a Lot Lease, the date the Lot is made available for lease.

E. "Lot Lease" means the leasing of a Lot to an Owner in order for the Owner to place a Home on the Lot.

F. "Lot" means a physical lot on which the Homes are placed and which are leased to individuals through Lot Leases.

G. "Low Income" means an annual household income at or below 80% of the AMI.

H. "Member" means any owner of a cooperative interest in Declarant.

I. "Moderate Income" means an annual household income at or below 100% of the

AMI.

J. "Owner" means the record owner at any time taking and holding fee simple title to a Home.

K. "Permitted Transfer" means transfer of title and possession of a Home or Lot to one or more of a deceased Owner's natural heirs, including any adopted children.

L. "Priority Period" means the first 30-day period following any Listing Date.

M. "Qualified Owner" means either a Moderate Income or Low Income Owner.

N. "Sale" means any proposal for the sale of a Home with an intent to Transfer the Home to a third-party. Sale shall include, but is not limited to, listing a Home for sale on a marketing platform such as Facebook, Craigslist, a multi listing service (MLS), placing a "for sale" sign on or about the Home, soliciting or accepting any bona fide offers to purchase a Home, or any other method for attempting to Transfer a Home to a third-party.

O. "Senior Foreclosure" means any foreclosure or deed-in-lieu action taken against the Property or Declarant by a Senior Lender.

P. "Senior Lender" means any lender holding a deed of trust or similar lien position superior to the Deed of Trust.

Q. "Terms" means the terms and conditions of a proposed Sale of a Home or Lease of a Lot. For those Sales involving the marketing of a Home for Sale, the Terms shall be the purchase price, time periods and conditions set forth in solicitation materials. For those Sales involving a bona fide third-party offer, the Terms shall be as set forth in the written third-party offer. For those Transactions involving the marketing of a Lot for lease, the Terms shall be the monthly rental price, time periods, and conditions set forth in solicitation materials.

R. "Transaction" means the purchase of a Home or the lease of a Lot.

S. "Transfer" or "Transferred" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in a Home by which possession of a Home is transferred.

## **ARTICLE 2**

### **PURPOSE**

The purpose of this Restrictive Covenant is to provide a method by which the Homes and Lots within the Community are made available on a priority basis for Qualified Owners, for whom because of their income, may not otherwise be in a position to afford to purchase a Home or

lease a Lot, and to help establish and preserve a supply of housing to help meet the needs of the residents of the County of Boulder.

**ARTICLE 3**  
**RESTRICTIVE COVENANT AND AGREEMENT BINDS THE PROPERTY**

This Restrictive Covenant shall constitute covenants running with title to the land as a burden thereon, for benefit of, and enforceable by, the County and the City, or either of them, and their successors and assigns, and this Restrictive Covenant shall bind Declarant, its Members and all subsequent Owners of a Home within the Community.

**ARTICLE 4**  
**NATURAL PERSONS**

The ownership of a Home shall be limited exclusively to housing for natural persons.

**ARTICLE 5**  
**RESTRICTIONS**

51 Sale and Lot Leases. In the event that a Home is Transferred (with the exception of Permitted Transfers) or made available for Sale or a Lot is leased without compliance with this Restrictive Covenant, the County and the City or either of them shall have the remedies set forth herein. Except as otherwise provided herein, each Transfer of a Home, listing of a Home for Sale or offering of a Lot as available for a Lot Lease, for any and all purposes, shall be deemed to include and incorporate the terms and conditions of this Restrictive Covenant.

52 Records and Inspection. Declarant shall cause to be submitted to the County and the City a report as of the end of each calendar year before each subsequent January 30th of new Owners residing in the community after the date of these Restrictive Covenants in conformance with any legal requirements regarding privacy. Declarant shall submit any information, documents or certificates requested from time to time by the County or the City with respect to the occupancy and use of any Home in Declarant's possession which the County reasonably deems necessary to substantiate the compliance with the provisions of this Restrictive Covenant. Such information shall be submitted to the requester within such reasonable time period as the requester may establish.

53 Sale Opportunity. At all times while this Restrictive Covenant encumbers the Property, in the event an Owner desires to Transfer a Home (with the exception of Permitted Transfers) or places a Home for Sale, the Owner of such Home must, for the Priority Period, only allow Low Income and Moderate Income individuals to purchase the Home on the **Terms**.

54 Lease Opportunity. At all times while the Restrictive Covenant encumbers the Property, in the event a vacant Lot becomes available for a Lot Lease (without a Home on it), Declarant shall, for the Priority Period, only allow Low Income and Moderate Income individuals to enter into a Lot Lease on the **Terms**.

55 Priority Period. At the expiration of the Priority Period, provided no Qualified Owner has leased the available Lot or purchased the available Home (each a "Transaction") (or commenced and diligently pursued in good faith a Transaction, in which case, the Priority Period shall be extended until the Transaction is complete), then the Owner or Declarant can make the Home available for Sale on the open market at the same **Terms** or in the case of a Lot for lease, make the Lot available for lease on the open market at the same **Terms**. In the event the **Terms** change, the provisions of this Article 5 shall again apply and the Priority Period shall re-commence. Whether an individual meets the definition of Low Income or Moderate Income shall be determined as of the Listing Date.

## **ARTICLE 6** **ENFORCEMENT**

6.1. Enforcement of This Covenant. The Declarant hereby grants and assigns to the County and the City, together or independently, the right to review and enforce compliance with this Restrictive Covenant. Compliance may be enforced by the County or by the City by any lawful means, including, without limitation, specific performance and damages to reimburse the County or the City, as applicable, for its or their enforcement costs.

6.2. Proceedings. Jurisdiction and venue for a suit enforcing compliance shall be proper and exclusive in Boulder County and service may be made or notice given by posting such service or notice in a conspicuous place on the applicable Home or by delivering such service or notice upon Declarant as provided in Section 8.10 below or upon Declarant's registered agent. As part of any enforcement action on the part of the County or the City, the applicable Owner shall pay all court costs and reasonable legal fees incurred by the County or the City, as applicable, in connection with these claims, actions, liabilities or judgments, including a reasonable amount to pay for the time, if any, of the County's or City's attorneys, as applicable, spent on such claims at the rates generally charged for similar services by private practitioners within the Denver metropolitan area.

## **ARTICLE 7** **FORECLOSURE**

7.1. Release. Notwithstanding anything herein to the contrary, in the event of a Senior Foreclosure, the County and the City shall release this Restrictive Covenant if either (a) the County Note and the City Note will each be repaid in full in connection with such Senior Foreclosure, or (b) neither the County nor the City exercises the Foreclosure ROFR pursuant to Section 7.2 below. Notwithstanding the foregoing, any and all claims of the County and the City available hereunder against Owner shall survive any release or termination of this Restrictive Covenant. In addition, at all times, the County and the City shall each retain any redemption rights under their respective Deeds of Trust as set forth in Section 7.3 below.

7.2. Senior Foreclosure. Upon commencement of a Senior Foreclosure, such Senior Lender must first notify the County and the City of the Senior Foreclosure action ("Foreclosure Notice") and offer to the County and the City the opportunity to cure such Senior Foreclosure by purchasing

the Senior Lender's debt position at the amount required to payoff such Senior Lender's loan in full. The County and the City shall each have 30 days from their respective receipt of the Foreclosure Notice in order to exercise the Foreclosure ROFR by providing written notice to the Senior Lender of the desire to exercise the Foreclosure ROFR and thereafter the County or the City, as applicable, shall have 45 days to consummate the acquisition of the Senior Lender's loan.

73 Redemption Rights. In the event of a Senior Foreclosure, the County and the City shall be entitled to receive notice of the foreclosure proceedings as is required by law to be given by the public trustee or the sheriff, as applicable, to lienors of the Property that are junior to the Senior Lender's loan (as provided in C.R.S. §38-38-101 et seq., or any succeeding statute). Upon receipt of such notice, the County and the City shall each have a right of redemption, and such other rights as a lienor in foreclosure, as their interests appear, in accordance with Colorado law governing foreclosure.

## **ARTICLE 8**

### **GENERAL PROVISIONS**

8.1 Equal Housing Opportunity. Pursuant to the Fair Housing Act, the Declarant, the County, and the City shall not discriminate on the basis of race, creed, color, sex, national origin, familial status or disability in the lease, sale, use or occupancy of a Home or a Lot.

8.2 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or Court order shall in no way affect any other provisions, it being the intent of the Declarant, the County, and the City that such invalidated provision be severable.

8.3 Term. The restrictions contained herein shall run with the land and bind the land for a term of 99 years from the date that this Restrictive Covenant is recorded, after which time the terms of this Restrictive Covenant shall be automatically extended for successive periods of 10 years. Upon repayment of both the County Note and the City Note in full, or upon expiration of both the County Loan and the City Loan as provided under Section 6(b) in such agreements, the Restrictive Covenant shall be released by a signed release of this Restrictive Covenant signed by the County, the City, and Declarant.

8.4 Amendment. This Restrictive Covenant may be amended only by an instrument recorded in the records of Boulder County, Colorado, executed by the County, the City, and the Declarant.

8.5 No Third-Party Beneficiaries. This Restrictive Covenant is made and entered into for the sole protection and benefit of both the County and the City. Except as otherwise specifically provided for herein, no other person, persons, entity or entities, including, without limitation, prospective buyers of a Home or prospective lessees of a Lot, shall have any right of action with respect to this Restrictive Covenant or right to claim any right or benefit from the terms provided in this Restrictive Covenant or be deemed a third-party beneficiary of this Restrictive Covenant.

8.6 Non-Liability. The County, the City, and their respective elected and appointed officials, department heads, employees, officers and agents shall not be liable to Declarant or third party by virtue of the exercise or non-exercise of their rights or the performance of their obligations under this Restrictive Covenant. The parties understand and agree that they are relying on, and do not waive or intend to waive by any provision of this Restrictive Covenant, the monetary limitations or any other rights, immunities or protections afforded by the Governmental Immunity Act, CRS §§ 24-10-101, et seq., as they may be amended, or any other limitation, right, immunity or protection otherwise available to the parties.

8.7 Exhibits. All exhibits attached hereto are incorporated herein and by this reference made part hereof.

8.8 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and use of the singular shall include the plural and vice versa.

8.9 Further Actions. The Declarant and its successors and assigns agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Restrictive Covenant or any agreement or document relating hereto or entered into in connection herewith.

8.10 Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Restrictive Covenant. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:

La Luna Community Cooperative  
Attn: President

\_\_\_\_\_  
\_\_\_\_\_, Colorado \_\_\_\_\_

To the County:

Boulder County  
Attn: [Insert name or title]  
1325 Pearl St., Third Floor  
Boulder CO 80302

With a copy to:

Boulder County Attorney's Office  
1325 Pearl St., Fifth Floor

Boulder CO 80302]

To the City:

City of Lafayette  
Attn: City Administrator  
1290 S. Public Road  
Lafayette, CO 80026

With a copy to:

City Attorney  
c/o City of Lafayette  
1290 S. Public Road  
Lafayette, CO 80026

8.11 Choice of Law. This Restrictive Covenant and each and every related document shall be governed and constructed in accordance with the laws of the State of Colorado.

8.12 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

8.13 Headings. Article and Section headings within this Restrictive Covenant are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

**[Signature page follows]**

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has set its hand unto this Restrictive Covenant as of the Effective Date.

BORROWER:

La Luna Community Cooperative

By: \_\_\_\_\_  
Name  
Title

COUNTY OF BOULDER    )  
  ) ss.  
STATE OF COLORADO    )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2023\_, by \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ of the La Luna Community Cooperative, a Colorado cooperative association.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

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

**EXHIBIT A  
PROPERTY**

**[INSERT LEGAL DESCRIPTION]**