

Upon recording return to:

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, dated as of [____], 2023, is entered into by and between the **RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION**, a corporation, instrumentality and agency of the State of Rhode Island, with a mailing address of 44 Washington Street, Providence, Rhode Island 02903 (together with any successor to its rights, duties and obligations, the "Corporation"), and _____, a Rhode Island limited liability company, with a mailing address of _____ (together with its successors and assigns, the "Owner"), is given as a condition precedent to the allocation of low-income housing tax credits by the Corporation or the availability to the Owner of low-income housing credits under Section 42(h)(4) of the Internal Revenue Code of 1986, as amended (the "Code") (this Declaration as amended from time to time, this "Agreement").

WITNESSETH:

WHEREAS, the Owner is or will be the owner of _____ units of low-income family housing located within that certain _____, Rhode Island 02842, said real estate being more particularly described in Exhibit A attached hereto (the "Development");

WHEREAS, the Corporation has been designated by the Governor of the State of Rhode Island as the housing credit agency for the State of Rhode Island for the allocation of Low-Income Housing Tax Credit dollars (the "Credit");

WHEREAS, the Owner has represented to the Corporation in the Owner's Low-Income Housing Tax Credit Application or in other documents filed with the Corporation (collectively, the "Application") that the Owner shall lease _____% of the units in the Development to individuals or families whose income is 60% or less of the area median gross income (adjustments for family size) as determined in accordance with Section 42 of the Code ("Low-Income Tenants");

WHEREAS, the Corporation has determined that the Development would support a Credit allocation under Section 42(h)(1) of the Code in the approximate annual amount of _____);

WHEREAS, the Owner has represented to the Corporation that it shall impose additional rent restrictions or shall covenant to maintain the Section 42 rent and income restrictions for an additional period of time beyond the termination of the Compliance Period as defined in Code Section 42(i);

WHEREAS, the Code requires as a condition precedent to the availability of the Credit to the Development that the Owner execute, deliver and record, in the official public land evidence records of the municipality in which the Development is located, this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code, the Section 42 Occupancy Restrictions found in Section 4 hereof and the Additional Occupancy Restrictions found in Section 5 hereof by regulating and restricting the use and occupancy and transfer of the Development as set forth herein; 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 Development shall be and are covenants running with the Development land for the term stated herein and binding upon all subsequent owners of the Development land for such term, and are not merely personal covenants to 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 not otherwise defined in this Agreement shall have the meanings given to them in Section 42 of the Code and in regulations of the United States Department of the Treasury (the "Treasury Department") and of the United States Department of Housing and Urban Development ("HUD") pertaining thereto, as applicable.

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

- a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land evidence records of the city or town in which the Development is located and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Corporation an executed original of the recorded Agreement and evidence of the date, deed book and page numbers of record. The Owner agrees that the Corporation shall have no obligation to issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until the Corporation has received evidence that the executed original of the Agreement has been duly recorded.
- b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Development land during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Development land and the Development: (i) shall be and are covenants running with the Development land, encumbering the Development land for the term of this Agreement, binding upon the Owner's successors in title and all subsequent Owners and operators of the Development land, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the Corporation and any past, present or prospective tenant of the Development) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the law of the State of Rhode Island to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall

be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. For the longer of the period the Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Development or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Development or portion thereof provides that such conveyance is subject to this Agreement.

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 liability company duly organized under the laws of the State of Rhode Island, (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, and perform its obligations under, this Agreement.
- b) The execution and performance of this Agreement by the Owner (i) shall 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 government body, and (ii) shall 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 Development is bound, and (iii) shall not result in the creation or imposition of any prohibited encumbrance of any nature.
- c) The Owner shall, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance, subject however (i) to encumbrances created pursuant to this Agreement, and (ii) other permitted encumbrances referenced in that certain title insurance policy issued to the Corporation by Commonwealth Land Title Insurance Company in connection with the related loans from the Corporation to Owner. All lenders holding prior recorded mortgages on the Development (if any) shall have delivered for recording prior recorded lienholders consents subordinating their liens to the provisions of this Agreement.
- 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 its business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.
- e) The Development constitutes or shall constitute a Qualified Low-Income Housing Project, as applicable, as defined in Section 42(g)(1) of the Code and applicable regulations.
- f) Each unit in the Development contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Development qualifies as a Single-Room Occupancy

Development or Transitional Housing for the Homeless) which are to be used on other than a transient basis.

- g) During the term of this Agreement, all units subject to the Credit shall be (1) leased and rented or made available to members of the general public who meet the income limitations applicable under Code Section 42(g)(1) to the Development and (2) rent-restricted as defined in Code Section 42(g)(2).
- h) The Owner agrees to comply fully with the requirements of the United States 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 (as such term is defined in Section 42 of the Code) (each a "Low-Income Unit") is and shall 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 Development (but not less than all of any building therein which has received an allocation of tax credits pursuant to Code Section 42(h)(1)(F)(i)(III)) at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Development or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. The preceding sentence shall not act to waive or modify any other restriction on sale, transfer or exchange of the Development or any low-income portion of the Development including but not limited to any restriction contained in documents relating to loans made by the Corporation and secured by the Development. The Owner agrees that the Corporation may void any sale, transfer or exchange of the Development 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 Corporation in writing of any intention to sell, transfer or exchange the entire Development or any low-income portion of the Development.
- l) The Owner warrants that it has not and shall 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.
- m) The Owner shall not demolish any part of the Development or substantially subtract from any real or personal property of the Development 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.
- n) The Owner represents, warrants and agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner shall use its best efforts to repair and restore the Development 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 Development in accordance with the terms of this Agreement.

- o) The Owner covenants and agrees it shall not refuse to lease any unit in the Development that is subject to the Credit to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 solely because of the status of the tenant as a certificate or voucher holder.
- p) Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the Gross Rent (as such term is defined in Section 42 of the Code) above the maximum allowed under the Code and this Agreement with respect to such Low-Income Unit.

SECTION 4 - APPLICABLE FRACTION; INCOME RESTRICTIONS; RENTAL RESTRICTIONS

In order to satisfy the requirements of Section 42 of the Code, the Owner represents, warrants and covenants that, throughout the term of this Agreement:

(Check applicable percentage election)

- (a)
 - (1) At least 20% or more of the residential units (or floor space fraction, as applicable) in the Development are and shall be both Rent-Restricted and occupied by individuals whose income is 50% or less of area median income.
 - (2) At least 40% of the residential units (or floor space fraction, as applicable) in the Development are and shall be both Rent-Restricted and occupied by individuals or families whose income is 60% or less of area median income.
 - (3) At least 40% of the residential units (or floor space fraction, as applicable) in the Development are and shall be both Rent-Restricted and occupied by individuals whose income is 80% or less of area median gross income, so long as the average income and rent restriction of the Low-Income Units is 58% or less of area median gross income, which is more restrictive than the Code requirement of 60%. In the event this election is chosen, Owner irrevocably agrees to rent the certain numbers of residential units in the Development to households at or below certain levels of area median gross income as set forth in the Owner's management plan provided by Owner and approved by Corporation prior to the date of this Agreement, as such management plan may be modified in writing from time to time subject to the Corporation's prior written approval.
- (b) The Owner agrees that for each taxable year in the Extended Use Period, the Applicable Fraction as defined in Section 42(c)(1) of the Code (i.e. the percentage of Low-Income Units) shall not be less than 60.6%. For this purpose, the "Extended Use Period" means the period described in Section 6(a) hereof.
- (c) The determination of whether a tenant meets the low-income requirement elected in this Section 4(a) shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant. The restrictions set forth in this Section 4 are herein sometimes referred to as the "Section 42 Rent and Occupancy Restrictions."

SECTION 5 - ADDITIONAL RENT AND OCCUPANCY RESTRICTIONS

This Section is intended to make enforceable those deeper targeting covenants which the Owner represented to the Corporation in its Application or in other documents filed with the Corporation.

The Owner represents, warrants and covenants that (check if applicable):

- (a) Throughout the term of this Agreement, 100% of the residential units shall rent for at least 10% lower than the maximum Gross Rent allowed under Section 42 of the Code for individuals whose income is 60% or less of area median gross income.
- (b) Throughout the term of the HOME loans, at least 40% of the residential units in the Development are and shall be occupied by individuals whose income is 50% or less of area median income.
- (c) Throughout the term of the HOME loans, at least _____ (___) of the residential units in the Development are and shall be occupied by individuals whose income is 50% or less of area median income.

SECTION 6 - TERM OF AGREEMENT

- a) Except as hereinafter provided, this Agreement and the Section 42 Rent and Occupancy Restrictions specified herein shall commence on the first day of the Compliance Period as defined in Code Section 42(i) on which any building in the Development becomes part of a Qualified Low-Income Housing Project as defined in Code Section 42(g)(1) and shall terminate on the date which is fifteen (15) years after the close of the Compliance Period (the "Extended Use Period"). The Owner waives its right to seek termination of this Agreement by petitioning the Corporation to find a buyer of the Development as provided in Code Section 42(h)(6)(E)(I)(II).
- b) Notwithstanding subsection (a) above, the Extended Use Period for any building which is part of this Development shall terminate:
 - (1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure except as provided in Section 42(h)(6)(E)(i)(I); or
 - (2) Upon exercise by the tenants of the Development (in cooperative form or otherwise) of a right of first refusal to purchase the Development or any building therein meeting the requirements of Code Section 42(i)(7).
- c) Notwithstanding subsection (b) above, the Section 42 Rent and Occupancy Restrictions shall continue for a period of three years following the termination of the Extended Use Period pursuant to the procedures specified in subsection (b) above. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit (as such term is defined in Section 42 of the Code) other than for good cause and shall not increase the Gross Rent (as such term is defined in Section 42 of the Code) above the maximum allowed under the Code and this Agreement with respect to such Low-Income Unit.

SECTION 7 - ENFORCEMENT OF CORPORATION'S RENT AND OCCUPANCY RESTRICTIONS

- a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Corporation, to inspect any books and records of the Owner regarding the Development with respect to the incomes of Low-Income Tenants which pertain to compliance with the Section 42 Rent and Occupancy Restrictions and the Additional Rent and Occupancy Restrictions specified in this Agreement.
- b) The Owner shall submit any other information, documents or certifications requested by the Corporation which the Corporation shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Section 42 Rent and Occupancy Restrictions and the Additional Rent and Occupancy Restrictions specified in this Agreement.

SECTION 8 - ENFORCEMENT OF SECTION 42 RENT AND OCCUPANCY RESTRICTIONS

- a) The Owner covenants that it shall not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and applicable regulations or this Agreement. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the Corporation) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Treasury Department, the Internal Revenue Service, or HUD from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Development.
- 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 Development and the Owner with Section 42(g) of the Code and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS DEVELOPMENT HEREBY AGREES AND CONSENTS THAT THE CORPORATION AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE DEVELOPMENT UNDER SECTION 4(a) OF THIS AGREEMENT (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL 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 STATE COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Corporation and all persons interested in Development compliance under Section 42 of the Code and all applicable regulations.
- d) The Owner agrees that if at any point following execution of this Agreement, Section 42 of the Code or regulations implementing said Section require the Corporation to monitor the

Section 42 Rent and Occupancy Restrictions, or alternatively, the Corporation chooses to monitor Section 42 Rent and Occupancy Restrictions or Additional Rent and Occupancy Restrictions, the Owner shall take any and all actions reasonably necessary and required by the Corporation to substantiate the Owner's compliance with the Section 42 Rent and Occupancy Restrictions or Additional Rent and Occupancy Restrictions and shall pay a reasonable fee to the Corporation for such monitoring activities performed by the Corporation.

SECTION 9 - MISCELLANEOUS

- a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- b) 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 as a party may from time to time designate in writing. The Corporation and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communication shall be sent.

To the Corporation:

Rhode Island Housing and Mortgage
Finance Corporation
44 Washington Street
Providence, Rhode Island 02903
Attention: Low-Income Housing Tax
Credit Program

With a copy to:

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To the Owner:

With a copy to:

- c) Amendment. The Owner agrees that it shall take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.
- d) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Rhode Island, without giving effect to its conflict of laws principles, and, where applicable, the laws of the United States of America.
- e) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.
- f) Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

- g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.
- h) Investor Member Cure Rights. Any cure of any default hereunder made or tendered by the Investor Member shall be deemed to be a cure made or tendered by Owner and shall be accepted or rejected on the same basis as if such cure were made or tendered by Owner. For purposes of this Agreement, “Investor Member” means CREA Frenchtown Road 9 Percent, LLC, a Delaware limited liability company, and/or CREA SLP, LLC, an Indiana limited liability company, and their respective successors and assigns.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have each duly executed and delivered this Agreement as of the date hereof.

Witness: _____, a Rhode Island limited liability company

By: a Rhode Island limited liability company,
its managing member

By:

By: _____
Name:
Title: President

Owner Signature Page to Declaration

Witness:

RHODE ISLAND HOUSING AND
MORTGAGE FINANCE CORPORATION

By: _____
Anne Berman, Director of Real Estate
Development

STATE OF RHODE ISLAND
County of Providence

In Providence, in said County and State, on the _____ day of _____, 2023, before me personally appeared the within-named Anne Berman, to me known and known by me to be the Director of Real Estate Development of Rhode Island Housing and Mortgage Finance Corporation and the person executing these presents on behalf of Rhode Island Housing and Mortgage Finance Corporation, the party executing the foregoing instrument, and he acknowledged said instrument by him so executed to be his free act and deed in such capacity and the free act and deed of Rhode Island Housing and Mortgage Finance Corporation.

Notary Public:
My Commission Expires:

EXHIBIT A
Legal Description

Exhibit A to Declaration