

PERMANENTLY AFFORDABLE RENTAL

INTERIM COVENANT

THIS INTERIM COVENANT ("Covenant") is made and entered into as of the 15TH day of June, 2010, by and among the Housing Authority of the City of Boulder, Colorado, d/b/a/ Boulder Housing Partners, established pursuant to Section 29-4-201 et seq., C.R.S., a Colorado housing authority, ("**Owner**") and the City of Boulder, a Colorado municipal corporation, ("**City**").

BACKGROUND. Owner is developing a residential project within the City limits of the City of Boulder, on that certain real property described as Red Oak Park, with a legal description of:

Lots 1 and 4, Red Oak Park Subdivision as recorded in the offices of the Boulder County Clerk and Recorder on March 23, 2010 at Reception # 03065118, County of Boulder, State of Colorado;

also known as 2637 Valmont, Boulder, Colorado (the "**Property**"). This Covenant is executed to confirm Owner's obligations as stated herein with respect to the development of permanently affordable units on the Property and execution of a final permanently affordable covenant for each permanently affordable unit.

- a. The City has provided funding to support Owner's efforts to redevelop Boulder Mobile Manor;
- b. The Owner has subdivided Boulder Mobile Manor and renamed it Red Oak Park;
- c. Owner intends to develop twenty dwelling units on the Property that are permanently affordable to households at or below 50% of the Area Median Income as established by the U.S. Department of Housing and Urban Development; and
- d. Owner proposes to hold all of the permanently affordable dwelling units in the Project for rent.

1. REQUIREMENTS. Owner hereby confirms its agreement to take the following actions:

(a) **Number of Permanently Affordable Units.** Owner agrees that it will provide twenty permanently affordable rental dwelling units on the Property.

**Housing Authority
City of Boulder
No recording fees
per Section 29-4-227 CRS**

COB.CEN

(b) **City Subsidy and Establishment of Rents.** The Owner and City have agreed that although the Owner will use all of the City's funding through 2010 for Red Oak Park to complete a first phase with 59 permanently affordable units on Lots 2, 3, 5 and 6 of the Red Oak Park Subdivision, the twenty units to be provided under this Covenant will be considered as a second phase of the same project. The City shall set the initial, maximum allowable rent for each Affordable Unit based upon the amount of subsidy provided, square footage of the units, and maximum target incomes of the households in the Affordable Units.

(c) **Enforceable Interest.** The parties acknowledge that the Owner is a Housing Authority for the purposes noted in Colorado Revised Statutes § 38-12-301.

(d) **Transfer.** The Owner shall not transfer its interest in the Property to any successor in interest without the express written agreement of the City that the City's affordable housing interest in the Property will not be jeopardized by such transfer. To that end, no transfer shall occur unless a successor in interest qualifies as a "housing authority" or "similar agency," as those terms are utilized in Colorado Revised Statutes § 38-12-301, or can otherwise be legally bound by rent restrictions. In any case, prior to the transfer of the Grantor's interest in the Property, the Grantor shall offer the City the right of first refusal to purchase the Property.

(e) **Selection of Tenants.** The Owner shall adopt written tenant selection policies and criteria for the Property that are consistent with the City of Boulder's Housing Division program guidelines as established by the City Manager or his/her designee.

(f) **Execution of the Permanently Affordable Unit Covenants Prior to Receipt of Residential Building Permits.** Prior to the receipt of residential building permits for the Permanently Affordable Units and prior to the granting or recording of any deeds, covenants, deeds of trust or mortgages, (other than deeds of trust or mortgages granted in connection with the financing of the development and construction of the Affordable Units), liens, or encumbrances with respect to the Affordable Units, Owner shall record a Permanently Affordable Rental Housing Covenant in a form acceptable to the City Manager and City Attorney and substantially similar to the Permanently Affordable Rental Housing Covenant attached hereto and marked as Exhibit A with respect to the estate, title and interest in each of the Permanently Affordable Units. The City and Owner acknowledge that the City may modify provisions before the time Owner is obligated to record the Permanently Affordable Rental Housing Covenant.

(g) **Release of Covenant.** This Covenant shall automatically terminate and be of no further force or effect upon the recording of all of the Covenants required by this Covenant.

3. MISCELLANEOUS.

(a) This Covenant shall run with the land. Subject to the provision contained in Section 2 (g) above, it shall bind perpetually the Owner, its successors in interest and assigns, and inure to the benefit of the City.

(b) Owner agrees to provide the City with copies of any documents required for the administration of this Covenant within a reasonable time after such documents have been recorded by the Clerk and Recorder.

(c) The Affordable Units created pursuant to this Covenant on the Property may not be used by any other development to satisfy the requirements of Chapter 9-13 B.R.C, 1981 or any other off-site permanently affordable housing obligations.

(d) Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by the City by like notice:

Manager of the Division of Housing
City of Boulder
P.O. Box 791
Boulder, CO 80306

(e) The City acknowledges and agrees that upon the recording of this Interim Covenant, all of the covenants required under the City's regulations and processes have been recorded and any prior covenants or deed restrictions relative to the affordable housing are no longer in effect. Upon request of the Grantor, the City will execute a release of such prior covenants or deed restrictions on the Property.

(f) If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

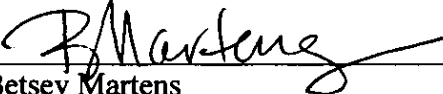
(g) Each party assumes responsibility for its officers, its agents', and its employees' negligent actions and omissions in the performance or failure to perform work under this Agreement. By agreeing to this provision, neither the City nor the Agency waives or intends to waive as to any person not a party to this Agreement the limitations on liability which are provided to the parties, their officers, and employees under the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S.

(h) The captions of the paragraphs in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

(i) The City Manager shall have the right to modify this Covenant to deal with exigent circumstances. The City will provide a 30-day review and comment period prior to any change becoming effective.

IN WITNESS WHEREOF, Owner and City have caused this Interim Covenant to be duly executed as of the day and year first written above.

HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO, a Colorado housing authority, d/b/a Boulder Housing Partners

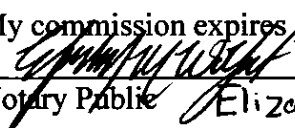

Betsey Martens
Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 17 day of June 2010, by Betsey Martens as Executive Director of the Housing Authority of the City of Boulder, a Colorado housing authority, d/b/a Boulder Housing Partners.

Witness my hand and official seal.

My commission expires Jan 9 2013


Notary Public Elizabeth M. Wolfert

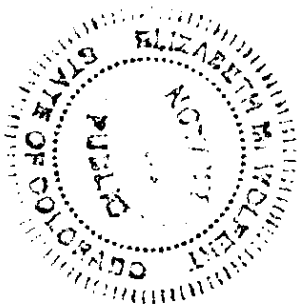


EXHIBIT A

LIMITATIONS ON

RENTS

AND

TENANT INCOME

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

LOW AND MODERATE INCOME RENTAL HOUSING COVENANT

This Low Income Rental Housing Covenant ("Covenant") is entered into as of the ___ day of ___, 201x, by and between **[INSERT EITHER the Grantor, a Colorado 501 (c) (3) non-profit corporation (hereafter "Grantor") OR the Housing Authority of the City of Boulder, a Colorado housing authority established pursuant to Section 29-4-201 et seq., C.R.S. (hereafter the "Grantor")]** and the City of Boulder, Colorado, a Colorado home rule city (hereafter "the City" or "Grantee").

This Covenant applies to the real property commonly known as **[INSERT ADDRESS AND SPECIFY NUMBER OF UNITS OR SPECIFIC UNITS]**, Boulder, Colorado; the legal description of which is as follows:

[INSERT LEGAL DESCRIPTION AND SPECIFY UNITS] (hereafter the "Property").

RECITALS

WHEREAS, the City has provided funds to develop this Property; and

WHEREAS, the Grantor has benefited from these funds; and

WHEREAS, the Grantor has agreed to control the rents charged and income requirements

for the occupancy of the Property; and

WHEREAS, subsequent residents will benefit from the rent limitations which this Covenant requires; and

WHEREAS, the intent of the City is to preserve through this Covenant and these funds the affordability of the Property for persons of low and moderate income, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the meanings defined herein:

A. "Area Median Income" means the Area Median Income reported annually for single persons and households of various size by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the Primary Metropolitan Statistical Area "PMSA" which includes the City of Boulder, Colorado.

B. "CPI-U" means the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated Primary Metropolitan Statistical area that includes the City of Boulder. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

C. "HUD" means the United States Department of Housing and Urban Development, or any successor governmental agency.

D. "HUD Low Income Limit" means the maximum gross household income that allows a household to be considered "low income" for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low income limit for a particular area. For the City of Boulder, the incomes reported for the Boulder Primary Metropolitan Statistical Area (PMSA) apply.

E. "Income" means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then "income" shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring

income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

F. "Institutional Lender" means any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

G. "Real Property" means land and improvements or common interest ownership and improvements.

H. "Rent," as used in this Covenant shall include, without limitation, all customary charges and fees to manage the rental units including water, sewer, and trash service and shall not include all other utilities, except that it shall not include amounts charged to tenants by the Grantor to reimburse the Grantor for actual amounts that the Grantor is required to pay to utility companies for service to the rental units as a result of the lack of credit worthiness, failure to pay their own utility bills, or neglect on the part of the tenant.

I. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest, or any interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

COVENANTS

1. **Rental Housing:** the Grantor shall maintain the Property and use the units only for residential housing for rent. Grantor shall maintain **[INSERT SPECIFIC UNITS OR NUMBER AND SIZE OF UNITS]** as the permanently affordable units.
2. **Maximum Income:** No single household in the specified permanently affordable units of the Property shall have an income which is greater than the HUD low-income limit for the Boulder PMSA. However, the above notwithstanding, a person, or family, whose income increases above the limits set forth above after he, she, or they become occupants of one of the units may be allowed to renew the lease for occupancy of the unit, provided that his, her, or the family's, gross income does not exceed thirty percentage points greater than the HUD Low-Income Limit.
3. **Maximum Assets:** No household in the specified permanently affordable units of the Property shall have assets which exceeds the asset limitations specified in the Division of Housing Income and Asset Limit Policy as established annually by the City Manager.

4. **Initial Rents:** The initial rent charged for each specified permanently affordable unit during the year immediately following the date of this Covenant shall not exceed **[SPECIFY THE RENTS FOR THE UNITS FOR APPROPRIATE SQUARE FOOTAGE AND HOUSEHOLD SIZE]**.
5. **Rent Increases:** Rent may be increased no more than once each year in an amount equal to, or less than, the percentage change in the “all items” figure for the prior twelve months in the most recent CPI-U or by 3% of the prior year’s rent, whichever figure is less. A rent increase above the percentage change in the CPI-U or 3% may be granted by the City upon its receipt and review of evidence which it finds to be convincing that operating expenses during the prior twelve months have increased by a percentage higher than the CPI-U or 3%. The Grantor must provide tenants with at least thirty days written notice before rent increases are implemented.
6. **Rental Covenant:** The parties acknowledge that the Grantor is a Housing Authority for the purposes noted in Colorado Revised Statutes § 38-12-301. The Grantor has signed and had recorded this Rental Covenant to maintain the specified permanently affordable rental units as affordable units.
7. **Transfer:** The Grantor shall not transfer its interest in the Property to any successor in interest without the express written agreement of the City that the City’s affordable housing interest in the Property will not be jeopardized by such transfer. To that end, no transfer shall occur unless a successor in interest qualifies as a “housing authority” or “similar agency,” as those terms are utilized in Colorado Revised Statutes § 38-12-301, or can otherwise be legally bound by rent restrictions. In any case, prior to the transfer of the Grantor’s interest in the Property, the Grantor shall offer the City the right of first refusal to purchase the Property.
8. **City’s Right to Acquire Grantor’s Interest:** In the case of potential or actual foreclosure, the City shall reserve the option to acquire the Property. The parties agree to the following provisions related to foreclosure or foreclosure prevention:
 - A. The Grantor agrees that he or she will give immediate notice to the City upon the first to occur of: (a) the date any notice of foreclosure is provided to the Grantor or any foreclosure is commenced against the Property under the first deed of trust, or (b) the date when the Grantor becomes 21 days late in making a payment on any indebtedness encumbering the Property required to avoid foreclosure of the first deed of trust.
 - B. At any time within 60 days after receipt of any notice described in Subparagraph 8A above, the City may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure or needed in order to redeem the Property after a foreclosure. Upon making any such payment, the City shall succeed to all rights of the Grantor to the Property and shall assume all of the Grantor’s rights and

obligations under the first deed of trust, subject to the terms of this Covenant. In such event the Grantor shall forthwith quit the Property and relinquish possession thereof to the City.

- C. The Grantor shall repay to the City of all sums paid by the City in connection with the first deed of trust and all other sums reasonably expended by the City in relation to the Property, plus eighteen percent simple interest from each date of expenditure. This redemption may only occur within one of the following time periods from the date when the City made the first of any payments due pursuant to Subparagraph 9A, whichever period is longer: twelve months; or the period of time allowed by Section 38-38-302 C.R.S., or any successor statute, for redemption by the foreclosed-upon Grantor of real property that has been sold pursuant to the foreclosure of a deed of trust or mortgage. As of the date of such redemption, the Grantor shall re-assume all of his or her rights and obligations under the first deed of trust. At the end of such twelve month period, if the Grantor's interest has not been so redeemed, all right, title and interest of the Grantor in the Property shall be extinguished, and the Grantor shall execute a quit claim deed to the City to evidence transfer of title to the City. If the Grantor fails or refuses to execute such a deed after being sent a written request therefor by the City, the City may execute it on behalf of the Grantor as the Grantor's attorney-in-fact.
9. **Enforcement Actions:** This Covenant may be specifically enforced against the Grantor or any successor in interest of the Grantor. Venue for such action shall be proper in Boulder County, and service may be made or notice may be given by posting such service or notice on the Property. Enforcement actions may include, without limitation, repayment of City-determined overcharges to tenants, eligibility for future funding, or lawsuit.
10. **Indemnification:** The Grantor shall defend, indemnify and save harmless the City from and against all losses, claims, suits, judgements or liabilities incurred as a result of the Grantor's actions or failures to act, and as part of such indemnification obligation shall pay all costs and attorney's fees, if any, incurred by the City as a result of any such claims or suits. The time of attorneys and legal assistants in the Boulder City Attorney's Office spent on any such claims or suits shall be paid for in accordance with generally prevailing attorney's fees charged in Boulder County for similar services.
11. The Grantor shall comply with all applicable laws and regulations of the City, State, and Federal governments.
12. The Grantor shall maintain the Property in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules, and regulations of any governmental authority with jurisdiction over matters concerning the Property.

13. The Grantor shall comply with annual reporting requirements of the Division of Housing, Department of Housing and Human Services, or any successor City of Boulder department or agency.
14. Leases between the Grantor and residents of the specified permanently affordable units must be for not less than one year.
15. No residential lease for the Property or any part thereof may contain any of the following provisions:
 - A. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
 - B. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Grantor may dispose of this personal property in accordance with state law;
 - C. Agreement by the tenant not to hold the Grantor or the Grantor's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - D. Agreement of the tenant that the Grantor may institute a lawsuit without notice to the tenant;
 - E. Agreement by the tenant that the Grantor may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 - F. Agreement by the tenant to waive any right to a trial by jury;
 - G. Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease; and
 - H. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Grantor against the tenant. The tenant may be obligated to pay costs if the tenant loses.
16. The Grantor may not terminate the tenancy or refuse to renew the lease of a tenant of the Property except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by service upon the tenant of a written notice from the Grantor specifying the grounds for the action.
17. The Grantor shall maintain the Property in compliance with all applicable housing quality standards and City code requirements.
18. The Grantor shall adopt written tenant selection policies and criteria for the Property that are consistent with the City of Boulder's Housing Division program guidelines as established by the City Manager or his/her designee.

- 19. This Covenant shall be perpetual, shall run with the land and in favor of the City of Boulder, Colorado, and shall be recorded by the Grantor in the real property records of the Clerk and Recorder of Boulder County, Colorado.
- 20. The Property is used to satisfy the requirements of Chapter 9-6.5 B.R.C, 1981 for this Property only, and not for any other property.
- 21. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.
- 22. Nothing in this Covenant shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and the Grantor.
- 23. The City Manager or his or her designee shall have the right to modify the conditions of this Covenant to deal with exigent circumstances. The City shall provide a 30-day review and comment period on any proposed changes prior to such change taking effect.

IN WITNESS WHEREOF, the Grantor has caused this Covenant to be duly executed as of the date first above written.

The Grantor

By: _____ Date _____
Grantor signature and title

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 200x, by
[INSERT GRANTOR SIGNATURE NAME AND TITLE FROM ABOVE].

Witness my hand and official seal.

My commission expires _____

Notary Public