**NOTICE OF LIEN AND EXTENDED USE AGREEMENT**

**BY**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\*FOR USE WITH ALL SECTION 42 DEVELOPMENTS**

**INCLUDING DEVELOPMENTS FINANCED WITH TAX-EXEMPT BONDS, RECEIVING ALLOCATIONS UNDER THE 2022 QAP**

Development Name: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Development Location: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Development Building Identification Number (“BIN”) **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

LIEN AND EXTENDED USE AGREEMENT

Low Income Housing Tax Credit Award # [INSERT AWARD NUMBER]

This Lien and Extended Use Agreement (“Agreement”) is made by and between [INSERT OWNER] (“Owner”), the Owner of certain real estate located at [INSERT ADDRESS], [INSERT CITY], in [INSERT COUNTY] County, State of Indiana, more particularly described on “Exhibit A” (“Real Estate”), and the Indiana Housing and Community Development Authority (“IHCDA” or the “Authority”), a public body corporate and politic of the State of Indiana.

# I. PURPOSE

1. IHCDA is authorized to act as the state’s housing credit agency and administers, operates, and manages the allocation of low income housing tax credits (“LIHTC”) pursuant to Section 42 of the Internal Revenue Code (“Code”), the Qualified Allocation Plan for the State of Indiana (“Allocation Plan”) and other rules, regulations, guidance and notices relating to LIHTC issued by the Internal Revenue Service (“IRS”) or IHCDA, from time to time (collectively “LIHTC Program”).
2. Owner received a reservation for an allocation of LIHTC credits in the amount of [INSERT SPELLED-OUT AMOUNT] Dollars ($[INSERT AMOUNT])(“Credits”), to be used to finance the construction and/or rehabilitation of a rental housing project proposed in Owner’s LIHTC application for the Real Estate (“Project”), which Project is subject to all of the requirements of the LIHTC Program.
3. In connection with a prior allocation of LIHTC, the Project is subject to that certain [NAME OF DOCUMENT, E.G. DECLARATION OF EXTENDED RENTAL HOUSING COMMITMENT] dated [INSERT DATE] and recorded on [INSERT DATE] in the [INSERT COUNTY] County Recorder’s Office in [INSERT COUNTY] County Indiana as Instrument Number [INSERT #] (the “Prior Extended Use Agreement”).
4. Owner represented to the Authority, and the Authority has relied on those representations, that the Project shall comply with all applicable construction, occupancy, and affordability requirements of the LIHTC Program and that the Project shall continue to meet these requirements for the LIHTC extended use period, as defined below.
5. The LIHTC Program requires that certain use restrictions be imposed upon any real estate assisted by Credits awarded by IHCDA to ensure that the benefits of such Credits remain with the intended beneficiaries under the LIHTC Program, as well as to comply with the Code.
6. Specifically, IHCDA requires that the use restrictions remain in force and effect for the entire fifteen (15) year Compliance Period required by the IRS plus an additional fifteen (15) years for a total of thirty (30) years (collectively the “Extended Use Period”).

# II. COVENANTS AND OBLIGATIONS

The parties agree that the reservation by IHCDA of Credits to be allocated to Owner when the Project is placed in service constitutes adequate consideration for the obligations undertaken by Owner in this Agreement. As of the date entered below, Owner hereby imposes the following use and deed restrictions upon the Real Estate and warrants, grants and conveys to IHCDA a lien upon the Real Estate for the duration of the Extended Use Period (the “Lien”). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

1. As a condition precedent to the availability of Credits for the Project, Owner shall deliver to and record this Agreement and its attachments with the Office of the Recorder for [INSERT COUNTY] County, Indiana, in which the Real Estate is located, to create a restrictive covenant running with the land upon which the Project is situated. Owner agrees to ensure that all requirements under Indiana law are satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate shall be satisfied in full. Throughout the term of this Agreement, its covenants and restrictions shall survive and be effective regardless of whether any contract, deed or other instrument subsequently executed conveying all or part of the Real Estate provides that such conveyance is subject to this Agreement. Owner agrees to obtain the consent of any prior recorded lien holder on the Real Estate to this Agreement, which consent shall be attached hereto and made a part hereof.
2. Owner and the Project must continuously comply with the LIHTC Program, including applicable sections of the Code and all Treasury Regulations and rulings relating to the LIHTC Program, each as amended from time to time, as well as the occupancy, development, and rent restriction requirements of the Code, the Allocation Plan and the additional commitments Owner made to IHCDA resulting in issuance of Form 8609, which Owner agreed to satisfy in the initial and final applications (collectively, the “Occupancy Restrictions”), all of which are incorporated herein by reference. Such Occupancy Restrictions include, but are not limited to:
   1. Owner has irrevocably elected the following Minimum Set-Aside election as defined in Section 42(g)(1) of the Code:

|  |  |
| --- | --- |
| **Selection**  **Insert “X”** | **Owner’s Commitment** |
|  | 20/50 |
|  | 40/60 |
|  | Average income |

* 1. Owner shall lease not less than \_\_\_\_ units in the Project to individuals or families whose income is 20% or less of area median gross income (including adjustments for family size), (“AMI”); not less than \_\_\_\_ units in the Project to individuals or families whose income is 30% or less of AMI; not less than \_\_\_\_ units in the Project to individuals or families whose income is 40% or less of AMI; not less than \_\_\_\_ units in the Project to individuals or families whose income is 50% or less of AMI; not less than \_\_\_\_ units in the Project to individuals or families whose income is 60% or less of AMI; not less than \_\_\_\_ units in the Project to individuals or families whose income is 70% or less of AMI; and not less than \_\_\_\_ units in the Project to individuals or families whose income is 80% or less of AMI (collectively “Qualifying Tenants”).
  2. Owner shall not refuse to lease a unit in the Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, if the prospective tenant meets all other eligibility and tenant selection criteria in order to be eligible for occupancy.
  3. Owner shall lease not less than \_\_\_\_ units in the Project at a rentthat is at or below the 20% AMI rent; not less than \_\_\_\_ units in the Project at a rent that is at or below the 30% AMI rentlevel; not less than \_\_\_\_ units in the Project at a rentthat is at or below the 40% AMI rent; not less than \_\_\_\_ units in the Project at a rentthat is at or below the 50% AMI rent; not less than \_\_\_\_ units in the Project at a rentthat is at or below the 60% AMI rent; not less than \_\_\_\_ units in the Project at a rentthat is at or below the 70% AMI rent; and not less than \_\_\_\_ units in the Project at a rentthat is at or below the 80% AMI rent.
  4. Owner shall lease \_\_\_\_ units in the Project as “exempt units” for occupancy by employees who work full-time for the Project. Such exempt units are not subject to LIHTC Program income and rent restrictions.
  5. Owner shall ensure that the “applicable fraction” (as defined in Section 42(c)(1)(B) of the Code) for each building for each taxable year in the Compliance Period and each year of the Extended Use Period shall not be less than the applicable fraction agreed upon in the initial and final applications as submitted to IHCDA.
  6. Owner shall lease units in accordance with any agreed upon restrictions for occupancy by special needs households, if applicable, as identified in Exhibit C.
  7. The Occupancy Restrictions set forth herein fully amend and restate the Occupancy Restrictions as defined in the Prior Extended Use Agreement as identified in Part I.C above. In the event of any conflict between the Prior Extended Use Agreement and this Agreement regarding the Occupancy Restrictions, this Agreement shall control.

1. Subject to the requirements of the Code, which prohibits the disposition to any person of any portion of the building to which this Agreement applies unless all of the building is disposed of to such person, Owner may sell, transfer or exchange the Project; provided, however, such sale, transfer or exchange shall be voidable by the Authority if the Authority is not first notified in writing and provided with the identity of the buyer or other successor of Owner's interest in the Project, together with such other information requested by the Authority. The partial disposition prohibition shall not apply to the Project if it is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Internal Revenue Service or the Authority determines that such acquisition is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the extended use period (as set forth in Subsection E of Part I of this Agreement). This subparagraph shall not act to waive any other restriction on sale, transfer or exchange of the Project.
2. Neither the Owner nor representatives acting on behalf of the Owner shall during the Extended Use Period or the three-year period immediately following termination of this Agreement as provided herein, 1) evict or terminate the tenancy of an existing tenant (other than for good cause), or 2) increase the gross rent with respect to any unit not otherwise permitted under Section 42.
3. IHCDA and Qualifying Tenant(s) (or either or all of them) are entitled, for any breach of this Agreement, to enforce specific performance by Owner of its obligations under this Agreement in a state court of competent jurisdiction, in addition to all other remedies provided by law or in equity. Owner unconditionally agrees that the beneficiaries of Owner’s obligations under this Agreement cannot adequately be compensated by monetary damages in the event of any such breach. In addition, IHCDA may recover reasonable attorneys’ fees and court costs incurred enforcing specific performance of the Owner’s obligations under this Agreement.
4. Owner acknowledges that the financial assistance received through the LIHTC Program represents good and valuable consideration for entering into this Agreement and that these restrictions on the use of the Project are consistent with the statutes, regulations, terms, conditions, and requirements for the LIHTC Program as administered by IHCDA.
5. Owner shall indemnify, save and hold harmless the Authority, its directors, officers, employees and agents from any and all claims, losses, damages or expenses (including reasonable attorneys’ fees) arising out of or in any way related to failure or alleged failure of the Owner to strictly and timely perform its obligations under this Agreement, or as a result of allocation of the Credits to the Project, or the recapture of any portion of the Credits by any appropriate governmental agency.

**III. TERM, TERMINATION, MISCELLANEOUS**

1. The terms, conditions, covenants and restrictions of this Agreement commence on the first day on which the first residential unit in the Project is placed in service and end on the last day of the Extended Use Period set forth in Subsection E of Part I of this Agreement.
2. Notwithstanding anything in this Agreement to the contrary, the Extended Use Period for any building which is a part of the Project shall terminate:
3. On the date such building is acquired by foreclosure or instrument in lieu of foreclosure, subject to the limitations in Subsection C of Part III of this Agreement below,
4. The Lien may be foreclosed and the restrictive covenants may terminate on the date the Project is acquired by foreclosure in accordance with the laws of the State of Indiana, or instrument in lieu of foreclosure, provided that IHCDA has received prior notice of the default and foreclosure action and any other information IHCDA requests about the disposition of the property following foreclosure. The foregoing shall not apply to the Project if the IRS or the Authority determines any such acquisition of the Project is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the Extended Use Period. The Project remains subject to the limitations in Subsection D of Part II of this Agreement, above for the three-year period immediately following termination of the Agreement.
5. This Agreement shall be binding upon the Project and shall constitute covenants running with the land. Owner agrees to ensure that any and all requirements of the laws of the State of Indiana which are satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate shall be satisfied in full. Except as otherwise provided herein, the covenants and restrictions contained herein shall survive and be effective throughout the Extended Use Period, regardless of whether any contract, deed or other instrument hereafter executed conveying the Real Estate or a portion thereof provides that such conveyance is subject to this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.
6. This Agreement may be amended only with the prior written approval of the Authority and no amendment shall be effective without such prior written approval. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. All notices to be given pursuant to this Agreement shall be in writing and mailed by certified mail 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.
7. The mortgagee of record consents to this Agreement, as demonstrated in Exhibit B.

This Lien and Extended Use Agreement is effective as of the \_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_\_.

IN WITNESS WHEREOF, Owner and the Authority have caused this Agreement to be signed by duly authorized representatives, on the day and year first written above.

|  |  |  |
| --- | --- | --- |
| Owner:  **[INSERT NAME OF OWNER]**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[INSERT NAME OF CO-OWNER]**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
|  |  |  |
|  |  |  |

STATE OF INDIANA )

) SS:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ )

Before me, a Notary Public, in and for said county and State, personally appeared\_\_\_\_\_\_\_\_\_\_\_\_\_ the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who acknowledged that the foregoing Lien and Extended Use Agreement was executed in such capacity as its voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_\_, 20\_\_\_\_.

|  |  |
| --- | --- |
| My County of Residence:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Notary Public |
| My Commission Expires:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Printed Name |

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

AGREED TO this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by the Authority.

INDIANA HOUSING AND COMMUNITY

DEVELOPMENT AUTHORITY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

J. Jacob Sipe, Executive Director

STATE OF INDIANA )

) SS:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ )

Before me, a Notary Public, in and for said county and State, personally appeared J. Jacob Sipe, the Executive Director of Indiana Housing and Community Development Authority, who acknowledged that the foregoing Lien and Extended Use Agreement was executed in such capacity as its voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

|  |  |
| --- | --- |
| My County of Residence:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Notary Public |
| My Commission Expires:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Printed Name |

This instrument was prepared by Carmen M. Files, Deputy Counsel, Indiana Housing and Community Development Authority, 30 South Meridian Street, Suite 900, Indianapolis, IN 46204 (317) 232-7777.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, if any, unless required by law: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Return recorded document to:

Attn: RHTC

Indiana Housing & Community Development Authority

30 South Meridian Street, Suite 900

Indianapolis, IN 46204

**EXHIBIT A**

**LEGAL DESCRIPTION**

**EXHIBIT B**

**MORTGAGEE’S ACKNOWLEDGEMENT AND CONSENT**

**TO THE LIEN AND EXTENDED USE AGREEMENT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the mortgagee of record (“Mortgagee”) pursuant to a mortgage recorded as Instrument No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and filed in the Office of the Recorder of \_\_\_\_\_\_\_\_\_\_\_\_\_ County, Indiana on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, hereby consents to the Lien and Extended Use Agreement (“Agreement”) executed by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”). and Indiana Housing and Community Development Authority dated on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_. Specifically, Mortgagee acknowledges having notice of the conditions under which the Agreement may be terminated and the lien foreclosed, as provided in the Agreement.

IN WITNESS WHEREOF, Mortgagee, by its duly authorized officer, has hereunto executed this Mortgagee’s Consent to Lien and Extended Use Agreement this \_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_.

“MORTGAGEE”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF INDIANA )

) SS:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Mortgagee”), who acknowledged that the foregoing Mortgagee’s Acknowledgement and Consent to Lien and Extended Use Agreement was executed in such capacity for and on behalf of the Mortgagee.

WITNESS my hand and seal this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

|  |  |
| --- | --- |
| My County of Residence:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Notary Public |
| My Commission Expires:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Printed Name |

**EXHIBIT C**

**ADDITIONAL DEVELOPMENT REQUIREMENTS**

**Term**

Owner has irrevocably waived the right to request early termination of the Extended Use Agreement through the Qualified Contract provisions of IRC Section 42

**Set-Aside Requirements**

This development competed for an allocation of Credits under the following set-aside(s), and is subject to all requirements of that set-aside as defined in the [INSERT YEARS] Indiana Qualified Allocation Plan.

🞏 Qualified Not-for-Profit 🞏 Development Location- Rural

🞏 Community Integration 🞏 Preservation of Existing Affordable Housing

🞏 Development Location- Large City 🞏 Housing First- Supportive Housing

🞏 Development Location- Small City 🞏 IHCDA General Set-Aside

**Special Needs Housing / Occupancy Restrictions**

1. This development will be subject to an age-restriction in accordance with the age-restricted housing rules of the Housing for Older Persons Act of 1995. 🞏 Yes 🞏 No

If yes, select one of the options below:

🞏 At least 80% of the units will be occupied by households in which at least one member is 55 years of age or older; OR

🞏 100% of the units will be occupied by households in which all members are 62 years of age or older

1. This development will operate as permanent supportive housing for persons experiencing homelessness. 🞏 Yes 🞏 No

If yes, select one of the options below:

🞏 100% of the units are restricted to occupancy by persons experiencing homelessness; OR

🞏 No more than 25% of the units, but no less than seven (7) units, are restricted to occupancy by persons experiencing homelessness

1. This development will meet the requirements of the “Community Integration” set-aside. 20-25% of the units must be restricted to occupancy by households in least at least one member has an intellectual or developmental disability. All units set aside for persons with intellectual or developmental disabilities must be rent restricted at the applicable 30% rent limit. 🞏 Yes 🞏 No