

NOTICE OF LIEN AND EXTENDED USE AGREEMENT

BY

Dated: _____

***FOR USE WITH ALL SECTION 42 DEVELOPMENTS, INCLUDING DEVELOPMENTS
FINANCED WITH TAX-EXEMPT BONDS**

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

- A. 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 of 1986 (“Code”), the Rental Housing Tax Credit 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”).
- B. Owner received a reservation for an allocation of LIHTC credits in the amount of [Insert Spelled-out Amount] \$[Insert Amount] (“Credits”), to be used to finance the construction 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.
- C. 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.
- D. 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.
- E. Specifically, IHCDA requires that the use restrictions remain in force and effect for the entire period
- F. required by the IRS, the Allocation Plan and any extended use period selected by Owner (“Extended Use Period”), which period is indicated below by an “X”:

Selection Insert “X”	Owner’s Commitment	Extended Use Period
	Tenant Lease/Purchase	15 years
	Section 42 Compliance Period, plus 15 years	30 years
	Section 42 Compliance Period, plus 20 years	35 years
	Section 42 Compliance Period, plus 25 years	40 years

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:

- A. 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 _____ 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 that all requirements under Indiana law that must be 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.
- B. 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 LIHTC Credits, 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 IHCD 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 shall lease not less than _____% of the units in the Project to individuals or families whose income is 30% or less of area median gross income (including adjustments for family size), ("AMI"), not less than _____% of the units in the Project to individuals or families whose income is 40% or less of AMI, not less than _____% of the units to individuals or families whose income is 50% or less of AMI, and not less than _____% of the units to individuals or families whose income is 60% or less of AMI (collectively "Qualifying Tenants"), and 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 shall not be less than _____ percent (____%). Owner shall not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
 2. Owner shall lease not less than _____% of the units in the Project at a rent that is at or below the 30% AMI rent level; and not less than _____% of the units in the Project at a rent that is at or below the 40% AMI rent; and not less than _____% of the units in the Project at a rent that is at or below the 50% AMI rent; and not less than _____% of the units in the Project at a rent that is at or below the 60% AMI rent.
- C. 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 part I.E). This subparagraph shall not act to waive any other restriction on sale, transfer or exchange of the Project.
- D. 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.
- E. IHCD 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.

- F. Owner acknowledges that the financial assistance received through the LIHTC Program represents good and valuable consideration for 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.
- G. 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

- A. 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 date which is the later of (i) the Extended Use Period set forth in part I.E., or (ii) the expiration of any additional extended use period, set forth in "Exhibit D" attached hereto.
- B. Notwithstanding anything in this Agreement to the contrary, the Extended Use Period for any building which is a part of the Project shall terminate:
 - 1. On the date such building is acquired by foreclosure or instrument in lieu of foreclosure, subject to the limitations in part III.C. below,
 - 2. On the last day of the fifteen (15) year Section 42 Compliance Period or fifteen (15) years prior to the expiration of any extended use period set forth in "Exhibit D", whichever occurs later, if Owner has properly requested, pursuant to the Code and the LIHTC Program, that the Authority present a qualified contract as defined in the Code, for the acquisition of the low-income portion of any part of the Project and the Authority is unable to procure a qualified contract.
- C. 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.
- D. This Agreement shall be binding upon the Project and shall constitute covenants running with the land. Owner agrees that any and all requirements of the laws of the State of Indiana which must be 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.
- E. 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.

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]**

[Insert Name of Co-Owner]

By: _____

By: _____

Printed: _____

Printed: _____

Address: _____

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____.

[Insert Name of Notary]
A Resident of _____ County, Indiana

My Commission Expires: _____

AGREED TO this _____ day of _____ by the Authority.

INDIANA HOUSING AND COMMUNITY
DEVELOPMENT AUTHORITY

By: _____
J. Jacob Sipe, Interim Executive Director
30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said county and State, personally appeared J. Jacob Sipe, the Interim Executive Director of IHCD, 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_____.

[Insert Name of Notary]
A Resident of _____ County, Indiana

My Commission Expires: _____

This instrument was prepared by Deborah K. Hepler (18003-49), General Counsel, Indiana Housing and Community Development Authority, 30 South Meridian Street, Suite 1000, Indianapolis, IN 46204 (317) 232-7777.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, [Insert Name of Preparer]

EXHIBIT B

**MORTGAGEE'S ACKNOWLEDGEMENT AND CONSENT TO
TO THE LIEN AND RESTRICTIVE COVENANT 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 _____, hereby consents to the Lien and Restrictive Covenant Agreement ("Agreement") executed by _____ ("Owner") on _____. 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: _____

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 Consent was executed in such capacity for and on behalf of the Mortgagee.

WITNESS my hand and seal this _____ day of _____.

My County of Residence:

Notary Public

My Commission Expires:

Printed Name