

**AFFORDABLE HOUSING FINANCING FUND
LAND BANKING PROGRAM**

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (“**Declaration**”) is dated as of this ____ day of _____, 2025 (“**Effective Date**”), by Town of Frisco, a Colorado home rule municipality whose address is PO Box 4100, Frisco, CO 80443 (the “**Declarant**”), for the benefit of the COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado, solely in its capacity as the Program Administrator for the AFFORDABLE HOUSING FINANCING FUND, managed by the Colorado Office of Economic Development and International Trade, a Colorado state agency, whose address is 1981 Blake Street, Denver, CO 80202 (“**Grantor**”).

RECITALS

A. Declarant owns fee simple title to that certain real property located in Frisco, Summit County, Colorado, legally described on Exhibit A attached hereto and incorporated herein (the “**Property**”).

B. Declarant intends to use the Property to develop affordable rental housing, affordable for sale housing, and/or a mixed-use development (with the predominate use being affordable housing) (the “**Project**”).

C. In connection with the Project, Declarant has applied to the Grantor for a grant in the amount of \$5,000,000.00.

D. As an inducement to and condition of making the grant, Declarant has agreed to enter into certain restrictive covenants on the Project for the benefit of the Grantor as more fully set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the grant and the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein and made a part hereof to the same extent as if set forth herein in full.

2. **Use Restrictive Covenant.** From and after the Effective Date, Declarant covenants and agrees that the Project shall be developed as affordable rental housing, affordable for sale housing, and/or commercial mixed-use. If the Project is developed as commercial mixed-use, then the Predominate Use must be affordable housing. Market-rate or non-restricted housing or rent-restricted housing above 80% area median income (“**AMI**”) may be included in that portion of the Project that does not consist of the Predominate Use. “**Predominate Use**” as used in this paragraph means at least 70% of the Project’s improved square footage [or units] must be affordable housing, unless a different percentage is agreed to in writing by the Grantor. The commercial use of a mixed-use project must be compatible with the affordable housing use and must be approved by the Grantor, in the Grantor’s sole discretion, in advance of any development activity.

3. **Affordability Restrictive Covenant.** Declarant covenants and agrees that, subject to Section 2 hereof regarding that portion of the Project that does not consist of the Predominate Use (i) all rental units developed on the Property will be restricted to households with annual incomes at or below 80% of AMI, and (ii) all for-sale homes (or for-sale units, as applicable) developed on the Property will be restricted to households with annual incomes at or below 100% of AMI through a ground lease or similar structure as approved by the Grantor in its sole discretion (“**Affordability Restrictive Covenant**”).

The Affordability Restrictive Covenant pursuant to this Paragraph 3 shall commence, as applicable: (i) upon construction completion of the rental housing units and continue for at least forty (40) years after construction completion of the last rental housing unit and/or (ii) upon construction completion of the for-sale homes (or for-sale units, as applicable) and shall continue for at least forty (40) years after construction completion of the final for-sale home (or unit, as applicable). If the Project has pre-existing rental housing or for-sale housing improvements as of the Effective Date, then the Affordability Restrictive Covenant set forth herein shall commence as of the Effective Date and continue for forty (40) years thereafter.

4. **Release.** This Declaration may be released by mutual agreement of Declarant and the Grantor, or per the terms of a separate agreement.

5. **Injunctive Relief.** Any breach of the terms and conditions of this Declaration shall cause irreparable harm to the Grantor. As such, upon a violation or threatened violation of the terms of this Declaration, the Grantor shall have the right to enforce the terms and conditions of this Declaration and shall have the right to seek and obtain temporary and/or permanent injunctive relief against the then-owner, occupant or tenant of the Property. All of the remedies permitted or available under this Declaration shall be cumulative and not alternative to any other remedies available at law or in equity, and an invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

6. **Transfers.** The Declarant shall not permit any transfer, conveyance, sale, assignment, or lease, whether voluntary or involuntary or by action of law, of all or any portion of the Property or the Project, without the prior written consent of Grantor.

7. **Covenant Running with Land; Binding on Successors and Assigns.** This Declaration and the restrictions contained herein shall burden the Property and be appurtenant to and benefit the Grantor. The restrictions and provisions herein shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

8. **Superiority.** The burdens of this Declaration are, and will at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust hereafter made affecting the Property or any part thereof, including any improvements now or hereafter placed thereon, and notwithstanding a foreclosure or other voluntary or involuntary transfer of title pursuant to such instrument, will remain in full force and effect.

9. **Severability.** If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect and the court shall construe this Declaration as much as possible to give rise to the intent to the language hereof.

10. **Attorneys' Fees.** In the event of any action at law or in equity to enforce any of the provisions and/or rights under this Declaration, the prevailing party in such action shall be awarded reasonable attorneys' fees and court costs incurred therein.

11. **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado.

12. **Consent to Jurisdiction and Venue.** DECLARANT AGREES THAT ANY CONTROVERSY ARISING UNDER OR IN RELATION TO THIS DECLARATION SHALL BE LITIGATED EXCLUSIVELY IN COLORADO. THE STATE AND FEDERAL COURTS AND AUTHORITIES SITTING IN THE CITY AND COUNTY OF DENVER, COLORADO, SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL CONTROVERSIES WHICH SHALL ARISE UNDER OR IN RELATION TO THIS DECLARATION. DECLARANT IRREVOCABLY CONSENTS TO SERVICE, JURISDICTION, AND VENUE OF SUCH COURTS FOR ANY SUCH LITIGATION AND WAIVES ANY OTHER VENUE TO WHICH IT MIGHT BE ENTITLED BY VIRTUE OF DOMICILE, HABITUAL RESIDENCE OR OTHERWISE. HOWEVER, NOTHING HEREIN IS INTENDED TO LIMIT GRANTOR'S RIGHT TO BRING ANY SUIT, ACTION OR PROCEEDING RELATING TO MATTERS ARISING UNDER THIS DECLARATION AGAINST DECLARANT OR ANY OF DECLARANT'S ASSETS IN ANY COURT OF ANY OTHER JURISDICTION.

13. **Counterparts.** This Declaration may be executed in one or more counterparts.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant and Grantor have executed this Declaration to be effective as of the Effective Date.

DECLARANT:

TOWN OF FRISCO,
a Colorado home rule municipality

By: _____
Frederick J. Ihnken, Mayor

ATTEST:

Stacey Nell, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by Frederick J. Ihnken, as Mayor and Stacey Nell as Town Clerk of the Town of Frisco, a Colorado home rule municipality.

Witness my hand and official seal.

My commission expires: _____

[S E A L]

Notary Public

GRANTOR:

COLORADO HOUSING AND FINANCE
AUTHORITY, a body corporate and political
subdivision of the State of Colorado, solely in its
capacity as the Program Administrator for the
AFFORDABLE HOUSING FINANCING FUND,
managed by the Colorado Office of Economic
Development and International Trade, a Colorado
state agency

By: _____
[name/title]
Colorado Housing and Finance Authority

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____,
2025, by _____, as _____ of the Colorado Housing and Finance Authority,
a body corporate and political subdivision of the State of Colorado, solely in its capacity as
program administrator for the Affordable Housing Financing Fund, managed by the Colorado
Office of Economic Development and International Trade, a Colorado state agency.

Witness my hand and official seal.

My commission expires: _____

[S E A L]

Notary Public

EXHIBIT A

(To Declaration of Restrictive Covenant)

Legal Description of the Property

LOT B-1, AMENDED WEST FRISCO 70, FILING NO. 2, ACCORDING TO THE PLAT FILED APRIL 16, 1974 UNDER RECEPTION NO. [140796](#), COUNTY OF SUMMIT, STATE OF COLORADO.

Also known as 101 West Main Street, Frisco, CO, 80443 - APN 1100169.