

AGREEMENT FOR COVENANTS AND RESTRICTIONS

**Document prepared by, and
after recording, please return to:**

City of _____

_____, Iowa _____

() ____ - ____

GRANTOR AND TAXPAYER: _____,

GRANTEE: _____,

LEGAL DESCRIPTION:

CDBG-UPPER STORY Contract Owner: _____

CDBG-UPPER STORY Contract Number: _____

Address: _____

**AGREEMENT FOR COVENANTS AND RESTRICTIONS
(COMMUNITY DEVELOPMENT BLOCK GRANT – UPPER STORY RENTAL HOUSING
CONVERSION PROGRAM)**

THIS AGREEMENT FOR COVENANTS AND RESTRICTIONS (“Agreement”), effective as of _____, is between _____, (the "City"), and _____ (the "Owner").

WITNESSETH:

WHEREAS, the City received Community Development Block Grant-Upper Story Rental Housing Conversion Program (CDBG-Upper Story) funds from the Iowa Economic Development Authority (IEDA); and

WHEREAS, the Owner has applied for and received approval for funding from the City, and the Owner and the City have entered into a Community Development Block Grant-Upper Story Rental Housing Conversion Program Development Agreement (the “Contract”), dated _____, and a Promissory Note (the “Note”), dated _____ (the Contract and the Note shall be known collectively as the “Loan Documents”), and

WHEREAS, the agreements, obligations, and covenants of the Owner pursuant to the Loan Documents are secured by a Mortgage, dated _____ (the Mortgage) and an Assignment of Leases and Rents, dated _____, both granted to the City by the Owner, and

WHEREAS, pursuant to the Loan Documents, the City made an award in the amount of \$_____ (“CDBG Funds”) to the Owner for the purpose of financing a portion of the costs of the project described in the Exhibits to the Loan Documents (the "Project") to be located on the real estate described in **Exhibit A** hereto (the “Property”); and

WHEREAS, in accordance with the Loan Documents, the Owner is required to provide certain housing benefits for low-and-moderate income families as set forth therein, and is further required to comply throughout the term of the Loan Documents with the requirements and covenants set forth therein;

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

"Affordable Rental Units" means those units contained on the Property that are occupied by Low-and-Moderate Income Families at any given time. The Grantor is not required to designate specific units as Affordable Rental Units but must meet the requirements of Section 2 hereof at all times during the Term of Affordability.

"Community Development Block Grant-Upper Story Rental Housing Conversion Program" or "CDBG-Upper Story" means the grant program authorized under Title I of the Housing and Community Development Act of 1974 and 24 CFR 570.480 et. Seq. for the rehabilitation of unoccupiable residential units in existing buildings or conversion of existing space into new residential units in existing buildings in spaces that are currently unoccupied.

"IEDA" means the Iowa Economic Development Authority.

"Low-and-Moderate Income Families" means those families earning no more than 80% of area median income as determined by the latest U.S. Department of Housing and Urban Development, Section 8 income guidelines. Unrelated individuals shall be considered as one-person families for this purpose.

2. As a condition to receipt of CDBG Funds, and in order to help ensure compliance by the Owner and any future owner of the Project with the requirements and covenants set forth in the Loan Documents throughout the required period of time (“Affordability Period”) as set forth in the Contract and Exhibits thereto, so as to maintain the housing benefits for which assistance has been provided through CDBG-Upper Story and therefore protect the investment of the City and IEDA in the Project, and in order to give the City and IEDA the ability to fulfill its obligations under CDBG-Upper Story to ensure such compliance, certain covenants and restrictions enforceable by the City must be placed on the real estate described in **Exhibit A** hereto governing the use of the Project, which covenants and restrictions shall run with the land and be binding on the Owner and its successors or assigns. The Owner, for itself and for its successors or assigns, makes the following covenants as to the use of the Project and the real estate described in **Exhibit A**:

- (a) All of the CDBG Funds shall be spent on Eligible Costs of the Project described in the Contract, in accordance with the Project described in Exhibit A to the Contract;
- (b) The Project shall be completed so as to provide the project benefits as required by and specified in the regulations and as referenced in the Loan Documents;
- (c) The Project shall constitute an eligible activity in compliance with CDBG-Upper Story as described in the Loan Documents, and the Owner shall comply with all of the CDBG-Upper Story requirements and shall own, operate and manage the Project as an eligible project **throughout the Affordability Period ending Three (3) years from when the City has determined the Project Activity has been completed and initial lease-up and demographic information entered into the HUD Grant Reporting system;**
- (d) Throughout the Affordability Period, the Owner shall rent 51% of the units in the Project assisted units to households at or below 80% of the area median income (the "CDBG-Upper Story Units) and the maximum (gross) rent limits allowed on the CDBG-Upper Story Units shall not exceed the most current HOME Program 65% rent limits in accordance with 24 CFR 92.252(a);
- (e) Throughout the Affordability Period, the Owner shall allow inspections of the Project to ensure continued compliance with all locally adopted and enforced building codes and standards, or, in the absence of any locally adopted and enforced building codes and standards, the requirements of the current Iowa State Building Code;
- (f) Throughout the Affordability Period, the owner shall comply with all of the statutes, regulations, and notices in the Federal Register that govern CDBG-Upper Story, including, but not limited to, Title I of the Housing and Community Development Act of 1974 and 24 CFR 570.480 et. Seq., as amended, and all notices published by HUD in the Federal Register and related thereto;
- (g) In order to ensure compliance with the covenants in subparagraphs (d), (e), and (f) above, Owner shall submit to the City, as required by the Loan Documents, its certification of compliance with such covenant, together with documentation in form and substance satisfactory to the City evidencing compliance with such covenant; and
- (h) The Owner shall comply with all the covenants set forth in the Loan Documents.

3. All the covenants herein shall run with the real estate described in **Exhibit A** hereto and the Project thereon and be binding upon the Owner and its successors or assigns, for the Affordability Period. Notwithstanding any other provisions of this Agreement, this entire Agreement, or any of the provisions or paragraphs hereof, may be terminated upon written agreement by the City and the Owner.

4. Notwithstanding the provisions of Section 3, such covenants shall cease to apply to the Mortgaged Property prior to the end of the Term of Affordability, in the event of involuntary noncompliance therewith caused by a fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or action of a federal agency after the date of making of the Loan which prevents the City or its successors or assigns from enforcing the covenants, or condemnation or similar event, but only if, within a reasonable period, amounts received by the Grantor as a consequence of such event are used to provide a project which meets the requirements of the CDBG-Upper Story program.

5. Notwithstanding the provisions of Section 4, if once the Mortgaged Property has been subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, and at any time during the part of the Term of Affordability subsequent to such event, the Grantor or a related person to the Grantor obtains an ownership interest in the Project for tax purposes, the covenants herein shall once again run with the land described in Attachment A hereto and the Project thereon and be binding on the Grantor or such related person and their respective successors or assigns for the remainder of the Term of Affordability.

6. Performance by the Owner of its agreements, covenants, and obligations pursuant to this Agreement are secured by the Mortgage against the real estate described in Exhibit A hereto, executed by the Owner and delivered to the City pursuant to the Contract

7. The Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in such manner and in such places as the City may reasonably request, and shall pay all fees and charges incurred in connection therewith.

8. This Agreement may be amended only by an amendment in writing executed by the parties hereto and properly recorded in the County Recorder's office.

9. Except for the rental of units in the Project to tenants, the Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any interest therein without obtaining the prior written consent of the City, which shall be conditioned

solely upon receipt of evidence satisfactory to the City that the Owner's purchaser or transferee (i) has assumed in writing and in full the Owner's duties and obligations under this Agreement, the Loan Documents and all related documents thereto; (ii) has the financial capability to carry out such obligations; and (iii) is knowledgeable in the operation and management of facilities similar to the Project facilities. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this paragraph may be ineffective to relieve the Owner of its obligations under this Agreement, the Loan Documents and all related documents thereto.

10. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Agreement, and if such default remains uncured for a period of 10 Business Days in the case of a monetary default or 20 Business Days in the case of a non-monetary default, provided, however, that if a non-monetary default cannot reasonably be cured within 20 Business Days and the Developer commences a cure within 20 Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended for up to an additional 30 Business Days, then the City may declare that the Owner is in default hereunder and may take any one or more of the following steps, at its option:

- (a) temporarily suspend making disbursements of CDBG-Upper Story Funds under this Agreement pending correction of the deficiency or default by the Developer;
- (b) require the repayment of the CDBG-Upper Story Loan;
- (c) declare the Developer and its principals "not in good standing" with respect to the City;
- (d) cease making any further payments of CDBG-Upper Story Funds under this Agreement;
- (e) terminate this Agreement;
- (f) require the immediate repayment of CDBG-Upper Story Funds advanced pursuant to this Agreement;
- (g) require that the Developer, the property manager, the Contractor or any other party providing services to the Developer to be replaced;
- (h) "Reserved"
- (i) draw upon and apply any escrows and/or reserve accounts in accordance with their terms;
- (j) exercise any rights it may have under the CDBG-Upper Story Loan Documents, including, but not limited to, foreclosure of the Note and Mortgage thereunder, in order to assure for repayment of the CDBG-Upper Story Funds; and
- (k) exercise any other rights and remedies that may be available under law or in equity.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of the City to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

10. This Agreement shall be governed by the laws of the State of Iowa.

11. Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

City: _____

Attention: _____

Owner: _____

Attention: _____

12. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

13. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

14. All the rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed by its duly authorized officers.

OWNER:

By: _____
Print Name: _____
Authority: _____

By: _____
Print Name: _____
Authority: _____

STATE OF IOWA)
)
COUNTY OF _____)

On this _____ day of _____, 20____, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public

STATE OF IOWA)
)
COUNTY OF _____)

On this _____ day of _____, 20____, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, the _____ for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public

CITY:

By: _____
Print Name: _____
Authority: _____

By: _____
Print Name: _____
Authority: _____

STATE OF IOWA)
)
COUNTY OF _____)

On this _____ day of _____, 20____, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, the _____ for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public

STATE OF IOWA)
)
COUNTY OF _____)

On this _____ day of _____, 20____, in front of the undersigned notary public, in and for the State of Iowa, personally appeared _____, the _____ for _____, a _____ organized in the State of Iowa, and that _____, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and _____.

Signature of Notary Public

EXHIBIT A
LEGAL DESCRIPTION

The following described real estate located in the City of _____, _____ County, Iowa:
