

## USE COVENANT

**THIS USE COVENANT** (this "**Covenant**") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), by and between \_\_\_\_\_, a Colorado limited liability company ("**Project Owner**"), and **YAMPA VALLEY HOUSING AUTHORITY**, a body corporate and politic of the State of Colorado ("**YVHA**").

## RECITALS

This Covenant is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Project Owner is the fee owner of land located in Routt County, Colorado legally described on Exhibit A attached hereto (the "**Property**").

B. YVHA is a multijurisdictional housing authority pursuant to the laws of the State of Colorado with the purpose of planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan in order to provide dwelling accommodations at rental prices or purchase prices within the means of families of low or moderate income living within the jurisdiction of the Authority, and to provide affordable housing projects or programs for employees of employers located within the jurisdiction of the Authority.

C. Project Owner intends to construct an income and residency restricted housing development containing \_\_\_\_\_ units of rental apartments (each, a "Unit"), on that \_\_\_\_\_ real property \_\_\_\_\_ legally described as \_\_\_\_\_ (the "Project"), with the renderings, drawings, and specifications for construction of which are attached hereto as Exhibit B (the "Plans and Specifications");

D. Project Owner is entering into this Covenant in exchange for YVHA's contribution of the Property to Project Owner.

E. The parties desire to establish the terms and conditions of this Covenant to govern Project Owner's construction of the Project on the Property and otherwise fulfill the foregoing objectives.

## COVENANT

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and incorporated herein by this reference, and further agree as follows:

1. **Property Subject to Covenant; Agreement Binds the Property.** The Use Covenant applies to the Units in the Property throughout the term of this Covenant. This Restriction shall constitute covenants running with title to the Property as a burden thereon, for benefit of, and enforceable by, the YVHA and its successors and assigns, and this Use Covenant shall bind Project Owner and all subsequent Owners of the Property. Each Owner, upon acceptance of a deed to the Property, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership of the Property. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants contained in this Restriction, even without reference to this Restriction in any document of conveyance.

### 2. **Income and Rent Restriction Set-Asides.**

a. *Income Restrictions.* \_\_\_ of the \_\_\_ Units will be set aside to households that, on average, earn up to \_\_\_ of AMI (as defined below), and \_\_\_ of the \_\_\_ Units will be set aside to households that, on average, earn up to \_\_\_ of AMI. The Unit designations and AMI limits are set forth in Exhibit B.

b. *Income Restrictions for New Tenants.* The income restrictions for the Units shall be calculated upon initial occupancy. Thereafter, for each new tenant, Project Owner shall ensure compliance with average AMI for the Units based on the last available information for tenants in the Units and the new tenant (that is, Project Owner need not obtain new certificates from all tenants in Units each time a new tenant moves into the Project).

c. *Compliance with Income Restrictions.* To the extent YVHA is not acting as property manager for Project Owner, YVHA shall be entitled to obtain reasonable evidence of annual compliance by Project Owner and

the tenants in the Units. To the extent a tenant does not comply with income restrictions in a Unit, Project Owner and YVHA shall work in good faith to effect a cure, as more particularly set forth below.

d. *Initial Rent Restrictions.* The Units will be initially offered at a maximum of an average rental rate set at the greater of (i) the applicable 20\_\_ AMI Rent Level for the Units or (ii) the applicable AMI Rent Level for the Restricted Units in the year during which all the Units are available for rental.

e. *Rent Increases for Renewing Tenants.* On an annual basis for each renewing tenants in the Units, Project Owner may increase rent on the Units to an amount equal to not more than the greater of (i) fifty percent (50%) of any increase in the revised AMI Rent Level published by HUD for the applicable year; or (ii) two percent (2%) of existing rent.

f. *Rent for New Tenants.* Project Owner shall set rent for new tenants in the Units at the greater of: (i) the then applicable AMI Rent Level for said Unit; or (ii) the rent payable by the previous occupant.

g. *Default and Cure.* In the event Project Owner discovers that an existing tenant no longer complies with the restrictions set forth in this Section 2, Project Owner shall ensure the Project is brought back into compliance within one year, including by causing the tenant in question to physically move out of the Unit to another development (to the extent permitted by applicable law), or such other action as determined by Project Owner.

h. *Definitions.*

i. **"AMI"** shall mean the median annual income for Routt County, Colorado, adjusted for household size that is calculated and published annually by the United States Department of Housing and Urban Development (**"HUD"**).

ii. **"AMI Rent Level"** shall mean the maximum allowable rent adjusted for unit size that is calculated and published annually by HUD. For the avoidance of doubt, HUD's published AMI Rent Level shall be deemed to be exclusive of utility costs, notwithstanding any HUD guidance to the contrary. Therefore, AMI Rent Level as used in this

Covenant is not intended to restrict Project Owner from charging the maximum AMI Rent Level and also causing tenants in the Units to pay their own utility costs. In the event HUD does not publish AMI Rent Level for any specific income percentage level, the AMI Rent Level for such Units shall be calculated by multiplying AMI by said percentage level, dividing the same by twelve (12), and then multiplying the same by 30%.

3. **Workforce Restrictions.** Each of the Units shall be set-aside for households: i) with at least one family member that is employed in Routt County and who reasonably expects to work on a full-time basis within Routt County during the term of the lease, which means being employed at least 1800 hours in a 12-month period; ii) who will occupy the Unit as their primary place of residency; and iii) who do not own any interest, personally or through an entity, in any improved residential property. (a "**Routt County Employed Tenant**"). Project Owner shall exempt individuals who are disabled and unable to work due to their disability from the requirements of the preceding subsection i).

Project Owner shall not be deemed in default if a tenant commits fraud to Project Owner regarding the tenant's status as a household with a Routt County Employed Tenant. In the event a Routt County Employed Tenant changes jobs during the term of its lease and, as a result, the household no longer has a Routt County Employed Tenant, Project Owner has no obligation to attempt to remove or relocate the tenant, other than upon the expiration of the lease term.

4. **Short Term Rentals.** Under no circumstances shall a Unit, or any part thereof, be used as a Short-Term Rental, including Temporary Short-Term Rentals and Hosted Short-Term Rentals. Project Owner will include said prohibition in the terms of any Lease.

5. **Default.** If Project Owner is in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Project Owner under this Covenant, and any such default continues beyond any notice or cure period set forth herein, YVHA will be entitled bring suit for the specific performance this Covenant. The foregoing remedy is in

addition to all remedies otherwise provided in this Covenant, or as otherwise available at law or in equity under the laws of the United States or the State of Colorado.

6. **Notice.** Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either party to the other must be given or communicated in writing by (i) reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express), (ii) United States certified mail (return receipt requested with postage fully prepaid), (iii) express mail service or (iv) via electronic delivery, provided such delivery is followed by one of the foregoing methods of delivery, addressed to the other party as follows:

OWNER: Mid Valley Apartments, LLC  
c/o Lone Tree Trust, LLC  
9233 Park Meadows Dr.  
Suite 219  
Lone Tree, CO 80124

with a copy to: Steven M. Sommers  
The Law Firm of Steven M. Sommers, Ltd.  
3900 E. Mexico Ave.  
Suite 300  
Denver, CO 80210

MANAGER: Yampa Valley Housing Authority  
Attn: Jason Peasley  
2100 Elk River Road  
Steamboat Springs, CO 80477

with copy to: Elevation Law Group, P.C.  
attn: George M. Eck III  
P.O. Box 770908  
Steamboat Springs, CO 80487

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder will be deemed to have been given on the date delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark will be deemed the date notice has been given.

YVHA will provide notice to any mortgagee, to the extent YVHA has been made aware of the mortgagee's interest in the Property. YVHA will accept any cure proffered by a mortgagee or by a member of Project Owner in the same manner as if proffered directly by Project Owner.

7. **Term; Amendment.** This Covenant shall be perpetual, provided, however, the parties shall work together in good faith to ensure the Property is financeable to lenders and investors, such that Project Owner is able to construct and operate the Project with the Units. To that end, the parties agree to consider modifications requested by the other party, including, without limitation, with respect to clarifications related to income averaging, setting rent amounts, and compliance..

**8. Recording And Filing; Covenant Running With The Land.**

a. This Covenant is to be recorded in the real property records of Routt County, Colorado.

b. Project Owner and YVHA agree that all of the requirements of the State of Colorado which must be satisfied for the provisions of this Covenant to constitute a restrictive covenant running with the land are deemed to be fully satisfied. All requirements of privity of estate are intended to be satisfied, or in the alternative, an equitable servitude is created to ensure that these restrictions run with the land. During the term of this Covenant, each and every material contract, deed or other instrument executed relating to the Property will expressly provide that such contract, deed or instrument is subject to this Covenant. However, the covenants contained in this Covenant survive and will continue to be effective as to successors and assigns of all or any portion of the Property regardless of whether such contract, deed or other instrument provides that it is subject to this Restrictive Covenant.

c. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant shall be unlawful or void for violation of: (1) the rule against perpetuities or some analogous statutory provision; (2) the rule restricting restraints on alienation; or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the shorter of (x) the term of this Restriction, or (y) the period of the lives of the current duly elected and seated board of directors of YVHA, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

9. **Partial Invalidity.** If any provision of this Covenant or the application thereof to any person or circumstance is, to any extent, held to be invalid, the remainder of this Covenant or the application of such provision to persons or circumstances other than those as to which it is held invalid will not be affected thereby, and each provision of this Covenant will be valid and enforceable to the fullest extent permitted by law.

10. **Interpretation.** In interpreting this Covenant in its entirety, any additions written or typed thereon will be given equal weight, and there will be no inference, by operation of law or otherwise, that any provision of this Covenant will be construed against either party hereto. This Covenant will be construed without regard to any presumption or other rule requiring construction against the parties causing this Covenant to be drafted.

11. **Headings, Captions and References.** The section captions contained in this Covenant are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder," and "herein" will refer to this Covenant as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "include," "includes," and "including" incorporate the meaning "without limitation." The use of the masculine or neuter genders herein includes the masculine, feminine, and neuter genders, and the singular form includes the plural when the context so requires.

12. **Governing Law.** This Covenant will be construed under the laws of the State of Colorado.

13. **Execution of Documents.** Project Owner and YVHA will each cooperate with the other and execute such documents as the other party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate or alter the powers, rights, duties, and responsibilities of the respective parties.

14. **Counterparts.** For the convenience of the parties, this Covenant may be executed in one or more counterparts, and each executed counterpart will for all purposes be deemed an original and will have the same force and effect as an original, but all of such counterparts together will constitute in the aggregate but one and the same instrument. Any electronic counterpart of this Covenant will be deemed to be an original.

15. **Assignment.** The rights and interests of YVHA pursuant to this Covenant may be assigned by YVHA, in whole or in part, by an instrument in writing signed by YVHA and recorded in the Routt County, Colorado real property records. In addition, the rights and interests of YVHA pursuant to this Covenant shall automatically transfer to any entity or organization succeeding to all or substantially of the property and assets of YVHA.

16. **Attorneys' Fees.** If any action is commenced between the Parties concerning this Agreement or for the enforcement of rights and duties of any Party pursuant to this Agreement, the court shall award the substantially prevailing Party in the action its reasonable attorneys' fees in addition to any other relief that may be granted.

17. **No Subleasing.** The Project Owner shall cause the property manager to include in any leasing agreement with residents that no subleases shall be permitted without the express written consent of the Project Owner, in its sole and absolute discretion. The Project Owner shall not agree to such sublease provisions as a matter of course but only in the case of extreme hardship (i.e., the tenant is relocating outside of Routt County).

**[Signature Pages Follow]**

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT B**

**UNIT DESIGNATIONS & AMI LIMITS**