

(DRAFT)
**101 W Main Housing
Planned Unit Development**

This Planned Unit Development Designation, to be known as the 101 W Main Housing Planned Unit Development, hereinafter referred to as the (“Designation”), was approved this __day of _____2024, by the Town Council of Frisco, Colorado, for certain real property located in Frisco, 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 and described in attached Exhibit A, hereinafter referred to as the “Property”. This Designation establishes the land uses that shall be permitted on the Property, a Conceptual Development Plan (“Plan”) and development guidelines and conditions, which must be adhered to by the owner/developer of the Property, NHPF West Main, LLC, hereinafter referred to as the “Owner/Developer” and successors and assigns of the Owner/Developer. This Designation also specifies improvements which must be made and conditions which must be fulfilled in conjunction with this designation by the Owner/Developer.

Where this Designation does not address a specific development standard or requirement of the Frisco Unified Development Code (“UDC”) currently in effect, the Development Code shall apply. Where the Designation addresses a specific development standard or requirement, the provisions of this Designation shall supersede the provisions of the Unified Development Code. Use and development of the Property shall be in accordance with the specific requirements of this Designation, and in substantial compliance with the Plan attached as Exhibit B. This Designation is intended to further the objectives of blending into the development pattern of the adjacent areas and increasing the supply of affordable workforce housing for the community.

A. Permitted Uses and Development Plan

1. Purpose and Intent

This Designation is proposed to establish a mixed-use development that blends into the surrounding Town of Frisco. The residential portion of this development will consist entirely of deed-restricted, Affordable Workforce Housing units as defined in Section C.2 of this PUD Designation. The two primary goals of the development are to provide affordable housing for the local workforce and to ensure compatibility with the surrounding neighborhood. The exceptions to current Unified Development Code requirements proposed here are necessary to allow for the construction and operation of at least 45 deed-restricted affordable units, serving households up to 80% of the area median income. Minor deviations from this area median income will be allowed up to 100% of the area median income as outlined in the Development Agreement between the Town of Frisco and the NHP Foundation, but no modification to this Designation shall be required. More specifically, this development will further the following goals and Guiding Principles as reflected in the Town of Frisco Community Plan.

- 1.4: Reinforce Main Street as the heart of the community, from the lake to the mountains.
 - 1.4D: Preserve Frisco’s historic street grid to retain the character and walkability of the town core.
 - 1.4E: Design and orient buildings to maintain historic development patterns along public rights of way
- 1.5: Promote a balanced community through support for diverse and equitable housing options.

- 1.5A: Develop a diverse portfolio of workforce housing programs to support a broad range of housing needs—type of unit, rental vs. ownership, and price points—at the community and neighborhood level.
- 1.5B: Stimulate the creation of workforce housing through town policies, incentives, and regulatory procedures.
- 1.5C: Collaborate with community partners and the private sector to expand the reach of Frisco’s workforce housing efforts.
- 2.1: Maintain a diverse and strong economy.
 - 2.1B: Provide opportunities for a balanced mix of housing and services to support local businesses, employees, residents, and visitors.
- 2.3 Facilitate the retention and expansion of locally owned businesses.
 - 2.3C: Expand workforce housing options to support small businesses and local employees.
- 4.1: Provide a safe and efficient multimodal transportation system.
 - 4.1D: Manage parking resources downtown to promote the efficient use of available spaces.
- 5.1: Provide high quality, year-round recreational amenities that appeal to both residents and visitors.
 - 5.1D: Coordinate new facilities with the Trails Master Plan (and other Town Master Plans) to ensure appropriate connections and access.

2. Development Plan and Permitted Uses

- a. Development Plan: development of the Property shall be in general accordance with the associated Site Plan application and the following specific requirements of this Designation. There is one (1) Planning Area on the property as specified below, which encompasses all property within Lot B-1 West Frisco 70 Sub #2:

Permitted Uses for Planning Area 1 Include:

1. At least forty-five (45) Units of Affordable Workforce Housing.
 - a. Minor deviations from the 52-unit configuration shown on Exhibit B may be considered as part of future Site Plan Review, but no modification to this Designation shall be required.
 - b. Ground floor residential uses shall be permitted within this Designation.
 - c. The commercial space on-site shall be a minimum of 1,500 square feet.
 - d. Affordable Housing incentives per the Affordable Housing Incentive Program shall be applied in accordance with Section 180-5.5 of the Unified Development Code with exceptions as stated in this Planned Unit Development Designation.
- b. Permitted Uses: Uses which are permitted or accessory within the Mixed Use (MU) Zoning District, as set forth in Figure 1 and shall be calculated pursuant to the methodologies and procedures set forth in the Unified Development Code.

Figure 1 Permitted Use table is meant to be inclusive rather than exhaustive. If a use that is not listed in the table below meets the intent of the permitted uses listed, the use can be permitted at the discretion of the Community Development Director.

Figure 1

Planning Area 1 – Mixed Use	
Permitted Uses	<p>Residential Uses:</p> <ol style="list-style-type: none"> 1. Permitted as a primary use 2. Permitted on the ground floor <p>Commercial Uses:</p> <ol style="list-style-type: none"> 3. Offices 4. Personal Services 5. Recreation and Entertainment 6. Retail 7. Arts & Entertainment Facility 8. Radio & Television Broadcasting <p>Public or Quasi-Public:</p> <ol style="list-style-type: none"> 9. Community Facilities 10. Civic, Youth, Social Organization 11. Medical Clinic <p>Recreation:</p> <ol style="list-style-type: none"> 12. Community Center 13. Health Spa 14. Open Space 15. Trails 16. Community Gardens 17. Shared Public Space

3. Supplements:

- a. Exhibit A –Site Plan
- b. Exhibit B – Housing Covenant
- c. Exhibit C – Parking Management
- d. Exhibit D – Car Share

B. Development Standards

1. Building Height: all structures shall be a maximum of 45 feet in height for pitched roofs, and 35 feet in height for flat roofs as defined in the Unified Development Code.
 - a. A ten percent increase in maximum building height as defined by the Mixed Use Zone in the Unified Development Code at the time of project construction shall be permitted for this Designation.
 - b. First floor building height for structure(s) shall be 9' minimum in height.

2. Setbacks:
 - a. 5' from side property lines
 - b. 3' from front property lines along Main Street
3. Lot Coverage: maximum lot coverage shall not exceed 80%. Lot coverage calculation shall be evaluated per the definition of lot coverage in the Unified Development Code.
4. Landscaping: landscaping shall be in general accordance with the Site Plan and shall follow Town Code with the following exceptions:
 - a. Plant material quantities may be reduced by up to 20 percent from the Mixed-Use Development as outlined in the Unified Development Code at the time of project construction.
 - b. Species mix may be increased to a 50-percent maximum for each species, and minimum tree caliper size may be reduced to 50 percent of the caliper size requirement as outlined in the Unified Development Code at the time of project construction.
5. Parking Calculations and Requirements. Vehicular parking, on-site and off-site, shall be constructed and maintained in general accordance with the Site Plan and On-Street Parking Plan.
 - a. Residential Parking Requirement: one-half parking space per unit for studios and one-bedroom units, one parking space per unit for two-bedroom units, and two parking spaces per unit for three bedrooms or greater. One visitor parking space is required per seven dwelling units.
 - b. On-Street Parking: required parking, excluding ADA and handicap accessible spaces, may be accommodated on streets proximate to the property, on a one-for-one basis. Refer to *Section 8. Dedications and Other Agreements*, for description and approval timeline in "On-Street Parking Plan" for approval and management of on-street parking.
 - c. Car-Sharing Service: each car-sharing space provided shall count as four parking spaces, up to 20 percent of the parking residential parking requirement. Refer to *Section 8. Dedications and Other Agreements*, for the description and approval timeline for "Car Share Management" for approval, management and enforcement of car-sharing.
6. Bicycle Parking: Calculations for bicycle parking shall follow mixed-use and nonresidential bicycle parking requirements as outlined in the Unified Development Code at the time of the project construction.
7. Public Walkway Easement for Access to Ten Mile Creek. A 25' wide non-exclusive public walkway easement dedicated to the Town of Frisco shall be provided for future installation of trail, rec path or other improvement by the Town of Frisco. Refer to *Section 8. Dedications and Other Agreements*, "Public Walkway Easement" for description and approval timeline. Refer to Exhibit A for proposed easement location.

8. **Snow Storage.** Snow storage shall be accommodated at the rate per the Unified Development Code and shall be provided on-site. No snow storage or detention facilities will be allowed within 15' of the 100 year floodplain as shown on Exhibit A as approved at the time of approval. The Town Engineer may approve snow storage, detention, and water quality facilities between 15' and 25' from the 100 year floodplain. Owner/Developer shall comply with any other conditions required by the Town Engineer for improvements within the 25' setback from the 100 year floodplain.
9. **Design Guidelines:** The overall goal is to complement the surrounding neighborhood and to minimize and mitigate physical and visual impacts of the development. The development is subject to the following design guidelines.
 - A. **Façade Standard:**
 - i. **Intent:** To ensure that the façade design of development is compatible with Frisco's small mountain town character and provides a human scale to enhance the walking experience in the neighborhood.
 - ii. **Building Elements:** All building elevations shall employ varied articulation of wall surfaces. Each façade shall be articulated using at least four of the following techniques:
 - Deep eaves or overhangs, at least 24 inches in depth;
 - Balconies, porches, or patios;
 - Building elements that provide shelter from natural elements;
 - Offsets, insets, bays, or other similar architectural features to add a variety of depths to the wall plane;
 - A change in texture or material, provided all exterior wall textures and materials are consistent with the overall architectural style of the building;
 - Variation in roof planes or roof forms, including dormer or gables.
 - B. **Bulk Plane Standards:**
 - i) Bulk plane encroachments shall be allowed up to 1,000 cubic feet per 10,000 square feet of lot area.
 - ii) Bulk plane encroachments shall be allowed for livable/ habitable spaces.
 - C. **Roof Standards:**
 - i. **Intent:** to ensure that roof elements are compatible with or complementary to existing historic or contributing buildings in the area and to encourage visibly pitched roofs or roof elements and the use of dormers and breaks in ridgelines.
 - ii. **Roof Pitch:**
 - pitched roofs, or flat roofs augmented with pitched roof elements, are required
 - A minimum roof pitch of 6/12 is encouraged
 - Mansard roofs are prohibited.
 - D. **Roof Design:** Roof lines shall be designed in a manner where they do not substantially deposit snow onto required parking areas, sidewalks, trash storage areas, stairways, decks, balconies or entryways.

E. Roof Materials:

- i. If metal roofs are used they shall be surfaced with a low-gloss finish, matte finish, or other finish proven to fade and not be reflective
- ii. Metal roofs, asphalt and fiberglass shingles are permitted provided that they provide substantial relief and shadow, and the design and color are compatible with the building
- iii. Bright colored roofs that exceed a chroma of four on the Munsell Color chart are prohibited

F. Building Material Standards:

- i. Intent: to ensure that building materials are compatible and complementary to existing historic and contributing buildings in the area, using a combination of mainly natural materials
- ii. Primary Materials:
 - Building materials shall be predominantly natural, including, but not limited to, wood siding, wood shakes, logs, stone, brick, or other similar materials
 - Other materials that imitate natural materials are also acceptable provided their texture, shape, and size are substantially similar to the natural materials they are imitating, and are not obviously artificial materials
 - Stucco or steel are acceptable materials when used in combination with other acceptable materials
- iii. Specific Material Standards
 - Concrete Block: concrete block shall not be allowed as the primary or extensive exterior finish. When used as an accent, concrete block shall be a split block, or other similarly shaped, textured, and colored materials that are found to be compatible with the building and the purpose of this section
 - Metal: metal shall have a matte finish or a finish proven to fade and not be reflective
 - Glass: the use of mirrored or reflective glass is prohibited unless required for compliance with the voluntary green building program as administered by the Town's Building Official
 - A variety of materials shall be used on all building elevations
 - There shall be a variety of quality and type of exterior materials, and their application shall be generally in balance and proportional on all elevations of the building
 - Materials that wrap around the building, such as a durable material at the base of the structure, shall continue around projecting outside exterior corners and end at recessed inside exterior corners

G. Accessory Structures: the same or similar building materials shall be used on main structures and any accessory structures located on the same site, unless an alternative material can be provided that will complement the project and which meets the other standards of this section.

- i. Additions: additions that are 50 percent or less of the existing building floor area, or exterior remodels or renovations, may be allowed to complement the

existing structure, even if the building does not currently meet the material standards of this section

H. Building Colors:

- i. Intent: to promote building colors compatible with the site and surrounding buildings
- ii. Maximum Color Chroma: no color may be used as the primary color of the building that exceeds a chroma of four on the Munsell Color chart. Pure white or black may not be utilized as the primary building color.
- iii. Exception for Building Accents: colors that exceed a chroma of four, but that do not exceed a chroma of eight on the Munsell Color chart may be used only sparingly as accents, such as on trim or railings. Luminescent, fluorescent, or reflective colors shall not be utilized on any exterior portion of the building.

10. Dedications and Other Agreements

Note: Changes to the recorded Operating Agreement shall be approved by the Town and re-recorded. No modification or amendment to this Designation shall be required.

Agreements	Description	Approval Timeline
<u>Public Walkway Easement</u>	- Provide access easement for future installation of trail, rec path or other improvement by Town of Frisco	- Record approved easement prior to certificate of occupancy
On-Street Parking Plan	- Provide specified parking spaces within Town Right of Way - Provide operating agreement	- On-street parking spaces finalized during Site Plan Approval - Operating Agreement to be recorded prior to certificate of occupancy
Car Share Management	- Provide operating agreement. - Acknowledge conditions of enforcement	- Operating Agreement to be recorded prior to certificate of occupancy.

C. **Workforce Housing Specific Regulations.**

1. This PUD Designation mandates the development of a minimum of 45 Affordable Workforce Housing Units.
2. Affordable Workforce Housing, as such term is specifically contemplated in this Designation, and for development purposes addressed herein, shall assume the meaning of the term Affordable Housing set forth in the Unified Development Code with the income restrictions as described in Section A.1. of this Designation.
3. The Units are planned as multi-family units as shown conceptually in the associated Major Site Plan. Nevertheless, the actual design and size of such units are subject to the physical conditions of the Property and market demands, and modifications to the design and nature of the Units may

be proposed provided that the level of Affordable Workforce Housing contemplated herein is reasonably maintained, in terms of the number of units, occupancy, amenities, et cetera. A final determination of the number of bedrooms and bathrooms for each unit will be made at Final Major Site Plan approval. Town approval shall be obtained for any deviation from the anticipated unit design or configuration, but no modification to this PUD Designation shall be required if the modifications are within 10% of the proposed unit mix.

4. Units shall be offered for rent, in accordance with the standards for such Units articulated in the attached draft sample Covenant (Exhibit B).
5. Renters approved for residence in this Planned Unit Development shall meet the income qualification requirements as enumerated in the Covenant (Exhibit B). The rental price of Units shall not exceed affordability limits established in the Covenant.
6. Owner/Developer may install the infrastructure for the entire Property at one time, or in phases, as is most advisable based on demand, site conditions, and prevailing construction conditions, provided that any such installation is conducted in accordance with this Designation and the Frisco Town Code.

D. Utilities and Improvements.

1. Road and Driveway Access:
 - A. The Property shall be accessed from Creekside Drive.
 - B. Road and driveway access is depicted on the Site Plan (Exhibit A). All road and driveway construction on the Property shall be in general accordance with such Plan, and the standards of the Frisco Town Code.
2. Right-of-Way and Easement Dedication:
 - A. All additional required easements for access, snow storage, utilities and maintenance will also be dedicated on the Plat, to the satisfaction of the Town of Frisco Public Works and Community Development Departments.
3. Sidewalks:
 - A. Concrete sidewalk to be constructed along Creekside Drive.
 - B. Main Street sidewalk to be realigned for new parking.
4. Water Systems: the water supply shall be provided by the Town of Frisco for all development on the Property.
5. Wastewater Disposal: wastewater disposal for all development shall be provided by the Frisco Sanitation District.
6. Fire Protection and Wildfire Hazard Mitigation: the Property is located within the jurisdiction of the Summit Fire & EMS. All development on the Property shall meet all fire protection requirements of the District.

E. Implementation

1. **Development Phasing.** The Owner/Developer intends to build the project in one phase. Although, the Owner/Developer may develop the project in phases, if advisable based on demand, site conditions, and prevailing construction conditions; provided that a proposed phasing plan is reviewed and approved by the Town in conjunction with the Site Plan Review.

E. General Provisions

1. **Enforcement:** the provisions of this Designation and the dedication relating to the use of land shall run in favor of the Town of Frisco and shall be enforceable at law or in equity by the Town of Frisco without limitations on any power or regulation otherwise granted by law. Other provisions of this Designation and the Plan shall run in favor of the residents, occupants, or landowners of the Property, but only to the extent expressly provided in, and in accordance with the terms of this Designation and the Plan. Provisions not expressly stated as running in favor of the residents, occupants or owners of the Property shall run in favor of the Town of Frisco.
2. **Breach of Provisions:** if at any time, any provision or requirements stated in this Designation have been breached by the Owner/Developer, the Town may withhold approval of any or all subdivision plats, or the issuance of any or all grading or building permits or occupancy permits applied for on the Property, until such breach has been remedied; provided, however, that the Town shall not take affirmative action on the account of such breach until it shall have first notified the Owner/Developer in writing and afforded the Owner/Developer a reasonable opportunity to remedy the same.
3. **Binding Effect:** this Designation shall run with the land and be binding upon the Owner/Developer, their respective successors, representatives and assigns, and all persons who may hereafter acquire an interest in the Property or any part thereof, with the exception that provisions of this Designation may be modified through an amendment in accordance with the procedure stated in the Development Code. This Designation shall be recorded in order to put prospective purchasers or other interested persons on notice as to the terms contained herein.
4. **Amendments:** the Unified Development Code includes procedures and requirements for review of all Planned Unit Developments. The Owner/Developer shall be on notice of these requirements and their potential impact should modifications to this Designation be desired. Amendments to the provisions of this Designation shall be reviewed and acted upon as a rezoning application, subject to the Town's procedures for zoning amendments and the requirements for findings under the Planned Unit Development Act of 1972 at CRS section 24-67-106(3)(b), unless such amendment is determined to be minor in nature in accordance with the provisions outlined in the Unified Development Code.
5. **Notices:** all notices required by this Designation shall be in writing and shall be either hand-delivered or sent by certified mail, return receipt requested, postage pre-paid, as follows:

Notice to Town:

Town of Frisco
Post Office Box 4100
Frisco, Colorado 80443

Notice to /Owner/Developer:

NHP Foundation
Attn: Neal Drobenare
1090 Vermont Avenue, NW, Suite 400
Washington, DC 20005

6. Entire Designation: this Designation contains all provisions and requirements incumbent upon the Owner/Developer relative to the 101 W Main Planned Unit Development, except as modified by subsequent action of the Town Council in accordance with the procedures set forth in the Unified Development Code and the Colorado Planned Unit Development Act (CRS Section 24-67-106) for amending planned unit developments, and except that nothing contained herein shall be construed as waiving any requirements of the Unified Development Code or other regulations otherwise applicable to the development of the Property.
7. Effective Date: to be legally effective and binding, this Designation must be recorded by the Summit County Clerk and Recorder. The date of such recording is referred to herein as the "Effective Date."
8. Legality of Provisions: in the case one or more of the provisions contained in this Designation, or any application thereof, shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Designation and the application thereof shall not in any way be affect or impaired thereby.

IN WITNESS WHEREOF, the Town and the Owner/Developers have executed this Designation as of the date first written above.

TOWN OF FRISCO, COLORADO

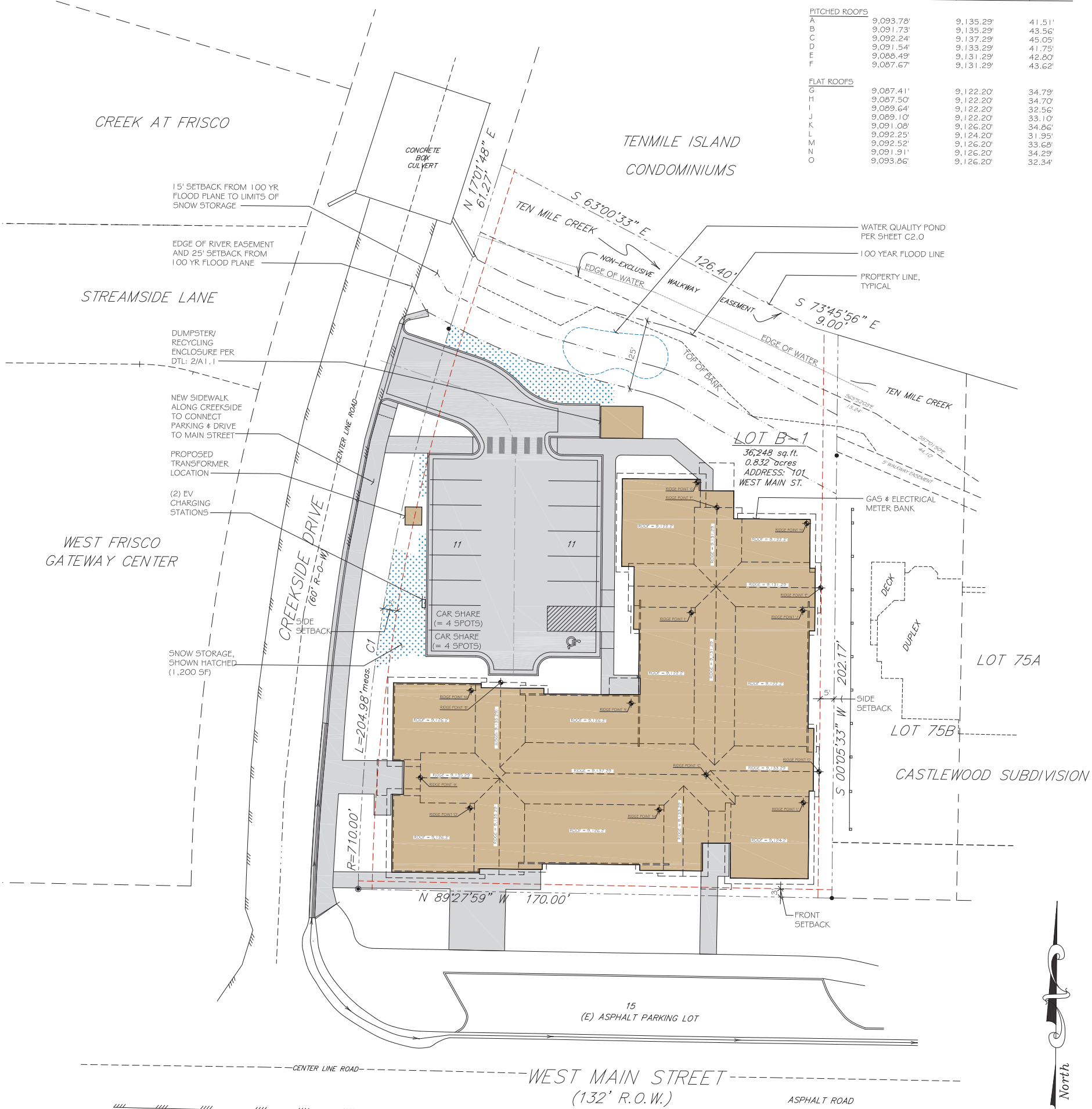
_____, Mayor
Town of Frisco

ATTEST:

_____, Clerk and Recorder

Owner/Developer

PROJECT SITE
LOT B-1, AMENDED WEST
FRISCO 70 . FILING #2
101 WEST MAIN ST



Notes:
1. Graphic provided for illustrative purposes only
and subject to change.

Record and Return to:

Colorado Housing and Finance Authority
1981 Blake Street
Denver, CO 80202
Attention: Legal Operations

LOW-INCOME HOUSING TAX CREDIT
LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (this “**Agreement**”), dated as of _____, 2023, is by and between _____, a Colorado ____, and its successors and assigns (the “**Owner**”), and the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (the “**Authority**”).

RECITALS:

- A. The Authority was designated by the Governor of the State of Colorado (the “**State**”) as the housing credit agency for the State for the allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the “**Code**”), and the Treasury Regulations thereunder (the “**Regulations**”).
- B. The Owner applied to the Authority for an allocation of [4%][9%] federal low-income housing tax credits to the Project (the “**Federal Credits**”).
- C. The Owner is the owner of a () unit rental housing development located on lands in the City of _____, County of _____, State of Colorado, as legally described in Exhibit A hereto commonly known as _____ (the “**Project**”).
- D. In connection with its Application (defined below) the Owner made certain representations to the Authority about the Project, including representations as to the number of Tax Credit Units (defined below) and the term of occupancy restrictions, upon which representations the Authority relied on in considering the Application for a reservation and allocation of Federal Credits.
- E. The Code requires the Owner to execute and deliver this Agreement and that it be recorded in the official land records of the county in which the Project is located to create covenants running with the land for the purpose of enforcing the Code and Regulations; and certain additional undertakings of the Owner in connection with its Application by regulating and restricting the use and occupancy of the Project as set forth herein.
- F. The Authority is unwilling to allocate Federal Credits to the Project unless the Owner enters into this Agreement, and consents to being regulated by the Authority so that the Authority may enforce the occupancy restrictions and other covenants, and terms and conditions of this Agreement in accordance with the Code and the Regulations.
- G. The Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project land for the Term (defined below) and binding upon all subsequent owners of the Project for such Term.
- NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Authority agree as follows:

1. **Incorporation of Recitals.** The recitals above are incorporated in and made a part of this Agreement.
2. **Definitions.** Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof, and all words and phrases defined in Section 42 of the Code shall have the same meanings in this Agreement:
- (a) “**AMI**” means Area Median Gross Income, as defined below.
- (b) “**Applicable Fraction**” means the applicable fraction as defined in Section 42(c)(1)(B) of the Code.
- (c) “**Application**” means the application submitted to the Authority by the Owner for a reservation, initial determination, or allocation of Federal Credits for the Project. The Application includes all materials provided to the Authority, as required by the applicable checklist, and any additional materials provided to the Authority that are reviewed as part of the application process.
- (d) “**Area Median Gross Income**” means the median gross income of the area in which the Project is located as determined by the Secretary for purposes of Section 42 of the Code, including adjustments for family size.
- (e) “**Compliance Manual**” means the Authority’s Multifamily Program Compliance Manual, as amended from time to time.
- (f) “**Compliance Period**” has the same meaning as defined in Section 42(i)(1) of the Code.
- (g) “**Credit Period**” means, with respect to the Federal Credit, the “credit period” as defined in Section 42(f) of the Code.
- (h) “**Eligible Basis**” means the eligible basis as defined in Section 42(d) of the Code.
- (i) “**Extended Use Period**” means for each building that is a part of the Project a period of [30/40] consecutive taxable years beginning on the first day in the Compliance Period on which the building is part of a qualified low-income housing project and ending on the date that is [15/25 years] after the close of the Compliance Period]; provided that in no event shall the Extended Use Period be shorter than the Extended Use Period as defined in Section 42(d) of the Code.
- (j) “**IRS**” means the Internal Revenue Service.
- (k) “**Materially Participate**” has the same meaning set forth in Section 469(h) of the Code.
- (l) “**Qualified Low-Income Building**” means a “qualified low-income building” as defined in Section 42(c)(2) of the Code.

- (m) **“Qualified Low-Income Housing Project”** means a “qualified low-income housing project” as defined in Section 42(g)(1) of the Code.
- (n) **“Qualified Nonprofit Organization”** means a qualified nonprofit organization as defined in Section 42(h)(5)(C) of the Code.
- (o) **“Qualifying Tenant”** means a tenant that meets the income requirements of Paragraph 7(b).
- (p) **“Rent Restricted”** a unit is “rent restricted” if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit as set forth in Paragraph 7(b), all as determined in accordance with Section 42(g)(2) of the Code.
- (q) **“Secretary”** means the Secretary of the United States Department of the Treasury.
- (r) **“Tax Credit Units”** means the rent-restricted units identified in Sections 7(a) and (b).
- (s) **“Term”** means the Term of this Agreement, as defined in Section 5(a).
- (t) **“Tenant Income Certification”** means the certification regarding resident eligibility to live in the Tax Credit Unit; and any successor certification, as required by the Authority from time to time.

3. Recording and Filing; Covenants to Run with the Land.

- (a) This Agreement will be recorded in the real property records where the Project is located, and the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to the Owner and its successors and assigns, the Authority and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the Term.
- (b) The Owner agrees that any and all requirements of the laws of the State that must be satisfied in order for the provisions of this Agreement to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, and any requirements of privity of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land.
- (c) During the Term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement; provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

4. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:

- (a) The Owner:

- (i) is duly organized under the laws of the state of _____, and is qualified to transact business under the laws of the State;
 - (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted;
 - (iii) has the full legal right, power and authority to execute and deliver this Agreement; and
 - (iv) has good and marketable title to the Project.
- (b) Each building that is the subject of an allocation of Federal Credits is, or by not later than the last day of the first year of the Credit Period, will be a Qualified Low-Income Building and the Project constitutes or will constitute a Qualified Low-Income Housing Project.
 - (c) The Owner shall not discriminate on the basis of race, creed, color, sex, age, marital status, national origin, disability or familial status or any other applicable protected class, in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, and shall not refuse to lease a unit in the Project to the holder of a voucher or certificate for federal housing assistance payments pursuant to Section 8 of the United States Housing Act of 1937, or a successor federal program, on account of the status of the prospective tenant as such holder.
 - (d) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing.
 - (e) The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.
 - (f) If the Owner becomes aware of any situation, event or condition that would result in non-compliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to the Authority.
 - (g) The Owner shall ensure that the Tax Credit Units shall be of comparable quality to other units, if any, in the Project.
 - (h) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.
 - (i) The Owner has obtained or will obtain from any prior recorded lienholder on the Project its consent and partial subordination to this Agreement in a form satisfactory to the Authority.

- (j) The Owner shall not evict or terminate the tenancy of an existing tenant of any Tax Credit Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Tax Credit Unit.
- (k) The Owner shall establish and maintain an operating reserve fund in an amount that is equal to, or greater than, four (4) months of projected annual operating expenses and four (4) months of debt service payments. The operating reserve fund must remain with the Project for a minimum of three (3) years from the time the Project is placed in service. These requirements, as well as provisions for reserve account reductions over time as Project benchmarks are achieved, must be contained in the entity partnership agreement. These requirements may not be modified without the prior written consent of the Authority.
- (l) **A Qualified Nonprofit Organization shall at all times own an interest in the Project (directly or through a partnership) and shall Materially Participate in the development and operation of the Project throughout the Compliance Period.**

5. Term of this Agreement.

- (a) This Agreement shall be in effect for each building that is part of the Project until the end of the Extended Use Period.
- (b) The Owner hereby waives any rights under Section 42(h)(6)(E)(i)(II) of the Code to terminate the Extended Use Period.
- (c) Code Requirements that Survive Foreclosure:
 - (i) This Agreement shall not be terminated with respect to any portion of the Project that is acquired by foreclosure or deed in lieu of foreclosure if the Secretary determines that such acquisition is part of an arrangement with the Owner a purpose of which is such termination.
 - (ii) If this Agreement terminates due to foreclosure or deed in lieu of foreclosure, the Owner shall not evict or terminate the tenancy of an existing tenant of any Tax Credit Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Tax Credit Unit for a period of three (3) years following the termination of this Agreement.
 - (iii) This subsection (c) and the rights granted to the Authority and past, present and future tenants of the Project to enforce this Agreement shall survive any such termination.
 - (iv) In the event foreclosure proceedings are initiated, the Authority shall receive notice of such foreclosure no less than 15 days prior to such foreclosure.

6. Qualified Low-Income Housing Project. From no later than the last day of the first year of the Credit Period through the end of the Extended Use Period, the Owner shall maintain the Project as a Qualified Low-Income Housing Project at all times. To this end, and without limitation, the Owner shall assure that all of the residential units in the Project are available for use by the general public, suitable for occupancy and used on other than a

transient basis unless the Project qualifies as a single room occupancy project or as transitional housing for the homeless pursuant to Section 42(i)(3) of the Code).

7. Occupancy Restrictions.

- (a) For the purpose of Section 42(g)(1) of the Code, the Owner elects the following (select one):
 - ___ At least twenty percent (20%) of the residential rental units in the Project shall be maintained as both rent-restricted and occupied by individuals or families whose income is fifty percent (50%) or less of AMI.
 - ___ At least forty percent (40%) of the residential rental units in the Project shall be maintained as both rent-restricted and occupied by individuals or families whose income is sixty percent (60%) or less of AMI.
 - ___ At least forty percent (40%) of the residential rental units in the Project shall be maintained as both rent-restricted and occupied by individuals or families whose average income does not exceed the imputed income limitation designated by the Owner with respect to the Tax Credit Units provided that: (i) the Owner shall designate the imputed income limitation of each Tax Credit Unit taking into account; (ii) the average of the imputed income limitations shall not exceed sixty percent (60%) of AMI, and (iii) the designated imputed income limitations shall be either twenty percent (20%), 30 percent (30%), 40 percent (40%), 50 percent (50%), 60 percent (60%), seventy percent (70%) or 80 percent (80%) of AMI. Any changes to these initial designations may be made only with the Authority's expressed written consent and in accordance with the Authority's [Income Averaging Policy] in place at the time of the request.
- (b) Additionally, the Owner covenants and agrees that, during the Extended Use Period, the Tax Credit Units shall be maintained as both rent restricted and occupied by individuals or families whose income level does not exceed the applicable AMI as follows:

No. of Units	AMI Threshold
___ () units	20% or less of AMI
___ () units	30% or less of AMI
___ () units	40% or less of AMI
___ () units	50% or less of AMI
___ () units	60% or less of AMI
___ () units	70% or less of AMI
___ () units	80% or less of AMI
___ () units	employee

The Owner further agrees that additional residential units in the Project shall be maintained as both rent-restricted and occupied by low-income individuals or families whose incomes meet the requirements of this subsection (b) to the extent necessary to maintain the Applicable Fraction, at not less than percentage(s) shown on Exhibit B hereto for each taxable year of the Extended Use Period.

- (c) The determination of whether an individual or family is a Qualifying Tenant shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any Tax Credit Unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Tax Credit Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section 7 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such residential unit shall no longer be a Tax Credit Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.
 - (d) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall be required to sign a fully completed Tenant Income Certification prepared by the Owner, and the income and assets of such individual or family must be verified in the manner prescribed by the Authority.
 - (e) The form of lease to be utilized by the Owner in renting any residential unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Tenant Income Certification or the failure by such tenant to execute a certification annually.
8. Additional Agreements. [The Owner agrees that the Authority's award and allocation of Federal Credits is based on the Owner's additional obligations and agreements, as set forth on Exhibit C, attached hereto and incorporated herein by this reference.][[Because the Owner is obtaining a loan that will be insured by the United States Department of Housing and Urban Development ("HUD"), the parties agree to the additional provisions set forth on Exhibit [D], attached hereto and incorporated herein by this reference.] [Intentionally deleted if N/A]
9. Compliance Monitoring: Fees.
- (a) The Owner acknowledges that Section 42 of the Code requires the Authority to monitor the compliance of the Owner and the Project with the requirements of Section 42 of the Code. The Owner agrees to strictly comply, at all times, with the Compliance Manual, the terms and provisions of which are by this reference incorporated in this Agreement and made a part hereof; and to take all actions required by the Authority pursuant to the Compliance Manual to assist or cooperate with the Authority in monitoring such compliance.
 - (b) The Owner agrees to pay to the Authority: (i) any non-compliance fees as required in the Compliance Manual as of the date of such non-compliance, and (ii) any fees in the amounts and at the times as the Authority shall, in its sole discretion, reasonably require the Owner to pay in order to reimburse the Authority for the costs of such monitoring.
10. Owner Certifications and Reports.
- (a) Within ninety (90) days of filing IRS Form 8609 with the IRS, the Owner shall provide to the Authority a copy of IRS Form 8609, for each building, as filed with the IRS for the first year of the Credit Period.

- (b) The Owner shall provide to the Authority, on the dates required by the Compliance Manual, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided by the Authority.
 - (c) The Owner shall maintain in its records and provide to the Authority copies of any and all notices and correspondence from or with the IRS concerning the Project or the Owner upon request.
 - (d) In addition to the information provided for in Section 9 and in this Section 10, the Owner shall provide any other information, documents or certifications requested, from time to time, by the Authority with respect to the Project's physical, operational and financial condition and residents which the Authority reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code, including a copy of the IRS Form 8609 Schedule A.
11. Transfer Restrictions.
- (a) The Owner shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of the Authority. Such consent shall be given provided that: (i) the Owner is in compliance with the requirements of this Agreement and Section 42(j)(6) of the Code; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of the Authority, by its performance with respect to other low-income housing tax credit or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Agreement; and (iii) the Authority shall be paid a transfer fee, as determined, from time to time, by the Authority. In no event shall the Owner dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. For the purposes of this subsection, a transfer of any managing member or general partner of the Owner or a transfer of fifty percent (50%) or more of the ownership interests in Owner shall be deemed a transfer of the Project.
 - (b) The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee.
12. Physical Maintenance/Management/Books/Records/Inspections.
- (a) The Owner shall maintain each building in the Project such that all residential units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to the Authority.
 - (b) The Owner shall provide for the management of the Project in a manner reasonably determined by the Authority to assure compliance with this Agreement. Any management contract entered into by the Owner involving the Project shall provide that it shall be subject to termination, without penalty and with or without cause, upon written request by the Authority addressed to the Owner. Upon such request the Owner shall immediately terminate the contract within a period of not more than thirty (30) days and shall make

arrangements reasonably satisfactory to the Authority for continuing proper management of the Project.

- (c) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with Section 42 of the Code and with this Agreement and to the eligibility of the Owner to claim the Federal Credits with respect to the Project shall at all times be maintained at the Project, or at the Owner's principal place of business in the State of Colorado, in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by the Authority or its authorized agents. The Authority shall also have the right to enter and inspect the Project at any reasonable time.
- (d) Owners are required to keep records for each Qualified Low-Income Building in the Project showing the following:
 - (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
 - (ii) the percentage of residential rental units in the building that are Tax Credit Units;
 - (iii) the gross rent charged on each residential rental unit in the building (including any utility allowance and any non-optional fees);
 - (iv) the number of occupants in each Tax Credit Unit;
 - (v) the Tax Credit Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
 - (vi) the annual income certification of each Qualifying Tenant;
 - (vii) documentation to support each Qualifying Tenant's income certification;
 - (viii) the Eligible Basis and qualified basis of the building at the end of the first year of the Credit Period; and
 - (ix) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project).

Owners are required to keep all records for each building for a minimum of six (6) years after the due date (with extensions) for filing the Owner's federal income tax return for any year; provided, that the records for the first year of the Credit Period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

- (e) The Authority has the right to conduct physical inspections of the Project and to conduct a review of the Owner's files relating to the Project throughout the Extended Use Period.

13. Enforcement.

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code or of this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of the Authority, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the IRS from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Project.
- (b) The Owner shall promptly advise the Authority as to the date each building in the Project is a Qualified Low-Income Building.
- (c) In the event of any failure of the Owner to comply with the provisions of Section 42 of the Code or this Agreement, consistent with the procedures set forth in the Compliance Manual, the Authority shall: (i) inform the Owner by written notice of such failure; and (ii) provide the Owner with a period of time to correct the failure. If any such failure is not corrected to the satisfaction of the Authority within the period of time specified by the Authority, without further notice the Authority may declare a default under this Agreement effective on the date of such declaration of default, and the Authority may (i) apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement; (ii) secure the appointment of a receiver to operate the Project in compliance with this Agreement; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Agreement.
- (d) The Owner and the Authority each acknowledges that the primary purpose of requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the Regulations thereunder, **AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF FEDERAL CREDITS FOR THE PROJECT HEREBY AGREES AND CONSENTS THAT THE AUTHORITY, ANY QUALIFYING TENANT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE BUILDING UNDER THE CODE (WHETHER PRESENT, PROSPECTIVE OR FORMER OCCUPANTS OF THE BUILDING) (ANY OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION,** the Owner hereby further specifically acknowledging that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (e) In the event of the Owner's or Project's failure to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the IRS or the Authority from time to time pertaining to the

- obligations of the Owner as set forth therein or herein, the Authority, in addition to all of the remedies provided by law or in equity, shall notify the IRS of such noncompliance.
14. Issuance of Form 8609. The Authority shall prepare and file with IRS Form 8609 with respect to each building in the Project, evidencing the Authority's allocation of Federal Credits with respect to the Project. The Authority shall issue Form 8609(s) to the Owner when the following conditions have been met:
- (a) Each building in the Project for which a Form 8609 is issued is a Qualified Low-Income Building.
 - (b) The Owner and the Project are in compliance with the terms of this Agreement.
 - (c) The Owner shall have provided, on form(s) approved by the Authority, a certification of each building's Eligible Basis and the Authority shall have made its final determination of the Federal Credit amount and its final determination pursuant to Section 42(m)(2) of the Code.
 - (d) The Owner shall have provided a copy of the executed partnership or operating agreement.
 - (e) The Owner shall have provided to the Authority the partial subordination of any prior recorded lien on the Project to this Agreement.
 - (f) The Owner and its management agent and any management staff involved in the certification of residents shall have completed compliance training provided or approved by the Authority.
 - (g) The Owner shall have paid the compliance monitoring fee.
15. Return of Unused Federal Credit. Pursuant to Section 42(h)(3)(C) of the Code and Regulation §1.42-14(d), the Federal Credit amount allocated to the Owner with respect to the Project shall be canceled and returned to the Authority, in whole or in part, if (i) any building in the Project is not a Qualified Low-Income Building within the time period required by Section 42 of the Code, or (ii) the "Qualified Basis" of any building in the Project is less than the qualified basis on which the Federal Credit was allocated by the Authority.
16. Release and Indemnification. The Owner acknowledges that, in issuing IRS Form 8609(s) with respect to the Project, the Authority is relying or will rely upon information and representations given by or on behalf of the Owner and has made or will make no independent investigation and does not and will not have independent knowledge of the basis for such information and representations. Accordingly, to induce the Authority to issue IRS Form 8609(s), the Owner agrees as follows:
- (a) The Owner agrees to release and forever discharge the Authority, its members, employees, agents, officers, successors and assigns of and from any and all claims, demands, causes of actions, judgments and executions which Owner has or may hereafter have against the Authority, whether in law or in equity, arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the issuance of a Form 8609 with respect to the Project by the Authority.

- (b) The Owner hereby agrees to indemnify, save harmless and defend the Authority, and its members officers, agents, employees, successors and assigns from any obligation, claim, loss, demand, cost, expense (including the costs of the investigation and settlement of any claim, and including reasonable attorney's fees) or judgment against the Authority arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the Authority's issuance of a Form 8609 with respect to the Project. If any such claim is asserted, any indemnified party hereunder will give prompt notice to the Owner and will cooperate in the investigation and defense of any such claim. The Owner will assume the defense of any such asserted claim by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld), it being understood that the indemnified party shall have the right to employ its own separate counsel and participate in such proceedings at its own cost and expense.
 - (c) If the indemnification provided in subsection (b) is, for any reason, either unavailable to the Authority or any of the other persons intended to be indemnified thereby or insufficient to hold it or any of them harmless, then the Owner hereby agrees to contribute to all amounts paid or payable by the Authority and such other persons as a result of any such obligation, claim, loss, demand, cost, expense, or judgment. The amount to be contributed by the Owner shall be the amount that is appropriate to reflect both the relative benefits received by the Owner, on the one hand, and by the Authority and such other persons, on the other hand, and the relative degrees of fault of the Owner, on the one hand, and of the Authority and such other persons, on the other hand.
17. Miscellaneous.
- (a) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
 - (b) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, 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.

To the Authority: Colorado Housing and Finance Authority
1981 Blake Street
Denver, Colorado 80202-1272
Attention: Low-Income Housing Tax Credit Program

To the Owner: [INSERT INFO]

Attention: _____
Email: _____

The Authority and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) This Agreement shall be governed by the laws of the State of Colorado and, where applicable, the laws of the United States of America.

This Agreement may be amended from time to time by any written instruments signed by both the Authority and the Owner. The signing of any such instrument by the Authority shall be deemed for all purposes to be on behalf of, and shall be legally binding on, the Authority, any Qualifying Tenant and any individual who meets the income limitation applicable to the Project under the Code (whether present, prospective or former occupants of the Project).

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by electronic image scan transmission will be effective as delivery of a manually executed counterpart of the Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

[Owner]
[NOTE: SIGNATURE BLOCK TO BE CONFIRMED
BY OWNER AND ENTITY DOCUMENTS]

By:_____

Its:_____

STATE OF _____)
) ss.
_____ COUNTY OF _____)
Acknowledged before me this _____ day of _____, 20____,
by _____ as _____
_____ of _____
_____.

My Commission expires: _____.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

COLORADO HOUSING AND FINANCE
AUTHORITY

By: _____
Name: _____
Title: _____

[to be inserted from title commitment or policy]

Also known as: [INSERT STREET ADDRESS] For informational Purposes only

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

Acknowledged before me this ____ day of _____, 20__, by
_____ as _____ of Colorado Housing
and Finance Authority.

My Commission expires: _____.

Notary Public

EXHIBIT B

Minimum Applicable Fraction by Building

Building Identification Number	Minimum Applicable Fraction

EXHIBIT C

Additional Owner Agreements

I. State Credits [insert if state credits]

RECITALS

A. The Authority is authorized by Part 21 of Article 22 of Title 39, Colorado Revised Statutes, as may be amended from time to time (the “**State Affordable Housing Credit Act**”) to allocate affordable housing tax credits under the State Tax Credit Act.

B. Under the State Affordable Housing Credit Act, the Authority determines the eligibility for and allocates credits in accordance with the standards and requirements set forth in the State Affordable Housing Credit Act and Section 42 of the Code.

C. The Owner applied to the Authority for an allocation of affordable housing credits under the State Affordable Housing Credit Act (the “**State Credits**”).

D. In connection with its Application (defined below) the Owner made certain representations to the Authority about the Project, including representations as to the number of Tax Credit Units and the term of occupancy restrictions, upon which representations the Authority relied in considering the Application for a reservation and allocation of State Credits.

E. The Authority is unwilling to allocate State Credits to the Project unless the Owner enters into this Agreement, and consents to be regulated by the Authority in order that the Authority may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement in accordance with the State Affordable Housing Credit Act.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Authority agree as follows:

1. Incorporation of Recitals. The recitals above are incorporated in and made a part of this Agreement.

2. Definitions. All references in the Agreement to the following capitalized terms, shall have the following meaning:

- a. “**Allocation Certificate**” means the Colorado Affordable Housing Tax Credit Allocation Certificate.
- b. “**Application**” means the application submitted to the Authority for a reservation, initial determination, or allocation of Federal Credits and/or State Credits. The Application includes all materials provided to the Authority, as required by the applicable checklist, and any additional materials provided to the Authority that are reviewed as part of the tax application process.

- c. **“Credit Period”** means, with respect to the State Tax Credit, the “credit period” as defined in Section 39-22-2101 of the State Tax Credit Act, and with respect to the Federal Credit, the “credit period” as defined in Section 42(f) of the Code.
- d. **“Department”** means the Colorado Department of Revenue.
- e. **“Qualified Development”** means a “qualified development” under Section 39-22-2101 (10) of the State Tax Credit Act.

3. Additional Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:

- a. In compliance with the State Affordable Housing Credit Act:
 - i. Each building that is the subject of an allocation of State Credits is or by not later than the last day of the Credit Period will be a Qualified Low-Income Building and the Project constitutes or will constitute a Qualified Development.
 - ii. The Project will be operated and maintained as a Qualified Development.
 - iii. The Owner shall operate the Project in accordance with the accessibility and adaptability requirements of the Federal Credits and Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, as amended.
 - iv. The Owner will not knowingly take or permit any action that would result in a violation of the State Affordable Housing Act.
- b. The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of the State Affordable Housing Credit Act.
- c. If the Owner becomes aware of any situation, event or condition that would result in non-compliance of the Project or the Owner with the State Affordable Housing Credit Act, the Owner shall promptly give written notice thereof to the Authority.
- d. The Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of the Authority, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department or the Authority from time to time pertaining to the Owner's obligations under the State Affordable Housing Credit Act and affecting the Project.

4. Compliance Monitoring. The Owner agrees that the Authority must monitor the Owner and the Project for compliance with the State Affordable Housing Credit Act in addition to the Code, and may report any non-compliance to the Department in addition to the IRS, and may provide the Department all filings provided to the IRS. As such, the Owner agrees to be bound by all State Credit compliance requirements found in the Compliance Manual and to take all actions required by the Authority pursuant to the Compliance Manual to assist or cooperate with the Authority in monitoring such compliance.

5. Owner Certifications and Reports.

- a. Within ninety (90) days of filing the Allocation Certificate with the Department, the Owner shall provide to the Authority a copy, for each building, of the Allocation Certificate, as filed by with the Department for the first year of the Credit Period.
- b. The Owner shall provide the Department with any documentation, certifications, and/or reports required by the State Affordable Housing Credit Act and/or as required by the Department for its monitoring of the State Credits.
- c. The Owner shall maintain its records and provide the Authority with all notices and correspondence from or with the Department concerning the Project or the Owner, and provide the Authority with any other information, documents or certifications requested, from time to time, by the Authority which the Authority reasonably deems necessary to substantiate the Owner's continuing compliance with the State Affordable Housing Credit Act.

6. Enforcement. All the enforcements rights of the Authority included in this Agreement include the Authority's rights to ensure compliance with the State Credits and the State Affordable Housing Credit Act.

7. Termination in the Event of Foreclosure. This Agreement shall not terminate, with respect to the State Credits, on the date the Project is acquired by foreclosure or instrument in lieu of foreclosure if the Authority determines that such acquisition is part of an arrangement, a purpose of which is to cause such termination.

8. Restrictions on Transfers. In addition to the requirements in Section 11 of the Agreement, the Authority's consent to a transfer of the Project will be conditioned on the Owner's and the Project's compliance with the State Affordable Housing Credit Act.

9. Allocation Certificate. The Authority's issuance of the Allocation Certificate is conditioned upon the satisfaction of the Owner of all requirements in the Qualified Allocation Plan for the issuance of such certificate.

II. Special Populations Served

- 1. The Owner further covenants and agrees that not later than the last day of the first year of the Credit Period, at least _____ (_____) of the residential rental units in the Project shall be constructed, equipped, set aside and occupied (or held vacant and available for immediate occupancy) by _____ [describe special housing needs resident] at all times during the term of this Agreement, and the Owner shall provide evidence to the Authority of any license, permit or other governmental approval required for such occupancy. **[USE IF SPECIAL NEEDS HOUSING]**
- 2. [USE IF REQUIREMENT TO ADD LANGUAGE RE SENIOR – PREFERENCE NOT TO INCLUDE, AND IF INCLUDE, NOT TO SPECIFY AGE]
- 3. The Owner will provide the Authority with notification of any substantial changes in population served.

EXHIBIT D

1. [HUD Financing Provisions] Insert if applicable.
- (a) The following terms shall have the following definitions:
- “Code” means the Internal Revenue Code of 1986, as amended.
- “HUD” means the United States Department of Housing and Urban Development.
- “HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.
- “Lender” means _____, its successors and assigns.
- “Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.
- “Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.
- “National Housing Act” means the National Housing Act of 1934, as amended.
- “Program Obligations” has the meaning set forth in the Security Instrument.
- “Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.
- “Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.
- (b) Notwithstanding anything herein to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), the provisions of hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or the requirements hereof. In the event of any conflict between the provisions hereof and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of this LURA, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the LURA imposes no terms or requirements that conflict with statutory provisions of the National Housing Act and related regulations.
- (c) In the event of foreclosure, this LURA (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the

- exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, or to the extent applicable, as otherwise approved by HUD.
- (d) Borrower and the Authority acknowledge that Borrower’s failure to comply with the covenants provided in the LURA does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.
- (e) Except for the Authority’s reporting requirement, in enforcing the LURA, the Authority will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
- i. Available surplus cash, if the Borrower is a for-profit entity;
 - ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity;
 - iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity; or
 - iv. A HUD-approved collateral assignment of any HAP contract.
- (f) For so long as the Mortgage Loan is outstanding, Borrower and Authority shall not further amend the LURA, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.
- (g) Subject to the HUD Regulatory Agreement, the Authority may require the Borrower to indemnify and hold the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Authority relating to the subordination and covenants set forth in the LURA, provided, however, that Borrower’s obligation to indemnify and hold the Authority harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.
- (h) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low-Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the LURA. Borrower represents and warrants that to the best of Borrower’s knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the LURA. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the LURA arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the LURA.]

[2. HUD Public Housing Provisions.

- (a) As used herein, the following terms shall have the following meanings:
- (i) “HUD” means the U.S. Department of Housing and Urban Development.

- (ii) “Restriction Period” means the period in which the Declaration is in effect.
 - (iii) “ACC” means the Consolidated Annual Contributions Contract between HUD and the Authority dated as of _____, as _____ amended by the Mixed Finance ACC Amendment, dated as of _____, as the same may be further amended from time to time.
 - (iv) “Act” means the United States Housing Act of 1937 (42 U.S.C. § 1437, *et seq.*), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.
 - (v) “Applicable Public Housing Requirements” means all requirements applicable to public housing, including, but not limited to, the Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the ACC, the HOPE VI grant agreement (if applicable), HUD notices (including any notice of fund availability under which Landlord received an award of HOPE VI funds for use in connection with the Project), the HUD-approved Declaration of Restrictive Covenants in favor of HUD, the Owner’s admissions and occupancy policies applicable to the Project, as set forth in its PHA Plan, and all applicable Federal statutory, executive order and regulatory requirements, as those requirements may be amended from time to time.
 - (vi) “Declaration” means the declaration of restrictive covenants required by HUD to be recorded against the Project prior to any mortgage(s) or other encumbrance(s) against the Property.
- (b) Notwithstanding anything in this Agreement to the contrary, except for the requirements of 26 U.S.C. 42(h)(6)(E)(ii) of the Code:
- (i) The provisions hereof are expressly subordinate to Applicable Public Housing Requirements. Owner covenants that it will not take or permit any action that would result in violation of Section 42 of the Code, Applicable Public Housing Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the Applicable Public Housing Requirements, HUD shall be and remains entitled to enforce the Applicable Public Housing Requirements. Notwithstanding the foregoing, nothing herein limits the Authority’s ability to enforce the terms of the Restrictive Covenants as required by the Code, provided such terms do not conflict with statutory provisions of the Act or the regulations related thereto. The Owner represents and warrants that to the best of the Owner’s knowledge the Restrictive Covenants impose no terms or requirements that conflict the Act and related regulations.
 - (ii) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure of the Project, this Agreement (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) of the Code.

- (iii) The Authority expressly reserves the right to: seek specific performance of this Agreement and to report to the Internal Revenue Service, pursuant to Section 42(m)(1)(B)(iii) of the Code and applicable regulations thereunder, any non-compliance with any terms of this Agreement. In addition, pursuant to 26 U. S. C. Section 42(h) (6)(B)(ii), tenants have the right to enforce the Restrictive Covenants.
- (iv) During the Restriction Period, no amendment to this Agreement shall be effective without the prior written approval of HUD.
- (v) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low-Income Housing Tax Credits or any portion thereof related to any potential conflicts between the Applicable Public Housing Requirements and this Agreement. Owner represents and warrants that to the best of Owner’s knowledge the Applicable Public Housing Requirements impose no requirements which may be inconsistent with full compliance with this Agreement. The acknowledged purpose of the Applicable Public Housing Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of this Agreement is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the Applicable Public Housing Requirements and this Agreement arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of Owner, with advice of counsel, to determine that it will be able to comply with the Applicable Public Housing Requirements and its obligations under this Agreement.]

Draft Parking Management Plan - 101 W Main Housing Planned Unit Development

This document proposes a draft framework to guide the creation of a Parking Management Plan for on-street parking stalls that will serve the proposed development at 101 W Main Street, Frisco, CO 80443. Any Parking Management Plan or regulations must be approved by the Town of Frisco.

A total of twenty (20) new on-street parking stalls are proposed to be constructed as part of the development of the 101 W Main Housing Planned Unit Development project. These parking stalls are proposed to be constructed in the W Main Street right-of-way. In addition to these 20 parking stalls, eleven (11) existing parking stalls located in the portion of W Main right-of-way that fronts 101 W Main Street are also proposed to be used to meet the project’s parking requirement.

The 101 W Main Housing project proposes to use twenty-two (22) of the on-street parking stalls for users of the Planned Unit Development, while the other nine (9) on-street parking stalls shall be constructed as a community benefit providing new vehicular parking for the public.

The 101 W Main site is constrained and unable to accommodate all required parking on-site. This configuration will allow the 101 W Main Housing project to meet the number of parking spaces required by code while also providing additional parking for the community at large.

Construction

The Owner/Developer will construct twenty (20) parking spaces within the Town of Frisco’s right-of-way along W Main Street as part of the off-site infrastructure improvements for the 101 W Main Housing Planned Unit Development project. Construction shall include all demolition, grading, drainage, pavement, signage, stripping, and other work required to construct twenty parking spaces per the plans.

Operation and Maintenance

Signage: Signage will be installed as part of the construction of the 101 W Main Housing project’s off-site improvements. The signage will display designated hours for parking and which parking stalls require parking permits. Signage shall state “Permit Parking Only. No Parking Monday and Thursday 7 am – 10 am. November 1st through May 1st” Signage will also display towing information for any vehicles improperly parked reference Exhibit C, page 15. Any replacement, upgrade, or maintenance of the signage after initial installation will be the exclusive right and responsibility of the Town of Frisco.

Permit parking and towing: To park in the 22 spaces dedicated to the users of 101 W Main, a vehicle must display a valid parking permit at all times. Parking permits will be issued by property management and may be subject to per-unit limits. Property management will also oversee the towing of vehicles that are improperly parked or parked without a permit. The Town of Frisco may tow or ticket improperly parked vehicles in those spaces as well.

Visitors to 101 W Main who choose to park in permitting spaces will also be required to obtain a parking permit from property management if they choose to park overnight. Vehicles improperly parked are subject to towing.

Parking procedures and requirements, including permit requirements, will be included in all lease agreements. Repeated parking violations will be considered lease violations subject to standard remedies including fines and/or eviction.

Lease agreements will stipulate what vehicles are allowed to be parked in the parking spaces. Only registered and operational passenger vehicles are allowed in the parking spaces. Recreational vehicles, trailers, boats, oversized vehicles or vehicles longer than 18 feet, or other equipment are not allowed. Car washing and car repair are not allowed in the parking spaces. Motorcycles must be parked in regular parking spaces. Abandoned or inoperable vehicles are not allowed to be parked in the parking spaces. Vehicles shall not overhang onto the sidewalk.

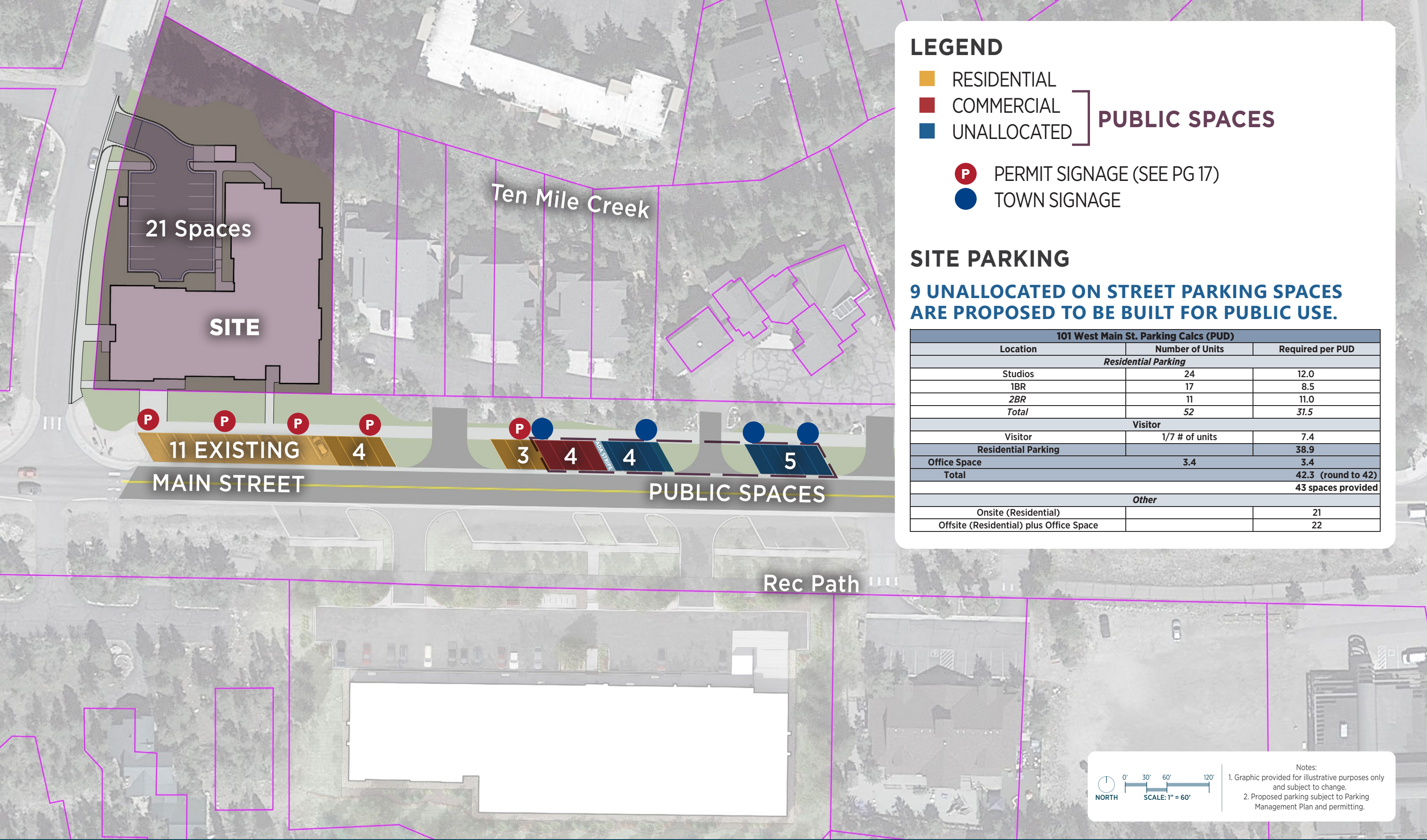
Overnight parking: Overnight parking will be allowed in the 22 spaces dedicated to the users of 101 W Main. However, vehicles that do not display the proper parking permits may be towed (see above). Overnight parking will not be allowed in the 13 on-street parking stalls open to the public (9 public benefit and 4 public spaces required for commercial users), except at the discretion of the Town of Frisco.

Snow Removal: The removal of snow from the public right-of-way will continue to be the sole duty and responsibility of the Town of Frisco. Parking restrictions to allow for the removal of snow are required.

The Town may restrict parking in the right-of-way at any time to allow for regular maintenance of the right-of-way, including snow removal. The Town shall sign parking restrictions times. On-street overnight parking spaces for permit spaces shall be signed for no parking 7 am to 10 am on Mondays and Thursdays November 1st through May 1st. Property management shall tow any vehicles not removed from the permit parking spaces during these times. To allow for snow removal, all vehicles must be moved from the on-street parking spaces during posted times.

Maintenance: Maintenance of the right-of-way, including parking stalls constructed in association with the 101 W Main Housing Planned Unit Development, shall be the sole right and responsibility of the Town of Frisco. Maintenance may include, but is not limited to resurfacing, snow removal, and signage maintenance.

The Town of Frisco may enforce parking regulations for all the on-street spaces constructed through the 101 W Main Housing project through any appropriate legal means, including the ticketing of vehicles, the towing of vehicles, and the disabling of vehicles pursuant to Colorado state law.



LEGEND

- RESIDENTIAL
- COMMERCIAL
- UNALLOCATED

PUBLIC SPACES

- PERMIT SIGNAGE (SEE PG 17)
- TOWN SIGNAGE

SITE PARKING

9 UNALLOCATED ON STREET PARKING SPACES ARE PROPOSED TO BE BUILT FOR PUBLIC USE.

101 West Main St. Parking Calcs (PUD)		
Location	Number of Units	Required per PUD
Residential Parking		
Studios	24	12.0
1BR	17	8.5
2BR	11	11.0
Total	52	31.5
Visitor		
Visitor	1/7 # of units	7.4
Residential Parking		38.9
Office Space	3.4	3.4
Total		42.3 (round to 42)
43 spaces provided		
Other		
Onsite (Residential)		21
Offsite (Residential) plus Office Space		22

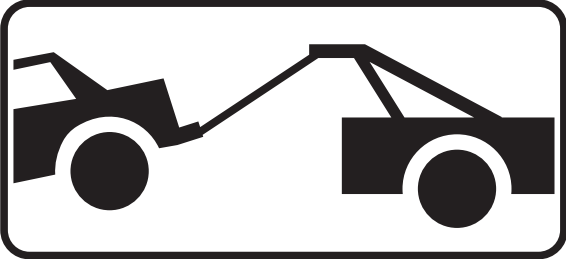
EXAMPLES OF PERMITTED AND
UNPERMITTED PARKING SIGNAGE

PROPOSED SIGNAGE

PROPOSED SIGNAGE TO HAVE WARNINGS DENOTING TOWING, FINES, AND TIME WHEN PARKING IS NOT ALLOWED.

ADDITIONAL SIGNAGE IN THIS LOCATION WILL BE USED TO DENOTE PERMIT REQUIREMENTS FOR RESERVED RESIDENTIAL SPACES.

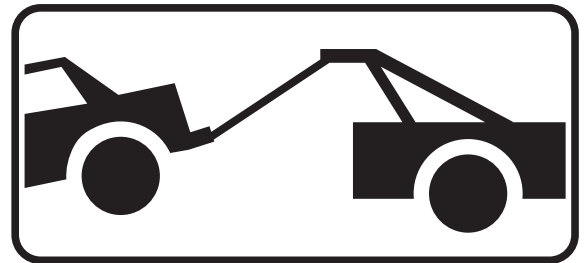
SIGNAGE SHOULD MAINTAIN CONSISTENCY WITH TOWN SIGNAGE THROUGHOUT THE TOWN. SIGNAGE SHOULD BE UPDATED AS NEEDED TO MATCH CURRENT TOWN STANDARDS.



PERMIT SIGNAGE
(SEE PG 15)
RESIDENTIAL
OVERNIGHT
PARKING FOR
DEVELOPMENT



TOWN SIGNAGE
(SEE PG 15)
PUBLIC PARKING,
NO OVERNIGHT
PARKING ALLOWED



Draft Car Sharing Proposal for 101 W Main Housing Planned Unit Development

This document proposes a draft framework to guide the establishment of a car-sharing program that will serve the proposed development at 101 W Main Street, Frisco, CO 80443. Any parking reductions based on a car-sharing program or regulations governing parking management must be approved by the Town of Frisco.

The development at 101 W Main proposes to allocate two (2) on-site parking spaces for car-sharing services for residents of the development. Under The 101 W Main Housing Planned Unit Development, provision of a parking space dedicated to a car-sharing service shall count as 4 parking spaces when calculating the required minimum parking spaces for a development qualifying for the Town’s Affordable Housing Development Incentive Program.

The 101 W Main Housing project will be a deed-restricted rental development under single ownership and operated by a professional property management company. The property owner will enter into an agreement with a car-sharing company such as ZipCar and Car2Go; the agreement will be enforced by the property management company.

If at any time following lease-up of the development, the 101 W Main Housing project fails to provide on-site car-sharing as required in the approved Major Site Plan, the property owner shall have 60 days to cure the issue. If a car-sharing service is not offered as required at the end of 60 days, the property shall be in violation of the Town code and shall be subject to penalties as described in Section 1-14 of the Code of Ordinances of the Town of Frisco.





RECORD OF PROCEEDINGS

**Meeting of the Planning Commission for the Town of Frisco
Town Hall, 1 East Main Street
Thursday, November 16, 2023 at 5:00 P.M.**

Call to Order: Kelsey Withrow, Chair, opened the meeting.

Roll Call: Present: Jessica Forsyth, Lina Lesmes, Ira Tane (virtual), Kelsey Withrow
Absent: April Connolly, Andy Stabile

Minutes: Approval of the November 2, 2023 Planning Commission meeting minutes
The minutes were approved unanimously.

Public Comment (non-agenda items): There were no public comments

Agenda Items:

1. **MAJ-23-0011:** A sketch plan review of the Major Site Plan application for a new mixed-use development and a preliminary public hearing for **REZ-23-0002**, 101 W. Main Housing Planned Unit Development (PUD); located at 101 W Main Street / Lot B-1 West Frisco 70 Sub # 2. Applicant: Andy Stabile, Allen-Guerra Architecture

Katie Kent, Community Development Director, noted that Lauren Avioli with NHP Foundation is present and will be taking the lead in tonight's presentation.

Kent introduced the project by stating that this is a sketch plan review of a Major Site Plan application for a new mixed-use development and a preliminary public hearing for a rezoning to a PUD. The proposed development is located at 101 W Main Street and will consist of 52 deed restricted rental units, with a minimum of 45 units being affordable for households earning between 30 and 80 percent of the Area Median Income (AMI). The applicant is requesting flexibility on the remaining units for minor deviations of up to 100 percent AMI. In addition to the Major Site Plan application, the applicant is proposing to rezone the site to a Planned Unit Development (PUD) to provide relief from certain standards of the underlying zone district for projects that provide a community benefit in the form of usable open space or work-force housing. Ms. Kent continued with background and analysis, then concluded her presentation with staff's recommendation that the Planning Commission provide the applicant with feedback on the applicant's request for the PUD to allow for relief from noted UDC standards addressed in the November 16, 2023 staff report.

COMMISSION QUESTIONS FOR STAFF:

- Commissioners asked staff to clarify the ten-foot versus nine-foot ceiling heights. Ms. Kent will let the applicant address.
- Commissioners noted last seen there was underground parking and asked if new foundation will fill the garage. Kent responded that the applicant could address but noted that the underground parking was removed due to the cost involved.
- Commissioners asked about the elevator shown in the plans and whether one elevator is sufficient. Staff responded that that would be determined by the building code and the architect can address.
- Commissioners asked if the building would have internal fire suppression. Staff responded yes.
- Commissioners asked if there will be any other parking on Main Street that will prohibit the public from using. Staff responded that the applicant could address.
- Commissioners asked if there is a commitment for solar panels. Kent responded that Staff did not want to require solar panels and felt that they may not be feasible based on the property across Main Street not having adequate sunlight to make solar functional.
- Commissioners asked staff if we knew how many units were at which AMI. Staff responded that the applicant would address. Further stating that, in the PUD, there is a minimum of forty-five (45) units at 80% AMI, with flexibility up to 100% AMI.
- Commissioners asked where the office would be located. Staff pointed out the location and noted that it is shown as commercial/office.
- Commissioners asked if the office space would be leased to the public. Applicant to address.
- Commissioners asked what the income requirements are for applying for the (CHAFA) and could the Affordable Housing Development Incentive Program be included in the PUD. Staff replied yes, it does not need to be designated.
- Commissioners noted that the reason for the minimum ceiling height is that in a prior project, a commercial tenant complained that the reduced ceiling height does not work for commercial uses.
- Commissioners asked if there is a reason the solar study has not been done yet. Staff responded the applicant to discuss.
- Commissioners noted that this project has the same architect as 602 Galena Street and that there are a lot of similarities causing it to feel repetitive. Staff responded that there are limitations to duplicity in the code but that the other project is too far away to fall under that specific part of the code. Staff will look into this piece.
- Commissioners asked what happens if we support all the reductions and exceptions and the AMIs might go up. Staff responded that when it is put in the PUD and then the applicant proposes to increase AMIs, then the changes would require a modification to the PUD.
- Commissioners noted that as stated in the narrative, in the front of the building, they are not allowed to abut parking on private property adjacent to West Main Street, but noted the Town approved this on the 80 West Main Street project. Commissioners requested further information on 80 W. Main Street. Staff will let the Applicant address.
- Commissioners asked about improving the trail on the rear of the property which seems like a cost and noted that the trail master plan is mostly on private property and is not a cost-effective use of the funds. Commissioners asked if there is a trail already created. Staff responded that there is no design for a trail at present, but the larger easement was included as a public amenity.
- Commissioners asked how the Town feels about all these exceptions, noting that the Town just re-wrote the code to make these projects fit and now we're making all these exceptions. Staff noted that they had a hard time at first for all these exceptions, but the timing is in the applicant's favor having just had the Summit County Needs Assessment come out which show this is a strong need of the community. Low-Income Housing Tax Credit (LIHTC) funding is very competitive right now, around the

state. Staff noted that they are proposing a PUD to recognize that they are not proposing town-wide exceptions; the unique location of this property warrants exceptions for the greater community need of low-income rental housing.

- Commissioners asked if this commercial space could be used for childcare. Staff noted that state licensing makes it prohibitive. Commissioners asked if there is any tool that could limit commercial space. Staff suggested Commissioners make that recommendation.
- Commissioners asked if the commercial space could be used for the Colorado Workforce Center. Staff responded yes if they were interested in it.
- Commissioners asked if buyers are limited to 100% AMI, then housing district guidelines let the buyers earn 20% more or 30% more. Staff responded that it depends on the covenant and the income level. The standard now is that it is not written for Frisco covenants as Commissioners noted but there are others that are.

Megan Testin with Norris Design thanked the Commission and gave a brief introduction to the project.

Lauren Avioli, Senior Acquisitions Director with NHP Foundation, addressed the Commission noting that also available to answer questions tonight are Brett Ruby, Development Project Manager with NHP Foundation and Neal Drobenare, Vice President of NHP Foundation. Also available for questions is the project's architect, Suzanne Allen-Sabo with Allen Guerra Architecture. Ms. Avioli gave an overview of the NHP Foundation. Ms. Avioli noted that there is a Development Agreement with the Town of Frisco and proceeded to discuss the project narrative and financing.

Ms. Testin called attention to the locale and transit and covered car share, ADA units, parking, and working with Public Works to find snow storage. Ms. Testin noted that they are not asking that the Code be rewritten, but a PUD to provide relief for the project.

Suzanne Allen-Sabo with Allen Guerra Architecture addressed the Commission to discuss parking, building heights which are currently 4' under the allowed 49.5' building height which is used in the Affordable Housing Incentive Program. Ms. Allen-Sabo passed around a materials board for the Commissioners and noted the project does look similar to 602 Galena Street due to the program; however, the site is considerably different, and the site design is significantly different. A rendering of the two projects will be provided at the next meeting for comparison. Ms. Allen-Sabo discussed the bulk plane, ceiling height, and grade. Further stating that the project is being pushed back from the street due to the 100-year flood plain and a 25' setback.

COMMISSION QUESTIONS FOR APPLICANT:

- Commissioners commented that there is no rock on the materials board, but wanted to confirm that rock is on the building. Ms. Allen-Sabo replied that there is rock on the building, used for balance and distinguishing commercial use. Commissioners commented that aesthetically they really like it and were concerned that it would go away due to affordability. Ms. Allen-Sabo noted that it would not go away if the commercial were kept and is affordable due to the small amount being used.
- Commissioners asked about the phrase "preparing parking spaces" and what that meant. Ms. Testin clarified that the parking spaces were being built and would be reserved for the residents of this building further noting that the parking management plan will be incorporating comments in the plan when we return and that the eleven spaces would be permit parking. A discussion ensued on parking.

- Commissioners asked if the amount of parking hinged on Public Works giving the thumbs up. Staff responded that Public Works comments on the draft proposal seemed very doable. The applicant responded that the parking will be very clearly marked at the next meeting.
- Commissioners asked if the applicant looked at the parking in the right of way next to the property as opposed to Main Street. Ms. Testin responded that this area was looked at for parking, but it is technically a bike path.
- Commissioners asked if the commercial space is really viable commercial/office space. Ms. Avioli responded that the space functions better for workforce housing and could be turned into two more units. The project would be more successful if the space was dedicated to workforce housing.
- Commissioners asked if, as designed, the space is functional for office space. The applicant responded that considering small office space is renting slowly they would likely have to identify a possible tenant for the space to make their lenders feel comfortable.
- Commissioners stated that the commercial component is important. Without commercial, it ruins the rhythm that the street needs to have to make it work as a commercial artery of our town. There becomes a connectivity gap. Ms. Avioli stated that what we are hearing the most is the need for workforce housing, this project puts workers on Main Street and will help the businesses on Main Street in an indirect way. Further, pulling the design up to Main Street will help with the lively, walkability feel that we all want to see and provide a lot more people in the area.
- Commissioners noted that if a trail is built, snow storage located there will become a problem.
- Commissioners asked the Applicant to go over the AMI breakdown that is being proposed. The applicant began reviewing all the affordability restrictions, noting that the next time they come back to the Commission these details will be worked out in pen, not pencil.
- Commissioners asked if this was a deed restriction that does not limit your place of work to the Town of Frisco. Ms. Avioli responded that the tax credit program deed restrictions cannot do that, that is correct.
- Commissioners asked if the deed restrictions are restricted in perpetuity. Applicant responded, yes, and the property would be owned by the new housing authority or the Town when it is complete.
- Commissioners asked if there was a clean slate, would you want either of those two office spaces. The applicant restated that their priority has always been workforce housing to be built on this site.
- Commissioners commented that the continuum of Main Street and the commercial aspect of it – the belief is that those two gratuitous offices do not make a difference. If we are making a PUD with a clean slate, take the commercial out. The corner of Main and Creekside with this large residential project would not change the continuum, especially with the project across the street adding all of the commercial units. There is no pressing need to provide a commercial aspect to the building.
- Commissioners asked if some of the building will be on fill, and some will not. Ms. Allen-Sabo responded, yes, some of the building will be on fill.
- Commissioners asked if there are EV parking spaces. Ms. Allen-Sabo answered yes, there are two spaces.
- Commissioners asked if diamond coat siding is engineered. Ms. Allen-Sabo responded, that is correct.
- Commissioners asked if it is correct that the applicant is working on a way not to disincentivize people from making more money. The applicant responded, not until they make above a certain level, a bit of an income growth is allowed. No one would be evicted mid-lease for income growth.
- Commissioners asked for clarity on the potential parking expansion for the south side. The applicant responded that this is not part of the 101 W Main Street development.

PUBLIC COMMENTS:

- Scott Holzer, 75B W Main Street, duplex to the east of project – Would like clarification on where the snow storage is and where the right of way (ROW) is. Mr. Holzer expressed concern about parking and snow storage. Ms. Testin responded by pointing out where the snow storage is being proposed and identified the ROW along Creekside Drive, to the left and right of the water quality pond, pending final plan from Public Works. Staff put up a topographical map and showed ROW.

COMMISSIONER DISCUSSIONS:

- Commissioners agreed to discuss and provide the applicant with their feedback on each of the items requesting relief from the UDC standards, item-by-item.
 1. Ceiling Height (§180-3.17.8)
9' instead of 10'
 - Commissioners agreed that they are fine with 9' ceiling heights in the commercial space and on the first floor.
 2. Residential Uses in Central Core and Mixed-Use Districts (§180-5.2.8)
Ground floor residential uses shall be permitted as a use by right instead of a conditional use approval.
 - Commissioners were in favor of the 100% residential use in central core and on the main floor, because it is low-income affordable housing.
 3. Mixture of Uses in the Mixed-Use Districts (§180-5.2.13)
3.7% instead of 20% commercial space on the property.
 - Commissioners were divided between being supportive of the reduction in commercial space. Some commented they could possibly be in favor of no commercial space while others would 1) like to see if there is a viable tenant for the space and 2) are begrudgingly going down to 3.7% but not altogether. Further comments were that the small amount of commercial space is not doing anything to create vibrancy. One commented that they would like to see 20% commercial space or none at all.
 4. Parking and Loading Regulations (§180-6.13)
48% offsite instead of 20%.
 - Commissioners were in support of the offsite parking if the parking management is specific and handled appropriately, consistently, and fairly. Adding that the parking management plan must have teeth, not just mandated but with enforcement.

Staff noted that the parking management plan will be required to be recorded as an attachment to the PUD.

- Commissioners inquired as to whether there are EV charging spaces or at least built-in with the infrastructure.
- Commissioners stressed the need for workforce housing, noting it must be site specific, not precedence setting. Rental units are okay – not 'for sale' units. This is one of the few sites where this parking arrangement is acceptable but still it is a struggle to accept. It is utopian to read narratives that we have all this great interconnective transit, but reality is that the Summit Stage is struggling to staff people once an hour. There must be teeth in the parking management plan.
- 5. Landscaping and Revegetation Requirements (§180-6.14)
The applicant is proposing that the landscaping for the site shall be in conformance with the Town Code, with the following exceptions:

- a. Plant material quantities may be reduced by up to 20% from the requirement per §180-6.14.3.
 - b. Species mix may be increased to a 50% maximum for each species, and minimum tree caliper size may be reduced to 50% of the caliper size requirement in §180-6.14.4.
 - c. Sustainability Standards:
 - 1. Ornamental grasses may be substituted for shrubs at a rate of 2 grasses per 1 shrub.
 - 2. Native plant materials are preferred.
- Commissioners were unanimously in support; however, noted that grass should not be a substitute for shrubs.
- 6. Snow Storage and Snow Shedding (§180-6.15)
 The applicant is proposing that snow storage shall be accommodated at the rate identified in the UDC, whether located on or off site.
 - Commissioners were unanimously in support as long as it does not come back on the Town and Public Works. Commissioners noted that rooftop decks and ice melt systems get abandoned and we live in a snowy area. Not having enough snow storage, dominoes into not having enough parking spots, etc.
- 7. Non-Residential Development Standards (§180-6.21)
 The applicant is proposing that the PUD utilize the design guidelines per §180-6.22 Residential Development Standards rather than §180-6.21 Non-Residential Development Standards.
 - Commissioners were overall supportive but noted that design standards in the façade should be robust in the PUD because it faces Main Street.
 - Commissioners commented on the articulation, the color being very gray and that it could be broken-up a bit. Suggesting additional language in the PUD to solidify the expectations better.

Staff suggested a hybrid of the residential development standards copied into the PUD to make it connect to non-residential.

 - Commissioners want what is written to stick to our high standards, noting that this must be more worthy of a Main Street project.
- 8. Bulk Standards (§180-6.23)
Staff requests the Planning Commission discuss bulk plane encroachments
 - Recommend that the applicant state in the PUD that bulk plane encroachments are permitted up to 1,000 cubic feet per 10,000 square feet of lot area and bulk plane encroachments are permitted to provide for additional residential living area along with architectural features and shall be approved by the Planning Commission at time of Major Site Plan review.

OR

 - Trying to stack units for most efficient building design. Recommend that the applicant remove bulk plane encroachments from their proposed development stating in the PUD that bulk plane encroachments are not applicable to the property.

OR

 - Provide different feedback on the bulk plane encroachments after discussing the architecture of the building and proposed design as submitted.
 - Commissioners support #1 Significant architectural relief allowing living area.

- Commissioners noted that the canopy above the 3rd floor belongs on the 2nd floor. Canopies are perfect, they add elements. The façade has to be better for sketch plan. Less gray.
- Commissioners readdressed the commercial element and how not having it would make the most competitive application for LIHTC.

Staff and Commissioner Updates:

- Katie Kent, Community Development Director, announced that the Town Council has chosen Candice De to fill the vacancy on the Planning Commission. Ms. De has an engineering background and will be sworn in at the next Planning Commission meeting scheduled for December 7.
- Staff has a modification to affordable housing that will be on the next agenda.
- Kent announced that the December 21 Planning Commission meeting will likely not be held.
- Kent noted that there will be a January 4, 2024 meeting.
- Kent introduced Emma Heth Planner 1. Emma lives in the County has a Geography undergraduate, with a great background.
- Kent noted that 619 Granite has a completion date estimated to be August 2024.
- Kent announced the hiring of James Gorham, Housing Program Specialist, James is from Missouri, a past Economic Development Director. He has good experience with a diverse background.
- Adolfo Vasquez is our new bilingual Inspector/Plan Reviewer. Adolfo is a local Summit County graduate and has an engineering degree, having worked his way through college in the construction field.
- Kent reminded Commissioners that there will be a December 12 joint work session with Town Council at 5pm for an hour open format. An agenda will be forthcoming.
- An RFP went out last Friday for a housing needs assessment: it is to decipher what we have, what we need, and how we get there.
- Commissioners requested an update on the Peak One deed restriction. Kent noted that discussion was postponed until more staff is on board noting that Emma and James will take the lead on the conversation this winter.
- An RFP for the Town's Comprehensive Plan and 3-mile plan is being released tomorrow.

Adjournment:

There being no further business, Commissioner LESMES made a motion to adjourn, seconded by Commissioner WITHROW and was unanimous. The meeting adjourned at 7:22 p.m.

Respectfully submitted,

Cheryl Mattka
Community Development Department