PURCHASE ORDER (PO) PAYMENT FORM (optional)

This form should be used for payments where the vendor does have a Purchase Order.

VENDOR NAME: The Agave Inc Vendor #24526

ADDRESS(optional):

INVOICE NUMBERS TO BE PAID (optional):

Reimbursement for workforce housing deed restrictions for unit 901 and unit 903
with ACPO, LLC at Animas City Park Overlook Townhomes.

PURCHASE ORDER: 24-0163

ACCOUNT NUMBER: 29-4141-31499

AMOUNT TO BE PAID IMMEDIATELY: $ 20,000

DEPT. APPROVAL: Eva Henson **DATE:** 03/27/24

DEPT. DIRECTOR APPROVAL: [illegible signature] **DATE:** 4/3/24

City of Durango
PURCHASE ORDER

P.O. NUMBER	24-0163
C.O. NUMBER	
DATE	02/12/2024

THE **P.O. NUMBER MUST APPEAR** ON ALL INVOICES, PACKING LISTS, LABELS, BILLS OF LADING AND CORRESPONDENCE.

VENDOR: The Agave Inc
564 East 2nd Avenue #101
Durango, CO 81301

SHIP TO: City Hall
949 E 2nd Ave
Durango, CO 81301-5109

VENDOR #	TERMS	DELIVERY DATE	F.O.B.	BUYER	PO TOTAL AMOUNT
24526	NET0	02/01/2024	SHIPPING	Grogan, Bob	$ 50,000.00

LINE	QUANTITY	UOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
1	50,000.00	EA	Animas City Park Overlook (ACPO) Townhomes & City/URA Participation Redevelopment and Reimbursement Agreement for eligible expenses once deed-restricted housing units have been recorded. Please note that this requisition is for the outstanding balance of the 2023 purchase order. 29-4141-31499	$1.00	$50,000.00
				TOTAL	**$ 50,000.00**

PLEASE SEND INVOICE (with PO#) TO:

City of Durango
Accounts Payable
949 E 2nd Ave
Durango, CO 81301-5109

FEDERAL TAX ID #: 84-6000582

AUTHORIZED BY:

DSchmidt

Devon Schmidt

City of Durango
PURCHASE ORDER

P.O. NUMBER	24-0163
C.O. NUMBER	
DATE	02/12/2024

THE **P.O. NUMBER MUST APPEAR** ON ALL INVOICES, PACKING LISTS, LABELS, BILLS OF LADING AND CORRESPONDENCE.

TERMS AND CONDITIONS

The following terms and conditions are applicable to this Purchase Order entered into by and between the City of Durango, Colorado (“City”) and Vendor (“Seller”).

Integration. It is understood by acceptance of the Purchase Order that this Purchase Order is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms, conditions and provisions of their agreement unless specifically otherwise stated in writing. All prior discussions and negotiations are superceded by or merged into this Agreement.

Modifications. No changes of any type made be made in this Purchase Order, including, but not limited to, changes in quantity, type of goods, delivery date, price, or any other provision, without the express written approval of the City.

Termination. The City reserves the right to terminate this Purchase Order, in whole or in part, in the event of for default or if Seller fails to perform in accordance with any of the requirements of this Purchase Order. Any such termination shall be without liability to the City except for completed items delivered to and accepted by the City prior to the date of termination..

Shipping Charges. In those cases where prices stated are not F.O.B. destination, Seller is required to prepay shipping charges and itemize such charges on the invoice to be submitted to the City.

Terms. By accepting this order, the Seller agrees that payment terms shall be Net 30 days unless otherwise stated. Payment will be made in accordance with the City’s operating policies and procedures.

Invoicing. Seller must render an original invoice to Accounts Payable Department of the City at the address stated on the Purchase Order.

Tax. The City is exempt from Federal and State taxes.

Purchase Order Number. The Purchase Order Number must appear on all invoices, packing slips, shipping notices, freight bills and correspondence concerning this Purchase Order.

Compliance. By accepting this Purchase Order, Seller understand and agrees that the terms covered herein, or services to be rendered, shall be manufactured, sold or performed in compliance with applicable Federal, State, County and local laws, statutes, ordinances, rules and regulations. Lack of knowledge or such laws, statutes, ordinances, rules or regulations by the Seller shall in not relieve Seller from responsibility for compliance.

Inspection. All commodities delivered pursuant to this Purchase Order shall be subject to inspection upon receipt by a representative of the City. All rejected commodities shall remain the property of the Seller and will be returned at Seller’s expense.

Laws & Jurisdiction. Any legal action pertaining to this Purchase Order shall be filed only in the District Court in and for the Sixth Judicial District in Durango, Colorado. This Purchase Order shall be governed by and interpreted in accordance with Colorado law.

Payment Changes. Payments will only be made to the company identified at the address as set forth on the Purchase Order unless the Seller has previously requested a change thereto on official company letterhead, signed by an authorized officer of the company and approved by an authorized City official.

Affirmative Action. Vendors shall, in all hiring or employment made possible or resulting from this agreement, take affirmative action to ensure that there shall be no unlawful discrimination against any employee or applicant for employment because of sex, race, age, color, creed, national origin, sexual orientation, marital status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall include applicability to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Discrimination. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from a City contract on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, sexual orientation, marital status, or the presence of any sensory, mental or physical handicap.

Liability-Copyright/Patent/Trademark. Seller shall indemnify, and hold the City, its employees and agents, harmless from liability for infringement of any United States patent, trademark or copyright for or on account of the use of any product sold to the City or used in the performance of this Purchase Order.

Insurance. If the Seller is required to enter onto City property to perform work or services pursuant to this Purchase Order, the Seller shall assume full responsibility and expense to obtain all necessary insurance as required by the City.

Indemnification. To the extent authorized by law, Seller shall indemnify, save and hold harmless the City, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Seller, or its employees, agents, subcontractors or assignees pursuant to the terms of this Purchase Order.

Remedies. The City shall have rights and remedies afforded by the Colorado Uniform Commercial Code and other applicable laws.

Warranties. Seller warrants that the goods are merchantable and conform to the description set forth on the Purchase Order.

DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN THE ACPO, LLC PLANNED DEVELOPMENT, LA PLATA COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN ACPO, LLC PLANNED DEVELOPMENT, La Plata County, Colorado ("Agreement") is made and entered into this 29th day of January, 2024, by ACPO, LLC (the "Declarant"), for the benefit of the Parties and enforceable by HomeFund ("HomesFund"), a duly constituted nonprofit organization established pursuant to Colorado law, its successor or agent, and the City of Durango, Colorado, a municipal corporation established pursuant to Colorado law (the "City"). Collectively, Declarant, HomesFund, and the City are referred to herein as the Parties.

WHEREAS, Declarant has developed residential townhomes, commonly referred to as the Animas City Park Overlook, in Durango, CO (the "Development"); and

WHEREAS, in exchange for compensation as set forth in the Redevelopment and Reimbursement Agreement signed by the Declarant and the Durango Renewal Partnership on August 10, 2022, Declarant has agreed to place certain restrictions on the use of six (6) Units within the Development for the benefit of the Parties, the Parties' successors and assigns, and the community by requiring occupancy of the Unit by at least one Qualified Resident, as the terms are defined below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Property. The following real property is hereby burdened with the covenants and restrictions specified in this Agreement ("Unit"):

UNIT 901, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND AND SURVEYORS AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854. COUNTY OF LA PLATA, STATE OF COLORADO.

---

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Owner* means the person, people, or organization that holds title to the Unit after the initial transfer of the Unit from the Declarant to the Owner.

b. *Person* means a natural person and excludes any type of entity, including but not limited to, a corporation, limited liability company, partnership, or a trust.

c. *Primary Residence* means a Person's principal place of abode at which the Person

resides and occupies the Unit as their primary residence for not less than nine (9) cumulative months of each calendar year.

d. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

e. *Qualified Resident* means a Person who works an average of 32 hours or more per week at a business or organization in La Plata County, Colorado, <u>or</u> a Person who has a history of residency in La Plata County and who can provide proof of being a resident of La Plata County for a least one year immediately prior to seeking to purchase or reside in the Unit.

3. <u>Occupancy Restrictions</u>.

a. The Unit must be occupied by a Qualified Resident as his or her Primary Residence.

b. The Unit is not required to be owned by a Qualified Resident. The Owner of the Unit may rent the Unit as long as it is occupied by a Qualified Household as their Primary Residence and the Owner and Qualified Resident abide by the annual verification reporting requirements stated below.

c. A Qualified Resident may lease a room or rooms in the Unit to one or more persons, provided that the Qualified Resident still occupies the Property as his or her Primary Residence.

d. No business activity shall occur on or in the Property other than as permitted within the zone district applicable to the Property.

e. No Unit, or any portion of the unit, shall be used as a short term residential or vacation rental or be made subject to any time share agreement. Any lease or rental of the Unit must be longer than 9 months and be for the purpose of using the Unit, or rooms in the Unit as a Primary Residency. Under no circumstances shall the Unit or any portion of the Unit be utilized as a short-term vacation rental.

4. <u>Owner Acceptance and Annual Verification</u>.

a. Prior to competing a sale of the Unit, the potential purchaser of the property must complete, sign, and record the Memorandum of Acceptance attached to this Declaration as Exhibit A.

b. No later than June 1st of each year, beginning in the year following the first full year of occupancy of the Unit, Owner shall submit an attestation to HomesFund including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

1. Evidence to establish that the Unit was occupied by a Qualified Resident or Household as their Primary Residence during the prior calendar year;

2. If applicable, a copy of the lease form currently used for the Unit; and

3. If applicable, a list of tenants who occupied the Unit in the prior calendar year and provide evidence that they were a Qualified Resident or Household, as required by HomesFund and the City.

5. <u>HomesFund Right of First Refusal</u>. Any deed transferring any Unit shall contain language reserving to HomesFund a right of first refusal to purchase the Unit in the event that the Owner chooses to sell the Unit. As part of the right of first refusal, Owner shall first notify HomesFund in writing if Owner intends to enter into a binding contract to sell the Unit to a third party and the material terms of the proposed sale. HomesFund shall have the right to purchase the Unit on the material terms proposed for sale to the third party and contained in the Notice. Within 30 calendar days of the receipt of notice, HomesFund must notify the Owner in writing of its intention to purchase the Unit on the terms provided or waive its right to purchase the Unit. If HomesFund waives the right to purchase the Unit in writing to the Owner, the Owner is able to sell the Unit subject to the provisions contained herein. However, any subsequent Deed transferring the ownership of the Unit shall contain the right of first refusal language required by this Paragraph.

6. <u>Breach</u>

a. If HomesFund or the City has reasonable cause to believe Owner is violating this Agreement, the City may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours written notice. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

b. If Owner is more than one individual, each shall be jointly and severally liable for compliance with this Agreement and any breach of this Agreement.

7. <u>Remedies</u>.

a. This Agreement shall constitute covenants running with the Units, described herein as a burden thereon, for the benefit of, and shall be specifically enforceable by the City, HomesFund, and their respective successors and assigns, as applicable, by any appropriate legal action against any non-complying Owners and/or occupants.

b. It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if an Owner fails to comply with any of the obligations herein imposed on them and that in the event of any such failure, and the City and/or HomesFund will be irreparably damaged and will not have an adequate remedy at law. The City and HomesFund shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law and no bond shall be required.

c. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

d. With the exception of a Public Trustee's or Sheriff's sale in a foreclosure proceeding for the benefit of a first lien mortgage holder; in the event of any sale, transfer, or conveyance of the Units thereof, each and every conveyance of

the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

e. In the event that the Owner fails to cure any breach, the City or HomesFund may resort to any and all available legal action, including, but not limited to requiring sale of the Unit by Owner.

8. Loans and Foreclosure.

a. The Owner may finance a portion of the initial purchase of the Unit with a loan from an Institutional Lender that is secured by a First Deed of Trust.

b. HomesFund is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust to facilitate favorable financing for the benefit of a Qualified Buyer of the Unit.

c. It shall be a breach of this Agreement for an Owner to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering a Unit, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for the Owner to default in the payment of real property taxes or any assessments, dues, or other obligations to any applicable homeowners association, if applicable. The Owner must notify HomesFund, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns or loan servicer, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment, or breach. The Owner must also notify HomesFund of any notices received from any governmental entity or homeowners association claiming a violation or non-payment, within five (5) calendar days of receiving such notice.

d. Upon notification of a default as provided above, HomesFund is entitled to require the Owner to sell the Unit in order to avoid the commencement of or the completion of foreclosure proceedings. If HomesFund requires sale of the Unit, Owner shall, immediately upon request, execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission providing for a ninety (90) day listing period.

e. Upon receipt of notice as provided above, the City and HomesFund shall have the right, but not the obligation, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to HomesFund for any payments made by HomesFund on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of HomesFund incurred in curing the default, including reasonable attorneys' fees. The Owner shall be required by HomesFund to execute a promissory note to be secured by a junior deed of trust encumbering the Unit in favor of HomesFund for the amounts expended by HomesFund as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Unit. Otherwise, Owner's indebtedness to HomesFund shall be satisfied from the Owner's proceeds at the closing upon sale of the Unit.

f. The City and HomesFund shall be a "person who appears to have an interest in the property" as described in C.R.S. § 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in C.R.S. § 38-38-103(1)(a). In addition, HomesFund shall be a "contract vendee" pursuant to C.R.S. § 38-38-104(1)(d), and shall be entitled to cure any default which is the basis for a foreclosure action in accordance with C.R.S. § 38-38-104, *et seq*. Upon filing with the Public Trustee of La Plata County of a Notice of Election and Demand (NED) pursuant to C.R.S. § 38-38-101(4) by the holder of the First Deed of Trust, HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner. HomesFund may assign the foregoing option to the City.

If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the option of HomesFund shall terminate. Such termination shall not, however, operate to extinguish the option of HomesFund to purchase the Unit in the event that any subsequent NED is filed.

g. The provisions of this Agreement may be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. In the event of foreclosure by a holder of a First Deed of Trust, and upon the issuance of a Public Trustee's or Sheriff's Deed, these Covenants shall automatically terminate.

h. With the exception of the First Deed of Trust provided by an Institutional Lender, this Agreement shall be senior to any lien or encumbrance recorded in the Office of the Clerk of Recorded of La Plata County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in a Unit by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed to be in breach of this Declaration and shall be subject to the provisions of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations, and restrictions contained in this Agreement.

9. <u>Miscellaneous.</u>

a. *Modification.* This Agreement may only be modified by subsequent written agreement of the Parties.

b. *Integration.* This Agreement and any attached exhibits constitute the entire agreement between Owner, HomesFund, and the City, superseding all prior oral or written communications.

c. *Runs with the Land.* The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of any ownership interest in the Property.

d. *Severability.* If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in La Plata County, Colorado.

f. *Agreement Binding; Assignment.* This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.

g. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

h. *No Joint Venture.* Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

i. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. *Recording.* This Agreement shall be recorded with the La Plata County Clerk and Recorder.

k. *Savings Clause.* If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the City Council, their now living descendants, if any, and the survivor of them, plus 21 years.

l. *Governmental Immunity.* The City and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental

Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.
ACCEPTANCE BY THE CITY OF DURANGO AND HOMESFUND.

The foregoing Declaration of Deed Restriction and Agreement Concerning the Workforce Housing Units within ACPO, LLC Development, and its terms are hereby adopted and declared by the City of Durango and HomesFund.

CITY OF DURANGO

By: ______________________
City Manager - Acting Robert Brammer

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 22 day of January 2024, by Robert Brammer, City Manager of City of Durango.

Witness my hand and official seal.

Faye Anne Harmer
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20164004239
MY COMMISSION EXPIRES 02/04/2026

Faye Anne Harmer
Notary Public

My commission expires: 2/4/28.

HOMESFUND

By: ______________________
Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 23rd day of January 2024, by Lisa Bloomquist, Executive Director of HomesFund.

Witness my hand and official seal.

Witness my hand and official seal.

Pamela C. Moore
Notary Public

My commission expires: 11/20/26.

PAMELA C. MOORE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064047336
MY COMMISSION EXPIRES NOVEMBER 20, 2026

DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN THE ACPO, LLC PLANNED DEVELOPMENT, LA PLATA COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN ACPO, LLC PLANNED DEVELOPMENT, La Plata County, Colorado ("Agreement") is made and entered into this 29th day of January, 2024, by ACPO, LLC (the "Declarant"), for the benefit of the Parties and enforceable by HomeFund ("HomesFund"), a duly constituted nonprofit organization established pursuant to Colorado law, its successor or agent, and the City of Durango, Colorado, a municipal corporation established pursuant to Colorado law (the "City"). Collectively, Declarant, HomesFund, and the City are referred to herein as the Parties.

WHEREAS, Declarant has developed residential townhomes, commonly referred to as the Animas City Park Overlook, in Durango, CO (the "Development"); and

WHEREAS, in exchange for compensation as set forth in the Redevelopment and Reimbursement Agreement signed by the Declarant and the Durango Renewal Partnership on August 10, 2022, Declarant has agreed to place certain restrictions on the use of six (6) Units within the Development for the benefit of the Parties, the Parties' successors and assigns, and the community by requiring occupancy of the Unit by at least one Qualified Resident, as the terms are defined below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Property. The following real property is hereby burdened with the covenants and restrictions specified in this Agreement ("Unit"):

UNIT 901, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND AND SURVEYORS AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854. COUNTY OF LA PLATA, STATE OF COLORADO.

---

2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Owner* means the person, people, or organization that holds title to the Unit after the initial transfer of the Unit from the Declarant to the Owner.

b. *Person* means a natural person and excludes any type of entity, including but not limited to, a corporation, limited liability company, partnership, or a trust.

c. *Primary Residence* means a Person's principal place of abode at which the Person

resides and occupies the Unit as their primary residence for not less than nine (9) cumulative months of each calendar year.

d. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

e. *Qualified Resident* means a Person who works an average of 32 hours or more per week at a business or organization in La Plata County, Colorado, <u>or</u> a Person who has a history of residency in La Plata County and who can provide proof of being a resident of La Plata County for a least one year immediately prior to seeking to purchase or reside in the Unit.

3. <u>Occupancy Restrictions</u>.

a. The Unit must be occupied by a Qualified Resident as his or her Primary Residence.

b. The Unit is not required to be owned by a Qualified Resident. The Owner of the Unit may rent the Unit as long as it is occupied by a Qualified Household as their Primary Residence and the Owner and Qualified Resident abide by the annual verification reporting requirements stated below.

c. A Qualified Resident may lease a room or rooms in the Unit to one or more persons, provided that the Qualified Resident still occupies the Property as his or her Primary Residence.

d. No business activity shall occur on or in the Property other than as permitted within the zone district applicable to the Property.

e. No Unit, or any portion of the unit, shall be used as a short term residential or vacation rental or be made subject to any time share agreement. Any lease or rental of the Unit must be longer than 9 months and be for the purpose of using the Unit, or rooms in the Unit as a Primary Residency. Under no circumstances shall the Unit or any portion of the Unit be utilized as a short-term vacation rental.

4. <u>Owner Acceptance and Annual Verification</u>.

a. Prior to competing a sale of the Unit, the potential purchaser of the property must complete, sign, and record the Memorandum of Acceptance attached to this Declaration as Exhibit A.

b. No later than June 1st of each year, beginning in the year following the first full year of occupancy of the Unit, Owner shall submit an attestation to HomesFund including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

1. Evidence to establish that the Unit was occupied by a Qualified Resident or Household as their Primary Residence during the prior calendar year;

2. If applicable, a copy of the lease form currently used for the Unit; and

3. If applicable, a list of tenants who occupied the Unit in the prior calendar year and provide evidence that they were a Qualified Resident or Household, as required by HomesFund and the City.

5. HomesFund Right of First Refusal. Any deed transferring any Unit shall contain language reserving to HomesFund a right of first refusal to purchase the Unit in the event that the Owner chooses to sell the Unit. As part of the right of first refusal, Owner shall first notify HomesFund in writing if Owner intends to enter into a binding contract to sell the Unit to a third party and the material terms of the proposed sale. HomesFund shall have the right to purchase the Unit on the material terms proposed for sale to the third party and contained in the Notice. Within 30 calendar days of the receipt of notice, HomesFund must notify the Owner in writing of its intention to purchase the Unit on the terms provided or waive its right to purchase the Unit. If HomesFund waives the right to purchase the Unit in writing to the Owner, the Owner is able to sell the Unit subject to the provisions contained herein. However, any subsequent Deed transferring the ownership of the Unit shall contain the right of first refusal language required by this Paragraph.

6. Breach

a. If HomesFund or the City has reasonable cause to believe Owner is violating this Agreement, the City may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours written notice. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

b. If Owner is more than one individual, each shall be jointly and severally liable for compliance with this Agreement and any breach of this Agreement.

7. Remedies.

a. This Agreement shall constitute covenants running with the Units, described herein as a burden thereon, for the benefit of, and shall be specifically enforceable by the City, HomesFund, and their respective successors and assigns, as applicable, by any appropriate legal action against any non-complying Owners and/or occupants.

b. It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if an Owner fails to comply with any of the obligations herein imposed on them and that in the event of any such failure, and the City and/or HomesFund will be irreparably damaged and will not have an adequate remedy at law. The City and HomesFund shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law and no bond shall be required.

c. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

d. With the exception of a Public Trustee's or Sheriff's sale in a foreclosure proceeding for the benefit of a first lien mortgage holder; in the event of any sale, transfer, or conveyance of the Units thereof, each and every conveyance of

the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

e. In the event that the Owner fails to cure any breach, the City or HomesFund may resort to any and all available legal action, including, but not limited to requiring sale of the Unit by Owner.

8. Loans and Foreclosure.

a. The Owner may finance a portion of the initial purchase of the Unit with a loan from an Institutional Lender that is secured by a First Deed of Trust.

b. HomesFund is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust to facilitate favorable financing for the benefit of a Qualified Buyer of the Unit.

c. It shall be a breach of this Agreement for an Owner to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering a Unit, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for the Owner to default in the payment of real property taxes or any assessments, dues, or other obligations to any applicable homeowners association, if applicable. The Owner must notify HomesFund, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns or loan servicer, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment, or breach. The Owner must also notify HomesFund of any notices received from any governmental entity or homeowners association claiming a violation or non-payment, within five (5) calendar days of receiving such notice.

d. Upon notification of a default as provided above, HomesFund is entitled to require the Owner to sell the Unit in order to avoid the commencement of or the completion of foreclosure proceedings. If HomesFund requires sale of the Unit, Owner shall, immediately upon request, execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission providing for a ninety (90) day listing period.

e. Upon receipt of notice as provided above, the City and HomesFund shall have the right, but not the obligation, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to HomesFund for any payments made by HomesFund on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of HomesFund incurred in curing the default, including reasonable attorneys' fees. The Owner shall be required by HomesFund to execute a promissory note to be secured by a junior deed of trust encumbering the Unit in favor of HomesFund for the amounts expended by HomesFund as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Unit. Otherwise, Owner's indebtedness to HomesFund shall be satisfied from the Owner's proceeds at the closing upon sale of the Unit.

f. The City and HomesFund shall be a "person who appears to have an interest in the property" as described in C.R.S. § 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in C.R.S. § 38-38-103(1)(a). In addition, HomesFund shall be a "contract vendee" pursuant to C.R.S. § 38-38-104(1)(d), and shall be entitled to cure any default which is the basis for a foreclosure action in accordance with C.R.S. § 38-38-104, *et seq*. Upon filing with the Public Trustee of La Plata County of a Notice of Election and Demand (NED) pursuant to C.R.S. § 38-38-101(4) by the holder of the First Deed of Trust, HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner. HomesFund may assign the foregoing option to the City.

If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the option of HomesFund shall terminate. Such termination shall not, however, operate to extinguish the option of HomesFund to purchase the Unit in the event that any subsequent NED is filed.

g. The provisions of this Agreement may be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. In the event of foreclosure by a holder of a First Deed of Trust, and upon the issuance of a Public Trustee's or Sheriff's Deed, these Covenants shall automatically terminate.

h. With the exception of the First Deed of Trust provided by an Institutional Lender, this Agreement shall be senior to any lien or encumbrance recorded in the Office of the Clerk of Recorded of La Plata County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in a Unit by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed to be in breach of this Declaration and shall be subject to the provisions of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations, and restrictions contained in this Agreement.

9. <u>Miscellaneous.</u>

a. *Modification*. This Agreement may only be modified by subsequent written agreement of the Parties.

b. *Integration*. This Agreement and any attached exhibits constitute the entire agreement between Owner, HomesFund, and the City, superseding all prior oral or written communications.

c. *Runs with the Land*. The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of any ownership interest in the Property.

d. *Severability*. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue*. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in La Plata County, Colorado.

f. *Agreement Binding; Assignment*. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.

g. *Third Parties*. There are no intended third-party beneficiaries to this Agreement.

h. *No Joint Venture*. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

i. *Notice*. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. *Recording*. This Agreement shall be recorded with the La Plata County Clerk and Recorder.

k. *Savings Clause*. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the City Council, their now living descendants, if any, and the survivor of them, plus 21 years.

l. *Governmental Immunity*. The City and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental

Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.
ACCEPTANCE BY THE CITY OF DURANGO AND HOMESFUND.

The foregoing Declaration of Deed Restriction and Agreement Concerning the Workforce Housing Units within ACPO, LLC Development, and its terms are hereby adopted and declared by the City of Durango and HomesFund.

CITY OF DURANGO

By: ______________________________
City Manager - Acting Robert Brammer

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 22 day of January 2024, by Robert Brammer, City Manager of City of Durango.

Witness my hand and official seal.

Faye Anne Harmer
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20164004239
MY COMMISSION EXPIRES 02.04.2028

____
Notary Public

My commission expires: 2/4/28.

HOMESFUND

By: ______________________________
Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 23rd day of January 2024, by Lisa Bloomquist, Executive Director of HomesFund.

Witness my hand and official seal.

Witness my hand and official seal.

____
Notary Public

My commission expires: 11/20/26.

PAMELA C. MOORE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064047336
MY COMMISSION EXPIRES NOVEMBER 20, 2026

E-RECORDED

ERECORD Reception #: 1229369 1/29/2024 2:04:29 PM
La Plata County Recorder, Tiffany Lee Page 1 of 2
Rec Fee: $18.00 Doc Fee $0.00 CF

EXHIBIT A

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING WORKFORCE HOUSING UNITS WITHIN ACPO DEVELOPMENT

WHEREAS, Anthony James Holmquist and Andrea Michelle Martens, the Buyers, are purchasing from ACPO, LLC, the Seller, at the price of $ 539,000.00, a unit described as:

UNIT 903, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854, COUNTY OF LA PLATA, STATE OF COLORADO.

Hereinafter, the "Unit".

WHEREAS, the Seller of that unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledges and agrees to the terms, conditions, limitations, restrictions, and uses found in that certain instrument entitled Declaration of Deed Restriction and Agreement Concerning Workforce Housing Units within ACPO, LLC Development. Said Deed Restriction and Agreement is recorded under Reception number #1229358 in the records of the Clerk and Recorder for La Plata County, Colorado.

NOW, THEREFORE, as required by the Deed Restriction and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Buyer agrees and acknowledges the following:

1. Buyer has carefully read the entire Deed Restriction and Agreement and has had the opportunity to consult with legal and financial counsel of his/her/their own choosing concerning said Deed Restriction and Agreement. Buyer fully understands the Deed Restriction and Agreement and agrees to comply with all covenants, restrictions, and requirements thereof.

2. Buyer hereby acknowledges and accepts the Deed Restriction and Agreement, in its entirety, including all exhibits, and agrees to be bound by its terms.

3. Buyer hereby specifically acknowledges and agrees to the following provisions as set forth in the Deed Restriction and Agreement:

a. That the Unit must be occupied by a Qualified Resident/Household in accordance with the terms of the Deed Restriction and Agreement and other program documents.

b. That nothing contained in this Memorandum, the Deed Restriction and Agreement, or any other Durango Program document shall be construed to require the City or HomesFund to protect or indemnify the Buyer against any losses attributable to the rental, including (not by way of limitation) non-payment of rent or damage to the premises, if the Unit is rented in accordance with the terms of the Deed Restriction and Agreement; nor to require the City or HomesFund to obtain a qualified tenant for the Buyer in the event that

none is found by the Buyer.

c. That it shall be a breach of the Deed Restriction and Agreement for Buyer to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering the Unit, including the First Deed of Trust, or to fail to pay any real property taxes or homeowner's association assessments as the same become due.

d. That the Owner of the Unit must notify HomesFund of any changes in occupancy of the Unit.

e. That the Owner of the Unit agrees to annual verification of the requirement that the Unit be occupied by a Qualified Resident or Household as their Primary Residence.

4. This Memorandum shall be recorded in the Office of the Clerk and Recorder of La Plata County, Colorado.

IN WITNESS WHEREOF, the undersigned Owner(s) has/have executed this Memorandum of Acceptance on the date set forth opposite his/her signature.

______________________ 1/26/24
Owner Date

RITA G. SMITH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194003951
MY COMMISSION EXPIRES 01/29/2027

STATE OF CO)
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 26 day of JAN, 20 24 by Anthony James Holmquist.

Witness my hand and official seal.

____
Notary Public

My commission expires: 1-29-27.

______________________ 1/24/2024
Owner Date

STATE OF VIRGINIA)
COUNTY OF FAIRFAX)

The above and foregoing document was acknowledged before me this 24 day of JANUARY, 2024 by ANDREA MICHELLE MARTENS.

Witness my hand and official seal.

____
Notary Public

My commission expires: 9-30-2024.

LAURA GAIL HAMERLING
NOTARY PUBLIC
REG #: 7340998
MY COMMISSION EXPIRES 09/30/2024
COMMONWEALTH OF VIRGINIA

EXHIBIT A

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING WORKFORCE HOUSING UNITS WITHIN ACPO DEVELOPMENT

WHEREAS, Anthony James Holmquist and Andrea Michelle Martens, the Buyers, are purchasing from ACPO, LLC, the Seller, at the price of $539,000.00, a unit described as:

UNIT 903, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854, COUNTY OF LA PLATA, STATE OF COLORADO.

Hereinafter, the "Unit".

WHEREAS, the Seller of that unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledges and agrees to the terms, conditions, limitations, restrictions, and uses found in that certain instrument entitled Declaration of Deed Restriction and Agreement Concerning Workforce Housing Units within ACPO, LLC Development. Said Deed Restriction and Agreement is recorded under Reception number #1229358 in the records of the Clerk and Recorder for La Plata County, Colorado.

NOW, THEREFORE, as required by the Deed Restriction and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Buyer agrees and acknowledges the following:

1. Buyer has carefully read the entire Deed Restriction and Agreement and has had the opportunity to consult with legal and financial counsel of his/her/their own choosing concerning said Deed Restriction and Agreement. Buyer fully understands the Deed Restriction and Agreement and agrees to comply with all covenants, restrictions, and requirements thereof.

2. Buyer hereby acknowledges and accepts the Deed Restriction and Agreement, in its entirety, including all exhibits, and agrees to be bound by its terms.

3. Buyer hereby specifically acknowledges and agrees to the following provisions as set forth in the Deed Restriction and Agreement:

a. That the Unit must be occupied by a Qualified Resident/Household in accordance with the terms of the Deed Restriction and Agreement and other program documents.

b. That nothing contained in this Memorandum, the Deed Restriction and Agreement, or any other Durango Program document shall be construed to require the City or HomesFund to protect or indemnify the Buyer against any losses attributable to the rental, including (not by way of limitation) non-payment of rent or damage to the premises, if the Unit is rented in accordance with the terms of the Deed Restriction and Agreement; nor to require the City or HomesFund to obtain a qualified tenant for the Buyer in the event that

none is found by the Buyer.

c. That it shall be a breach of the Deed Restriction and Agreement for Buyer to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering the Unit, including the First Deed of Trust, or to fail to pay any real property taxes or homeowner's association assessments as the same become due.

d. That the Owner of the Unit must notify HomesFund of any changes in occupancy of the Unit.

e. That the Owner of the Unit agrees to annual verification of the requirement that the Unit be occupied by a Qualified Resident or Household as their Primary Residence.

4. This Memorandum shall be recorded in the Office of the Clerk and Recorder of La Plata County, Colorado.

IN WITNESS WHEREOF, the undersigned Owner(s) has/have executed this Memorandum of Acceptance on the date set forth opposite his/her signature.

______________________ 1/26/24

Owner Date

RITA G. SMITH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194003951
MY COMMISSION EXPIRES 01/29/2027

STATE OF Co)

COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 26 day of JAN, 2024 by Anthony James Holmquist and ______________.

Witness my hand and official seal.

____

Notary Public

My commission expires: 1-29-27.

______________________ 1/24/2024

Owner Date

STATE OF VIRGINIA)

COUNTY OF FAIRFAX)

The above and foregoing document was acknowledged before me this 24 day of JANUARY, 2024 by ANDREA MICHELLE ~~and~~ MARTENS.

Witness my hand and official seal.

____

Notary Public

My commission expires: 9-30-2024.

LAURA GAIL HAMERLING
NOTARY PUBLIC
REG #: 7340998
MY COMMISSION EXPIRES
09/30/2024
COMMONWEALTH OF VIRGINIA

ERECORD Reception #: 1229358 1/29/2024 12:10:38 PM
La Plata County Recorder, Tiffany Lee Page 1 of 7
Rec Fee: $43.00 Doc Fee $0.00 CF

E-RECORDED

DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN THE ACPO, LLC PLANNED DEVELOPMENT, LA PLATA COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN ACPO, LLC PLANNED DEVELOPMENT, La Plata County, Colorado ("Agreement") is made and entered into this 26th day of Jan, 2024, by ACPO, LLC (the "Declarant"), for the benefit of the Parties and enforceable by HomeFund ("HomesFund"), a duly constituted nonprofit organization established pursuant to Colorado law, its successor or agent, and the City of Durango, Colorado, a municipal corporation established pursuant to Colorado law (the "City"). Collectively, Declarant, HomesFund, and the City are referred to herein as the Parties.

WHEREAS, Declarant has developed residential townhomes, commonly referred to as the Animas City Park Overlook, in Durango, CO (the "Development"); and

WHEREAS, in exchange for compensation as set forth in the Redevelopment and Reimbursement Agreement signed by the Declarant and the Durango Renewal Partnership on August 10, 2022, Declarant has agreed to place certain restrictions on the use of six (6) Units within the Development for the benefit of the Parties, the Parties' successors and assigns, and the community by requiring occupancy of the Unit by at least one Qualified Resident, as the terms are defined below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Property. The following real property is hereby burdened with the covenants and restrictions specified in this Agreement ("Unit"):

UNIT 903, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854, COUNTY OF LA PLATA, STATE OF COLORADO.

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2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Owner* means the person, people, or organization that holds title to the Unit after the initial transfer of the Unit from the Declarant to the Owner.

b. *Person* means a natural person and excludes any type of entity, including but not limited to, a corporation, limited liability company, partnership, or a trust.

c. *Primary Residence* means a Person's principal place of abode at which the Person

resides and occupies the Unit as their primary residence for not less than nine (9) cumulative months of each calendar year.

d. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

e. *Qualified Resident* means a Person who works an average of 32 hours or more per week at a business or organization in La Plata County, Colorado, <u>or</u> a Person who has a history of residency in La Plata County and who can provide proof of being a resident of La Plata County for a least one year immediately prior to seeking to purchase or reside in the Unit.

3. <u>Occupancy Restrictions</u>.

a. The Unit must be occupied by a Qualified Resident as his or her Primary Residence.

b. The Unit is not required to be owned by a Qualified Resident. The Owner of the Unit may rent the Unit as long as it is occupied by a Qualified Household as their Primary Residence and the Owner and Qualified Resident abide by the annual verification reporting requirements stated below.

c. A Qualified Resident may lease a room or rooms in the Unit to one or more persons, provided that the Qualified Resident still occupies the Property as his or her Primary Residence.

d. No business activity shall occur on or in the Property other than as permitted within the zone district applicable to the Property.

e. No Unit, or any portion of the unit, shall be used as a short term residential or vacation rental or be made subject to any time share agreement. Any lease or rental of the Unit must be longer than 9 months and be for the purpose of using the Unit, or rooms in the Unit as a Primary Residency. Under no circumstances shall the Unit or any portion of the Unit be utilized as a short-term vacation rental.

4. <u>Owner Acceptance and Annual Verification</u>.

a. Prior to competing a sale of the Unit, the potential purchaser of the property must complete, sign, and record the Memorandum of Acceptance attached to this Declaration as Exhibit A.

b. No later than June 1st of each year, beginning in the year following the first full year of occupancy of the Unit, Owner shall submit an attestation to HomesFund including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

1. Evidence to establish that the Unit was occupied by a Qualified Resident or Household as their Primary Residence during the prior calendar year;

2. If applicable, a copy of the lease form currently used for the Unit; and

3. If applicable, a list of tenants who occupied the Unit in the prior calendar year and provide evidence that they were a Qualified Resident or Household, as required by HomesFund and the City.

5. HomesFund Right of First Refusal. Any deed transferring any Unit shall contain language reserving to HomesFund a right of first refusal to purchase the Unit in the event that the Owner chooses to sell the Unit. As part of the right of first refusal, Owner shall first notify HomesFund in writing if Owner intends to enter into a binding contract to sell the Unit to a third party and the material terms of the proposed sale. HomesFund shall have the right to purchase the Unit on the material terms proposed for sale to the third party and contained in the Notice. Within 30 calendar days of the receipt of notice, HomesFund must notify the Owner in writing of its intention to purchase the Unit on the terms provided or waive its right to purchase the Unit. If HomesFund waives the right to purchase the Unit in writing to the Owner, the Owner is able to sell the Unit subject to the provisions contained herein. However, any subsequent Deed transferring the ownership of the Unit shall contain the right of first refusal language required by this Paragraph.

6. Breach

a. If HomesFund or the City has reasonable cause to believe Owner is violating this Agreement, the City may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours written notice. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

b. If Owner is more than one individual, each shall be jointly and severally liable for compliance with this Agreement and any breach of this Agreement.

7. Remedies.

a. This Agreement shall constitute covenants running with the Units, described herein as a burden thereon, for the benefit of, and shall be specifically enforceable by the City, HomesFund, and their respective successors and assigns, as applicable, by any appropriate legal action against any non-complying Owners and/or occupants.

b. It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if an Owner fails to comply with any of the obligations herein imposed on them and that in the event of any such failure, and the City and/or HomesFund will be irreparably damaged and will not have an adequate remedy at law. The City and HomesFund shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law and no bond shall be required.

c. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

d. With the exception of a Public Trustee's or Sheriff's sale in a foreclosure proceeding for the benefit of a first lien mortgage holder; in the event of any sale, transfer, or conveyance of the Units thereof, each and every conveyance of

the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

e. In the event that the Owner fails to cure any breach, the City or HomesFund may resort to any and all available legal action, including, but not limited to requiring sale of the Unit by Owner.

8. Loans and Foreclosure.

a. The Owner may finance a portion of the initial purchase of the Unit with a loan from an Institutional Lender that is secured by a First Deed of Trust.

b. HomesFund is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust to facilitate favorable financing for the benefit of a Qualified Buyer of the Unit.

c. It shall be a breach of this Agreement for an Owner to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering a Unit, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for the Owner to default in the payment of real property taxes or any assessments, dues, or other obligations to any applicable homeowners association, if applicable. The Owner must notify HomesFund, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns or loan servicer, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment, or breach. The Owner must also notify HomesFund of any notices received from any governmental entity or homeowners association claiming a violation or non-payment, within five (5) calendar days of receiving such notice.

d. Upon notification of a default as provided above, HomesFund is entitled to require the Owner to sell the Unit in order to avoid the commencement of or the completion of foreclosure proceedings. If HomesFund requires sale of the Unit, Owner shall, immediately upon request, execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission providing for a ninety (90) day listing period.

e. Upon receipt of notice as provided above, the City and HomesFund shall have the right, but not the obligation, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to HomesFund for any payments made by HomesFund on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of HomesFund incurred in curing the default, including reasonable attorneys' fees. The Owner shall be required by HomesFund to execute a promissory note to be secured by a junior deed of trust encumbering the Unit in favor of HomesFund for the amounts expended by HomesFund as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Unit. Otherwise, Owner's indebtedness to HomesFund shall be satisfied from the Owner's proceeds at the closing upon sale of the Unit.

f. The City and HomesFund shall be a "person who appears to have an interest in the property" as described in C.R.S. § 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in C.R.S. § 38-38-103(1)(a). In addition, HomesFund shall be a "contract vendee" pursuant to C.R.S. § 38-38-104(1)(d), and shall be entitled to cure any default which is the basis for a foreclosure action in accordance with C.R.S. § 38-38-104, *et seq*. Upon filing with the Public Trustee of La Plata County of a Notice of Election and Demand (NED) pursuant to C.R.S. § 38-38-101(4) by the holder of the First Deed of Trust, HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner. HomesFund may assign the foregoing option to the City.

If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the option of HomesFund shall terminate. Such termination shall not, however, operate to extinguish the option of HomesFund to purchase the Unit in the event that any subsequent NED is filed.

g. The provisions of this Agreement may be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. In the event of foreclosure by a holder of a First Deed of Trust, and upon the issuance of a Public Trustee's or Sheriff's Deed, these Covenants shall automatically terminate.

h. With the exception of the First Deed of Trust provided by an Institutional Lender, this Agreement shall be senior to any lien or encumbrance recorded in the Office of the Clerk of Recorded of La Plata County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in a Unit by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed to be in breach of this Declaration and shall be subject to the provisions of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations, and restrictions contained in this Agreement.

9. <u>Miscellaneous.</u>

a. *Modification.* This Agreement may only be modified by subsequent written agreement of the Parties.

b. *Integration.* This Agreement and any attached exhibits constitute the entire agreement between Owner, HomesFund, and the City, superseding all prior oral or written communications.

c. *Runs with the Land.* The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of any ownership interest in the Property.

d. *Severability.* If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in La Plata County, Colorado.

f. *Agreement Binding; Assignment.* This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.

g. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

h. *No Joint Venture.* Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

i. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. *Recording.* This Agreement shall be recorded with the La Plata County Clerk and Recorder.

k. *Savings Clause.* If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the City Council, their now living descendants, if any, and the survivor of them, plus 21 years.

l. *Governmental Immunity.* The City and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.
ACCEPTANCE BY THE CITY OF DURANGO AND HOMESFUND.

The foregoing Declaration of Deed Restriction and Agreement Concerning the Workforce Housing Units within ACPO, LLC Development, and its terms are hereby adopted and declared by the City of Durango and HomesFund.

CITY OF DURANGO

By: ______________________

City Manager - Acting Robert Brammer

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 22 day of January, 2024, by Robert Brammer, City Manager of City of Durango.

Witness my hand and official seal.

Faye Anne Harmer
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20164004230
MY COMMISSION EXPIRES 02/04/2028

Faye Anne Harmer
Notary Public

My commission expires: 2/4/28.

HOMESFUND

By: ______________________

Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 23nd day of January, 2024, by Lisa Bloomquist, Executive Director of HomesFund.

Witness my hand and official seal.

Pamela C. Moore
Notary Public

My commission expires: 11/20/26.

PAMELA C. MOORE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064047336
MY COMMISSION EXPIRES NOVEMBER 20, 2026

DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN THE ACPO, LLC PLANNED DEVELOPMENT, LA PLATA COUNTY, COLORADO

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING CERTAIN WORKFORCE HOUSING UNITS WITHIN ACPO, LLC PLANNED DEVELOPMENT, La Plata County, Colorado ("Agreement") is made and entered into this 26th day of Jan, 2024, by ACPO, LLC (the "Declarant"), for the benefit of the Parties and enforceable by HomeFund ("HomesFund"), a duly constituted nonprofit organization established pursuant to Colorado law, its successor or agent, and the City of Durango, Colorado, a municipal corporation established pursuant to Colorado law (the "City"). Collectively, Declarant, HomesFund, and the City are referred to herein as the Parties.

WHEREAS, Declarant has developed residential townhomes, commonly referred to as the Animas City Park Overlook, in Durango, CO (the "Development"); and

WHEREAS, in exchange for compensation as set forth in the Redevelopment and Reimbursement Agreement signed by the Declarant and the Durango Renewal Partnership on August 10, 2022, Declarant has agreed to place certain restrictions on the use of six (6) Units within the Development for the benefit of the Parties, the Parties' successors and assigns, and the community by requiring occupancy of the Unit by at least one Qualified Resident, as the terms are defined below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. <u>Property</u>. The following real property is hereby burdened with the covenants and restrictions specified in this Agreement ("Unit"):

UNIT 903, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854, COUNTY OF LA PLATA, STATE OF COLORADO.

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2. <u>Definitions</u>. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Owner* means the person, people, or organization that holds title to the Unit after the initial transfer of the Unit from the Declarant to the Owner.

b. *Person* means a natural person and excludes any type of entity, including but not limited to, a corporation, limited liability company, partnership, or a trust.

c. *Primary Residence* means a Person's principal place of abode at which the Person

resides and occupies the Unit as their primary residence for not less than nine (9) cumulative months of each calendar year.

d. *Qualified Household* means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

e. *Qualified Resident* means a Person who works an average of 32 hours or more per week at a business or organization in La Plata County, Colorado, or a Person who has a history of residency in La Plata County and who can provide proof of being a resident of La Plata County for a least one year immediately prior to seeking to purchase or reside in the Unit.

3. Occupancy Restrictions.

a. The Unit must be occupied by a Qualified Resident as his or her Primary Residence.

b. The Unit is not required to be owned by a Qualified Resident. The Owner of the Unit may rent the Unit as long as it is occupied by a Qualified Household as their Primary Residence and the Owner and Qualified Resident abide by the annual verification reporting requirements stated below.

c. A Qualified Resident may lease a room or rooms in the Unit to one or more persons, provided that the Qualified Resident still occupies the Property as his or her Primary Residence.

d. No business activity shall occur on or in the Property other than as permitted within the zone district applicable to the Property.

e. No Unit, or any portion of the unit, shall be used as a short term residential or vacation rental or be made subject to any time share agreement. Any lease or rental of the Unit must be longer than 9 months and be for the purpose of using the Unit, or rooms in the Unit as a Primary Residency. Under no circumstances shall the Unit or any portion of the Unit be utilized as a short-term vacation rental.

4. Owner Acceptance and Annual Verification.

a. Prior to competing a sale of the Unit, the potential purchaser of the property must complete, sign, and record the Memorandum of Acceptance attached to this Declaration as Exhibit A.

b. No later than June 1st of each year, beginning in the year following the first full year of occupancy of the Unit, Owner shall submit an attestation to HomesFund including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:

1. Evidence to establish that the Unit was occupied by a Qualified Resident or Household as their Primary Residence during the prior calendar year;

2. If applicable, a copy of the lease form currently used for the Unit; and

3. If applicable, a list of tenants who occupied the Unit in the prior calendar year and provide evidence that they were a Qualified Resident or Household, as required by HomesFund and the City.

5. HomesFund Right of First Refusal. Any deed transferring any Unit shall contain language reserving to HomesFund a right of first refusal to purchase the Unit in the event that the Owner chooses to sell the Unit. As part of the right of first refusal, Owner shall first notify HomesFund in writing if Owner intends to enter into a binding contract to sell the Unit to a third party and the material terms of the proposed sale. HomesFund shall have the right to purchase the Unit on the material terms proposed for sale to the third party and contained in the Notice. Within 30 calendar days of the receipt of notice, HomesFund must notify the Owner in writing of its intention to purchase the Unit on the terms provided or waive its right to purchase the Unit. If HomesFund waives the right to purchase the Unit in writing to the Owner, the Owner is able to sell the Unit subject to the provisions contained herein. However, any subsequent Deed transferring the ownership of the Unit shall contain the right of first refusal language required by this Paragraph.

6. Breach

a. If HomesFund or the City has reasonable cause to believe Owner is violating this Agreement, the City may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with 24 hours written notice. This Agreement shall constitute Owner's permission to enter the Property during such times upon such notice.

b. If Owner is more than one individual, each shall be jointly and severally liable for compliance with this Agreement and any breach of this Agreement.

7. Remedies.

a. This Agreement shall constitute covenants running with the Units, described herein as a burden thereon, for the benefit of, and shall be specifically enforceable by the City, HomesFund, and their respective successors and assigns, as applicable, by any appropriate legal action against any non-complying Owners and/or occupants.

b. It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if an Owner fails to comply with any of the obligations herein imposed on them and that in the event of any such failure, and the City and/or HomesFund will be irreparably damaged and will not have an adequate remedy at law. The City and HomesFund shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law and no bond shall be required.

c. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

d. With the exception of a Public Trustee's or Sheriff's sale in a foreclosure proceeding for the benefit of a first lien mortgage holder; in the event of any sale, transfer, or conveyance of the Units thereof, each and every conveyance of

the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

e. In the event that the Owner fails to cure any breach, the City or HomesFund may resort to any and all available legal action, including, but not limited to requiring sale of the Unit by Owner.

8. Loans and Foreclosure.

a. The Owner may finance a portion of the initial purchase of the Unit with a loan from an Institutional Lender that is secured by a First Deed of Trust.

b. HomesFund is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust to facilitate favorable financing for the benefit of a Qualified Buyer of the Unit.

c. It shall be a breach of this Agreement for an Owner to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering a Unit, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for the Owner to default in the payment of real property taxes or any assessments, dues, or other obligations to any applicable homeowners association, if applicable. The Owner must notify HomesFund, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns or loan servicer, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment, or breach. The Owner must also notify HomesFund of any notices received from any governmental entity or homeowners association claiming a violation or non-payment, within five (5) calendar days of receiving such notice.

d. Upon notification of a default as provided above, HomesFund is entitled to require the Owner to sell the Unit in order to avoid the commencement of or the completion of foreclosure proceedings. If HomesFund requires sale of the Unit, Owner shall, immediately upon request, execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission providing for a ninety (90) day listing period.

e. Upon receipt of notice as provided above, the City and HomesFund shall have the right, but not the obligation, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to HomesFund for any payments made by HomesFund on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of HomesFund incurred in curing the default, including reasonable attorneys' fees. The Owner shall be required by HomesFund to execute a promissory note to be secured by a junior deed of trust encumbering the Unit in favor of HomesFund for the amounts expended by HomesFund as specified herein, including future advances made for such purposes. The Owner may pay the promissory note at any time prior to the sale of the Unit. Otherwise, Owner's indebtedness to HomesFund shall be satisfied from the Owner's proceeds at the closing upon sale of the Unit.

f. The City and HomesFund shall be a "person who appears to have an interest in the property" as described in C.R.S. § 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in C.R.S. § 38-38-103(1)(a). In addition, HomesFund shall be a "contract vendee" pursuant to C.R.S. § 38-38-104(1)(d), and shall be entitled to cure any default which is the basis for a foreclosure action in accordance with C.R.S. § 38-38-104, *et seq.* Upon filing with the Public Trustee of La Plata County of a Notice of Election and Demand (NED) pursuant to C.R.S. § 38-38-101(4) by the holder of the First Deed of Trust, HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner. HomesFund may assign the foregoing option to the City.

If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the option of HomesFund shall terminate. Such termination shall not, however, operate to extinguish the option of HomesFund to purchase the Unit in the event that any subsequent NED is filed.

g. The provisions of this Agreement may be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. In the event of foreclosure by a holder of a First Deed of Trust, and upon the issuance of a Public Trustee's or Sheriff's Deed, these Covenants shall automatically terminate.

h. With the exception of the First Deed of Trust provided by an Institutional Lender, this Agreement shall be senior to any lien or encumbrance recorded in the Office of the Clerk of Recorded of La Plata County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in a Unit by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed to be in breach of this Declaration and shall be subject to the provisions of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations, and restrictions contained in this Agreement.

9. <u>Miscellaneous.</u>

a. *Modification.* This Agreement may only be modified by subsequent written agreement of the Parties.

b. *Integration.* This Agreement and any attached exhibits constitute the entire agreement between Owner, HomesFund, and the City, superseding all prior oral or written communications.

c. *Runs with the Land.* The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of any ownership interest in the Property.

d. *Severability.* If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in La Plata County, Colorado.

f. *Agreement Binding; Assignment.* This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.

g. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

h. *No Joint Venture.* Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

i. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. *Recording.* This Agreement shall be recorded with the La Plata County Clerk and Recorder.

k. *Savings Clause.* If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the City Council, their now living descendants, if any, and the survivor of them, plus 21 years.

l. *Governmental Immunity.* The City and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.
ACCEPTANCE BY THE CITY OF DURANGO AND HOMESFUND.

The foregoing Declaration of Deed Restriction and Agreement Concerning the Workforce Housing Units within ACPO, LLC Development, and its terms are hereby adopted and declared by the City of Durango and HomesFund.

CITY OF DURANGO

By: ______________________
City Manager - Acting Robert Brammer

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 22 day of January 2024, by ROBERT BRAMMER, City Manager of City of Durango.

Witness my hand and official seal.

Faye Anne Harmer
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20164004299
MY COMMISSION EXPIRES 02/...

Faye Anne Harmer
Notary Public

My commission expires: 2/9/28.

HOMESFUND

By: ______________________
Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 23nd day of January 2024, by Lisa Bloomquist, Executive Director of HomesFund.

Witness my hand and official seal.

Pamela C. Moore
Notary Public

My commission expires: 11/20/26.

PAMELA C. MOORE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064047336
MY COMMISSION EXPIRES NOVEMBER 20, 2026

E-RECORDED

ERECORD Reception #: 1229386 1/29/2024 4:41:31 PM
La Plata County Recorder, Tiffany Lee Page 1 of 2
Rec Fee: $18.00 Doc Fee $0.00 CF

EXHIBIT A

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING WORKFORCE HOUSING UNITS WITHIN ACPO DEVELOPMENT

WHEREAS, Ann Marie Swan, the Buyer, is purchasing from ACPO, LLC, the Seller, at the price of $ 550,810.00, a townhome unit described as:

UNIT 901, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND AND SURVEYORS AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854. COUNTY OF LA PLATA, STATE OF COLORADO.

Hereinafter, the "Unit".

WHEREAS, the Seller of that Unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledges and agrees to the terms, conditions, limitations, restrictions, and uses found in that certain instrument entitled Declaration of Deed Restriction and Agreement Concerning Workforce Housing Units within ACPO, LLC Development. Said Deed Restriction and Agreement is recorded under Reception number 1229378 in the records of the Clerk and Recorder for La Plata County, Colorado.

NOW, THEREFORE, as required by the Deed Restriction and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Buyer agrees and acknowledges the following:

1. Buyer has carefully read the entire Deed Restriction and Agreement and has had the opportunity to consult with legal and financial counsel of his/her/their own choosing concerning said Deed Restriction and Agreement. Buyer fully understands the Deed Restriction and Agreement and agrees to comply with all covenants, restrictions, and requirements thereof.

2. Buyer hereby acknowledges and accepts the Deed Restriction and Agreement, in its entirety, including all exhibits, and agrees to be bound by its terms.

3. Buyer hereby specifically acknowledges and agrees to the following provisions as set forth in the Deed Restriction and Agreement:

   a. That the Unit must be occupied by a Qualified Resident/Household in accordance with the terms of the Deed Restriction and Agreement and other program documents.

   b. That nothing contained in this Memorandum, the Deed Restriction and Agreement, or any other Durango Program document shall be construed to require the City or HomesFund to protect or indemnify the Buyer against any losses attributable to the rental, including (not by way of limitation) non-payment of rent or damage to the premises, if the Unit is rented in accordance with the terms of the Deed Restriction and Agreement; nor to require the City or HomesFund to obtain a qualified tenant for the Buyer in the event that

none is found by the Buyer.

c. That it shall be a breach of the Deed Restriction and Agreement for Buyer to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering the Unit, including the First Deed of Trust, or to fail to pay any real property taxes or homeowner's association assessments as the same become due.

d. That the Owner of the Unit must notify HomesFund of any changes in occupancy of the Unit.

e. That the Owner of the Unit agrees to annual verification of the requirement that the Unit be occupied by a Qualified Resident or Household as their Primary Residence.

4. This Memorandum shall be recorded in the Office of the Clerk and Recorder of La Plata County, Colorado.

IN WITNESS WHEREOF, the undersigned Owner(s) has/have executed this Memorandum of Acceptance on the date set forth opposite his/her signature.

Ann Marie Swan 1.29.24

Owner Date

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 29th day of Jan, 2024 by Ann Marie Swan and ——.

Witness my hand and official seal.

Notary Public

My commission expires: 1-29-27.

RITA G. SMITH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194003951
MY COMMISSION EXPIRES 01/29/2027

EXHIBIT A

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING WORKFORCE HOUSING UNITS WITHIN ACPO DEVELOPMENT

WHEREAS, Ann Marie Swan, the Buyer, is purchasing from ACPO, LLC, the Seller, at the price of $550,810.00, a townhome unit described as:

UNIT 901, ANIMAS CITY PARK OVERLOOK TOWNHOMES PHASE 2 AS-BUILT SUBDIVISION AS RECORDED DECEMBER 7, 2023 UNDER RECEPTION NO. 1228146 AND AND SURVEYORS AFFIDAVIT OF CORRECTION RECORDED JANUARY 4, 2024 UNDER RECEPTION NO. 1228806 AND SURVEYOR'S AFFIDAVIT OF CORRECTION RECORDED RECORDED JANUARY 8, 2024 UNDER RECEPTION NO. 1228854. COUNTY OF LA PLATA, STATE OF COLORADO.

Hereinafter, the "Unit".

WHEREAS, the Seller of that Unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledges and agrees to the terms, conditions, limitations, restrictions, and uses found in that certain instrument entitled Declaration of Deed Restriction and Agreement Concerning Workforce Housing Units within ACPO, LLC Development. Said Deed Restriction and Agreement is recorded under Reception number 1229378 in the records of the Clerk and Recorder for La Plata County, Colorado.

NOW, THEREFORE, as required by the Deed Restriction and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Buyer agrees and acknowledges the following:

1. Buyer has carefully read the entire Deed Restriction and Agreement and has had the opportunity to consult with legal and financial counsel of his/her/their own choosing concerning said Deed Restriction and Agreement. Buyer fully understands the Deed Restriction and Agreement and agrees to comply with all covenants, restrictions, and requirements thereof.

2. Buyer hereby acknowledges and accepts the Deed Restriction and Agreement, in its entirety, including all exhibits, and agrees to be bound by its terms.

3. Buyer hereby specifically acknowledges and agrees to the following provisions as set forth in the Deed Restriction and Agreement:

   a. That the Unit must be occupied by a Qualified Resident/Household in accordance with the terms of the Deed Restriction and Agreement and other program documents.

   b. That nothing contained in this Memorandum, the Deed Restriction and Agreement, or any other Durango Program document shall be construed to require the City or HomesFund to protect or indemnify the Buyer against any losses attributable to the rental, including (not by way of limitation) non-payment of rent or damage to the premises, if the Unit is rented in accordance with the terms of the Deed Restriction and Agreement; nor to require the City or HomesFund to obtain a qualified tenant for the Buyer in the event that

none is found by the Buyer.

c. That it shall be a breach of the Deed Restriction and Agreement for Buyer to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering the Unit, including the First Deed of Trust, or to fail to pay any real property taxes or homeowner's association assessments as the same become due.

d. That the Owner of the Unit must notify HomesFund of any changes in occupancy of the Unit.

e. That the Owner of the Unit agrees to annual verification of the requirement that the Unit be occupied by a Qualified Resident or Household as their Primary Residence.

4. This Memorandum shall be recorded in the Office of the Clerk and Recorder of La Plata County, Colorado.

IN WITNESS WHEREOF, the undersigned Owner(s) has/have executed this Memorandum of Acceptance on the date set forth opposite his/her signature.

Ann Marie Swan ______________________ 1.29.24 ______________

Owner Date

STATE OF COLORADO)

) ss.

COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this 29th day of Jan, 2024 by Ann Marie Swan and —.

Witness my hand and official seal.

____

Notary Public

My commission expires: 1·29·27.

RITA G. SMITH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194003951
MY COMMISSION EXPIRES 01/29/2027