

When Recorded Return to:

Alaska Housing Finance Corporation
Attn: NHTF Program Manager
P.O. Box 101020
Anchorage, Alaska 99510-1020

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE NATIONAL HOUSING TRUST FUND PROGRAM

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE NATIONAL HOUSING TRUST FUND PROGRAM dated and effective as of _____, 2023 ("Instrument") is given by the CITY OF VALDEZ, a municipal corporation duly organized and existing under the laws of the State of Alaska ("Grant Recipient"), VALDEZ SENIOR HOUSING ASSOCIATES, LLC, an Alaska limited liability company ("Owner"), whose address is 22701 E Briarwood Pl, Aurora, CO 80016, as a condition required by **ALASKA HOUSING FINANCE CORPORATION** ("AHFC"), whose address is at P.O. Box 101020, Anchorage, Alaska 99510, acting pursuant to section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12U.S.C. 4501 *et seq.*), and for the purposes hereinafter described.

RECITALS

WHEREAS, AHFC is willing to provide Grant Recipient with certain funds (the "NHTF Funds") available through the National Housing Trust Fund ("NHTF") in the amount provided in the Grant Agreement defined below, in accordance with the terms of the NHTF laws and regulations and this Instrument; and

WHEREAS, Grant Recipient is the [Class B Member] of Owner and is obligated to contribute the NHTF Funds to Owner as a capital contribution for use by Owner in the development of the Project (as hereinafter defined); and

WHEREAS, NHTF was established under Title 1 of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 10-289), with implementing regulations in Part 93 of Title 24 of the Code of Federal Regulations; and

WHEREAS, the provisions contained in Part 93 of Title 24 of the Code of Federal Regulations, as they currently exist and as they may be modified in the future, are hereby incorporated into this Instrument by this reference as if fully set forth herein; and

WHEREAS, pursuant to Part 93 of Title 24 of the Code of Federal Regulations, as amended, in connection with the award of the NHTF Funds to the Grant Recipient and the Grant Recipient's contribution of the NHTF Funds to Owner, Grantee and Owner must agree and do hereby agree to comply with certain occupancy and rent restrictions for the Period of Affordability set forth and defined below, and the Owner has executed and recorded this Instrument to evidence Owner's agreement to comply with such restrictions.

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grant Recipient and Owner do hereby agree to bind the Property (hereinafter described) for the Period of Affordability as follows:

PART I: DEFINITIONS

All words and phrases defined in Part 93 of Title 24 of the Code of Federal Regulations, as from time to time amended, shall have the same meanings in this Instrument.

1. **Adjusted Income, Annual Income, Monthly Adjusted Income, Monthly Income:** The terms “Adjusted Income,” “Annual Income,” “Monthly Adjusted Income,” and “Monthly Income” as used herein means such income, as determined by AHFC, calculated in accordance with the definitions of these terms in Part 5 of Title 24 of the Code of Federal Regulations.
2. **Grant Agreement:** The term “Grant Agreement” means that certain initial agreement between the Grant Recipient and AHFC providing for funds under the NHTF pursuant to Grant Agreement No. GOL-22-VAL- 1
3. **NHTF-Assisted Unit:** The term “NHTF-Assisted Unit” as used herein means a unit designated as NHTF-assisted pursuant to Part 93 of Title 24 of the Code of Federal Regulations.
4. **NHTF Funds:** The term “NHTF Funds” as used herein means funds made available under Part 93 of Title 24 of the Code of Federal Regulations through allocations and reallocations, plus all repayments and interest or other return on the investment of these funds.
5. **NHTF Program:** The term “NHTF Program” as used herein means the National Housing Trust Fund Program delineated in Part 93 of Title 24 of the Code of Federal Regulations, as it currently exists and as it may be modified in the future.
6. **HUD:** The term “HUD” as used herein means the United States Department of Housing and Urban Development.
7. **Instrument:** The term “Instrument” as used herein means this Declaration of Covenants, Conditions, and Restrictions as it may from time to time be amended.
8. **Extremely Low-Income Families:** The term “Extremely Low-Income Families” as used herein means families whose Annual Incomes do not exceed 30 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.
9. **Project:** The term “Project” as used herein means a site or an entire building, or two or more buildings, together with the site on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with NHTF Funds pursuant to the terms of the Grant Agreement, under a commitment by the Owner, as a single undertaking under Part 93 of Title 24 of the Code of Federal Regulations. The term “Project” includes all the activities associated with the site and building described in the Grant Agreement.
10. **Project Completion:** The term “Project Completion” as used herein means the later of the date AHFC sends the final Close-Out letter or the final disbursement of NHTF Funds and the complete submission of all Project completion documentation to AHFC, including but not limited to the final project completion report form HUD-40097 or similar form.
11. **Project Placed in Service Date:** The term “Project Placed in Service Date” as used herein means the date the Project is issued an Unconditional Certificate of Occupancy.

PART II: COVENANTS, CONDITIONS AND RESTRICTIONS

In order to retain its classification as a rental housing project which qualifies as affordable housing for the purposes of the NHTF, the term of this Instrument shall continue in effect through the period of time commencing upon the Project Placed in Service Date and continue for a period of thirty (30) years, or until thirty (30) years after the Project Completion date, whichever is later, subject to earlier termination as provided herein, hereinafter referred to as the “Period of Affordability.” In order to carry out the purposes of the National Housing Trust Fund and the Grant Agreement, Grant Recipient and Owner declares the following covenants, conditions and restrictions which constitute covenants running with the land and shall be binding on all parties having any right, title and interest in the Project or any part of the residential building, including the physical structure and all improvements therein located on the real property.

1.92 Acres of land within the City of Valdez, legally described as Lot 3, Valdez Medical Park Senior Addition Plat #22-02), Valdez Recording District, Third Judicial District, Copper River Meridian State of Alaska. (the "Property")

If Project Completion has not occurred by the date of this Instrument, Grant Recipient and or Owner shall provide AHFC with written notice of the Project Completion date in recordable form, in accordance with Part V, Section 2 herein, and such notice will be recorded with reference to and shall relate back to this Instrument for the purpose of establishing the Period of Affordability.

1. **Use of Project:** During the Period of Affordability specified herein, Grant Recipient and Owner will maintain the Project, as described in the Grant Agreement, as rental housing and will rent or hold available for rental each NHTF-Assisted Unit on a continuous basis under the terms and conditions of this Instrument.

2. **Repair and Replacement Fund:** The Owner must establish and maintain a Repair and Replacement (“RRF”) fund as part of the Owner’s ongoing Project operations. The RRF must be funded on a routine basis from Project cash flow and deposits must be placed in a specific general ledger account, or other bank account as approved by AHFC, and identified as such. The RRF must be used for the repair or replacement of such items as carpet, painting, roof systems, appliances or other elements of the building systems. Unless otherwise approved by AHFC in writing, the annual contribution to the RRF must equal at least **\$11,200.00**, except that the RRF will be capped at **\$56,000.00**. If the RRF balance reaches or exceeds \$56,000.00, additional payments will not be required, until such time that the balance decreases to below \$56,000.00. This subsection (2) shall not act to affect, limit, or modify any loan document requirement for a similar replacement reserve account established by the loan documents relating to any loan by AHFC or any other lender which are secured by the Project or Property.

The RRF requirements of this subsection (2) shall be deemed satisfied so long as replacement reserves, in amounts not less than described above, are collected pursuant to loan documents with AHFC or any other lender which are secured by the Property, and the RRF requirements in this subsection (2) need not be separately satisfied until such time as similar replacement reserves are no longer fully funded under the loan documents with AHFC or any other lender which are secured by the Property or until the time such loan(s) are paid in full.

3. **Income Targeting:** The Owner will comply with the following income targeting requirements with regard to the Project’s tenant selection criteria:

A. Seven point one percent (7.1%) (two (2) units) of all residential units must be restricted to persons or families whose Annual Income does not exceed 30% of the area median income, as determined by HUD, adjusted for family size. These units are considered Extremely Low-Income and federal NHTF-Assisted Units. NHTF-Assisted Units are floating; it must be designated by the Owner and tracked over time, however, they are not fixed to any particular unit during the life of the Period of Affordability.

B. When determining whether a person or family is an income-eligible occupant for a unit covered under 3(A), the Owner must use “Annual Income” as defined under the Section 8 Housing Assistance Payments programs in 24 CFR part 5.609. Income determinations are to be done in accordance with 24 CFR §93.151.

C. When determining whether a person or family is an income-eligible occupant for initial occupancy for a unit covered under 3(A), the Owner must determine Annual Income by examining source documents evidencing Annual Income (e.g. wage statement, interest statement, unemployment compensation statement) for the family. The Annual Income of the family must be calculated by projecting the prevailing rate of income of the family at the time the family is determined to be income eligible. Annual Income shall include income from all family members occupying the subject unit.

D. Subsequent to the tenant’s initial income certification, each tenant’s Annual Income must be re-examined annually in accordance with the following provisions:

i. For all income-restricted units, Owner must review source documents as in 3(C) above to determine income in the initial year of occupancy, and at least every 6th year thereafter. In the interim years, Owner must continue to re-examine income, but may choose between the following methods:

- Review source documents as in 3(C) above.
- Obtain a written statement from the family indicating family size and Annual Income. This must include a certification from the family that information is complete and accurate, and must indicate that source documents will be provided upon request.
- Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the Annual Income of the family. The statement must indicate the tenant’s family size and state the amount of the family’s Annual Income.

4. **Rental Charge Limitations:**

- A. Maximum rental charges for NHTF-Assisted Units described in 3(A) shall not exceed:
- For **Extremely Low-Income NHTF**-Assisted Units, the NHTF rent plus utilities of an extremely low-income tenant shall not exceed the greater of 30 percent of the federal poverty line or 30 percent of the income of a family whose annual income equals 30 percent of the median income for the Chugach Census Area, as determined by HUD, with adjustments for the number of bedrooms in the unit. HUD will publish the NHTF rent limits on an annual basis.
 - If the unit receives Federal or State project-based rental subsidy, and the tenant pays as a contribution toward rent not more than 30 percent of the tenant's adjusted income, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.
- B. Maximum rental charges for NHTF-Assisted Units described in 3(A) shall not exceed:
- 30% of the tenant family's Monthly Adjusted Income as determined by HUD, less the monthly allowance for the utilities and services (excluding telephone and cable television) to be paid by the tenant; OR
 - 30% of the gross income of a family whose income equals 65% of the Chugach Census Area median income, as determined by HUD, adjusted for family size, less the monthly allowance for the utilities and services (excluding telephone and cable television) to be paid by the tenant (see possible exceptions to this in (iii) below for NHTF-Assisted Units). In calculating the maximum rent under this section, the Owner must use the average occupancy per unit assumptions provided by HUD (1.5 persons per bedroom, 1 person for an efficiency unit).
 - If one of these units is used as a manager's unit, it is not considered a residential unit and does not need to be rent restricted.
- C. Maximum rent and utility allowances may change annually, as changes in the applicable gross rent amounts or income adjustments warrants. Any increase in rents are subject to the provisions of outstanding leases, tenants must be provided not less than 30 days prior written notice before implementing any increase in rents.
- D. For units in projects that have not been allocated low-income housing tax credits pursuant to section 42 of the Internal Revenue Service Code of 1986, increases in tenant income in units originally qualifying under 3(A) shall be considered in the following way: Units considered NHTF-Assisted Units under 3(A) but whose tenants' income increases over time to over 50% but under 80% of the area median income no longer satisfy 3(A). For projects including HOME Investment Partnership funds, these units may convert to HOME Units. See HOME Investment Partnership DCCR for specific instructions. Alternatively the next available comparable unit must be rented to a household satisfying 3(A), however, this process should not increase the number of assisted units.
- E. For units in projects that have not been allocated low-income housing tax credits pursuant to section 42 of the Internal Revenue Service Code of 1986, increases in tenant income in units qualifying under 3(B) shall be considered in the following way: Units considered NHTF-Assisted under 3(B) but whose tenants' income increases over time to more than 30% of the median income no longer satisfy 3(B). In order to comply with the requirements of 3(B): 1) another unit housing a tenant below 30% of the median may be designated a NHTF-Assisted Unit, or the next comparable unit must be rented to a household qualifying under 3(B), and 2) until such time that another unit is designated a NHTF-Assisted Unit or the next comparable unit is rented to a household qualifying under 3(B), this unit will remain a NHTF-Assisted Unit and the rent charged must be the lesser of the amount payable by the tenant under the State or local law, 30% of the family's Adjusted Income under 24 CFR Part 5, or the market rent for comparable, unassisted units in the neighborhood.

5. **Tenant-Based Rental Assistance Programs:** During the Period of Affordability specified herein, the Owner shall not refuse leasing to a holder of a housing assistance voucher under 24 CFR part 982 (Housing Choice Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program (24 CFR Part 92) solely because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document.

6. **Rent Limitation for Minimum Period of Affordability:** During the Period of Affordability specified herein, the Project shall remain in compliance with the requirements set forth herein, pursuant to these covenants running with the land without regard to the terms of any mortgage or the transfer of ownership, except that upon

foreclosure or transfer in lieu of foreclosure pursuant to a mortgage held by a lender other than AHFC, the Period of Affordability may be terminated by AHFC if the foreclosure or transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability and if such foreclosure or transfer in lieu of foreclosure is not for the purpose of avoiding low income affordability restrictions. However, if at any time following foreclosure or transfer in lieu of foreclosure, but still during the original Period of Affordability, the owner of record prior to foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or Property, the Period of Affordability shall be revived and this Instrument shall apply to the Property according to its original terms without further notice or action.

7. **Rent Schedule and Utility Allowances:** During the Period of Affordability specified herein, annually, the Owner must submit to AHFC for AHFC's review and approval, a schedule of unit rents and utility allowances proposed by the Owner for all units subject to the maximum rent limitations stated in sections 4(A) and 4(B) of this Part.

8. **Project Standards:** During the Period of Affordability specified herein, the Owner must maintain the Project in accordance with the housing quality standards set forth in Section 982.401 of Title 24 of the Code of Federal Regulations. However, the Uniform Physical Conditions Standards, required by the Low Income Housing Tax Credit program, may be substituted as AHFC considers these standards to be substantially similar to those set forth in 24 CFR Section 982.401. In addition, housing assisted with NHTF Funds must meet all applicable local codes, zoning, and ordinances, construction and/or rehabilitation standards, and the property standards listed in 24 CFR Part 93.301.

9. **Unit Accessibility:** In accordance with Section 504 of the Rehabilitation Act of 1973 (as amended), when an accessible unit becomes vacant, the unit will first be offered to any current occupant of the Project requiring the accessibility feature, and second, be offered to any eligible qualified applicant on the waiting list requiring the accessibility features. In addition, when an applicant or tenant requires an accessibility feature or policy modification to accommodate a disability, the Owner must provide such feature or policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden.

10. **Tenant and Participant Protections-Lease:** During the Period of Affordability specified herein, the lease between a tenant occupying a NHTF-Assisted Unit and the Owner of the rental housing assisted with NHTF funds must be for not less than one year, unless by mutual agreement between the tenant and the Owner.

11. **Mixed-Income Project:** During the Period of Affordability specified herein, housing that accounts for less than 100 percent of the dwelling units in a project qualifies as affordable housing if the housing meets the criteria of sections 3 through 9 of this Part. Each building in the Project must contain housing that meets those criteria. For the purpose of meeting affordable housing requirements under sections 3 through 11 of this Part, the dwelling units counted as affordable housing may be changed over the Period of Affordability, so long as the total number of affordable housing units remains the same, and the substituted units are, at a minimum, comparable or larger in terms of size, features, and number of bedrooms to the originally designated affordable housing units.

12. **Affirmative Marketing:** During the Period of Affordability specified herein, the Owner shall comply with the following affirmative marketing requirements:

- A. Annually complete a HUD form 935.2; Affirmative Fair Housing Marketing Plan and make this plan available to AHFC or HUD upon request;
- B. The Equal Housing Opportunity logotype or slogan will be used with all applicable correspondence, notices and advertising;
- C. Affirmative fair housing marketing practices in soliciting renters, determining their eligibility, and concluding all transactions;
- D. Demonstrate good faith efforts to solicit those eligible persons who are not likely to apply for housing assistance, through special outreach efforts, including but not limited to, community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service agencies, medical service centers, homeless shelters, and the use of minority specific media;

E. Maintain a file containing all marketing efforts and records of all applicants and tenants selected during the Period of Affordability specified herein, and make available these records to AHFC or HUD for assessment of the results of these actions;

F. Annually assess the success of affirmative marketing actions, determine what corrective actions will be taken or changes to the Affirmative Fair Housing Marketing Plan will be made where affirmative marketing requirements are not met, and make available these assessments and determinations to AHFC or HUD for review.

13. **Period of Record Retention:** All pertinent documents, books, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records relating to the Project and Property specified herein (“Records”) shall be retained for five years following expiration of the Period of Affordability specified herein by Grant Recipient and or Owner, as applicable. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the Period of Affordability specified herein, the records must be retained for five years following completion of the action and resolution of all issues which arise from it, or for five years following the end of the Period of Affordability, whichever is later.

14. **Inspection and/or Audit of Records:** Grant Recipient and/or Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by AHFC, HUD, the Comptroller General of the United States, or any of their representatives and designees, all Records. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by the Grant Recipient and/or Owner at the specified office of AHFC, or at any other reasonable location. The original of all such Records shall also be available and produced for inspection, copying, and audit when needed to verify the authenticity of a copy.

PART III: DEFAULT AND REMEDIES

1. **Events of Default:** Any one of the following events which occurs and continues shall constitute an event of default (“Event of Default”):

A. Any representation or warranty made by the Grant Recipient and or Owner in this Instrument or the Grant Agreement shall be false in any material respect or shall omit any material fact on the date made, OR

B. The Grant Recipient and or Owner shall fail to perform or observe any term, covenant, or agreement contained in this Instrument or the Grant Agreement to which the Grant Recipient and or Owner, as applicable, is a party or on its part to be performed or observed and with respect to any such term, covenant, or agreement contained herein and any such failure remains unremedied for sixty (60) days after such failure shall first become known to the Grant Recipient and or Owner.

2. **Remedies of AHFC:** Whenever any Event of Default shall have occurred and shall continue following the expiration of any applicable cure period:

A. If Grant Recipient and or Owner breaches any covenant, condition, or restriction set forth herein and related to the Project, and if such breach remains uncured for a period of sixty (60) days after notice thereof shall have been given by AHFC (or for an extended period approved in writing by AHFC if the breach stated in such notice can be corrected, but not within such sixty (60) day period but thereafter does not diligently pursue the same to completion within such extended period), AHFC shall be entitled to any or all of the following remedies: (a) point reductions in the “applicant qualifications” (or similar) category of any current AHFC funding competitions applied for by the Grant Recipient, Owner, or its general partner(s); (b) return of all NHTF Funds disbursed to the Grant Recipient for the Project, plus interest at the maximum rate permitted by law, and/or an amount attributable to the increase in equity in the Property attributable to the construction and/or rehabilitation effected with the NHTF Funds; (c) resort to any court having jurisdiction of the subject matter for specific performance of this Instrument, for an injunction against any violation of this Instrument, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Instrument, or for initiation of foreclosure proceedings; or such other relief as may be appropriate; it being acknowledged by both the Grant Recipient and Owner that the beneficiaries of the obligations hereunder cannot be adequately compensated by monetary damages in the event of Grant Recipient’s or Owner’s breach of this Instrument, because the beneficiaries include the low-income families to be benefitted by Owner’s use of the herein described NHTF Funds. AHFC shall be

entitled to reimbursement of reasonable attorneys' fees and all costs incurred in any such judicial action hereunder in which AHFC shall prevail. Notwithstanding anything to the contrary herein, Owner's investor member and special member shall have the right but not the obligation to cure any default by Owner, and AHFC shall accept or reject such cure on the same basis as if tendered by Owner.

- B. AHFC may take whatever action at law or in equity, as it determines necessary or desirable, or remedy any Event of Default, or to enforce performance and observance of any obligation, agreement or covenant of the Grant Recipient and Owner under this Instrument or the Grant Agreement, it being acknowledged by the Grant Recipient and Owner that the beneficiaries of Grant Recipient's and Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's breach of this Instrument, because senior citizens and lower-income families are the intended beneficiaries of the use of NHTF Funds.

2. **Agreement to Pay Attorneys' Fees and Expenses:** In the event the Grant Recipient or Owner should default under any of the provisions of this Instrument or the Grant Agreement and AHFC should employ attorneys or incur other expenses for the performance or observance of any obligation or agreement on the part of the Grant Recipient or Owner herein contained or contained in the Grant Agreement, the Grant Recipient or Owner agrees to pay to AHFC, if prevailing, the reasonable fees of such attorneys and such other expenses so incurred by AHFC.

3. **Remedies are Cumulative:** Each right, power and remedy of AHFC provided for in this Instrument, now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Instrument or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by AHFC of any one or more of the rights, powers or remedies shall not preclude the simultaneous or later exercise by AHFC of any or all such other rights, powers or remedies.

4. **Remedies of Other Parties:** For the Period of Affordability, the occupancy requirements set forth in this Instrument also shall inure to the benefit of, and may be judicially enforced against Owner by, affected Extremely Low-Income Families. Any such party that prevails in such judicial action shall be entitled to reimbursement of its reasonable attorneys' fees and costs in which such party shall prevail.

PART IV: REPRESENTATIONS AND WARRANTIES OF GRANT RECIPIENT AND OWNER

1. Owner represents and warrants that Owner has validly executed this Instrument and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity to enter into this Instrument; to carry out Owner's obligations as described in this Instrument; and to assume responsibility for compliance with all applicable federal and state rules and regulations. Grant Recipient represents and warrants that Grant Recipient has validly executed this Instrument and the same constitutes the binding obligation of Grant Recipient. Grant Recipient has full power, authority, and capacity to enter into this Instrument; to carry out Grant Recipient's obligations as described in this Instrument; and to assume responsibility for compliance with all applicable federal and state rules and regulations.

2. **No Conflict or Contractual Violation:** To the best of Grant Recipient's and Owner's knowledge, the making of this Instrument and Grant Recipient's and Owner's obligations hereunder:

- A. Will not violate any contractual covenants or restrictions between Owner and any third party or any such covenants or restrictions affecting the Project or Property;
- B. Will not conflict with any of the instruments that create or establish Owner's authority;
- C. Will not conflict with any applicable public or private restrictions;
- D. Do not require any consent or approval of any public or private authority which has not already been obtained; and
- E. Are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (i) Grant Recipient and Owner, without regard to capacity, (ii) any person with whom Grant Recipient and Owner may be jointly or severally liable, or (iii) the Property, the Project, or any part thereof.

3. **No Litigation:** No litigation or proceedings are pending or, to the best of Grant Recipient's or Owner's knowledge, threatened against Grant Recipient or Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property or Project, or any portion thereof, or which could in any way interfere with the consummation of this Instrument.

4. **No Bankruptcy:** There is no pending or, to Grant Recipient's or Owner's best knowledge, threatened, against Grant Recipient or Owner, any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, or regulation relating to bankruptcy, insolvency or relief for debtors.
5. **No Encumbrances or Attachment:** Grant Recipient and Owner shall not allow the Property to be attached in any manner, including any liens or other encumbrances or any mortgages or other security interest during the Period of Affordability without the prior written consent of AHFC. AHFC consents to the following liens and encumbrances (i) [PENDING] subject to Owner's continued compliance with this Instrument.
6. **Indemnification:** Grant Recipient, to the extent permitted by law, and Owner, jointly and severely, agree to indemnify and hold harmless AHFC from and against all liabilities, losses, claims, damages, demands, suits, liens, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by AHFC as a result of any material inaccuracy in any of the representations and warranties contained in this Instrument.

PART V: MISCELLANEOUS

1. **Binding Effect: Covenants Running with the Land:** During the Period of Affordability specified herein, this Instrument and the covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land for the benefit of AHFC, and its successors, and shall pass to and be binding upon Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to the land, but shall include a leasehold interest in land, this Instrument and the covenants, conditions and restrictions shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Period of Affordability specified herein in accordance with the terms hereof said covenants, conditions and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions, and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, conditions and restrictions shall run to each portion of the Property impacting the Property. Owner, at its cost and expense, shall cause this Instrument to be duly recorded or filed and re-recorded or re-filed in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of AHFC to enforce this Instrument.
2. **Consent to Transfer:** Grant Recipient and Owner hereby agree that AHFC's written consent is required for any sale or transfer of the Property or any portion thereof or interest therein during the Period of Affordability. Grant Recipient and Owner specifically acknowledge that any sale or transfer of any interest in the Property shall be a default under the terms of this Instrument unless it shall have received the written consent of AHFC prior to any such sale or transfer of the Property or any portion thereof or interest therein.
3. **Notices:** All notices required or permitted to be given pursuant to this Instrument must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

DCCR NHTF
GOL-22-VAL-1 – Valdez Senior Apartments

To AHFC: Chief Executive Officer
Alaska Housing Finance Corporation
P.O. Box 101020
Anchorage, Alaska 99510-1020

To Owner: Valdez Senior Housing Associates, LLC
An Alaska limited liability company
22701 E Briarwood Pl
Aurora, CO 80016

Copies to: NHTF Program Manager
Alaska Housing Finance Corporation
P.O. Box 101020
Anchorage, Alaska 99510-1020

With a Copy to: CREA Valdez Senior, LLC
c/o CREA, LLC
30 S. Meridian Street, Suite 400
Indianapolis, IN 46204

To Grant Recipient: City of Valdez
PO BOX 307
Valdez, AK 99686

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

4. **Governing Law:** This Instrument, as it may affect the rights, remedies and obligations of AHFC, shall be governed by and construed in accordance with federal law. Insofar as federal law does not apply, the provisions of this Instrument shall be governed by and construed in accordance with the laws of the State of Alaska.

5. **Severability:** This Instrument is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Instrument or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Instrument and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

6. **Indemnification:** Grant Recipient, to the extent permitted by law, and Owner will protect, defend, indemnify, and hold harmless AHFC from and against any and all liabilities, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons caused by, in connection with, or arising out of any activities undertaken pursuant to this Instrument. Grant Recipient, to the extent permitted by law, and Owner's obligation to protect, defend, indemnify, and hold harmless as set forth in this section shall include any and all attorneys' fees incurred by AHFC in the defense or handling of said suits, demands, judgments, liens and claims and all attorneys' fees and investigation expenses incurred by AHFC in enforcing or obtaining compliance with the provisions of this Instrument.

7. **Section Titles:** Section titles are for descriptive purposes only and shall not control or limit the meaning of this Instrument as set forth in the text.

8. **Compliance With Laws, Permits and Certifications:** Owner shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations, conditions, and assurances and shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required in regard to the Project.

9. **Amendments or Termination:** This Instrument shall not be terminated except as provided herein. This Instrument shall not be amended (other than to incorporate the date of Project Completion as presented in Part II) except in writing, containing the signature of AHFC or its successor or assign and no such amendment shall be effective unless the amendment identifies this Instrument and is recorded in the official public land records where this Instrument is recorded and the Property is located.

10. **No Merger and No Accord or Satisfaction:** If AHFC, as a lender (beneficiary) under a deed of trust or mortgage secured by the Property, acquires the fee estate (whether pursuant to foreclosure or transfer in lieu of foreclosure), the fee estate and covenants, conditions, and restrictions of this Instrument shall not merge with title to the Property as a result of such acquisition and shall not be considered an accord or satisfaction of this Instrument. For the term herein stated, this Instrument shall remain a separate and distinct obligation of all owners of and successors in title to the Property after such acquisition unless and until AHFC shall elect, by express consent in writing, to release the Property from this Instrument. Furthermore, any purchaser of the Property at a foreclosure sale shall receive title subject to the provisions of this Instrument which shall encumber the Property for the term herein stated.

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IN WITNESS WHEREOF, the Grant Recipient and Owner have executed this Instrument on the day and year first above written.

ACKNOWLEDGMENT AND ACCEPTANCE

GRANT RECIPIENT

CITY OF VALDEZ

By Mark R Detter, City Manager

OWNER:

VALDEZ SENIOR HOUSING ASSOCIATES, LLC
an Alaska limited liability Corporation

By its Managing Member,
CM Valdez Sr Housing LLC
a Colorado limited liability company

By Shawne Mastronardi, President

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

This certifies that on this ____ day of _____, 2023, before me, a Notary Public in and for said State, personally appeared Shawne Mastronardi (signer), known or identified to me to be the President of CM Valdez Sr Housing LLC, a Colorado limited liability company, the managing member of Valdez Senior Housing Associates, LLC, an Alaska limited liability company, and acknowledged to me that she executed the within instrument by proper authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Alaska
Residing at _____
My commission expires: _____

STATE OF ALASKA)
) ss.

DCCR NHTF
GOL-22-VAL-1 – Valdez Senior Apartments

THIRD JUDICIAL DISTRICT)

This certifies that on this ____ day of _____, 2023, before me, a Notary Public in and for said State, personally appeared Mark R Detter (signer), known or identified to me to be the City Manager of the City of Valdez, Alaska, a municipal corporation organized and existing under the laws of the state of Alaska, and acknowledged to me that he executed the within instrument by proper authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Alaska
Residing at _____
My commission expires: _____

National Housing Trust Fund Note

1. BORROWER'S PROMISE TO PAY

For Value Received, the City of Valdez, an Alaska incorporated city ("Borrower"), promises to pay to the Alaska Housing Finance Corporation ("AHFC") the principal sum of five hundred thousand and 0/100 Dollars (U.S. \$500,000.00) plus interest.

2. INTEREST

Interest shall accrue at an annual rate of zero percent (0%). Interest will be charged on that part of principal which has not been paid. Interest will be charged beginning on the date of this Note and continuing until the full amount of principal has been paid or the maturity of the note.

3. NOTE SECURED BY DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

In addition to any protections given to AHFC under this Note, a Declaration of Covenants, Conditions, and Restrictions herewith ("DCCR") protects AHFC from possible losses which might result if Borrower does not keep the promises made in this Note and in AHFC Grant Number GOL-22-VAL-1 ("Grant Agreement"). The DCCR encumbers the Borrower's leasehold interest in the following real property:

1.92 Acres of land within the City of Valdez, legally described as Lot 3, Valdez Medical Park Senior Addition Plat #22-02), Valdez Recording District, Third Judicial District, Copper River Meridian State of Alaska. ("Property")

4. PAYMENTS

Borrower shall make no payments so long as Borrower complies with the terms of the Grant Agreement and the DCCR. In the event Borrower fails to comply with the terms of the DCCR or the Grant Agreement, the full amount this Note becomes immediately due and payable; however, AHFC may not sue Borrower for the indebtedness, its sole remedy for collection of the debt under this Note being a DCCR foreclosure pursuant to applicable law. This limitation on the manner of collection of indebtedness shall not be construed to limit any other remedy AHFC may have to enforce compliance with the provisions of the DCCR. The full balance of this Note, and all accrued interest thereon, shall be due and payable thirty (30) years from the project completion date, unless sooner due and payable as provided for herein.

5. FORGIVENESS OF DEBT

If the project (herein defined) is used for the purposes set forth in the Grant Agreement for a thirty (30) year period commencing on the date stated in the DCCR, Borrower's indebtedness herein evidenced shall be forgiven by AHFC and Borrower's indebtedness under this Note shall be zero. In the event the project (as described in the DCCR and referred to herein as the "Project") is not used in compliance with the terms of the DCCR for the purposes set forth in the Grant Agreement for any period exceeding ten (10) consecutive days or thirty (30) total days, AHFC may extend the date of forgiveness of Borrower's indebtedness beyond the thirty (30) year period. The length of time by which AHFC may extend the date of forgiveness shall be the length of time of such discontinued use. AHFC shall accomplish the extension by recording a notice of extension of the date of forgiveness that sets forth the dates that the use required by the Grant Agreement was discontinued and the new date on which the forgiveness of indebtedness occurs. AHFC may extend the date of forgiveness for each such period of discontinued use. If Borrower contests AHFC's

determination of the dates of discontinued use, Borrower shall have the burden of proving that the Property, subject to the Grant Agreement, was used for grant purposes on any disputed date.

6. NO WAIVER BY AHFC

Any failure by AHFC to enforce any of the provisions of this Note, or to exercise any option which is provided, or to require at any time Borrower's performance of any of the provisions of this Note or the DCCR shall in no way be construed as a waiver of such provisions or of AHFC's right to thereafter enforce each and every provision.

7. BORROWER'S WAIVERS

Borrower waives its right to require AHFC to do the following: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (C) to obtain an official certification of nonpayment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payment to AHFC if Borrower fails to keep its promises under this Note, or who signs the Note to transfer it to someone else also waives these rights. These persons include "guarantors, sureties and endorsers."

8. GIVING OF NOTICES

Any notice of default that must be given to Borrower under this Note will be given by delivering it or by mailing it by certified mail addressed to Borrower at PO BOX 307, Valdez, AK 99686 or at such other address as Borrower directs by written notice to AHFC.

Any notice that must be given to AHFC under this Note will be given by mailing it by certified mail to AHFC at P.O. Box 101020, Anchorage, Alaska 99510-1020 or at such other address as AHFC directs by written notice to Borrower.

9. NONRECOURSE

This Note is a nonrecourse obligation of the Borrower and its members.

ACKNOWLEDGMENT AND ACCEPTANCE

By: _____
Mark R Detter, City Manager

When Recorded Return to:
Alaska Housing Finance Corporation
Attn: SCHDF Program Manager
P.O. Box 101020
Anchorage, Alaska 99510-1020

DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR SENIOR HOUSING
(Senior Citizens Housing Development Fund Program)

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR SENIOR HOUSING (Senior Citizens Housing Development Fund Program) dated as of _____, 2023 (“Instrument”) is given by the CITY OF VALDEZ, a municipal corporation duly organized and existing under the laws of the State of Alaska (“Grant Recipient”), VALDEZ SENIOR HOUSING ASSOCIATES, LLC, an Alaska limited liability company (“Owner”), whose address is 22701 E Briarwood Pl, Aurora, CO 80016, as a condition required by **ALASKA HOUSING FINANCE CORPORATION** (“AHFC”), located at P.O. Box 101020, Anchorage, Alaska 99510.

RECITALS

WHEREAS, AHFC is willing to provide Grant Recipient with certain funds (“SCHDF Funds”) available through the Senior Citizen Housing Development Fund (“SCHDF”) in the amount provided in the Grant Agreement defined below, in accordance with the terms of that Act and this Instrument; and

WHEREAS, Grant Recipient is the [Class B Member] of Owner and is obligated to contribute the SCHDF Funds to Owner as a capital contribution for use by Owner in the development of the Property (as hereinafter defined); and

WHEREAS, the provisions contained in AS 18.56.800 and 15 AAC 154.010-.080 and 15 AAC 154.100-.110 are hereby incorporated into this Instrument by this reference as if fully set forth herein; and

WHEREAS, pursuant to AS 18.56.800 and 15 AAC 154.010-.080 and 15 AAC 154.100-.110, and in accordance with the terms of the AHFC Grant Agreement GOL-22-VAL-1, in connection with the award of the SCHDF Funds to the Grant Recipient and the Grant Recipient’s contribution of the SCHDF Funds to Owner. Grant Recipient and Owner must agree and do hereby agree to comply with certain occupancy and rent restrictions for the Period of Compliance set forth and defined below, and Grant Recipient and Owner have executed and recorded this Instrument to evidence its agreement to comply with certain occupancy restrictions.

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grant Recipient and Owner do hereby agree as follows:

PART I: DEFINITIONS

1. **Annual Income:** The term “Annual Income” as used herein shall mean such income, as determined by AHFC, calculated in accordance with the definitions of these terms in Part 813 of title 24 of the Code of Federal Regulations.
2. **Assisted Unit:** The term “Assisted Unit” means rental housing units developed with the assistance of SCHDF Program funds, which may be further subject to tenant income and unit rent affordability restrictions.
3. **Grant Agreement:** The term “Grant Agreement” means that certain agreement between Owner and AHFC providing for funds under the SCHDF Program pursuant to Grant Agreement No. GOL-22-VAL-1.
4. **Instrument:** The term “Instrument” as used herein means this Declaration of Covenants, Conditions, and Restrictions as it may from time to time be amended.
5. **Period of Compliance:** The term “Period of Compliance” means the period of time during which the covenants and conditions stated herein shall be enforced.
6. **Project:** The term “Project” means the real property described in Part II hereof, including all buildings and appurtenances added or erected thereon, and all fixtures, improvements and appurtenances therein, which is under common ownership, management, and financing (including SCHDF Program funds), under a commitment by the Obligor, as a single undertaking under AS 18.56.800. The term “Project” also includes all the activities associated with the site and building.
7. **Project Completion:** The term “Project Completion” means final disbursement of SCHDF Program funds and the filing of all required documents under the terms of the Grant Agreement.
8. **SCHDF Funds:** The term “SCHDF Funds” as used herein means funds made available under AS 18.56.800.
9. **SCHDF Program:** The term “SCHDF Program” as used herein means the Senior Citizens Housing Development Fund delineated in AS 18.56.800 and 15 AAC 154.010-.080 and 15 AAC 154.100-.110.

PART II: COVENANTS, CONDITIONS AND RESTRICTIONS

In order to carry out the purposes of the SCHDF Program and Grant Agreement, Grant Recipient and Owner declare the following covenants, conditions and restrictions which constitute covenants running with the land and shall be binding on all parties having any right, title and interest in the following Project or any part of the residential building, including the physical structure and all improvements therein located on the real property, described as:

1.92 Acres of land within the City of Valdez, legally described as Lot 3, Valdez Medical Park Senior Addition Plat #22-02), Valdez Recording District, Third Judicial District, Copper River Meridian State of Alaska. (the “Property”)

1. **Use of Project:** The Grant Recipient and Owner will maintain the Project as a SCHDF Program rental housing project and will rent or hold available for rental not less than twenty-eight units (28) on a continuous basis to eligible senior households. The Project shall remain restricted to senior households for a period of at least 30 years (“Period of Compliance”), pursuant to these covenants running with the land beginning after Project Completion, without regard to the terms of any mortgage or the transfer of

ownership, except that upon foreclosure by a lender or other transfer in lieu of foreclosure, the provisions of this Instrument shall be suspended if the foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of its senior citizens use. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, the Owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the Project or Property, the provisions of this Instrument shall be revived according to its original terms.

2. **Repair and Replacement Fund:** Owner must establish and maintain a Repair and Replacement ("RRF") fund as part of Owner's ongoing Project operations. The RRF must be funded on a routine basis from Project cash flow and deposits must be placed in a specific general ledger account, or other bank account as approved by AHFC, and identified as such. The RRF must be used for the repair or replacement of such items as carpet, painting, roof systems, appliances or other elements of the building systems. Unless otherwise approved by AHFC in writing, the annual contribution to the RRF must equal at least \$11,200.00, except that the RRF will be capped at \$56,000.00. If the RRF balance reaches or exceeds \$56,000.00, additional payments will not be required, until such time that the balance decreases to below \$56,000.00. This subsection (2) shall not act to affect, limit, or modify any loan document requirement for a similar replacement reserve account established by the loan documents relating to any loan by AHFC or any other lender which are secured by the Property.

The RRF requirements of this subsection (2) shall be deemed satisfied so long as replacement reserves, in amounts not less than described above, are collected pursuant to loan documents with AHFC or any other lender which are secured by the Property, and the RRF requirements in this subsection (2) need not be separately funded until such time as similar replacement reserves are no longer fully funded under the loan documents with AHFC or any other lender which are secured by the Property or until the time such loans are paid in full.

3. **Other Unit Restrictions:** All rental units in the Project may be occupied only by individuals or families meeting the definition of a "senior household" under 15 AAC 154.120, as amended from time to time.

4. **Affirmative Marketing:** During the Period of Compliance, Owner shall comply with the following affirmative marketing requirements:

- (a) The Equal Housing Opportunity logotype or slogan will be used with all applicable correspondence, notices and advertising;
- (b) Affirmative fair housing marketing practices in soliciting renters, determining their eligibility, and concluding all transactions;
- (c) Demonstrate good faith efforts to solicit those eligible persons who are not likely to apply for housing assistance, through special outreach efforts, including but not limited to, community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service agencies, medical service centers, homeless shelters, and the use of minority specific media; and
- (d) Maintain a file containing all marketing efforts and records of all applicants and tenants selected and make available these records to AHFC for assessment of the results of these actions.

5. **Period of Record Retention:** All pertinent documents, books, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records relating to the Project and Property specified herein (“Records”) shall be retained for five years following expiration of the Period of Compliance specified herein. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the Period of Compliance specified herein, the records must be retained for five years following completion of the action and resolution of all issues which arise from it, or for five years following the end of the Period of Compliance, whichever is later.

6. **Inspection and/or Audit of Records:** Grant Recipient and/or Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by AHFC or any of its representatives and designees, all Records. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by Grant Recipient or Owner at the specified office of AHFC, or at any other reasonable location. The original of all such Records shall also be available and produced for inspection, copying, and audit when needed to verify the authenticity of a copy.

PART III: DEFAULTS AND REMEDIES

1. **Events of Default:** Any one of the following events which occurs and continues shall constitute an event of default (“Event of Default”):

- (a) Any representation or warranty made by the Grant Recipient and or Owner in this Instrument or the Grant Agreement shall be false in any material respect or shall omit any material fact on the date made; OR
- (b) The Grant Recipient and or Owner shall fail to perform or observe any term, covenant, or agreement contained in this Instrument or the Grant Agreement to which the Grant Recipient and or Owner, as applicable, is a party or on its part to be performed or observed and with respect to any such term, covenant, or agreement contained herein and any such failure remains unremedied for sixty (60) days after such failure shall first become known to the Grant Recipient and or Owner

2. **Remedies on Default:** Whenever any Event of Default shall have occurred and shall continue following the expiration of any applicable cure period:

- (a) If Grant Recipient and or Owner breaches any covenant, condition, or restriction set forth herein and related to the Project, and if such breach remains uncured for a period of sixty (60) days after notice thereof shall have been given by AHFC (or for an extended period approved in writing by AHFC if the breach stated in such notice can be corrected, but not within such sixty (60) day period but thereafter does not diligently pursue the same to completion within such extended period), AHFC shall be entitled to any or all of the following remedies: (a) point reductions in the “applicant qualifications” (or similar) category of any current AHFC funding competitions applied for by the Grant Recipient, Owner, or its general partner(s); (b) return of all SCHDF Funds disbursed to the Grant Recipient for the Project, plus interest at the maximum rate permitted by law, and/or an amount attributable to the increase in equity in the Property attributable to the construction and/or rehabilitation effected with the SCHDF Funds; (c) resort to any court having jurisdiction of the subject matter for specific performance of this Instrument, for an injunction against any violation of this Instrument, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Instrument, or for initiation of foreclosure proceedings; or such other relief as

may be appropriate; it being acknowledged by both the Grant Recipient and Owner that the beneficiaries of the obligations hereunder cannot be adequately compensated by monetary damages in the event of Grant Recipient's or Owner's breach of this Instrument, because the beneficiaries include the low-income families to be benefitted by Owner's use of the herein described SCHDF Funds. AHFC shall be entitled to reimbursement of reasonable attorneys' fees and all costs incurred in any such judicial action hereunder in which AHFC shall prevail. Notwithstanding anything to the contrary herein, Owner's investor member and special member shall have the right but not the obligation to cure any default by Owner, and AHFC shall accept or reject such cure on the same basis as if tendered by Owner.

(b) AHFC may take whatever action at law or in equity, as it determines necessary or desirable, or remedy any Event of Default, or to enforce performance and observance of any obligation, agreement or covenant of the Grant Recipient and Owner under this Instrument or the Grant Agreement, it being acknowledged by the Grant Recipient and Owner that the beneficiaries of Grant Recipient's and Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's breach of this Instrument, because senior citizens and lower-income families are the intended beneficiaries of the use of SCHDF Funds.

3. **Agreement to Pay Attorneys' Fees and Expenses:** In the event the Grant Recipient or Owner should default under any of the provisions of this Instrument or the Grant Agreement and AHFC should employ attorneys or incur other expenses for the performance or observance of any obligation or agreement on the part of the Grant Recipient or Owner herein contained or contained in the Grant Agreement, Grant Recipient or Owner agrees to pay to AHFC, if prevailing, the reasonable fees of such attorneys and such other expenses so incurred by AHFC.

4. **Remedies are Cumulative:** Each right, power and remedy of AHFC provided for in this Instrument, now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Instrument or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by AHFC of any one or more of the rights, powers or remedies shall not preclude the simultaneous or later exercise by AHFC of any or all such other rights, powers or remedies.

5. **Remedies of Other Parties:** For the Period of Compliance, the occupancy requirements set forth in this Instrument also shall inure to the benefit of, and may be judicially enforced against Grant Recipient and Owner by senior citizens. Any such party that prevails in such judicial action shall be entitled to reimbursement of its reasonable attorneys' fees and costs in which such party shall prevail.

PART IV: REPRESENTATIONS AND WARRANTIES OF GRANT RECIPIENT AND OWNER

1. Owner represents and warrants that Owner has validly executed this Instrument and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity to enter into this Instrument; to carry out Owner's obligations as described in this Instrument; and to assume responsibility for compliance with all applicable federal and state rules and regulations. Grant Recipient represents and warrants that Grant Recipient has validly executed this Instrument and the same constitutes the binding obligation of Grant Recipient. Grant Recipient has full power, authority, and capacity to enter

into this Instrument; to carry out Grant Recipient's obligations as described in this Instrument; and to assume responsibility for compliance with all applicable federal and state rules and regulations.

2. **No Conflict or Contractual Violation:** To the best of Grant Recipient's and Owner's knowledge, the making of this Instrument and Grant Recipient's and Owner's obligations hereunder:

- A. Will not violate any contractual covenants or restrictions between Grant Recipient and Owner and any third party or any such covenants or restrictions affecting the Project or Property;
- B. Will not conflict with any of the instruments that create or establish Grant Recipient's and Owner's authority;
- C. Will not conflict with any applicable public or private restrictions;
- D. Do not require any consent or approval of any public or private authority which has not already been obtained; and
- E. Are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (i) Grant Recipient and Owner, without regard to capacity, (ii) any person with whom Grant Recipient and Owner may be jointly or severally liable, or (iii) the Property, the Project, or any part thereof.

3. **No Litigation:** No litigation or proceedings are pending or, to the best of Grant Recipient's and Owner's knowledge, threatened against either Grant Recipient and Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property or Project, or any portion thereof, or which could in any way interfere with the consummation of this Instrument.

4. **No Bankruptcy:** There is no pending or, to Grant Recipient's and Owner's best knowledge, threatened, against either Grant Recipient or Owner, any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, or regulation relating to bankruptcy, insolvency or relief for debtors.

5. **No Encumbrances or Attachment:** Grant Recipient and Owner shall not allow the Property to be attached in any manner, including any liens or other encumbrances or any mortgages or other security interest during the Period of Compliance without the prior written consent of AHFC.

6. **Indemnification:** Grant Recipient, to the extent permitted by law, and Owner jointly and severally agree to indemnify and hold harmless AHFC from and against all liabilities, losses, claims, damages, demands, suits, liens, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by AHFC as a result of any material inaccuracy in any of the representations and warranties contained in this Instrument.

PART V: MISCELLANEOUS

1. **Binding Effect, Covenants Running with the Land:** During the Period of Compliance specified herein, this Instrument and the covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land for the benefit of AHFC, and its successors, and shall pass

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to and be binding upon Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to the land, but shall include a leasehold interest in land, this Instrument and the covenants, conditions and restrictions shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Period of Compliance specified herein in accordance with the terms hereof said covenants, conditions and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions, and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, conditions and restrictions shall run to each portion of the Property impacting the Property. Owner, at its cost and expense, shall cause this Instrument to be duly recorded or filed and re-recorded or re-filed in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of AHFC to enforce this Instrument.

2. **Consent to Transfer.** Grant Recipient and Owner hereby agree that AHFC's written consent is required for any sale or transfer of the Property or any portion thereof or interest therein during the Period of Compliance. Grant Recipient and Owner specifically acknowledge that any sale or transfer of any interest in the Property shall be a default under the terms of this Instrument unless it shall have received the written consent of AHFC prior to any such sale or transfer of the Property or any portion thereof or interest therein.

3. **Notices:** All notices required or permitted to be given pursuant to this Instrument must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

To AHFC: Chief Executive Officer
Alaska Housing Finance Corporation
P.O. Box 101020
Anchorage, Alaska 99510-1020

To Owner: Valdez Senior Housing Associates, LLC
An Alaska limited liability company
22701 E Briarwood Pl
Aurora, CO 80016

Copies to: SCHDF Program Manager
Alaska Housing Finance Corporation
P.O. Box 101020
Anchorage, Alaska 99510-1020

With a Copy to: CREA Valdez Senior, LLC
c/o CREA, LLC
30 S. Meridian Street, Suite 400
Indianapolis, IN 46204

To Grant Recipient: City of Valdez
PO BOX 307
Valdez, AK 99686

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

4. **Entire Agreement:** The Grant Agreement and this Instrument contain the entire understanding between the parties hereto with respect to the subject matter hereof. The recitals herein are incorporated into this Instrument as if fully set forth herein. This Instrument shall not act to change the terms of any deed of trust or mortgage secured by the Property and benefiting AHFC as lender, with such loan documents to be separate and distinct from the SCHDF Program.

5. **Governing Law:** This Instrument, as it may affect the rights, remedies and obligations of AHFC, shall be governed by and construed in accordance with federal law. Insofar as federal law does not apply, the provisions of this Instrument shall be governed by and construed in accordance with the laws of the State of Alaska.

6. **Severability:** This Instrument is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Instrument or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Instrument and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

7. **Indemnification:** Grant Recipient, to the extent permitted by law, and Owner will protect, defend, indemnify, and hold harmless AHFC from and against any and all liabilities, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons caused by, in connection with, or arising out of any activities undertaken pursuant to this Instrument. Grant Recipient, to the extent permitted by law, and Owner's obligation to protect, defend, indemnify, and hold harmless as set forth in this section shall include any and all attorneys' fees incurred by AHFC in the defense or handling of said suits, demands, judgments, liens and claims and all attorneys' fees and investigation expenses incurred by AHFC in enforcing or obtaining compliance with the provisions of this Instrument.

8. **Section Titles:** Section titles are for descriptive purposes only and shall not control or limit the meaning of this Instrument as set forth in the text.

9. **Compliance with Laws, Permits and Certifications:** Owner shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations, conditions, and assurances and shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required in regard to the Project.

10. **Amendments or Termination:** This Instrument shall not be terminated except as provided herein. This Instrument shall not be amended except in writing, containing the signature of AHFC or its successor or assign and no such amendment shall be effective unless the amendment identifies this Instrument and is recorded in the official public land records where this Instrument is recorded and the Property is located.

11. **No Merger and No Accord or Satisfaction:** If AHFC, as a lender (beneficiary) under a deed of trust or mortgage secured by the Property, acquires the fee estate (whether pursuant to foreclosure or transfer in lieu of foreclosure), the fee estate and covenants, conditions, and restrictions of this Instrument shall not merge with title to the Property as a result of such acquisition and shall not be considered an

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accord or satisfaction of this Instrument. For the term herein stated, this Instrument shall remain a separate and distinct obligation of all owners of and successors in title to the Property after such acquisition unless and until AHFC shall elect, by express consent in writing, to release the Property from this Instrument. Furthermore, any purchaser of the Property at a foreclosure sale shall receive title subject to the provisions of this Instrument which shall encumber the Property for the term herein stated.

IN WITNESS WHEREOF, the Grant Recipient and Owner have executed this Instrument on the day and year first above written.

SIGNATURE PAGE FOLLOWS

ACKNOWLEDGMENT AND ACCEPTANCE

GRANT RECIPIENT

CITY OF VALDEZ

By Mark R Detter, City Manager

OWNER:

VALDEZ SENIOR HOUSING ASSOCIATES, LLC

Valdez Senior Housing Associates, LLC
an Alaska limited liability Corporation

By its Managing Member,
CM Valdez Sr Housing LLC
a Colorado limited liability company

By _____
Shawne Mastronardi, President

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

This certifies that on this ____ day of _____, 2023, before me, a Notary Public in and for said State, personally appeared Shawne Mastronardi (signer), known or identified to me to be the

Senior Citizens Housing Development Fund Note

1. BORROWER'S PROMISE TO PAY

For Value Received, the City of Valdez, an Alaska incorporated city ("Borrower"), promises to pay to the Alaska Housing Finance Corporation ("AHFC") the principal sum of five hundred thousand and 0/100 Dollars (U.S. \$500,000.00) plus interest.

2. INTEREST

Interest shall accrue at an annual rate of zero percent (0%). Interest will be charged on that part of principal which has not been paid. Interest will be charged beginning on the date of this Note and continuing until the full amount of principal has been paid or the maturity of the note.

3. NOTE SECURED BY DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

In addition to any protections given to AHFC under this Note, a Declaration of Covenants, Conditions, and Restrictions herewith ("DCCR") protects AHFC from possible losses which might result if Borrower does not keep the promises made in this Note and in AHFC Grant Number GOL-22-VAL-1 ("Grant Agreement"). The DCCR encumbers the Borrower's leasehold interest in the following real property:

1.92 Acres of land within the City of Valdez, legally described as Lot 3, Valdez Medical Park Senior Addition Plat #22-02), Valdez Recording District, Third Judicial District, Copper River Meridian State of Alaska. ("Property")

4. PAYMENTS

Borrower shall make no payments so long as Borrower complies with the terms of the Grant Agreement and the DCCR. In the event Borrower fails to comply with the terms of the DCCR or the Grant Agreement, the full amount this Note becomes immediately due and payable; however, AHFC may not sue Borrower for the indebtedness, its sole remedy for collection of the debt under this Note being a DCCR foreclosure pursuant to applicable law. This limitation on the manner of collection of indebtedness shall not be construed to limit any other remedy AHFC may have to enforce compliance with the provisions of the DCCR. The full balance of this Note, and all accrued interest thereon, shall be due and payable thirty (30) years from the project competition date, unless sooner due and payable as provided for herein.

5. FORGIVENESS OF DEBT

If the project (herein defined) is used for the purposes set forth in the Grant Agreement for a thirty (30) year period commencing on the date stated in the DCCR, Borrower's indebtedness herein evidenced shall be forgiven by AHFC and Borrower's indebtedness under this Note shall be zero. In the event the project (as described in the DCCR and referred to herein as the "Project") is not used in compliance with the terms of the DCCR for the purposes set forth in the Grant Agreement for any period exceeding ten (10) consecutive days or thirty (30) total days, AHFC may extend the date of forgiveness of Borrower's indebtedness beyond the thirty (30) year period. The length of time by which AHFC may extend the date of forgiveness shall be the length of time of such discontinued use. AHFC shall accomplish the extension by recording a notice of extension of the date of forgiveness that sets forth the dates that the use required by the Grant Agreement was discontinued and the new date on which the forgiveness of indebtedness

occurs. AHFC may extend the date of forgiveness for each such period of discontinued use. If Borrower contests AHFC's determination of the dates of discontinued use, Borrower shall have the burden of proving that the Property, subject to the Grant Agreement, was used for grant purposes on any disputed date.

6. NO WAIVER BY AHFC

Any failure by AHFC to enforce any of the provisions of this Note, or to exercise any option which is provided, or to require at any time Borrower's performance of any of the provisions of this Note or the DCCR shall in no way be construed as a waiver of such provisions or of AHFC's right to thereafter enforce each and every provision.

7. BORROWER'S WAIVERS

Borrower waives its right to require AHFC to do the following: (A) to demand payment of amounts due (known as "presentment"); (B) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (C) to obtain an official certification of nonpayment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payment to AHFC if Borrower fails to keep its promises under this Note, or who signs the Note to transfer it to someone else also waives these rights. These persons include "guarantors, sureties and endorsers."

8. GIVING OF NOTICES

Any notice of default that must be given to Borrower under this Note will be given by delivering it or by mailing it by certified mail addressed to Borrower at PO BOX 307, Valdez, AK 99686 or at such other address as Borrower directs by written notice to AHFC.

Any notice that must be given to AHFC under this Note will be given by mailing it by certified mail to AHFC at P.O. Box 101020, Anchorage, Alaska 99510-1020 or at such other address as AHFC directs by written notice to Borrower.

9. NONRECOURSE

This Note is a nonrecourse obligation of the Borrower and its members.

ACKNOWLEDGMENT AND ACCEPTANCE

By: _____
Mark R Detter, City Manager