

PVA LURA

Linda

RECEIVED SEP 29 1994

Re-205C

[4324]

LAND USE RESTRICTION AGREEMENT FOR LOW-INCOME HOUSING TAX CREDITS

THIS LAND USE RESTRICTION AGREEMENT, dated as of September 13, 1993, is by and between El Prado Redevelopment Associates, Ltd., a Colorado Limited Partnership and its successors and assigns (the "Owner"), and the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (the "Authority").

WITNESSETH:

WHEREAS, the Owner is the owner of a Ninety-six (96) unit rental housing development located on lands in the [City of] [Town of] Arvada, County of Jefferson, State of Colorado, more particularly described in Exhibit A hereto, known as El Prado Apartments (the "Project"); and

WHEREAS, the Authority has been designated by the Governor of the State of Colorado (the "State") as the housing credit agency for the State for the allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder (the "Code"); and

WHEREAS, the Owner has applied to the Authority for an allocation of low-income housing tax credits to the Project and has made certain representations to the Authority in its Low-Income Housing Tax Credit Preliminary Reservation Request (the "Application") about the Project, including representations as to the number of Low-Income Units (hereinafter defined) and the term of occupancy restrictions, upon which representations the Authority relied in considering the Application for a reservation of credits; and

WHEREAS, the Code requires in connection with the allocation of low-income housing tax credits that the Owner execute, deliver and record in the official land records of the county in which the Project is located this land use restriction agreement (this "Agreement") in order to create covenants running with the land for the purpose of enforcing certain requirements of Section 42 of the Code and certain additional undertakings of the Owner in connection with its Application by regulating and restricting the use and occupancy of the Project as set forth herein; and

WHEREAS, based upon the Owner's representations, the Authority is willing to allocate low-income housing tax credits to the Project provided that the Owner, by entering into this Agreement, consents to be regulated by the Authority in order that the Authority may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use and occupancy of the Project shall be and are covenants running with the Project land for the term stated herein and binding upon all subsequent owners of the Project for such term.

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

1. Definitions. All words and phrases defined in Section 42 of the Code shall have the same meanings in this Agreement.

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

(a) This Agreement shall be placed of record in the real property records of the county in which the Project is located and, except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns, and the Authority and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the period prescribed in Section 4 hereof.

(b) The Owner hereby agrees that any and all requirements of the laws of the State to be satisfied in order for the provisions of this Agreement to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. During the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

RECEPTION NO. F0136211 41.00 RECORDED IN JEFFERSON COUNTY, COLORADO PG: 0001-008 10/27/95 10:00 743

RECEPTION NO. 94149628 35.00 RECORDED IN COUNTY OF JEFFERSON STATE OF COLORADO 9/12/94 12:35

(c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Agreement and such consent and evidence thereof satisfactory to the Authority shall be a condition precedent to the issuance of Internal Revenue Service form 8609 constituting final allocation of the low-income housing tax credit.

3. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows: 2

(a) The Owner is duly organized under the laws of the State of Colorado, and is qualified to transact business under the laws of the State. 2

(b) The Owner has good and marketable title to the premises constituting the Project.

(c) Each building which is the subject of an allocation of low-income housing tax credits is, or, by not later than the last day of the first year of the Credit Period, as defined in Section 42(f) of the Code, will be, a "qualified low-income building" as defined in Section 42(c)(2) of the Code, and the Project constitutes or will constitute a "qualified low-income housing project" as defined in Section 42(g) of the Code.

(d) The Owner shall not discriminate on the basis of race, creed, color, sex, age, marital status, national origin, handicap or familial status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(e) The Owner shall not:

(i) except pursuant to the provisions of this Agreement or except upon a sale, transfer or conveyance of the Project in accordance with the terms of this Agreement, grant commercial leases relating to the Project (other than commercial leases with respect to an insubstantial portion of the Project);

(ii) demolish any part of the Project or substantially subtract from any real or personal property of the Project; or

(iii) permit the use of any residential rental unit for any purpose other than rental housing.

(f) The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.

(g) If the Owner becomes aware of any situation, event or condition which would result in noncompliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to the Authority.

(h) The Owner shall insure that the Low-Income Units (as hereinafter defined) shall be of comparable quality to other units, if any, in the Project.

(i) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms hereof.

(j) A qualified nonprofit organization [as defined in Section 42(h)(5)(C) of the Code] shall own an interest in the Project and shall materially participate in the development and operation of the Project throughout the Compliance Period [as defined in Section 42(i)(1) of the Code]. [Delete if inapplicable.]

4. Term of Restrictions.

(a) Except as otherwise provided herein, this Agreement, including the occupancy restrictions set forth in Sections 5 and 6 hereof, shall be in effect for each building which is part of the Project for a period of Forty (40) taxable years [must be at least fifteen (15) years] beginning with the taxable year in which each such building is placed in service or, at the election of the taxpayer, the succeeding taxable year.

(b) In addition to the period described in subsection (a) above, the Owner shall comply with the occupancy requirements set forth in Sections 5 and 6 hereof at all times during the "extended use period" as defined in Section 42(h)(6)(D) of the Code, provided, however, the extended use period for any building which is part of the Project shall terminate:

(i) on the date the building is acquired by foreclosure or deed in lieu of foreclosure; or

(ii) on the last day of the one-year period beginning on the date, after the date which is one (1) year prior to the end of the period described in subsection (a) above, the Owner submits a written request to the Authority to find a person to acquire the Owner's interest in the low-income portion of the building and the Authority is unable to present during such period a "qualified contract" as such term is defined in Section 42(h)(6)(F) of the Code [delete this paragraph (ii) if the Owner has waived such early termination rights by agreeing to thirty (30) years or longer for this Agreement, as set forth in subsection (a) above].

3  
3

(c) Notwithstanding any termination of the extended use period pursuant to subsection (b) above, during the period of three (3) years following such termination, the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit.

5. Occupancy Restrictions. (To be completed by CHFA) The Owner covenants and agrees that, not later than the last day of the first year of the Credit Period, as defined in Section 42(f) of the Code:

(a) At least Forty-nine percent (49 %) of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is Fifty percent (50 %) or less of area median gross income, and at least an additional Fifty-one percent (51 %) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is Sixty percent (60 %) or less of such median gross income (collectively, the "Low-Income Units"), all as determined in accordance with the Code. The Owner acknowledges and agrees that the foregoing income limitations shall be applicable in lieu of the limitations which would otherwise be applicable under Section 42(g)(1) of the Code. The Owner further agrees that additional units in the Project shall be both rent-restricted and occupied by qualifying low-income individuals or families ("Qualifying Tenant(s)") to the extent necessary to maintain the "applicable fraction," as defined in Section 42(c)(1)(B) of the Code, at not less than One Hundred percent (100%) for each taxable year of the extended use period. A unit is "rent-restricted" if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit [based upon the income limitations set forth in this subsection (a)], all as determined in accordance with Section 42(g) of the Code.

47 units

49 units

(b) The determination of whether an individual or family is a Qualifying Tenant shall be made at least annually on the basis of the current income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (a) of this Section 5 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

(c) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall be required to sign and deliver to the Owner a fully completed Certification of Resident Eligibility substantially in the form attached hereto as Exhibit B, and the income and assets of such individual or family must be verified in the manner prescribed by the Authority.

(d) The form of lease to be utilized by the Owner in renting any unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification or the failure by such tenant to execute an Income Certification annually.

6. Additional Owner Agreements. (To be completed by CHFA) The Owner further covenants and agrees that not later than the last day of the first year of the Credit Period, as defined in Section 42(f) of the Code:

(a) At least Twelve (12) of the residential rental units in the Project shall be constructed, equipped, set aside and made available for occupancy on a priority basis to Large Family Units [describe special housing needs resident] at all times during the term of the Land Use Restriction Agreement hereinafter defined, and the Owner shall provide evidence to the Authority of any license, permit or other governmental approval required for such occupancy.

(b) Of the residential units which are to be subject to the restrictions of Section 5 hereof, at least Twelve (12) shall be 3 -bedroom units. ~~and at least~~  
\*\*\*\*\* (\*\*\*\*) \*\*\*\*\*

[ADD ANY ADDITIONAL REQUIREMENTS]

7. Owner Certifications and Reports.

(a) The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Section 42 of the Code. A copy of such annual certification shall be provided to the Authority.

(b) The Owner shall annually provide to the Authority a Certification of Continuing Program Compliance substantially in the form attached hereto as Exhibit C and a copy of the most recent Occupancy Report substantially in the form attached hereto as Exhibit D.

4  
4

8. Transfer Restrictions. The Owner covenants and agrees that it will cause or require as a condition precedent to any conveyance, transfer, assignment or any other disposition of the Project during the term hereof, that the transferee of the Project assume in writing, in a form acceptable to the Authority, all duties and obligations of the Owner under this Agreement.

9. Physical Maintenance/Books/Records/Inspections/Monitoring.

(a) The Owner shall maintain each building in the Project such that all units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to the Authority.

(b) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with Section 42 of the Code and with this Agreement and to the eligibility of the Owner to claim credits with respect to the Project shall at all times be maintained at the Project, or at the Owner's principal place of business in the State of Colorado, in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by the Authority or its authorized agents. The Authority shall also have the right to enter onto and make inspection of the Project.

(c) Owners are required to keep records for each Qualified Low-Income Building in the Project showing the following:

- (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
- (ii) the percentage of residential rental units in the building that are Low-Income Units;
- (iii) the rent charged on each residential rental unit in the building (including any utility allowance);
- (iv) the number of occupants in each Low-Income Unit;
- (v) the Low-Income Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- (vi) the annual income certification of each Qualifying Tenant;
- (vii) documentation to support each Qualifying Tenant's income certification;
- (viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- (ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project).

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

(d) In addition to the information provided for in Sections 5 and 7, the Owner shall submit any other information, documents or certifications requested from time to time by the Authority with respect to the Project's physical, operational and financial condition which the Authority reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code. S

(e) The Owner acknowledges that Section 42 of the Code requires the Authority to monitor the compliance by the Owner and the Project with the requirements of said Section 42. In addition to its specific agreements and undertakings in this Agreement, the Owner shall take or cause to be taken all other and further actions required of the Owner by the Authority in order to satisfy such monitoring requirement, which actions shall be designated in writing by the Authority to the Owner not less than sixty (60) days (or such other period as may be required by law) prior to the date by which such actions must first be taken. In addition, the Owner agrees to pay to the Authority such fees in such amounts and at such times as the Authority shall, in its sole discretion, reasonably require the Owner to pay in order to reimburse the Authority for the costs of such monitoring. S

10. Enforcement.

(a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and of this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of the Authority, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Owner shall promptly advise the Authority as to the date each building in the Project is a "qualified low-income building" as defined in Section 42(c)(2) of the Code.

(c) In the event of any failure of the Owner to comply with the provisions of Section 42 of the Code or of this Agreement, the Authority shall inform the Owner by written notice of such failure and provide the Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of the Authority within the period of time specified by the Authority, which shall be at least thirty (30) days after the date any notice to the Owner is mailed, or within such further time as the Authority determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice the Authority may declare a default under this Agreement effective on the date of such declaration of default, and the Authority may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or any other remedies at law or in equity or any such other action as shall be necessary or desirable so as to correct non-compliance with this Agreement.

(d) The Owner and the Authority each acknowledges that the primary purpose of requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the Treasury Regulations thereunder, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF LOW-INCOME HOUSING TAX CREDITS FOR THE PROJECT HEREBY AGREES AND CONSENTS THAT THE AUTHORITY, ANY QUALIFYING TENANT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE BUILDING UNDER THE CODE (WHETHER PRESENT, PROSPECTIVE OR FORMER OCCUPANTS OF THE BUILDING) (ANY OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION, the Owner hereby further specifically acknowledging that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(e) In the event of the Owner's or Project's failure to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or the Authority from time to time pertaining to the obligations of the Owner as set forth therein or herein, the Authority may, in addition to all of the remedies provided by law or in equity, notify the Internal Revenue Service of such noncompliance.

11. Miscellaneous.

(a) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

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

To the Owner: El Prado Redevelopment Associates, Ltd.  
8290 Federal Blvd, #113  
Westminster, CO 80030  
Attention: Loren Snyder

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

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

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

[Owner] El Prado Redevelopment Associates, Ltd.  
EPRD, Inc. - General Partner

[SEAL]

X By: [Signature]  
Loren Snyder  
Its: Vice President

X ATTEST: [Signature]



[SEAL]

COLORADO HOUSING AND FINANCE  
AUTHORITY

By: [Signature]  
David W. Herlinger,  
Executive Director

ATTEST: [Signature]

James [Signature],  
Assistant Secretary

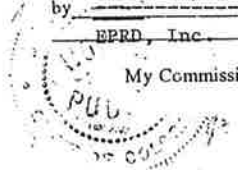
STATE OF COLORADO )  
 ) ss.  
 )  
 COUNTY OF Jefferson )

7  
7

Acknowledged before me this 21st day of September, 1993,  
by Loren Snyder as Vice President and  
by \_\_\_\_\_ as \_\_\_\_\_ of  
EPRD, Inc.

My Commission expires March 19, 1994

My Commission expires: \_\_\_\_\_

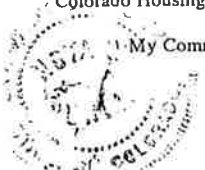


Debbie Rade  
Notary Public

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

Acknowledged before me this 23rd day of SEPTEMBER, 1993, by  
by DAVID W. HERLINGER as EXECUTIVE DIRECTOR and  
by JAMES A. ROBERTS as ASSISTANT SECRETARY of  
Colorado Housing and Finance Authority.

My Commission expires: 3-9-96



Christine R. Polityk  
Notary Public