

**This Instrument Prepared By:**  
**J. Anderson Gass, Attorney**  
**City of Knoxville Law Department**  
**400 Main Street, Suite 699**  
**Knoxville, TN 37902**

**RE: DOCUMENT NO. C-25-0130**

### **RESTRICTIVE COVENANT**

This Agreement, dated the \_\_\_\_ day of \_\_\_\_\_, 2025, is made between **Lumen Flats Knoxville, LLC** (“Borrower”), whose address is 1030 16<sup>TH</sup> Avenue S, Suite 500, Nashville, Knoxville, Tennessee 37212, and the **City of Knoxville**, having its office at the City County Building at Knoxville, Tennessee (“City”).

### **RECITALS**

- A. The City, through its Department of Housing and Neighborhood Development, receives federal funds provided by the U.S. Department of Housing and Urban Development (“HUD”), including Community Development Block Grant (“CDBG”) funding, HOME Investment Partnerships Program (“HOME”) funding, and funding provided through the American Rescue Plan Act of 2021 (“ARP”) for HOME (“HOME-ARP”).
- B. The City must use the CDBG, HOME, and HOME-ARP funding consistent with federal laws, rules, and regulations.
- C. Through its housing rehabilitation program, the City provides loans to rehabilitate housing consistent with the aforementioned federal laws, rules, and regulations (“Loan Program”).
- D. As part of its Loan Program, the City also provides technical and financial assistance to qualified owners for the rehabilitation/construction of property to safe, decent, and sanitary standards.
- E. Borrower is the holder of legal title to certain property situated at 1585 Coleman Road, Knoxville, Tennessee 37909 (“Property”), as more fully described in Exhibit A attached hereto and made a part hereof by reference.
- F. Borrower has applied for a Rental Rehabilitation Loan through the City’s Loan Program to obtain HOME-ARP funding to acquire and rehabilitate/construct the Property.
- G. As a participant in the City’s Loan Program, Borrower will receive loan funds to cover all or part of the cost of rehabilitating/constructing a residential structure(s) on the Property, and, in consideration, Borrower consents to be regulated and restricted by the provisions of the City’s Loan Program.

In consideration of the Property and the mutual covenants contained herein, Borrower and the City agree as follows.

### **TERMS**

Borrower and the City hereby create a restrictive covenant encumbering the Property that will meet the conditions for qualification as affordable housing under the HOME program regulations at 24 C.F.R. § 92.252. More specifically, for the purposes of compliance with 24 C.F.R. § 92.252, this

restrictive covenant limits the use of HOME-assisted rental unit(s) in the Property to affordable rental units for low-income families for a period of 15 years commencing on the date that rehabilitation/construction of all units in the Property is completed. In summary, the HOME-assisted units qualify as affordable housing under 24 C.F.R. § 92.252 only if they comply with all of the following requirements:

- A. They bear rents not greater than the lesser of:
  - (1) The fair market rent for existing housing for comparable units in the area as established by HUD for the Section 8 Existing Housing Program, less an allowance for tenant-paid utilities, or
  - (2) A rent that does not exceed 30% of the adjusted income of a family whose gross income equals 65% of the median income for the area, as determined by HUD, adjusted for the number of bedrooms in the unit, less an allowance for tenant-paid utilities. HUD will provide average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent under this paragraph.
- B. For projects with five or more rental units, or an owner of multiple 1- or 2-unit projects with a total of 5 or more rental units, at least 20% of the rental units are occupied by very-low income families, as defined by the HOME regulations, and have rents that meet one of the following requirements.
  - (1) The rent does not exceed 30% of the gross income of a family whose income equals 50% of the median income for the area, as determined by HUD, adjusted for family size, less an allowance for tenant-paid utilities. However, if the rent determined under this Section B(1) is higher than the applicable rent calculated under Section A, the maximum rent for units is that calculated under Section A.
  - (2) The rent does not exceed 30% of a family's adjusted income. If the unit receives a federal or state project-based rental subsidy and the family pays 30% or less of its adjusted income toward rent, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.
- C. They are occupied only by households that qualify as low-income families, except for temporary noncompliance as allowed by 24 C.F.R. § 92.252(i).
- D. They will remain affordable without regard to the term of any loan, mortgage, repayment of the HOME investment, or transfer of ownership for not less than 15 years beginning after project completion, except that, upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be terminated 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 the termination of low-income affordability. However, the affordability restrictions will be revived according to the original terms if, during the original affordability period, the owner of record before foreclosure or transfer in lieu of foreclosure, or any 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above written.

APPROVED AS TO FORM:

CITY OF KNOXVILLE:

\_\_\_\_\_  
CHARLES W. SWANSON  
DIRECTOR OF LAW

\_\_\_\_\_  
INDYA KINCANNON  
MAYOR

LUMEN FLATS KNOXVILLE, LLC

By: \_\_\_\_\_  
Ben Brewer, Managing Member

STATE OF TENNESSEE  
COUNTY OF KNOX

Before me, a Notary Public in and for the County and State aforesaid, personally appeared **INDYA KINCANNON**, with whom I am personally acquainted and who upon oath acknowledged herself to be Mayor of the City of Knoxville, a municipal corporation organized and existing under the laws of the State of Tennessee, and that she is authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF KNOX

Before me, a Notary Public in and for Knox County, Tennessee, personally appeared **Ben Brewer**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that as the Managing Member of Lumen Flats Knoxville, LLC, the within named bargainor, being authorized to do so, executed the within instrument for the purposes therein contained.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2025.

My commission expires: \_\_\_\_\_ NOTARY PUBLIC

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## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

SITUATED in District 5 of Knox County, Tennessee, and within the 48th Ward of the City of Knoxville, and at the southwest corner of Lonas Drive and Coleman Road and being more particularly bounded and described as follows:

BEGINNING at an iron pin set at the southwest corner of the intersection of Lonas Drive with Coleman Road; thence with the line of Coleman Road South 40 deg. 44 min. East, 201.86 feet to an existing iron pipe; thence with the line of property of Westowne Realty Company South 56 deg. 57 min. West, 199.67 feet to an iron pin set; thence with the line of property of Jack Valentine North 40 deg. 52 min. West, 200.93 feet to an existing iron pin in the southeast line of Lonas Drive; thence with said line North 56 deg. 40 min. East, 200.00 feet to the point of BEGINNING, as surveyed by Bruce McClellan, Surveyor, Maryville, Tennessee, Tennessee No. 696, dated March 26, 1993.

Being the same property conveyed to BURTON A. HALL AND PETER FALK, by Deed from MARY JANE VALENTINE, WIDOW OF ROY H. VALENTINE, dated April 5, 1993, of record in Book 2101 Page 502, in the Register's Office for Knox County, Tennessee.

Also, being the same property conveyed to HERITAGE HOMES FOR SENIORS, A TENNESSEE GENERAL PARTNERSHIP, by Deed from BURTON A. HALL AND PETER FALK, dated August 26, 1993, of record in Book 2116 Page 837, in the Register's Office for Knox County, Tennessee. Reference is hereby made to Correction Deed from BURTON A. HALL AND PETER FALK TO HERITAGE HOME FOR SENIORS, A TENNESSEE GENERAL PARTNERSHIP, dated August 26, 1993, of record in Book 2128 Page 442, in the Register's Office for Knox County.