

## RESTRICTIVE COVENANT AND AGREEMENT

THIS RESTRICTIVE COVENANT AND AGREEMENT (“**Restrictive Covenant**”) is signed on \_\_\_\_\_, 20\_\_ (“**Signing Date**”), but is effective as of the date of its recording (the “**Effective Date**”), is by and among 805 OTTLEY AVENUE LLC, a Colorado limited liability company (the “**Company**”), and the FRUITA HOUSING AUTHORITY, a body corporate and politic of the State of Colorado (the “**Authority**”).

### Recitals

A. The Company owns the real property described in Section 1 of this Restrictive Covenant.

B. The City of Fruita, Colorado (the “**City**”), and the Authority previously entered into a Redevelopment, Financing and AMI Restriction Agreement (the “**Redevelopment Agreement**”) with the Company, whereby the Company agreed to redevelop the Property into a 62-unit multifamily rental housing development (to be known as the “**Oaks**”) specifically intended to provide housing for households earning up to 100% of AMI as defined in Section 2 below; and

C. It was a condition of the Redevelopment Agreement that the Parties enter into this Restrictive Covenant and that the Company record this Restrictive Covenant upon receipt by the Company of the entirety of the Required Contributions or upon receipt by the Company of a Notice of Nonappropriation including a statement directing the Company to record the Restrictive Covenant against the Property to apply to the Predetermined Number of Restricted Units.

D. The Parties desire to enter into this Restrictive Covenant for the purposes of: restricting the use of the Property in accordance with this Restrictive Covenant for a period of [30] years from the issuance of a Certificate of Occupancy from the Mesa County Building Department unless terminated earlier by mutual agreement of the Parties, in writing; to satisfy the conditions set forth in the Redevelopment Agreement; and to subject [62]-units of the Oaks to this Restrictive Covenant.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Company and the Authority agree as follows:

1. Property Subject to Covenant. This Restrictive Covenant applies to the following [\_\_\_] Units (the “**Restricted Units**”):

[DESCRIPTION OF RESTRICTED UNITS]

located at the following real property located in the City of Fruita, Mesa County, Colorado:

[LEGAL DESCRIPTION]

THE OAKS RESTRICTIVE COVENANT AND AGREEMENT

Also known as: 805 W Ottley Avenue, Fruita, Colorado 81521

2. Definitions. In addition to those terms that are defined parenthetically, as used in this Restrictive Covenant:

**“Area Median Income”** or **“AMI”** means the median annual income for Mesa County, Colorado (or such next larger statistical area calculated by HUD that includes the County, if HUD does not calculate the area median income for the County on a distinct basis from other areas), as adjusted for household size, that is calculated and published annually by HUD (or any successor index thereto acceptable to the Authority, in its reasonable discretion).

**“Company”** means 805 Ottley Avenue LLC, and its successors and assigns.

**“County”** means Mesa County, Colorado.

**“Household”** means has the meaning set forth in 24 CFR § 570.3.

**“HUD”** means the U.S. Department of Housing and Urban Development.

**“Property”** means the real property described in Section 1 of this Restrictive Covenant.

**“Qualified Occupant”** means a tenant of a Unit who, at the time of commencement of the occupation of the Unit, (i) meets the income restriction requirements set forth in Section 5 of this Restrictive Covenant; and (ii) occupies a Unit as such person’s primary residence.

**“Restricted Unit”** means those residential units located on the Property identified in Section 1 that are subject to the restrictions set forth in herein.

**“Unit”** means a residential unit located on the Property.

3. Purpose of Occupancy and Rent Restrictions. The purpose of this Restrictive Covenant is to restrict the occupancy of each Restricted Unit in such a fashion as to provide affordably priced housing for Qualified Occupants who, because of their income, may not otherwise be in a position to afford to occupy or lease other similar properties in the City of Fruita. This Restrictive Covenant shall be interpreted and enforced in accordance with this purpose. Units that do not constitute Restricted Units are not subject to the restrictions contained herein.

4. Tenant and Occupancy Restrictions. Throughout the term of this Restrictive Covenant:

A. Each of the Restricted Units shall, at the time of commencement of the lease for such Unit, be rented only to a Household with at least one Qualified Occupant.

B. In the event that the Company is unable, after making reasonable efforts, to find a Qualified Occupant who meets the income restriction requirements set forth in Section 5 of this Restrictive Covenant, to lease a Restricted Unit, the Company may rent said Restricted Unit to an Occupant whose income is above 100% AMI provided that:

- 1) the monthly rental rate does not exceed the Colorado Housing and Finance Authority ("CHFA") limits for Mesa County for the 100% AMI group as published in CHFA's annual Income Limit and Maximum Rent Tables for All Colorado Counties;
- 2) the term of the lease for said Restricted Unit is no longer than twelve months and does not contain an automatic renewal clause; and
- 3) the Company provides to the Authority, upon written request, documentation (including a minimum of one public advertisement and the tenant applications (if any)) that reasonable efforts were made to market the Restricted Unit to Qualified Occupants earning at or below 100% AMI but either no Qualified Occupants meeting the income requirement applied to rent said Restricted Unit or all potential Qualified Occupants who applied to rent said Restricted Unit were not qualified tenants pursuant to the Company's Tenant Selection Plan.

5. Rent Restriction. Throughout the term of this Restrictive Covenant, each Restricted Unit shall be rented only to a Qualified Occupant earning at or less than 100% AMI, except as provided in section 4.B., above, to be used by such Qualified Occupant as their primary residence. The monthly rental rate charged to each Qualified Occupant shall not exceed the Colorado Housing and Finance Authority ("CHFA") limits for Mesa County for the 100% AMI group as published in CHFA's annual Income Limit and Maximum Rent Tables for All Colorado Counties.

6. Additional Lease Restrictions. The Authority and the Company further agree that:

A. Neither the Qualified Occupant, nor any member of the Qualified Occupant's Household inhabiting a Restricted Unit, may sublease all or any portion of the rented Restricted Unit; and

B. A Restricted Unit may not be rented for a term of fewer than 90 days.

All subleases or rentals of a Restricted Unit not in compliance with the requirements of this Section 6 are *void ab initio*, and a violation of this Restrictive Covenant.

7. Preference for Tenants Employed by Employers Operating in the City. The Authority and the Company agree that the Company, in its Tenant Selection Plan, shall include a preference for Qualified Occupants who: (i) are employed at an entity, including but not limited to governmental entities, operating within in the City (the "Employing Entity"); and (ii) work the majority of their working hours in person on location (rather than being employed and working at home) at the property owned by the Employing Entity or an entity owned by the Employing Entity; and (iii) work for the Employing Entity at such business an average of at least 30 hours per week on an annual basis. The Company shall submit its Tenant Selection Plan to the Authority annually for review and approval.

8. Records; Inspection; Monitoring.

A. The Authority may examine, inspect, and copy the Company's records concerning the use and occupancy of the Restricted Units upon reasonable advanced written notice. The Company will submit to the Authority any information, document, or certificate regarding the occupancy and use of the Restricted Units which the Authority reasonably deems to be necessary to confirm the Company's compliance with the provisions of this Restrictive Covenant.

B. The Authority's representatives may enter each of the Restricted Units to determine compliance with this Restrictive Covenant without an inspection warrant or other legal authorization, subject to the following requirements: (i) except in the event of an emergency, entry may be made by the Authority only between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday; and (ii) the Authority shall provide Company with not less than 48 hours' prior written notice (72 hours in the event that the inspection is to be held on a Monday) before entering a Restricted Unit to allow Company to give adequate written notice to the residents of the Restricted Unit. If the Authority complies with these requirements, the Company shall permit the Authority's, as applicable, entry into each Restricted Unit. The Company's compliance with this provision has been met if: the Company (i) gives 24 hour written notice to the tenant of the applicable Restricted Unit; (ii) gives the Authority access to the Restricted Unit at the designated time of the compliance inspection. If Company fails or refuses to comply with the requirements of this Section, or if the occupants of the Restricted Unit refuse the Authority's entry into the Restricted Unit, the Authority shall have the right to obtain access to the Restricted Units in the manner provided by law.

C. The Authority's rights under this Section 8 may also be exercised by such Party's authorized agent.

9. Default; Notice.

A. If the Company fails to comply with this Restrictive Covenant, the Authority may notify the Company by written notice of such violation. Within 45 days of receiving written notice of the violation, the Company shall either correct the default or commence proceedings to cure the default, as applicable. If the Company commences proceedings to cure the default, the Company shall exercise reasonable diligence in completing the correction of the default, while keeping the Authority apprised as to status promptly upon the Authority's written request. If the

Company does not cure the violation in accordance with this section, the Authority may declare a default under this Restrictive Covenant effective on the date of such declaration of default. The Authority may then proceed to enforce this Restrictive Covenant.

B. Concurrently with the issuance of a written notice to Company pursuant to section A of this Section 9, the Authority may also provide a copy of such notice to any lender with a recorded interest in the Property. Such lender may, but shall not be required to, correct the Company's violation of this Restrictive Covenant to the satisfaction of the Authority, as applicable, within the specified time contained in subsection A, above, which time period shall begin on the date the Authority mails the written notice to the lender.

10. The Authority's Power to Enforce. The restrictions, covenants, and limitations created by this Restrictive Covenant are for the benefit of the Authority. Only the Authority may enforce this Restrictive Covenant.

11. Equitable Relief. The Authority may each individually or together enforce this Restrictive Covenant pursuant to an action for specific performance of this Restrictive Covenant. The Authority may independently obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction, and permanent injunction to prevent the Company from taking any action contrary to the terms of this Restrictive Covenant. Any equitable relief provided for in this Section may be sought singly or in combination with such legal remedies as the Authority may be entitled to, either pursuant to the provisions of this Restrictive Covenant or under the laws of the State of Colorado.

12. Waiver; Termination; Modification of Covenant. The restrictions, covenants, and limitations of this Restrictive Covenant may be waived, terminated, or modified only with the written consent of the Authority and the Company. No waiver, modification, or termination pursuant to this subsection A will be effective until the proper instrument is executed and recorded in the office of the Clerk and Recorder of Mesa County, Colorado.

13. Statute of Limitations. The Company hereby waives the benefit of and agrees not to assert in any action brought by the Authority to enforce this Restrictive Covenant any applicable statute of limitation, including, but not limited to, the provisions of Section 38-41-119, C.R.S. If any statute of limitation may lawfully be asserted by the Company in connection with an action brought by the Authority to enforce the terms of this Restrictive Covenant, each day during which any violation of this Restrictive Covenant occurs is to be deemed to be a separate breach of this Restrictive Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

14. Waiver. The failure of the Authority to exercise any of its rights under this Restrictive Covenant shall not be a waiver of those rights. The Authority may waive its rights under this Restrictive Covenant by a signed instrument specifically waiving its rights.

15. Attorney's Fees. If any action is brought in a court of law by any Party concerning the enforcement, interpretation, or construction of this Restrictive Covenant, the prevailing Party,

either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

16. Notices. All notices provided for or required under this Restrictive Covenant must be in writing, signed by the Party giving the notice, and will be deemed properly given when received or two days after being mailed, postage prepaid, certified, return receipt requested, addressed to the Parties hereto at their addresses appearing on the signature pages. Each Party, by written notice to the other Parties, may specify any other address for the receipt of such instruments or communications. E-mail is not a valid method of giving notice under this Restrictive Covenant, unless specifically agreed to in writing by the Party receiving such notice.

17. Recording And Filing; Covenant Running with the Land.

A. This Restrictive Covenant is to be recorded in the real property records of Mesa County, Colorado.

B. The Company and the Authority agree that the regulatory and restrictive covenants contained in this Restrictive Covenant are covenants running with the land and are binding upon the Company, and the Company's successors and assigns, unless this Restrictive Covenant is released and terminated as provided in Section 12 or unless terminated by court order. All requirements of privity of estate are intended to be satisfied, or in the alternative, an equitable servitude is created to ensure that these restrictions run with the land.

18. Applicable Law. This Restrictive Covenant is to be interpreted in accordance with the laws of the State of Colorado without regard to its conflict of laws analysis.

19. Vesting and Term. The Authority's rights and interests under this Restrictive Covenant are vested immediately, and this Restrictive Covenant, and any amendments hereto, are binding and in full force and effect in perpetuity, unless terminated as provided in Section 12.

20. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Restrictive Covenant.

21. Terminology. Wherever applicable, the pronouns in this Restrictive Covenant designating the masculine or neuter apply equally to all genders. Wherever applicable within this Agreement, the singular includes the plural, and the plural includes the singular.

22. Severability. If any provision of this Restrictive Covenant is finally determined to be invalid, illegal, or unenforceable, such determination does not affect the remaining provisions of this Restrictive Covenant.

23. Entire Agreement. This Restrictive Covenant constitutes the entire agreement and understanding between the parties relating to the subject matter of this Restrictive Covenant and supersedes any prior agreement or understanding relating thereto.

24. Binding Effect. This Restrictive Covenant is binding upon and inures to the benefit of Parties, and their successors and assigns.

25. Authority. The execution of this Restrictive Covenant has been approved by the Authority pursuant to Resolution FHA 2025-\_\_\_\_\_, adopted by the Board of Commissioners of the Fruita Housing Authority on May 20, 2025.

DATED: \_\_\_\_\_, 2025

COMPANY:

805 OTTLEY AVENUE LLC, a Colorado limited liability company

By: Headwaters Housing Partners, Managing Member

By: \_\_\_\_\_

Company's Address:

\_\_\_\_\_  
\_\_\_\_\_

FRUITA HOUSING AUTHORITY, a body corporate and politic of the State of Colorado

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Board Secretary

Authority's Address:

325 E. Aspen Ave.  
Fruita, CO 81521



[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_, \_\_\_\_\_, of Headwaters Housing Partners, as Manager of 805 Ottley Avenue LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_, \_\_\_\_\_, of the Fruita Housing Authority, a body corporate and politic of the State of Colorado.

WITNESS my hand and official seal.

Notary Public

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