



## RIGHT OF FIRST REFUSAL

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ , between \_\_\_\_\_ (the Owner), having an address of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_ and the New Hampshire Housing Finance Authority, having an address of 32 Constitution Drive, Bedford, County of Hillsborough and State of New Hampshire (hereinafter referred to as New Hampshire Housing), and the parties agree as follows:

1. The Owner owns \_\_\_\_\_ (hereinafter referred to as the Property). See attachment for legal description.
2. A Qualified Non-Profit is defined as meeting the requirements of the Internal Revenue Code (IRC) Section 42(h)(5)(C).
3. The Owner and its successors and assigns in interest (as may be approved by New Hampshire Housing as per HFA 109.10.B of the Qualified Allocation Plan) are bound to the Low Income Housing Tax Credit (LIHTC) rent and income limits set forth in the Land Use Restriction Agreement (LURA) for the term stated in the LURA (60 years for projects allocated 9% LIHTCs and 30 years for projects allocated 4% LIHTCs with tax-exempt bond financing). If the Owner chooses to sell the Property before the end of the applicable LURA term, the following procedure must be followed:
  - a. The Owner must make a bona fide offer to sell the Property to New Hampshire Housing (the "Initial Offer") for an amount equal to fair market value of the Property as determined by a licensed appraiser selected by the Owner. If New Hampshire Housing disagrees with the initial appraiser's determination of fair market value, New Hampshire Housing may select another appraiser by notifying the Owner within ten (10) days of receipt of the initial appraiser's fair market value determination and shall promptly engage the second appraiser to determine the fair market value of the Property. If New Hampshire Housing fails to appoint its appraiser within thirty (30) days of receipt of the initial appraiser's fair market value determination, the Owner's initial appraisal shall establish fair market value. If New Hampshire Housing engages a second appraiser in accordance with this Section, then the fair market value of the Property shall be the average of the appraisals rendered by each of the two appraisers so selected; provided, however, that if one of the appraisals so rendered shall reflect a fair market value that is more than five

percent (5%) greater or more than five percent (5%) less than the other appraisal so rendered, the two real estate appraisers shall promptly select a third independent appraiser, which appraiser shall establish fair market value hereunder by designating the appraisal of either the Owner or New Hampshire Housing as fair market value. Any appraiser engaged under the terms hereof must be experienced in performing real estate appraisals in New Hampshire on low income housing tax credit properties. In determining fair market value of the Property, the appraisers shall take into consideration the continuing existence of any restrictions on use including restrictions on rents and income of the residents as set forth in any project documents or regulatory agreements for the full remaining term of said agreement. Each party will bear the expense of its own appraiser, and the Owner shall bear fifty percent (50%) and New Hampshire Housing shall bear fifty percent (50%) of the expenses incurred in engaging a third real estate appraiser, if applicable. Notwithstanding the forgoing, the Initial Offer shall not be a valid offer until the appraisal process described above is complete and a fair market value determination for the Property has been made.

- b. Notwithstanding anything contained herein to the contrary, if the Owner disagrees with the fair market value as determined in accordance with Section 3.a, above, then Owner shall promptly notify New Hampshire Housing and then may initiate marketing efforts and solicit bona fide offers from third parties; provided that the offer need not be unconditional to be considered bona fide and the Owner must reimburse New Hampshire Housing for all appraisal costs incurred pursuant to Section 3.a, above. If, within eighteen (18) months of the Owner's rejection of the fair market value, the Owner receives a bona fide offer for the Property with a purchase price in excess of the fair market value determined in Section 3.a, above, then the Owner shall offer the Property to New Hampshire Housing for: (i) substantially the same terms as the offer received pursuant to this Section ("the "Third Party Offer"); or (ii) the Initial Offer. If the Owner makes a Third Party Offer, the Initial Offer shall be deemed extinguished. The Initial Offer or the Third Party Offer, as applicable, shall be referred to below as the "Offer." If the Owner does not receive a bona fide offer within the eighteen (18) month period then, at any time thereafter the Owner desires to sell the Property, it must follow the procedures in Section 3.a, above, and after completing said procedures, it may elect to follow the procedures in Section 3.b herein.
- c. The Offer shall be in writing delivered to New Hampshire Housing. New Hampshire Housing may accept the Offer, in accordance with its terms, by notifying the Owner in writing no later than thirty (30) days of its receipt of the Offer or seven (7) days following its next regularly scheduled board meeting whichever is sooner. If New Hampshire Housing accepts the Offer, then the Owner and New Hampshire Housing shall close the sale of the Property at the offices of New Hampshire Housing within the sooner of the closing date set forth in the Third Party Offer (but not sooner than 30 days following the acceptance) or ninety (90) days after the acceptance of the Offer.

- d. If New Hampshire Housing accepts the Offer, New Hampshire Housing may purchase this Property for its own purposes or it may assign its rights to a Qualified Non-Profit Entity.
- e. If New Hampshire Housing declines the Offer to purchase the Property or to otherwise exercise its right under this ROFR, either for its own purposes or on behalf of another Qualified Non-Profit Entity, the Owner may sell the Property to any third party, which sale shall be bound by the requirements of the LIHTC LURA for the remainder of its term. This Agreement may be assigned by the Owner, subject to the written approval of the New Hampshire Housing, which approval shall not be unreasonably withheld.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Right of First Refusal to be executed by their duly authorized representatives, as of the day and year first written above.

OWNER:

[ \_\_\_\_\_ ]

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

Name:

Title:

New Hampshire Housing:

New Hampshire Housing Finance Authority

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

Name:

Title:

EXHIBIT A  
Legal Description