

[ACOM POLICY 448, ATTACHMENT C,](#)
[AHCCCS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS \(CC7Rs\)](#)

When Recorded Return to:
Arizona Health Care Cost Containment System
701 East Jefferson Street MD650
Phoenix, Arizona 85034
Attn: [NAME], Housing Administrator

[AHCCCS¹ Declaration of Covenants, Conditions and Restrictions \(CC&Rs\)](#)

This Declaration of Covenants, Conditions and Restrictions is entered into this ____ day of _____, 20__ by and between the STATE OF ARIZONA, through the ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (hereinafter “AHCCCS”), a state agency, and [NAME OF ENTITY], a [IDENTIFICATION OF TYPE OF ENTITY] (hereinafter referred to as the “Owner”).

RECITALS

WHEREAS, Owner has applied to AHCCCS to provide [DOLLAR AMOUNT] to Owner for the acquisition, repair or improvement of property for residential housing with certain restrictions (the “Application”); and

WHEREAS, the provisions of the Application require Owner to agree to certain occupancy restrictions as summarized in Addendum 1 attached to this Declaration of Covenants, Conditions and Restrictions as if fully set forth herein; and

WHEREAS, AHCCCS is willing to provide Owner with said funds, in accordance with the terms of the Application and this Declaration of Covenants, Conditions and Restrictions; and

WHEREAS the public filing of this Declaration of Covenants, Conditions and Restrictions is intended to evidence Owner’s agreement to be bound by the restrictions set forth in the Application and this Declaration and to bind any successor in interest to Owner.

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agreed as follows:

PART I: DEFINITIONS

- (1) **Agreement:** means this Declaration of Covenants, Conditions and Restrictions, as it may from time to time be amended. This Declaration of Covenants, Conditions and Restrictions includes and incorporates by reference the application for housing funds submitted by Owner.
- (2) **Extended Use Period:** means the number of years during which the property is subject to this Agreement, as specified in Addendum Number 1 attached hereto.

¹ [Changes are a result of Arizona Laws 2015, Chapter 19, Section 9 \(SB 1480\) enacts that from and after June 30, 2016, the provision of behavioral health services under DBHS in the Department of Health Services is transferred to and shall be administered by the AHCCCS.](#)

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- (3) **Project:** means a site or an entire building, or two or more buildings, together with the site on which the building or buildings is located, that are under common ownership, management, and financing by Owner, as a single undertaking, the acquisition, repair or improvement of which is financed, in whole or in part, with funds provided by AHCCCS (the “Project”). The term “Project” includes all the activities associated with the site and building.
- (4) **Project Completion:** means the later of the date of property acquisition, the date of completion or property rehabilitation, or the date of the issuance of a Certificate of Occupancy for the property, if applicable; or the date specified in Addendum 1.
- (5) **AHCCCS:** means the Arizona Health Care Cost Containment System, an agency of the State of Arizona.
- (6) **Owner:** means [NAME OF ENTITY] as set forth at the beginning of the Agreement, or any successor in title to the property that is the subject of the Agreement.
- (7) **Property:** means the real property legally described in Addendum Number 2 attached hereto.
- (8) **Seriously Mentally Ill Adult:** means a person who has been determined to be seriously mentally ill pursuant to Arizona Revised Statutes Title 36, Chapters 5 and 34.
- (9) **State:** means the State of Arizona.

Part II: Covenants, Conditions and Restrictions

In order to retain its classification as a qualified rental housing project, during the period of time commencing upon project completion and continuing for a period of 25 years, the following restrictions apply to the project located at [ADDRESS OF PROJECT] (the Project) and the property legally described in Addendum Number 2 attached to this declaration (the Property).

1. **Use of Funds.** Owner shall use funds provided by AHCCCS solely for the acquisition, repair or improvement of the Property or facilities located on the Property. All funds provided shall be a lien upon the Property from the date Owner receives the funds.
2. **Notice of Completion.** Owner shall provide AHCCCS with written notice of Project Completion within five (5) days after the date of Project Completion.
3. **Use of Property.** During the extended use period specified herein, Owner will maintain the units in the Project as rental housing and will rent or hold available for rental each unit on a continuous basis.
4. **Tenancy Limitations.** During the extended use period specified herein, the Project shall be used exclusively for housing Seriously Mentally Ill Adults.
5. **Property Standards.** During the extended use period specified herein, the Owner must maintain the premises in the Project in accordance with all applicable federal, state, and local codes, zoning and ordinances.
6. **Monitoring.** During the extended use period specified herein, Owner will provide AHCCCS with access to the Project to conduct on-site inspections of the Project and the Property to determine compliance with these use covenants, condition, and restrictions.
7. **Record Retention.** All pertinent documents, books, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, and other records relating to the Project and

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Property specified herein shall be retained for five years following expiration of this Agreement. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the period of availability specified herein, the records must be retained for five years following the completion of the action and resolution of all issues which arise from it, or for five years following the end of the period of availability, whichever is later.

8. **Inspection and/or Audit of Records.** Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by the State, the State Auditor General, or of their representatives and designees, all pertinent books, documents, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, and other records (hereinafter referred to as "Records") relating to the Project and Property. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by the Owner at the specified office of AHCCCS, the State, the State Auditor general, 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: Remedies

1. **Remedies of AHCCCS and the State.** If Owner breaches any covenant, condition or restriction set forth herein, and if such breach remains uncured for a period of sixty (60) days after notice thereof shall have been given by AHCCCS, AHCCCS shall be entitled, in its sole discretion, to any or all of the following remedies: (i) require repayment of all monies provided by AHCCCS or any other agency of the State or Arizona for the acquisition, repair or improvement of the Project or Property, reduced proportionately by the number of years remaining of the Extended Use Period but not less than fifty percent (50%) of the total amount of funds provided within thirty (30) days' written demand ; (ii) if repayment is not timely made, pursue a forfeiture of Owner's interest in the Project and Property by judicial foreclosure; (iii) specific performance to compel Owner's performance; (iv) apply for the appointment of a receiver to assume operation of the Project; (v) apply for an injunction to enjoin Owner's actions or inaction; (vi) seek such other and further relief as may be authorized by law or in equity. In the event of a breach by Owner that is not cured after sixty (60) days, AHCCCS shall be entitled to recover all reasonable attorneys' fees, costs and expert witness fees incurred thereafter and, in the event either party files suit to enforce any claim arising out of this Agreement, the party prevailing in such action shall be entitled to an award for all reasonable attorneys' fees, costs and expert witness fees incurred in the action.
2. **Remedies are Cumulative.** Each right, power and remedy of AHCCCS provided for in this Agreement, 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 Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by ADS or the State or any one or more of the rights, powers or remedies provided for in this Agreement or

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now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by AHCCCS of any or all such other rights, powers or remedies.

3. **Remedies of Other Parties.** The covenants, conditions, and restrictions set forth in this Agreement also shall inure to the benefit or, and may be judicially enforced against Owner by affected seriously mentally ill adults. Any party that prevails in such judicial action shall be entitled to reimbursement of its reasonable attorneys' fees, costs, and expert witness fees incurred in such action.

Part IV: Representations and Warranties of Owner

1. **Valid Execution.** Owner represents and warrants that Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (I.) to enter into this Agreement, (ii.) to carry out Owner's obligations as described in this Agreement, and (iii.) to assume responsibility for compliance with all applicable federal and state rules and regulations.
2. **No Conflict or Contractual Violation.** To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:
 1. Will not violate any contractual covenants or restrictions between Owner and any third party or any such covenants or restrictions affecting the property;
 2. Will not conflict with any of the instruments that create or establish Owner's authority;
 3. Will not conflict with any applicable public or private restrictions;
 4. Do not require any consent or approval of any public or private authority which has not already been obtained; and
 5. Are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A.) Owner, without regard to capacity, (B.) any person with whom Owner may be jointly or severally liable, or (C.) the property or any part thereof.
3. **No Litigation.** No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against 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 any portion thereof, or which could in any way interfere with the consummation of this Agreement.
4. **No Bankruptcy.** There is no pending or, to the best of Owner's knowledge, threatened against 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.** 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 extended use period without the prior written consent of AHCCCS.

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6. **Compliance with Rules, Regulations and Statutes.** At all times, Owner shall comply with all rules, regulations and statutes applicable to the Project and the Property.
7. **Indemnification.** Owner agrees to indemnify and hold harmless AHCCCS from and against all liabilities, losses, claims, damages, demands, suits, liens, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by AHCCCS as a result of any material inaccuracy in any of the representations and warranties contained in this Part IV.

Miscellaneous

1. **Binding Effect; Covenants Running With the Land.** During the extended use period specified herein, this Agreement and covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land for the benefit of AHCCCS 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 land, but shall include a leasehold interest in land, this Agreement 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 extended use period 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 an 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. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or re-filed in such places as may be requested by AHCCCS, and shall pay or cause to paid all recording, filing, or other taxes, fees and charges to establish, preserve and protect the ability of AHCCCS to enforce this Agreement.
2. **State or Other State Agencies.** All references to AHCCCS shall include the State of Arizona or other state agencies or departments as may be reasonable or necessary for the performance of the obligations of AHCCCS under this Agreement or the enforcement of rights provided in this Agreement. In the event some other agency of the State of Arizona assumes operation of the program or programs applicable to this Agreement, such other agency may assume all rights and obligations of AHCCCS by notice to Owner and recordation of a notice of succession that identifies the successor agency or department.
3. **Amendments.** This Agreement shall not be amended or modified except by written instrument signed by each party hereto and recorded or filed as this Agreement was recorded and/or filed.

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4. **Condemnation.** In the event of condemnation of the property, Owner agrees to provide other, similar property as determined by AHCCCS to be subject to the remainder of the extended use period.
5. **Notices.** All notices required or permitted to be given pursuant to this Agreement 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:

If to AHCCCS:
Arizona Health Care Cost Containment System
701 East Jefferson Street,
Phoenix, Arizona 85034

If to Owner:
[NAME]
[ADDRESS]

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

6. **Entire Agreement.** This Agreement, together with the other documents executed in conjunction with this Agreement, contains the entire understanding between the parties hereto with respect to the subject matter hereof.
7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
8. **Severability.** This Agreement 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 Agreement or the application thereof to any person or circumstances shall be held invalid or unenforceable, the remainder of this Agreement 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.
9. **Indemnification.** Owner will protect, defend, indemnify, and hold harmless AHCCCS and the State 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 Agreement. 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 AHCCCS and/or the State in the defense or handling of said suits, judgments, liens and claims and all attorneys' fees and investigation expenses incurred by AHCCCS and/or the State in enforcing or obtaining compliance with the provisions of this Agreement.

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10. **Section Titles.** Section titles are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the test.
11. **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 property.
12. **Owner Agreement to Record.** Owner agrees that this Agreement will be recorded in the public records of the County where the property described above is located. Owner will bear the responsibility for all costs of such recording.

Owner Representative Signature

Date

SUBSCRIBED AND SWORN to before me this ____ DAY OF _____, 2015.

Notary Public

My Commission Expires:

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ADDENDUM NUMBER 1

This **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (Declaration) includes and incorporates by reference the application for housing funds submitted to the State of Arizona, dated, [**DATE**] for residential housing located **at [FULL ADDRESS] assigned** (the Application)

The commencement date for the ___-year extended use period shall be the date of recordation of this **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS.**

The Application provides Owner will maintain the residence for a period of _____ () years from the date of recordation of this Declaration as residential housing for seriously mentally ill adults under programs administered by Arizona Health Care Cost Containment System, an agency of the State of Arizona, or its successor.

The Declaration is intended to bind owner, its successors and the real property described in Addendum 2 for the period designated in Attachment 1 unless the obligations and restrictions arising from the Declaration are waived, modified or released by a written instrument, executed by an authorized representative of AHCCCS, or its successor and an authorized representative of Owner or its successor and each signature is acknowledged before a notary public or comparable officer.

**AHCCCS ACQUISITION/ RENOVATION/NEW CONSTRUCTION
 COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R)
 REQUIREMENT TABLE**

Activity	State Investment Per Unit*	Minimum Period of Covenants, Conditions and Restrictions (CC&Rs)
Renovation only	Between \$10,000 - \$40,000	Ten (10) years (new or extended)
	More than \$40,000	Fifteen (15) years (new or extended)
Existing housing or new construction or acquisition of unit(s) (initial certificate of occupancy issued within twelve (12) months of State assistance)	Regardless of the dollar amount	Twenty-five (25) years

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ADDENDUM NUMBER 2

This legal description for the subject property of this Declaration of Covenants, Conditions, and Restriction is:

[LEGAL DESCRIPTION]

[TAX PARCEL NUMBER]

[STREET ADDRESS]

PUBLIC COMMENT UNTIL 10/19/16