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THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this "Agreement"), DATED August 27, 2001 by Pershing Pointe Townhomes Phase III LP and its successors (The "Owner"), and Wyoming Community Development Authority (the "Authority") is given as a condition precedent to the allocation of low-income housing tax credits by the Authority together with any successor to its rights, duties and obligations.

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of a low-income rental housing development located on lands in the City of CHEYENNE, County of LARAMIE, State of Wyoming, more particularly described in Exhibit "A" hereto, known as or to be known as Pershing Pointe Townhomes Phase III (the "Project"); and

WHEREAS, the Authority has been designated by the Governor of the State of Wyoming as the housing credit agency for the State of Wyoming for the allocation of low-income housing tax credits (the "Credit"); and

WHEREAS, the Owner has applied to the Authority for an allocation of Credit to the Project in an amount not to exceed \$398,173.00 low-income housing tax credits; and

WHEREAS the Owner has represented to the Authority in Owner's Low-Income Housing Tax Credit Application (the "Application") that Owner shall lease 20% of the units in the Project to individuals or families whose income is 50% or less of the area median gross income (including adjustments for family size) and with the rent restricted, all as determined in accordance with Section 42 of the Internal Revenue Code ("Low-Income Tenants"); and

WHEREAS, the Authority has determined the Project would support a Credit allocation in an amount not to exceed \$398,173.00; and

WHEREAS, the Owner has represented to the Authority in Owner's Application that it will impose additional rent restrictions or will covenant to maintain the Section 42 rent and income restrictions for an additional period of time as set out in Section 5 of this Agreement (WCDA Occupancy Restrictions); and

WHEREAS, the Internal Revenue Code requires as a condition precedent to the allocation of the Credit, that the Owner execute, deliver and record in the official land deed records of the county in which the Project is located this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code and the WCDA Occupancy Restrictions found in Section 5 hereof by regulating and restricting the use and occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer 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 Land for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of the other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

#### SECTION 1 – DEFINITIONS

All words and phrases defined in Section 42 of the Internal Revenue Code and by Treasury or HUD regulations pertaining thereto shall have the same meanings in this Agreement.

#### SECTION 2 – RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

(a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Authority an executed original of the recorded Agreement showing the date, deed book and page numbers of record. The Owner agrees that the Authority will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until the Authority has received the recorded executed original of this Agreement.

(b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project Land during the term of this Agreement, that the Agreement and the covenants and restrictions set forth in the Agreement regulating and restricting the use, occupancy and transfer of the Project Land and the Project (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the term of this Agreement, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project Land, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner and the benefits shall inure to the Authority and any past, present or prospective tenant of the Project and its respective successor and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Wyoming to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges 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. For the longer of the period this Credit is claimed or 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 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.

(c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

#### SECTION 3 – REPRESENTATION, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants and warrants as follows:

(a) The Owner (i) is a Limited Partnership duly organized under the laws of the State of Ohio and is qualified to transact business under the laws of the State of Wyoming, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision or law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a part or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, and Loan Documents relating to the Project or other permitted encumbrances).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

(e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations.

(f) Each unit in the Project contains complete facilities for living, sleeping, eating cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.

(g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42 (g) of the Code.

(h) The Owner agrees to comply fully with the requirement of the Fair Housing Act as it may from time to time be amended.

(i) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy.

(j) Subject to the requirement of Section 42 of the Code and the Agreement, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion

of the Project. The Owner agrees that the Authority may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

(k) The Owner agrees to notify the Authority in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

(l) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.

(m) The Owner represents, warrants and agrees that 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 effort 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 of this Agreement.

(n) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that 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 requirements in conflict herewith.

#### SECTION 4 – INCOME RESTRICTIONS; RENTAL RESTRICTION

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restrictions") that:

(a) At least 20% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 50% or less of area median income.

(b) The determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually in a manner consistent with the methods used under HUD's Section 8 Program.

#### SECTION 5 – WCDA OCCUPANCY RESTRICTIONS

This Section is intended to make enforceable those extended use or deeper targeting covenants which the Owner represented to the Authority in its Application.

The Owner represents, warrants and covenants throughout the term of this agreement that:

(a) Throughout the term of this Agreement at least 60 units or One Hundred percent (100%) of the residential units shall be both rent-restricted and occupied by individuals or families whose income is forty-five percent (45%) or less of such median gross income. 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), all as determined in accordance with Section 42 (g) of the Code.

(b) The Owner will extend the term of the Section 42 income and rental restriction for 15 years after the close of the initial 15 year compliance period.

(c) Regardless of any provision in Section 6 of this Agreement to the contrary, the WCDA Occupancy Restrictions agreed to in this Section shall remain in place for a period of 50 years except in the event that:

- (1) the Owner loses title to the property due to foreclosure or deed in lieu of foreclosure
- (2) a right of first refusal is exercised by a qualified low-income tenant to purchase the building(s) as provided under Section 42 (i)(7) of the Code

#### SECTION 6 – TERM OF AGREEMENT

(a) Except as hereinafter provided, this Agreement and the Section 42 Occupancy Restrictions specified herein shall commence with the first day in the Project period on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the close of the initial compliance period.

(b) Notwithstanding subsection (a) above, the Owner shall comply with the requirements of Section 42 relating to the extended use period for an additional 15 years, provided, however, the extended use period for any building which is part of this Project shall terminate:

- (1) On the date the building is acquired by foreclosure or deed in lieu of foreclosure, unless the IRS determines that the foreclosure is part of a plan to avoid maintaining the Project as a low income project: or
- (2) On the last day of the compliance period if the Owner has properly requested that the Authority assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is part of the Project and the Authority is unable within one year to present a qualified contract.
- (3) Upon the exercise of a right of first refusal of a qualified low-income tenant to purchase the building(s) as provided under Section 42 (i)(7) of the Code.

(c) Notwithstanding subsection (b) above, the Section 42 rent requirement shall continue for a period of three years following the termination of the extended use requirement pursuant to the procedures specified in the subsection (b) above. During such three year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit 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.

(d) The Owner has agreed to WCDA Occupancy Restrictions as reflected in Section 5 of this Agreement, and the term for the optional restrictions shall not terminate until the time period agreed upon.

#### SECTION 7 – ENFORCEMENT OF WCDA OCCUPANCY RESTRICTIONS

(a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority, to inspect any books and records of the Owner regarding the Project with respect to the rentals and incomes of Low-Income Tenants which

pertain to compliance with the WCDA Occupancy Restrictions specified in any section of this Agreement.

(b) The Owner shall submit any other information, documents, or certifications requested by the Authority, which the Authority shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the WCDA Occupancy Restrictions specified in this Agreement.

#### SECTION 8 – ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS

(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 applicable regulations or this Agreement. Moreover, 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 the Code and 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 Department of Housing and Urban Development from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Owner acknowledges that the primary purpose for 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 applicable regulations, AND BY REASON THEREOF, THE OWNER, IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS FOR THIS PROJECT, HEREBY AGREES AND CONSENTS THAT THE AUTHORITY AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Authority and all persons interested in Project compliance under Section 42 of the Code and the applicable regulations.

(d) The Owner agrees to comply with Section 42(m)(10)(B)(iii) regarding monitoring compliance and the WCDA Monitoring Procedures which includes but is not limited to: recordkeeping and retention provisions, annual certification and review provisions, and auditing provisions, and provisions for notifying owners and the Internal Revenue Service of non-compliance or lack of certification.

An annual compliance-monitoring fee equal to \$35.00 per unit will be charged for each year of the compliance period.

SECTION 9 – MISCELLANEOUS

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

(b) Notice. 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:

WCDA  
Attn: Low-Income Housing Tax Credit Program  
P.O. Box 634  
Casper, WY 82602

To the Owner:

Pershing Pointe Townhomes Phase III LP  
7800 East Kemper Road  
Cincinnati, OH 45249

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

(c) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code, any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.

(d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar as Section 42 requires otherwise (relating to the three-year vacancy control during the extended use period).

(e) Governing Law. This Agreement shall be governed by the laws of the State of Wyoming and, where applicable, the laws of the United States of America.

(f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed by its duly authorized representative(s), as of the day and year first written above.

OWNER: Pershing Pointe Townhomes Phase III LP  
By: W.O. Brisben Companies South, Inc., General Partner  
BY: \_\_\_\_\_  
NAME: William O. Brisben  
TITLE: President

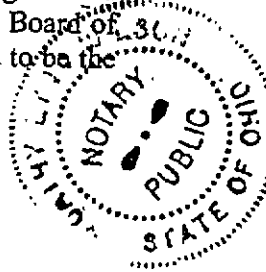


ATTEST:

State of Ohio

County of Hamilton

On this 27th day of August, 2001, before me personally appeared William O. Brisben to me personally known, who, being by me duly sworn, did say that he is the President of W.O. Brisben Companies South, Inc., GP and that said instrument was signed and sealed on behalf of said W.O. Brisben Companies South, Inc. by authority of its Board of Directors and said William O. Brisben acknowledged said instrument to be the free act and deed of said W.O. Brisben Companies South, Inc. My commission expires on the 2nd day of MARCH, 2005.



Notary Public

*Cathy L. Wilson*

Cathy L. Wilson  
Notary Public, State of Ohio  
My Commission Expires: March 2, 2005  
Recorded in Warren Co.

AUTHORITY: Wyoming Community Development Authority

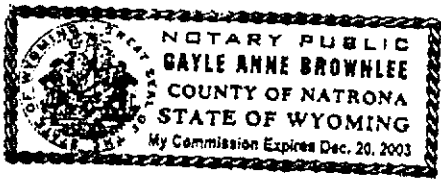


By: *George D. Axlund*  
George D. Axlund, Executive Director

On this 12th day of June, 2001, before me personally appeared George D. Axlund to me personally known, who, being by me duly sworn, did say that he is the Executive Director of Wyoming Community Development Authority and that said instrument was signed and sealed on behalf of said Wyoming Community Development Authority by authority of its Board of Directors and said George D. Axlund acknowledged said instrument to be the free act and deed of said Wyoming Community Development Authority

My commission expires on the 20th day of Dec, 2003

*Gayle Anne Brownlee*  
Notary Public



RECORDED 8/28/2001 AT 1:13 PM REC# 302606 JK# 1607 PG# 580  
DEBRA K. LATHROP, CLERK OF LARAMIE COUNTY, WY PAGE 8 OF 9

Attachment "A"

Attach legal description.

## LAND DESCRIPTION

?A portion of Lot 1, Block 1, Westcor Addition, a subdivision situated in a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  and a portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34 and a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35, all in Township 14 North, Range 66 West of the 6th P.M., Laramie County, Wyoming, more particularly described as follows:

Beginning at the northeast corner of said Lot 1, being the point of intersection of the west right-of-way line of Taft Avenue and the south right-of-way line of Pershing Boulevard; thence on an azimuth of 180°17'32", along said west right-of-way line of Taft Avenue, a distance of 449.88 feet; thence southwesterly, a distance of 577.19 feet along a curve concave to the northwest, having a radius of 1000.00 feet and a central angle of 33°04'15" (chord azimuth of 196°49'40", a chord distance of 569.22 feet); thence on an azimuth of 213°21'47" along said west right-of-way line, a distance of a distance of 63.49 feet to the TRUE POINT OF BEGINNING; thence on an azimuth of 301°24'57", a distance of 70.00 feet; thence on an azimuth of 272°43'58", a distance of 52.09 feet; thence on an azimuth of 301°24'57", a distance of 100.00 feet; thence on an azimuth of 22°55'10", a distance of 331.36 feet; thence on an azimuth of 267°46'20", a distance of 195.00 feet; thence on an azimuth of 342°19'19", a distance of 80.00 feet; thence on an azimuth of 270°00'00", a distance of 32.00 feet; thence on an azimuth of 00°00'00", a distance of 75.00 feet; thence on an azimuth of 269°54'48", a distance of 93.03 feet to a point on the west line of said Section 35; thence on an azimuth of 180°17'32" along the west line of said Section 35, a distance of 757.97 feet to the north 1/16 corner common to said Sections 34 and 35; thence on an azimuth of 90°16'02" along the north 1/16 line of said Section 35; also being the north line of Grandview Park, Sixth Filing, a distance of 271.63 feet to the west right-of-way of Taft Avenue; thence on an azimuth of 33°21'47" along the west right-of-way of Taft Avenue, a distance of 262.72 feet to the TRUE POINT OF BEGINNING. Containing 4.71 acres, more or less.

RECORDED 8/28/2001 AT 1:13 PM REC# 302606 K# 1607 PG# 581  
DEBRA K. LATHROP, CLERK OF LARAMIE COUNTY, WY PAGE 9 OF 9