

RESTRICTIVE COVENANT AND AGREEMENT

THIS RESTRICTIVE COVENANT AND AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__ ("Effective Date"), by and between the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation (hereinafter "City"), and _____ (hereinafter "Owner").

WHEREAS, on October 19, 2021, by Ordinance No. 1816, Series 2021, the City adopted the 2021 International Energy Conservation Code ("2021 IECC"), with certain amendments, inclusive of Appendix RC, Zero Energy Ready Residential Building Provisions ("Appendix RC"), which provides requirements for residential buildings intended to result in net zero energy consumption over the course of a year; and

WHEREAS, on April 5, 2022, by Ordinance No. 1825, Series 2022, the City authorized building permit applicants meeting certain criteria to request waivers from compliance with Appendix RC for major structural repairs or rebuilding of residences that sustained fire damage during the Marshall Fire, not consisting solely of smoke or ash damage, that rendered the residence uninhabitable; and

WHEREAS, Owner is the owner of real property located at _____, Louisville, Colorado, as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Owner has applied for and received a permit to build a _____ residential structure on the Property (the "Project"); and

WHEREAS, neither the Owner nor the Project meets the criteria set forth in Ordinance No. 1825, Series 2022, and thus the Project must be constructed in accordance with Appendix RC; and

WHEREAS, pursuant to Appendix RC, all new residential buildings must be designed to achieve a Energy Rating Index ("ERI") zero energy score; and

WHEREAS, compliance may be achieved through (i) entrance into a contract with a qualified community renewable energy facility (CREF) that allocates bill credits to the rated home, or a renewable energy purchase contract or lease (REPC), for a duration of not less fifteen (15) years, with a facility that generates photovoltaic, thermal, geothermal, or wind energy (each, a "Renewable Source"), or (ii) installation of on-site Renewable Source power production achieving the ERI value required under Appendix RC; and

WHEREAS, Owner has elected to achieve compliance through entrance into an REPC, a copy of which agreement has been filed with the City; and

WHEREAS, this Agreement is intended to ensure the Property remains in compliance with Appendix RC for the full term of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Restrictive Covenant. The Owner shall ensure the Property remains compliant with the ERI value requirements of Appendix RC continuously at all times during the Term (defined below) of this Agreement. Owner shall notify the City immediately if, for any reason, the REPC affecting the Property terminates or expires during the Term of this Agreement. Upon such termination or expiration, the Owner shall either (i) execute a new REPC or CREF meeting the ERI value requirements of Appendix RC and provide an executed copy to the City within ten (10) days' of such termination, unless a longer period is designated by the City Manager in writing, or (ii) demonstrate to the City's satisfaction, by documentation and City inspection, that there has been installed on the Property on-site Renewable Source power production achieving the ERI value required under Appendix RC, thus eliminating the necessity of an REPC or CREF.

2. Changes in Ownership. The Owner shall notify the City immediately upon offering the Property for sale at such time as the Property (i) has been listed on the Multiple Listing Service (MLS) or similar service, or (ii) has otherwise been offered for sale to any potential purchaser. The Owner shall provide contact information for any new owner of the Property immediately upon the closing of the purchase and sale, or any other conveyance, of the Property to a new owner.

3. Term. The term of this Agreement, inclusive of all of its terms, covenants, agreements, restrictions and conditions, shall commence on the Effective Date, and shall continue for until (i) the date on which fifteen (15) years have elapsed from the Effective Date, or (ii) the date on which the City notifies the Owner in writing that the City is satisfied that there has been installed on the Property on-site Renewable Source power production achieving the ERI value required under Appendix RC, whichever date comes first (the "Term").

4. Breach. Failure of Owner to comply with Section 1 of this Agreement shall constitute a material breach upon which the City may exercise any and all remedies available to the City by law or in equity, and a violation of the Louisville Municipal Code ("LMC") punishable in accordance with LMC § 15.18.070, as may be amended from time to time, or such other provisions of the City Code authorizing penalties for violations of City ordinances and City-adopted codes. The City shall have any and all remedies set forth in this Agreement and at law and in equity to enforce the terms and conditions of this Agreement, which remedies may be exercised cumulatively.

5. Covenants Run with Land. The terms, covenants, agreements, restrictions and conditions in this Agreement shall be construed as covenants running with the Property. Each and every one of the benefits, burdens, terms, covenants, agreements and conditions contained in this Agreement shall inure to the benefit of and be binding upon the Owner and each successive owner of all or a portion of the Property, and each person having an interest therein derived through any owner thereof.

6. Recording. This Agreement shall be recorded in the office of the Boulder County Clerk and Recorder, State of Colorado, in order to put prospective purchasers of the Property or other interested parties, on notice of its terms. At the end of the Term, the then-owner of record may request that the City record a notice of termination of this Agreement in the Boulder County property records.

7. Owner Representations. The Owner represents that Owner is the owner of record of the Property, and that the Owner has full right and authority to enter into this Agreement and bind the Property, the Owner, and the Owner's successors, heirs, and assigns to the terms, covenants, agreements, restrictions and conditions in this Agreement.

8. **OWNER AGREES TO ADVISE ANY POTENTIAL PURCHASER OF THE PROPERTY OF THE RESTRICTIONS AND REQUIREMENTS STATED HEREIN.**

9. Entire Agreement. This Agreement is the entire agreement between the City and Owner, and may be amended only by written instrument subsequently executed by the City and Owner and recorded by the City.

10. Severability. In the event any provision in this Agreement is determined invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties have entered into this Restrictive Covenant and Agreement on the date first above written.

CITY OF LOUISVILLE

By: _____
Jeff Durbin, City Manager

ATTEST:

Meredyth Muth, City Clerk

OWNER:

By:_____

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF BOULDER)

The above and foregoing signature of _____ was subscribed and sworn to before me this ____ day of _____, 20__.

Witness my hand and official seal.

(SEAL)

Notary Public

My commission expires on: _____

EXHIBIT A
Legal Description

Exhibit B
Means of Compliance with Appendix RC