

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

---

Frost Brown Todd LLC  
400 West Market Street, Suite 3200  
Louisville, Kentucky 40202  
Attn: Laura Theilmann

-----Space Above This Line for Recorder's Use-----

**LAND USE RESTRICTION AGREEMENT**

By and Among

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**  
as Issuer

**PSG VESTA DERBY OAKS LLC**  
as Borrower

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION**  
as Trustee

Relating to

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
INDUSTRIAL BUILDING REVENUE BONDS  
(VESTA DERBY OAKS PROJECT)**

**\$ \_\_,000,000 Series 2022A  
\$ \_\_,000,000 Taxable Series 2022B**

Dated as of \_\_\_\_\_ 1, 2022

**TABLE OF CONTENTS**

	Page
RECITALS .....	1
SECTION 1. Definitions .....	2
SECTION 2. Number and Gender.....	4
SECTION 3. Headings .....	4
SECTION 4. Construction.....	5
SECTION 5. Benefit.....	5
SECTION 6. Covenant with Respect to Tax Status of the Series 2022A Bonds. ....	5
SECTION 7. Qualified Residential Rental Project Requirements.....	5
SECTION 8. Transfer Restrictions.....	9
SECTION 9. Certification to Secretary.....	9
SECTION 10. Enforcement.....	9
SECTION 11. Violations.....	10
SECTION 12. Agent of the Issuer and the Trustee; No Duty of Issuer to Monitor Compliance.....	11
SECTION 13. Amendment.....	11
SECTION 14. Severability .....	12
SECTION 15. Notices .....	12
SECTION 16. Governing Law .....	12
SECTION 17. Termination.....	13
SECTION 18. Post-Defeasance or Redemption.....	13
SECTION 19. Indemnification.....	14
SECTION 20. Recordation.....	14
SECTION 21. Covenants to Run with the Land; Successors Bound. ....	15
SECTION 22. No Conflict with Other Documents .....	15
SECTION 23. Non-Liability of Issuer.....	15
SECTION 24. Multiple Counterparts.....	15
EXHIBIT A Description of Project Site.....	A-1

## LAND USE RESTRICTION AGREEMENT

**THIS LAND USE RESTRICTION AGREEMENT** (the “Agreement”) is made as of \_\_\_\_\_ 1, 2022 by and among **PSG VESTA DERBY OAKS LLC**, a Delaware limited liability company (the “Borrower”), the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** (together with its successors and assigns, the “Issuer”), a political subdivision of the Commonwealth of Kentucky (the “Commonwealth”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION** (the “Trustee”), in connection with the Issuer’s \$\_\_\_\_,000,000 aggregate principal amount Industrial Building Revenue Bonds (Vesta Derby Oaks Project), Series 2022A (the “Series 2022A Bonds”) and its \$\_\_\_\_,000,000 aggregate principal amount Industrial Building Revenue Bonds (Vesta Derby Oaks Project), Taxable Series 2022B (the “Series 2022B Bonds” and, together with the Series 2022A Bonds, the “Bonds”), to be issued pursuant to (i) the Trust Indenture dated as of \_\_\_\_\_ 1, 2022 between the Issuer and the Trustee (the “Indenture”), (ii) the Loan Agreement dated as of \_\_\_\_\_ 1, 2022 between the Issuer and the Borrower (the “Loan Agreement”); and (iii) the Tax Compliance Certificate dated \_\_\_\_\_ \_\_, 2022 between the Issuer and the Borrower (the “Tax Compliance Certificate”).

### RECITALS

**WHEREAS**, the Borrower will be the record owner of a multi-family residential rental project located at 3237 Utah Avenue, Louisville Kentucky 40215, known as Vesta Derby Oaks as described in Exhibit A (the land together with the buildings to be constructed thereon referred to hereinafter as the “Real Estate”); and

**WHEREAS**, the Borrower is intended to be or shall be treated by the parties as the owner of the Real Estate for federal tax purposes; and

**WHEREAS**, the Borrower intends to operate the Real Estate as a multi-family residential rental apartments project that will comprise 418 residential units (the “Project”) and has agreed to utilize a portion of the Project to provide rental housing to low or moderate income individuals at low or moderate rental amounts; and

**WHEREAS**, a portion of the costs of the acquisition and renovation of the Real Estate and the Project will be financed by a loan by the Issuer to the Borrower (the “Loan”) made pursuant to the Loan Agreement and evidenced by a promissory note as described in more detail in the Loan Agreement (the “Note”); and

**WHEREAS**, the Loan will be funded from proceeds of the sale of the Bonds; and

**WHEREAS**, interest on the Series 2022A Bonds is and will remain excludable from gross income for federal income tax purposes, provided, among other things, that the Project is treated as a “qualified residential rental project” under, and continuously complies with the requirements of, Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”) and the applicable Treasury Regulations (“Regulations”) throughout the Qualified Project Period; and

**WHEREAS**, the Project’s compliance with the requirements of Section 145(d) of the Code and the applicable Regulations throughout the Qualified Project Period and the Series 2022A Bonds’ treatment as “qualified 501(c)(3) bonds” under Section 145 of the Code is in large part within the control of the Borrower; and

**WHEREAS**, Revenue Procedure 96-32, 1996-1 C.B. 717 (“Rev. Proc. 96-32”), sets forth a safe harbor under which an organization that provides low-income housing will be considered charitable

because it relieves the poor and distressed as described in Treas. Reg. § 1.501(c)(3)-1(d)(2) (the “Low-Income Safe Harbors”); and

**WHEREAS**, the Issuer is unwilling to issue the Bonds unless the Borrower shall, by agreeing to this Agreement, consent to be regulated by the Issuer to preserve the exclusion of interest on the Series 2022A Bonds from gross income under Section 103(a) of the Code; and

**WHEREAS**, the Borrower’s compliance shall be required throughout the entire term of the Qualified Project Period to preserve the exclusion of interest on the Series 2022A Bonds from gross income under Section 103(a) of the Code.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter set forth, and of other good and valuable consideration, the Issuer, the Borrower and the Trustee agree as follows:

**SECTION 1. Definitions.**

In addition to words and terms defined elsewhere in this Agreement, the following words and terms used in this Agreement shall have the following meanings, unless some other meaning is plainly intended, and any terms not defined in this Agreement shall have the same meaning as such terms are defined in the Indenture, the Loan Agreement or in Sections 145 and 142 of the Code and the applicable Regulations:

“Act” means Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (“KRS”).

“Assumption Agreement” means an agreement or undertaking by any transferee, pursuant to a Transfer, to assume the obligations and duties of the Borrower described in this Agreement and the Financing Agreements.

“Available Units” means Residential Rental Units that are actually occupied or that are unoccupied and have been leased at least once after first becoming available for occupancy, provided that (a) in the case of an acquisition of an existing facility for the purpose of establishing or continuing a qualified residential rental project under Section 142(d) of the Code, a Residential Rental Unit that is unoccupied on the later of (i) the date such facility is acquired or (ii) the issue date of the first issue of Qualified 142(d) Bonds or Qualified 501(c)(3) Bonds, as applicable, financing the acquisition of such facility is not an Available Unit and does not become an Available Unit until it has been leased for the first time after such date, and (b) a Residential Rental Unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been leased for the first time after such renovations are completed.

“Bond Counsel” means (i) Frost Brown Todd LLC or (ii) any nationally recognized bond counsel experienced in municipal finance and, particularly, in the issuance of debt the interest on which is excludable from gross income for federal income tax purposes, as applicable.

“Certification of Income” means a certification, including all necessary information and documentation, to substantiate the amount of income of all residents of a Residential Rental Unit, given by a prospective or current Qualified Tenant and Safe Harbor Tenant.

“Financing Agreements” include the Indenture, the Loan Agreement and the Tax Compliance Certificate.

“Low and Moderate Income” means income that does not exceed 60% of the area median gross income, with appropriate adjustments to income level made for family size, as determined in a manner consistent with the determinations of lower income families and area median gross income, all as made in accordance with and subject to the requirements of Section 142(d)(2)(B) of the Code. For these purposes, income shall be treated as not exceeding 60% of the area median gross income, with appropriate adjustments to income level made for family size, if the relevant individual’s or family’s adjusted income (computed in the manner described in Regulation § 1.167(k)-3(b)(3) prior to its removal by T.D. 8474, 1993-1 C.B. 242) does not exceed 60% of the applicable area median gross income.

“Occupancy Standards” means the requirement that at least [40% of the Available Units] must be actually occupied by (or treated as occupied by, as provided herein) Qualified Tenants and at least 75% of the Available Units must be actually occupied by (or treated as occupied by, as provided herein) Safe Harbor Income Tenants. An Available Unit shall be treated as “occupied” by a Qualified Tenant or Safe Harbor Tenant during the applicable tenancy for purposes of the Occupancy Standards if the tenant of such Unit was a Qualified Tenant or Safe Harbor Tenant at the commencement of such tenant’s actual occupancy of the Available Unit, even though such tenant ceases to be a Qualified Tenant or Safe Harbor Tenant because such tenant ceases to have Low and Moderate Income or satisfy the Low-Income Safe Harbors, provided that the second sentence of paragraph (o) of Section 7 below does not apply to such tenant. Moreover, if an Available Unit vacated by a Qualified Tenant or Safe Harbor Tenant was actually occupied by a Qualified Tenant or Safe Harbor Tenant at the commencement of such Qualified Tenant’s or Safe Harbor Tenant’s occupancy of such Unit, such Available Unit shall be treated as occupied by a Qualified Tenant or Safe Harbor Tenant until reoccupied, excluding any reoccupation for a temporary period of not more than thirty-one (31) days, at which time the character of the Available Unit shall be redetermined. The character of any Available Unit described in the immediately preceding sentence shall be redetermined upon expiration of the thirty-one (31)-day period. In calculating the foregoing 40% or 75% requirement, if the resulting number of Available Units contains a fraction, it shall be rounded up to the next highest whole number.

“Purpose Investment” means an investment acquired to carry out the governmental purpose of the Series 2022A Bonds, as described in Section 1.148-1(b) of the Regulations.

“Qualified 142(d) Bonds” means obligations that satisfy the requirements of Sections 103 and 142(d) of the Code.

“Qualified 501(c)(3) Bonds” means obligations that satisfy the requirements of Sections 103 and 145 of the Code.

“Qualified Project Period” means the period commencing on the later of the first day on which at least 10% of the Residential Rental Units in the Residential Rental Property are occupied or the issue date of the Qualified 142(d) Bonds or Qualified 501(c)(3) Bonds, as applicable, issued to acquire such facility and ending on the latest of the following: (A) the date that is fifteen years after the date on which at least 50% of the Residential Rental Units in the facility are first occupied; (B) the first day on which no tax-exempt private activity bond (as defined in Section 141(a) of the Code) issued with respect to the facility is outstanding; or (C) the date on which any assistance provided with respect to the facility under Section 8 federal assistance terminates.

“Qualified Tenant” means any individual or family with Low and Moderate Income. Occupants of a Residential Rental Unit shall not be considered to be Qualified Tenants if all the occupants are students (as defined in Section 152(f)(2) of the Code). Notwithstanding the foregoing, a Residential Rental Unit shall not fail to be treated as occupied by Qualified Tenants because such Residential Rental Unit is occupied (a) by an individual who is (i) a student and receiving assistance under Title IV of the

Social Security Act, (ii) a student who was previously under the care and placement responsibility of the state agency responsible for administering a plan under part B or part E of Title IV of the Social Security Act or (iii) a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, state or local laws, or (b) entirely by full-time students if such students are (i) single parents and their children and such parents are not dependents of any person other than the full-time student occupying the Residential Rental Unit, or (ii) married and file a joint return.

“Related Person” means an individual or entity who, concerning the referenced party, is described in Section 147(a)(2) of the Code.

“Residential Rental Property” means the Real Estate or any other building or structure containing one or more similarly constructed Residential Rental Units used for the Project, including facilities functionally related and subordinate thereto, as provided in Section 1.103-8(b) of the Regulations.

“Residential Rental Unit” means a housing unit containing separate and complete living, sleeping, eating, cooking and sanitation facilities for a single person or a family. Such housing unit shall contain a kitchen that includes a stove, cooking range, full-size refrigerator and sink. A housing unit, however, shall not fail to be treated as a “Residential Rental Unit” merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

“Safe Harbor Income Tenant” means any individual or family with income that does not exceed 80% of the area median gross income, with appropriate adjustments to income level made for family size, as determined in a manner consistent with the determinations of lower income families and area median gross income, all as made in accordance with and subject to the requirements of Section 142(d)(2)(B) of the Code. For these purposes, income shall be treated as not exceeding 80% of the area median gross income, with appropriate adjustments to income level made for family size, if the relevant individual’s or family’s adjusted income (computed in the manner described in Regulation § 1.167(k)-3(b)(3) prior to its removal by T.D. 8474, 1993-1 C.B. 242) does not exceed 80% of the applicable area median gross income.

“Sole Member” means Patriot Services Group, Inc., a Florida nonprofit corporation described in Section 501(c)(3) of the Code and exempt from federal income taxation under Section 501(a) of the Code, as Sole Member of the Borrower, and its successors and assigns.

“Transfer” means any conveyance, transfer, whether by sale, exchange, gift or assignment or other disposition of the Project.

## **SECTION 2. Number and Gender.**

Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

## **SECTION 3. Headings.**

The titles and headings of the sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any

of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent shall arise.

**SECTION 4. Construction.**

It is intended that this Agreement set forth the terms, conditions, limitations and restrictions applicable to the Project and that the Project be a “qualified residential rental project” as defined in Section 142(d) of the Code. All provisions herein shall be construed in accordance with such intent.

**SECTION 5. Benefit.**

The Issuer, the Borrower and the Trustee each acknowledges that a primary purpose for requiring compliance by the Borrower with this Agreement is to preserve the excludability from gross income for federal income tax purposes of interest on the Series 2022A Bonds, and that the Trustee and holders of the Series 2022A Bonds shall be entitled, for any breach of the provisions hereof, to all remedies, both at law and in equity, in the event of any default hereunder.

**SECTION 6. Covenant with Respect to Tax Status of the Series 2022A Bonds.**

The Issuer and the Borrower each covenants that it will not knowingly take, or permit to be taken, any action that would adversely affect the excludability from gross income for federal income tax purposes of interest on the Series 2022A Bonds throughout the Qualified Project Period and the Trustee covenants that it will not invest or use any of the proceeds of the Series 2022A Bonds except as otherwise directed by the Borrower in writing.

**SECTION 7. Qualified Residential Rental Project Requirements.**

The Borrower represents, warrants and covenants that the Project shall, throughout the Qualified Project Period, unless this Agreement is earlier terminated pursuant to Section 17 of this Agreement, satisfy the following terms and conditions, limitations and restrictions:

(a) *Satisfaction of Applicable Legal Requirements.* The Project is being acquired, rehabilitated, equipped and installed for the purpose of providing multifamily Residential Rental Units, and the Project shall be owned, managed and operated as multifamily Residential Rental Property, all in accordance with the requirements of Section 145(d) of the Code applicable to Qualified 501(c)(3) Bonds and the qualified residential rental project requirements of Section 142(d) of the Code and the applicable residential rental project provisions of Section 1.103-8(b) of the Regulations and the administrative guidance issued thereunder;

(b) *Similarly Constructed Residential Rental Units.* All of the Residential Rental Units in the Project shall be similarly constructed;

(c) *Transient Use.* During the term of this Agreement, (i) none of the Residential Rental Units in the Project shall at any time be utilized on a transient basis, (ii) none of the Residential Rental Units in the Project shall ever be leased or rented for a period of less than thirty (30) days and (iii) neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer court or park or for any other use on a transient basis;

(d) *General Public Availability.* During the term of this Agreement, (i) the Residential Rental Units in the Project shall be leased and rented or made available for rental on a

continuous basis to members of the general public except as otherwise permitted by federal, state or local law, and (ii) the Borrower shall not give preference in renting Residential Rental Units in the Project to any particular class or group of persons, other than Qualified Tenants or Safe Harbor Tenants as provided herein; provided, however, that Residential Rental Units in the Project may be occupied by maintenance, security or managerial employees of the Borrower or its property manager who are reasonably required to maintain residences in the Project, but only to the extent such occupation does not cause the Project to cease to be a qualified residential rental project under Section 142(d) of the Code;

(e) *Use of Related Facilities by Tenants.* Any functionally related and subordinate facilities (e.g., parking areas, laundry facilities, tenant offices, physical therapy rooms, dining rooms, meeting rooms, common areas, swimming pools, tennis courts, etc.) (the “Related Facilities”) for the Project will be made available to all tenants of the Project on an equal basis. Fees charged to residential tenants for use of the Related Facilities will be commensurate with fees charged for similar facilities at similar residential rental properties in the surrounding area and, in no event will any such fees charged to tenants of the Project be discriminatory or exclusionary as to the Qualified Tenants or Safe Harbor Tenants of the Project. No Related Facilities will be made available to persons other than tenants or their guests. Parking, if available, will be made available to all tenants on a first come, first served basis;

(f) *No Continual or Frequent Nursing, Medical or Psychiatric Services.* No continual or frequent nursing, medical or psychiatric services will be provided to the residents of the Project at any time or in any manner;

(g) *Ownership, Structure and Financing.* The Project will consist of one or more buildings or structures, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a single tract of land, consisting of any parcel of land or two or more parcels of land that are contiguous except for being separated only by a road, street, stream or similar property (parcels are contiguous if their boundaries meet at one or more points) and (iii) financed with proceeds of the Series 2022A Bonds or otherwise pursuant to a common plan of financing. Each such building or structure is a discrete edifice or other man-made construction consisting of an independent foundation, outer walls and roof and containing five or more similarly constructed units;

(h) *Condominium Ownership.* During the term of this Agreement, the Borrower will not convert the Project to condominium ownership;

(i) *Borrower Rentals.* During the term of this Agreement, no Residential Rental Unit in the Project shall be occupied by the Borrower (or a Related Person) at any time unless the Borrower (or a Related Person) resides in a Residential Rental Unit in a building or structure that contains at least five Residential Rental Units and unless the resident of such Residential Rental Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);

(j) *Certificate of Project Commencement and 50% Occupancy.* Within 30 days after the later of the issue date of the Series 2022A Bonds or the date on which 10% of the Residential Rental Units in the Project are first occupied following the construction thereof, the Borrower shall file with the Issuer and the Trustee a certificate identifying such date. Within 30 days after the later of the issue date of the Series 2022A Bonds or the date on which 50% of the Residential Rental Units in the Project are occupied, the Borrower shall file with the Issuer and the Trustee a



certificate identifying such date and the beginning date and earliest ending date of the Qualified Project Period;

(k) *No Discrimination.* During the term of this Agreement, the Borrower shall not discriminate on the basis of age, race, color, creed, national origin, religion, sex or marital status in the lease, use or occupancy of the Project except as otherwise permitted by federal, state or local law or in connection with the employment or application for employment of persons for the operation and management of the Project; and the Borrower specifically agrees that the Borrower will not refuse to lease units or deny occupancy in the Project to persons whose family includes minor dependents who will occupy such unit, unless such refusal is based upon factors not related to the presence of such minors in the family;

(l) *Payment of Expenses.* During the term of this Agreement, the Borrower shall make timely payment of the fees and expenses, if any, of the Trustee in accordance with the provisions of this Agreement, the Indenture and the Loan Agreement, including any expenses incurred by the Trustee in the performance of its duties and obligations under this Agreement;

(m) *Certification of Income.* As a condition of occupancy, each Qualified Tenant and Safe Harbor Tenant shall be required to sign and deliver to the Borrower a Certification of Income, in a form designed to establish compliance with the applicable provisions of the Code and the Treasury Regulations, or as otherwise required by the Internal Revenue Service. Such Qualified Tenant or Safe Harbor Tenant shall also be required to provide whatever other information, documents or certifications are deemed necessary by the Borrower to substantiate the Certification. All Certifications of Income with respect to each Qualified Tenant or Safe Harbor Tenant who resides in a Residential Rental Unit in the Project or resided in a Residential Rental Unit during the immediately preceding calendar year shall be maintained on file at the main business office of the Project and shall be available for inspection by the Issuer and the Trustee;

(n) *Annual Determinations.* The determination of whether a resident of the Project is a Qualified Tenant or a Safe Harbor Tenant shall be made at least annually on the basis of the current income of all the residents of the Residential Rental Unit. Each lease to a Qualified Tenant or a Safe Harbor Tenant entered into after the date hereof shall require the tenant to sign the Certification of Income annually, attesting to the combined income of all the occupants of each Residential Rental Unit and at any other time as the Borrower may reasonably request;

(o) *Subsequent Changes to Income.* If a tenant is a Qualified Tenant or a Safe Harbor Tenant upon commencement of occupancy of a Residential Rental Unit, the income of such tenant shall be treated as Low or Moderate Income or satisfying the Low-Income Safe Harbors, respectively. The preceding sentence shall cease to apply to any tenant whose income as of the most recent annual determination under paragraph (n) of this Section exceeds 140% of Low and Moderate Income or the Low-Income Safe Harbors, as applicable, if, after such determination, but before the next annual determination, any Residential Rental Unit of comparable or smaller size in (i) the same building (within the meaning of Section 42 of the Code), provided that the Project is eligible for low-income housing tax credits under Section 42 of the Code or (ii) the Project, if the Project is not eligible for low-income housing tax credits under Section 42 of the Code, is occupied by a new tenant who does not qualify as a Qualified Tenant or a Safe Harbor Tenant;

(p) *Form of Lease.* Any lease used in renting any Residential Rental Unit in the Project to a Qualified Tenant shall provide for termination of the lease and consent by such tenant

to immediate eviction, subject to applicable provisions of State law, for failure to qualify as a Qualified Tenant as a result of any material misrepresentation made by such person with respect to any Certification of Income. Each Qualified Tenant occupying a Residential Rental Unit shall be required to execute a written lease that shall be effective for a term of at least six (6) months. No meals or other services will be provided to tenants of the Project;

(q) *Owner's Certification.* On the first day of each month after any Residential Rental Unit in the Project is available for occupancy, the Borrower shall prepare a record of the percentage of Residential Rental Units of the Project occupied (and treated as occupied) by Qualified Tenants or Safe Harbor Tenants during the preceding month. Such record shall be maintained on file at the main business office of the Project, shall be available for inspection by the Issuer and the Trustee and shall contain such other information and be in the form required by the Issuer and/or the Trustee, as applicable;

(r) *Occupancy Standards.* The Project shall satisfy the Occupancy Standards; and

(s) *Records Maintenance and Inspection.* During the term of this Agreement, the Borrower shall (i) maintain complete and accurate records pertaining to the Residential Rental Units occupied or to be occupied by Qualified Tenants and Safe Harbor Tenants, and (ii) permit any duly authorized representative of the Trustee, the Issuer, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the income of and Certificate of Income of Qualified Tenants and Safe Harbor Tenants residing in the Project upon reasonable notice and at reasonable times.

**SECTION 8. Transfer Restrictions.** For the Qualified Project Period, except with respect to events such as foreclosure, deed in lieu of foreclosure, involuntary loss or other events described in Section 1.103-8(b)(6)(iii)(a) of the Regulations and not otherwise described in paragraph (b) thereof, provided that proceeds received as a consequence of such events are used as provided in Section 1.103-8(b)(6)(iii)(a) of the Regulations, the Borrower shall not Transfer the Project or any interest therein, in whole or in part, except in accordance with the terms of the Indenture and Loan Agreement (or either of them), and this Section 8. Any Transfer of the Project or any interest therein, in whole or in part, shall only be permitted if: (1) the Borrower shall not be in default hereunder; (2) the purchaser or assignee shall assume in writing in a form acceptable to the Trustee, all duties and obligations of the Borrower under this Agreement, including this Section 8, and execute any necessary or appropriate document with respect to assuming its obligations under this Agreement, and the Financing Agreements in the form of an Assumption Agreement, which document shall be recorded in the recorder's office in the Project's jurisdiction; (3) the Trustee shall have received an opinion of Bond Counsel to the effect that such Transfer will not adversely affect the exclusion of the interest on the Series 2022A Bonds from gross income for federal income tax purposes; (4) [omitted]; (5) the Borrower shall deliver to the Trustee an opinion of counsel to the transferee that the transferee has duly assumed the obligations of the Borrower under this Agreement and that such obligations and this Agreement are binding on the transferee; and (6) such other conditions are met as are set forth in or referred to in the Financing Agreements (i) to protect the exclusion of the interest on the Series 2022A Bonds from gross income for federal income tax purposes, (ii) to ensure that the Project is not acquired by a person that has pending against it, or that has a history of, building code violations, as identified by municipal, county, state or federal regulatory agencies, and (iii) to provide to the satisfaction of the Issuer and the Trustee, in their respective sole discretion, that indemnification of the Issuer and the Trustee under Section 19 of this Agreement and elsewhere is assumed by the purchaser or assignee. The Borrower shall deliver the Assumption Agreement and the items specified in Clauses (3) and (5) above to the Trustee, with copies to the Issuer, at least ten (10) business days prior to a proposed Transfer.

**SECTION 9. Certification to Secretary.**

The Borrower represents, warrants and covenants that the Borrower shall annually submit to the Secretary of the Treasury (at such time and in such manner as the Secretary shall prescribe) a certification attesting that the Project continues to meet the requirements of Section 142(d) of the Code and shall simultaneously send copies of such certification to the Trustee, including, but not limited to, IRS Form 8703, and any additional certifications or information required to be submitted to the Secretary of the Treasury. The Borrower acknowledges that failure to file such certification with the Secretary of the Treasury when required would subject the Borrower to penalty, as provided in Section 6652(j) of the Code.

**SECTION 10. Enforcement.**

The Borrower further represents, warrants and covenants that:

(a) *Examination of Records.* The Borrower shall permit, after two (2) business days prior written notice, any duly authorized representative of the Issuer, and/or the Trustee to inspect any books and records of the Borrower regarding the Project, particularly with respect to the incomes of Qualifying Tenants and Safe Harbor Tenants that pertain to compliance with the provisions of this Agreement and Sections 142(d) and 145(d) of the Code and Rev. Proc. 96-32. Any certification, records or other documents deemed necessary by the Issuer, or the Trustee to show the Project's compliance with Sections 142(d) and 145(d) of the Code and Rev. Proc. 96-32 shall be maintained on file at the Project site until the later of (i) the date that the Series 2022A

Bonds (and any tax-exempt obligations used to refund any of the Series 2022A Bonds) remain outstanding and for four (4) years thereafter or (ii) the end of the Qualified Project Period.

(a) *Other Information.* The Borrower shall provide such other information, documents or certifications requested by the Issuer or the Trustee that the Issuer or the Trustee, as applicable, deems reasonably necessary, to substantiate the Borrower's continuing compliance with the provisions of this Agreement and Section 142(d) of the Code.

(b) *Reliance on Borrower or Tenant Certification.* In the enforcement of the Agreement, the Issuer or the Trustee may rely on any certificate delivered by or on behalf of the Borrower or any tenant concerning the Project.

## **SECTION 11. Violations.**

(a) *Notice.* The Borrower further represents, warrants and covenants that it will inform the Issuer and the Trustee by written notice of any violation of the Borrower's obligations under this Agreement or the occurrence or existence of any situation or event (an "Adverse Development") that would cause the interest on the Series 2022A Bonds to become includable in gross income for federal income tax purposes within five (5) days after discovering any such Adverse Development, and the Trustee covenants and agrees to inform the Borrower by written notice of any Adverse Development that, in the opinion of Bond Counsel, would cause the interest on the Series 2022A Bonds to become includable in gross income for federal income tax purposes within thirty (30) days after discovering such Adverse Development;

(b) *Time to Correct.* The Borrower covenants and agrees to correct or rectify any Adverse Development no later than thirty (30) days after such Adverse Development is first discovered or should have been discovered by the Borrower's exercise of reasonable diligence. The Issuer and the Trustee covenant and agree to provide the Borrower a period of time, which shall be at least thirty (30) days after the date such Adverse Development is first discovered or should have been discovered by the Borrower's exercise of reasonable diligence, or if later, within such further time which may be approved in an opinion of Bond Counsel, in which to correct any Adverse Development. The Borrower represents, warrants and covenants that if any such Adverse Development is not corrected to the satisfaction of the Issuer (relying solely upon the advice of Bond Counsel) within the period of time specified by the Issuer or the Trustee, without further notice, the Issuer or the Trustee, as applicable, may declare a default under this Agreement, effective on the date of such declaration of default, and upon such default, the Borrower shall pay to the Trustee an amount equal to any rents or other amounts received by the Borrower for any Residential Rental Units in the Project that were occupied in violation of this Agreement during the period such violation continued and the Trustee shall deliver such amounts to the Issuer within ten (10) business days;

(c) *Specific Performance.* The Borrower acknowledges that the Issuer and/or the Trustee and/or, to the extent permitted in the Financing Agreements, any owner of any of the Series 2022A Bonds, may also apply, individually or collectively, to any court, state or federal, for specific performance of this Agreement, or for an injunction against any violation of this Agreement, or for any other remedies at law or in equity or for any such other actions as shall be necessary or desirable so as to correct non-compliance with this Agreement.

**SECTION 12. Agent of the Issuer and the Trustee; No Duty of Issuer to Monitor Compliance.**

The Borrower further represents, warrants and covenants that the Issuer and the Trustee shall each have the right to appoint an agent to carry out any of its duties and obligations under this Agreement, and the Issuer and the Trustee shall inform the Borrower and the other party of any such agency appointment by written notice.

The Issuer hereby appoints the Trustee as its agent to administer this Agreement and performance by the Borrower of the terms, provisions and requirements hereof for the entire term of the Qualified Project Period. Neither the Trustee nor the Issuer shall have a duty to enforce any of the obligations of the Borrower under this Agreement but the Trustee shall be obligated to notify the Issuer of the failure of the Borrower to comply with such obligations. The Borrower hereby agrees to pay all reasonable costs and expenses of the Trustee in undertaking the administration services under this Agreement. The Issuer hereby directs the Borrower to deliver all reports, notices, requests or other documents required to be delivered for the benefit of the Issuer hereunder to the Trustee only, unless delivery to the Issuer is expressly required by the term of this Agreement, or the Borrower is otherwise directed in writing by the Trustee or the Issuer. The Borrower hereby agrees, upon reasonable written notice from the Trustee, to make the Project and the books and records relating to tenant income compliance required hereunder available for inspection during regular business hours by the Trustee as an agent of the Issuer. Notwithstanding the foregoing or any other provision herein to the contrary, the Borrower and the Trustee acknowledge and agree that the Issuer shall have no duty to monitor compliance with the terms and conditions of this Agreement.

The Trustee may rely on the certificates and reports delivered to the Trustee by the Borrower without independent investigation, and the Trustee's responsibilities hereunder shall not extend beyond the receipt of such certificates and reports required to be submitted to the Trustee by the Borrower under this Agreement. The Trustee shall be under no duty to make any investigation or inquiry as to any statement or other matter referred to in such instruments but it may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. Any certificate or document provided to the Trustee shall not contain Social Security numbers. If Social Security numbers are included in the document, the document shall be transmitted to the Trustee in a secured electronic method approved by the Trustee.

**SECTION 13. Amendment.**

This Agreement may be amended to reflect changes in Sections 103 and 141 through 150 of the Code, the applicable Regulations and administrative guidance promulgated thereunder. The Issuer, the Borrower and the Trustee each covenants to take any lawful action (including amendment of this Agreement) (in the case of the Trustee, upon payment of its fees and expenses related to such action) if, in the opinion of Bond Counsel, such action is necessary to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 103 of the Code and affecting the Project. No amendment of this Agreement shall be made without the prior written approval of the Issuer, the Trustee and the Borrower and an approving opinion of Bond Counsel that such amendment will not adversely affect the tax-exempt status of the Series 2022A Bonds.

**SECTION 14. Severability.**

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

**SECTION 15. Notices.**

The Issuer, the Borrower and the Trustee each agree that 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:

The Borrower:           PSG Vesta Derby Oaks LLC  
                                  c/o Patriot Services Group  
                                  10151 Deerwood Park Blvd, Bldg 200, Suite 250  
                                  Jacksonville, FL 32256  
                                  Attention: Rick Wheat  
                                  Email: rick.wheat@patriotservices.org

The Issuer:               Louisville/Jefferson County Metro Government  
                                  527 W. Jefferson Street  
                                  Louisville, KY 40202  
                                  Attention: Office of the Mayor  
                                  Email: \_\_\_\_\_  
                                  Facsimile: \_\_\_\_\_

The Trustee:             The Bank of New York Mellon Trust Company, National Association  
                                  4655 Salisbury Road, Suite 300  
                                  Jacksonville, FL 32256  
                                  Attention: Sheila S. Papelbon  
                                  Email: Sheila.papelbon@bnymellon.com

**SECTION 16. Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth and, where applicable, the laws of the United States of America, *provided*, that, with respect to the existence, corporate powers, legal capacity, rights (including, without limitation, rights to indemnification and exculpation from liability), privileges, powers, obligations and liabilities of the Issuer, this Agreement shall be governed by the laws of the Commonwealth, excluding conflicts of law principles.

All claims of whatever character arising out of this Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between the Issuer and any other party hereto, if and to the extent that such claim potentially could or actually does involve the Issuer or any Issuer Indemnified Person, shall be brought in any state or federal court of competent jurisdiction located in the county where the Project is located. By executing and delivering this Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of *forum non conveniens*; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Issuer of any prior notice or procedural requirements applicable to actions or claims against or involving joint powers commissions or

governmental units of the Commonwealth that may exist at the time of and in connection with such matter.

#### **SECTION 17. Termination.**

The Issuer, the Borrower and the Trustee each agrees that this Agreement shall terminate:

(a) *Completion.* Upon the termination of the Qualified Project Period;

(b) *Involuntary Non-Compliance.* In the event of an involuntary non-compliance caused by unforeseen events, such as fire, seizure, requisition, change in a federal law or an action of a federal agency after the date of issuance of the Series 2022A Bonds that prevents the Issuer or the Trustee from enforcing the provisions of this Agreement or condemnation or similar event, provided that:

(i) the Series 2022A Bonds are retired at their first applicable available call date; or

(ii) any insurance proceeds or condemnation award or other amounts received as a result of such loss or destruction are used to provide a project that meets the requirements of Sections 145 and 142(d) of the Code and Regulation § 1.103-8(b) as amended, or any successor law or regulation;

(c) *Certain Transfers.* In the event of foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, following which and within a reasonable period of time the Series 2022A Bonds are redeemed or the amounts received as a consequence of such event are used to provide a qualified residential rental project meeting the applicable requirements of the Code and the Regulations, unless, at any time subsequent to such event and during the Qualified Project Period, the Borrower or any direct successor in interest, or any transferee from the Borrower or its successor subject to an Assumption Agreement, or any Related Person to such persons, or any other person who was, prior to the event of foreclosure or other such event, an obligor on any Purpose Investment issued in connection with any financing for the Project, obtains an ownership interest in the Project for tax purposes;

(d) *Opinion of Bond Counsel.* Upon the delivery of an opinion of Bond Counsel acceptable to the Issuer and the Trustee that continued compliance with the requirements of Section 7 hereof is not required in order for interest on the Series 2022A Bonds to be and continue to be excludable from gross income for federal income tax purposes.

#### **SECTION 18. Post-Defeasance or Redemption.**

The Issuer, the Borrower and the Trustee each agrees that upon the defeasance or full redemption of the Series 2022A Bonds, the Trustee shall have no further obligation hereunder. Borrower represents, fully warrants and covenants that in the event that the Series 2022A Bonds are defeased or redeemed, but this Agreement remains in full force and effect, it shall contract, at Borrower's expense, with a compliance monitoring agent reasonably satisfactory to the Issuer, to review compliance by the Borrower with the requirements of this Agreement.

## **SECTION 19. Indemnification.**

Provided that this indemnity shall not include the payment of principal and interest under the Financing Agreements (it being intended that the repayment of the Loan(s) is an obligation of the Borrower, as provided in the applicable Financing Agreements),

(a) Indemnification of the Trustee. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Trustee and its officers, directors, officials, employees and agents from and against (a) any and all claims of or on behalf of any person arising from any cause whatsoever in connection with the Real Estate or the financing thereof, (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees, in connection with the Series 2022A Bonds, the Financing Agreements, the Note, any mortgage, this Agreement or the Project and (c) all costs, reasonable counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon. In the event that any action or proceeding is brought against the Trustee, or any of its officers, directors, officials, employees or agents with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to participate in the investigation and defense thereof and in the event the indemnified party reasonably determines that a conflict of interest exists between such party and the Borrower in connection therewith, or if all parties commonly represented do not agree as to the action (or inaction) of counsel, the indemnified party may employ separate counsel without the consent or approval of the Borrower, and in such event the Borrower shall pay the reasonable fees and expenses of such separate counsel. The obligations of the Borrower hereunder are full recourse obligations. Notwithstanding the foregoing, no party shall be indemnified pursuant to this Section 19(a) against its own gross negligence or willful misconduct. The indemnification obligations hereunder shall be cumulative with and in addition to, all other indemnification obligations owed from the Borrower to the Trustee and their related indemnified parties under any Bond Document (as defined in the Indenture).

(b) Indemnification and Release of the Issuer. The Borrower hereby expressly agrees that the indemnification and release provisions of the Loan Agreement (including, without limitation, Section 6.4 thereof providing for the Borrower's obligation to indemnify and release the Issuer and the Issuer Indemnified Persons (as defined therein) against Liabilities (as defined therein)) are incorporated by reference and made a part hereof as if fully set forth herein and shall be applicable to this Agreement and to any such Liabilities that may arise in whole or in part under this Agreement. THE BORROWER FURTHER EXPRESSLY ACKNOWLEDGES AND AGREES THAT SUCH INDEMNIFICATION AND RELEASE OBLIGATION EXTENDS, WITHOUT REGARD TO OR THE NECESSITY OR ANY BREACH OR FAULT ON THE PART OF ANY BORROWER, TO THE ISSUER'S OR ANY OTHER AUTHORITY INDEMNIFIED PERSON'S OWN NEGLIGENCE OF ANY KIND OR DEGREE, OR BREACH OF CONTRACTUAL DUTY, EXCEPT INsofar AS AND TO THE EXTENT THAT ANY SUCH LIABILITIES ARISE FROM THE WILLFUL MISCONDUCT OF THE PERSON SEEKING INDEMNIFICATION.

## **SECTION 20. Recordation.**

The Issuer, the Trustee and the Borrower each agrees that the Borrower shall cause this Agreement (and all amendments and supplements hereto) to be recorded and filed in the conveyance and real property records of the county where the Project is located and in such other places as the Issuer or



the Trustee may reasonably request. This Agreement (and all amendments and supplements hereto) shall be recorded in the grantor-grantee index to the name of the Borrower as grantor and to the name of the Trustee as the grantee. The Borrower should pay all fees and charges incurred in connection with any such recording(s). Upon delivery by the Borrower to the Trustee of an opinion of independent counsel acceptable to the Trustee that the conditions to termination of this Agreement have been made, the Trustee and the Issuer shall, upon request by the Borrower, and at the Borrower's expense, file any documentation necessary to remove this Agreement from the real estate records of the county where the Project is located.

**SECTION 21. Covenants to Run with the Land; Successors Bound.**

The Borrower hereby subjects the Real Estate to the covenants, reservations and restrictions set forth in this Agreement. The Issuer, the Trustee and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants, reservations and restrictions running with the land to the extent permitted by law and shall pass to and be binding upon the Borrower's successors in title to the Real Estate throughout the term of this Agreement. Each and every contract, deed, mortgage, or other instrument hereafter executed covering or conveying the Real Estate or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed, mortgage or other instrument.

**SECTION 22. No Conflict with Other Documents.**

The Borrower warrants that it has not executed 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 all other requirements in conflict herewith.

**SECTION 23. Non-Liability of Issuer.**

Neither of the Issuer nor any Issuer Indemnified Person (as defined in the Loan Agreement) shall be liable for any costs, expenses, losses, damages, claims or actions of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement.

**SECTION 24. Multiple Counterparts.**

This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

[Signatures to follow]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the date first mentioned above.

[Seal]

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT, KENTUCKY**

Attest:

\_\_\_\_\_  
Sonya Harward, Metro Council Clerk

By: \_\_\_\_\_  
Greg Fischer, Mayor

Approved as to form and legality:

Michael J. O'Connell  
Jefferson County Attorney

By: \_\_\_\_\_  
Assistant Jefferson County Attorney

(Signature Page to PSG Vesta Derby Oaks LLC Land Use Restriction Agreement)

COMMONWEALTH OF KENTUCKY )  
 ) SS.  
COUNTY OF JEFFERSON )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Greg Fischer, Mayor, Louisville/Jefferson County Metro Government, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he/she signed and delivered said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

(Notary Page to PSG Vesta Derby Oaks Land Use Restriction Agreement)

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Camilla J. Lindsey  
Vice President

(Signature Page to PSG Vesta Derby Oaks Land Use Restriction Agreement)

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Camilla J. Lindsey, Vice President of The Bank of New York Mellon Trust Company, National Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that she signed and delivered said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

(Notary Page to PSG Vesta Derby Oaks Land Use Restriction Agreement)

**PSG VESTA DERBY OAKS LLC,**  
A Delaware limited liability company

By: Patriot Services Group, Inc., a Florida not for  
profit corporation, its Manager

By: \_\_\_\_\_  
Frederick Wheat, Authorized Signatory

(Signature Page to PSG Vesta Derby Oaks Land Use Restriction Agreement)

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Frederick Wheat, Authorized Signatory of Patriot Services Group, Inc., Manager of PSG Vesta Derby Oaks LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he signed and delivered said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

(Notary Page to PSG Vesta Derby Oaks LLC Land Use Restriction Agreement)

**EXHIBIT A**  
**DESCRIPTION OF PROJECT SITE & REAL PROPERTY**

0149946.0753850 4863-1444-5327v4

4886-7396-1218.4