

07-14-93P03:30 RCVD

64605

OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
HOME INVESTMENT PARTNERSHIPS PROGRAM  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS, (this "Declaration"), dated as of July 14, 1993, by D & S Properties, and its successors and assigns (the "Owner") is given as a condition precedent to the award of HOME Investment Partnership (HOME) Program funds by the Oregon Housing and Community Services Department, a governmental agency of the State of Oregon, together with any successor to its rights, duties, and obligations, (the "Department").

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of a 35 unit rental housing development located on lands in the City of Klamath Falls, County of Klamath, State of Oregon, more particularly described in Exhibit A hereto, known as or to be known as Ewauna Apartments (the "Project"); and

WHEREAS, the Department has been designated by the Governor of the State of Oregon as the administering agency for the State of Oregon for the HOME Program; and

WHEREAS, the Owner has applied to the Department and entered into a Grant Agreement for an award to the Project in an amount not to exceed Two Hundred Eighty Seven Thousand Five Hundred Two dollars (\$287,502.00); and

WHEREAS, the Owner has represented to the Department rent restrictions it will maintain for the period of time as specified in the Grant Agreement; and

WHEREAS, the Department of Housing and Urban Development (HUD) requires as a condition precedent to the awarding of HOME funds that the Owner execute, deliver and record this Declaration in the official land deed records of the county in which the Project is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of 24 CFR 92.252(5) and the Department's Occupancy Restrictions found in Section 5 hereof by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, under this Declaration, 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 other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Department agree as follows:

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 HOME PROJECT NUMBER  
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Return To:

ARIE C. DE GROOT

ATTORNEY AT LAW

219 SO. 11TH, #2A

KLAMATH FALLS, OR 97601

50' OK

**SECTION 1 - DEFINITIONS**

All the words and phrases used in this Declaration shall have the same meaning as when used in 24 CFR 92, Department Administrative Rules, and the Department of Housing and Urban Development ("HUD") Regulations unless the context requires otherwise.

**SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

- (a) Upon execution of this Declaration by the Owner and the Department, the Owner shall cause this Declaration 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 Department an executed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (b) The Owner intends, declares, and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project (1) shall be and are covenants running with the Project land, encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the Department and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner hereby agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate servitude has been created to insure that these restrictions run with the Project. For the term of this Declaration, 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 Declaration, 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 Declaration.
- (c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration.

**SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

The Owner hereby represent, covenants, and warrants as follows:

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## SECTION 3 continued

- (a) The Owner (1) is a general partnership duly organized under the laws of the State of Oregon, and is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to execute and deliver this Declaration.
- (b) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) 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 Declaration, 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 Declaration, any 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 Declaration) 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 24 CFR 92 and applicable regulations.
- (f) During the Term of this Declaration, all units receiving HOME assistance shall be leased, rented or made available to members of the general public who qualify as Tenants at or below 50% of area median income (or otherwise qualify for occupancy of the units).
- (g) During the term of this Declaration, the Owner covenants, agrees and warrants that each low-income unit is and will remain habitable according to HUD Section 8 Housing Quality Standards (HQS).
- (h) Subject to the requirements of 24 CFR 92 and this Declaration, 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 Declaration

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and to the requirements of 24 CFR 92 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 Department 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 Declaration and the requirements of 24 CFR 92.

- (i) The Owner agrees to notify the Department in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (j) The Owner shall not demolish any part of the Project, 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 Declaration unless required by law or unless the Department has given its prior written consent.
- (k) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, 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 Declaration.
- (l) The Owner warrants that it has not and will not execute any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration 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 RESTRICTIONS

The Owner represents, warrants, and covenants throughout the term of this Declaration and in order to satisfy the requirements of 24 CFR 92.614 ("Qualification as affordable housing and income targeting: Rental housing") that at least 20 percent of the units are:

- (a) Occupied by very low-income families who pay as a contribution toward rent not more than 30 percent of the families' monthly adjusted income as determined by HUD; or
- (b) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area as determined by HUD.

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## SECTION 4 continued

- (c) The determination of whether a tenant meets the income requirement shall be made by the Owner or his designated agent at least annually on the basis of the current income of said Tenant, not to exceed 50% of area median income.

## SECTION 5 - DEPARTMENT'S OCCUPANCY RESTRICTIONS

The Owner represents, warrants and covenants throughout the term of this Declaration that Project rents will not exceed the gross rent allowable under 24 CFR 92.614(1).

## SECTION 6 - TERM OF DECLARATION

This Declaration, and the Terms of Affordability specified herein, apply to the Project immediately upon recordation, and the owner shall comply with all restrictive covenants herein not later than the first day in the Project period on which any building which is part of the Project is placed in service. This Declaration shall terminate on July 14, 2008, or 15 years after the date the Project is completed, whichever is later. Notwithstanding this stated term limit, the duration of this Declaration also shall extend for 15 years from the date 1) any new construction at the Project is certified for occupancy, or 2) any rehabilitation activity at the Project is approved in writing by a county building inspector after final inspection.

## SECTION 7 - ENFORCEMENT OF DEPARTMENT'S OCCUPANCY RESTRICTIONS

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Department, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the Department's Occupancy Restrictions specified in this Declaration.
- (b) The Owner shall submit any other information, documents, or certifications requested by the Department which the Department shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Department's Occupancy Restrictions specified in this Declaration.

## SECTION 8 - ENFORCEMENT OF 24 CFR 92 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR 92 and applicable regulations of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the Department) to comply fully with all applicable rules, rulings, policies, procedures, regulations or

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## SECTION 8 continued

other official statements promulgated or proposed and published by HUD from time to time pertaining to Owner's obligations under 24 CFR 92 and affecting the Project.

- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with 24 CFR 92 and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING HOME INVESTMENT PARTNERSHIP FUNDS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE DEPARTMENT AND ANY TENANT WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER 24 CFR 92 (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 DECLARATION 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 Department and all persons interested in Project compliance under 24 CFR 92 and the applicable regulations.
- (d) The Owner agrees to take any and all actions reasonably required by the Department to substantiate the Owner's compliance with occupancy restrictions of 24 CFR 92 as now constituted or subsequently amended and other occupancy restrictions of the Department as now constituted or subsequently adopted.
- (e) This Declaration and the Grant Agreement of which it is a part may be enforced by the Department or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Grant Agreement. In the event the Owner fails to satisfy the requirements of this Declaration or the Grant Agreement and legal costs are incurred by the Department or one or more of the tenants or beneficiaries, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Owner.

## SECTION 9 - MISCELLANEOUS

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

## SECTION 9 continued

- (b) Notices. All notices to be given pursuant to this Declaration 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 Department: Oregon Housing and Community Services  
Department  
ATTN: HOME PROGRAM  
1600 State Street  
Salem, Oregon 97310-0161

To the Owner: D & S Properties  
ATTN: Arie C. DeGroot  
Attorney at Law  
219 South 11th Street, #2A  
Klamath Falls, Oregon 97601

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

- (c) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR 92, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the HOME assistance. The Department, together with Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
- (e) Governing Law. This Declaration shall be governed by the laws of the State of Oregon 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 reservation of HOME funds and shall not be deemed to terminate or merge with the awarding of the funds.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its

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17028

duly authorized representatives, as of the day and year first written above.

OWNER

D & S PROPERTIES

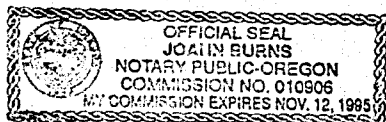
By: *Gerrit A. DeGroot*

Name: GERRIT A. DEGROOT

Title: Managing Partner

STATE OF OREGON     )  
                              ) ss.  
County of Klamath )

This instrument was acknowledged before me this 14<sup>th</sup> day of July, 1993,  
by Gerrit A. DeGroot.



*JoAnn Burns*  
NOTARY PUBLIC FOR OREGON

My Commission Expires: 11-12-95

COVENANTS, 1993  
Revised 1/93

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## EXHIBIT "A"

## LEGAL DESCRIPTION

Lots 9, 10, and 11, Block 4; CANAL ADDITION TO THE CITY OF  
KLAMATH FALLS, according to the official plat thereof on file  
in the office of the County Clerk of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Arie C. DeGroot the 14th day  
of July A.D., 19 93 at 3:30 o'clock P M., and duly recorded in Vol. M93  
of Deeds on Page 17021.

Evelyn Biehn County Clerk

By Quintine W. Miller

FEE \$50.00