

mtc- 64383

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State of Oregon, County of Klamath
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Linda Smith, County Clerk
Fee \$ 61.00 # of Pgs 9

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:
Oregon Housing and Community
Services Department
PO Box 14508
Salem, Oregon 97309-0409
Attn: Carol S. Kowash, Housing Development Representative

SPACE ABOVE FOR RECORDER'S USE

**OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT
OREGON AFFORDABLE HOUSING TAX CREDIT PROGRAM
DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS, (this "Declaration"), dated as of July 13, 2004, by Crestview Commons Limited Partnership, and its successors and assigns (the "owner") is given as a condition precedent to the award of Oregon Affordable Housing Tax Credits (OAHTC) 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 64-unit rental housing development (63 residential plus one manager's unit) located at 3900 Hilyard Avenue on lands in the City of Klamath Falls, Oregon, County of Klamath, State of Oregon, more particularly described in Exhibit A hereto, known as or to be known as Crestview Commons (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 OAHTC Program; and

WHEREAS, the Owner has applied to the Department and received OAHTC on the loan for the Project in an amount not to exceed One Million Dollars (\$1,000,000); and

WHEREAS, the Owner has represented to the Department in the Owner's OAHTC Application (the "Application") dated August 15, 2002 as modified on December 22, 2003, that the Owner shall lease/rent the Project's units to individuals or families whose income is less than 60% of the area median gross income as determined by HUD; 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 covenants running with the land and Project for the term stated herein and binding upon all subsequent owners of the Project for such term, and are not simply 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:

Declaration of Land Use Restrictive Covenants

Project Number

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SECTION 1 - DEFINITIONS

All the words and phrases used in this Declaration shall have the same meaning as when used in IRC Section 42, ORS 317.097, Oregon Department of Revenue Administrative Rule 150, and the OAHTC Administrative Rules (813-110) unless the context requires otherwise.

"Rents Charged at the Market Interest Rate" means the rents that would be required, if the lender charged the market interest rate, in order to make the project financially feasible.

"Rent Reduction" means the amount rents are reduced from the Rents Charged at the Market Interest Rate as a result of the OAHTC subsidy.

"Rent Pass Through" means the amount of Rent Reduction made available to tenants of the project because of the reduced interest rate attributable to the OAHTC subsidy.

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 (I) shall be and are covenants running with the Project, including the land thereof, 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; (II) are not merely personal covenants of the Owner; and (III) 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 are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project for the term of this Declaration. 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 represents, covenants, and warrants as follows:

- (a) The Owner (I) is a Limited 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, (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 Declaration.
- (b) The execution and performance of this Declaration by the Owner (I) 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, (II) 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 (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 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 provided for in Oregon Administrative Rules (Chapter 813, Division 110) and applicable regulations.
- (f) The Owner represents, warrants, and agrees that 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 and that they will remain habitable for the term of this Declaration.
- (g) The Owner agrees that all statements in the Application are true, correct and complete, and that the statements are made expressly for the benefit of the State of Oregon, acting by and through the Department, or otherwise, and the Tenants of the Project.
- (h) Subject to the requirements of ORS 317.097, OAR 813-110 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 or any interest therein that such acquisition is subject to the requirements of this Declaration. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any

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 ORS 317.097 and OAR 813-110.

- (i) The Owner agrees to notify the Department in writing prior to any sale, transfer, or exchange of the entire Project or any 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 that;

- (a) All units shall be leased, rented or made available only to members of the general public whose annual household incomes are less than 60 percent of the area median income and if the Owner has received an allocation of Low-Income Housing Tax Credits (LIHTC), the Owner agrees to further reduce the project rents consistent with the LIHTC Reservation and Extended Use Agreement.
- (b) 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 60% of area median income.

SECTION 5 - RENT REDUCTION

The Owner represents, warrants and covenants that, throughout the term of this Declaration;

- (a) The Owner shall be in compliance with the rent limitations established in the OAHTC Administrative Rules (813-110) and, when applicable, the rent limitations established pursuant to IRC Section 42 by ensuring that:

- b) Rents in the project will be reduced annually by a total of at least \$29,952. This Rent Reduction is calculated from the Rents Charged at the Market Interest Rate indicated in the OAHTC application dated August 15, 2002, as modified on December 22, 2003. Such rents may be adjusted annually based on the percentage increase in the area median gross income where the Project is located as announced by the Department of Housing and Urban Development. In no event, shall rents be required to decrease as a result of such adjustment below the rates shown in the modified application of December 22, 2003.
- (c) The Rent Pass Through per month per unit to the tenant, in order to accomplish the Rent Reduction mandated in (b) above will be an average amount of \$2,496 with the combination of all monthly Rent Pass Through to the tenants in the project on an annual basis totaling not less than \$29,952.
- (d) The Owner shall comply with the OAHTC Program's Administrative Rule 813-110-015(2) in that the Rent Reduction shall equal or exceed the amount of projected interest savings from the reduced interest rate loan and has represented that intent in the OAHTC application dated August 15, 2002, as modified on December 22, 2003.

SECTION 6 - TERM OF DECLARATION

- (a) Except as hereinafter provided, this Declaration shall commence 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 and this Declaration shall terminate upon the expiration of the tax credit. Notwithstanding the foregoing, this Declaration shall terminate on the date the Project is acquired by foreclosure or instrument in lieu of foreclosure, except as otherwise restricted by IRC Section 42 (h)(6)(E).

SECTION 7 - ENFORCEMENT OF DEPARTMENT'S OCCUPANCY RESTRICTIONS

- (a) The owner agrees to 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 the 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 - COMPLIANCE OF OCCUPANCY RESTRICTIONS

- (a) The Owner covenants that it will not violate or permit any action that would result in a violation of the requirements of the OAHTC program, its applicable Law, including, but not limited to ORS chapters 317 and 456, all related Administrative Rules, and the requirements of this Declaration. Moreover, the Owner covenants that it will not violate or permit any action that would result in a violation of (and further 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 laws, rules, rulings, policies, procedures,

regulations or other official statements promulgated by HUD, the United States Department of the Treasury and the Internal Revenue Service, as well as any rules, rulings, policies, procedures, regulations or other official statements proposed and published from time to time by HUD, pertaining to the Owner's obligations and affecting the Project.

- (b) The Owner acknowledges that a 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 the OAHTC program regulations and, where applicable, the requirements of the LIHTC Program, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING OAHTC FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER THE OAHTC PROGRAM (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 and owner compliance under 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 and rent restrictions as now constituted or subsequently amended and other occupancy and rent restrictions of the Department as now constituted or subsequently adopted and will pay promptly a reasonable fee to the Department for the Department's monitoring of the Owner's compliance based upon the Department's monitoring costs.
- (e) This Declaration may be enforced by the Department or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, the occupancy and rent restrictions of this Declaration shall be deemed a contract enforceable by one or more tenants as third-party beneficiaries of this Declaration. In the event the Owner fails to satisfy the requirements of this Declaration 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.
- (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: OAHTC PROGRAM
 PO Box 14508
 Salem, Oregon 97309-0409

To the Owner: Crestview Commons Limited Partnership
 RK Holdings, LLC, General Partner
 ATTN: Kira Cador/Wayne Rembold
 1022 SW Salmon Street, Suite 450
 Portland, OR 97205

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 the IRC, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the Credit. The Department, together with the 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.
- (d) Subordination of Declaration. This Declaration and the restrictions hereunder are subordinate to the permanent loan documents on the Project in an original principal amount not to exceed \$1,650,000, except insofar as IRC Section 42 (h)(6) otherwise requires (for example, existing low-income tenants in the Project retain tenancy rights at restricted rents for a three-year period). The Department may subordinate this Declaration to other financing, in its sole discretion, and such subordination shall be binding on all 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 certification of the Credit and shall not be deemed to terminate or merge with the certification.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

DEPARTMENT

Oregon Housing and Community
Services Department (OHCS)

By: Betty Markey
Name: Betty Markey
Title: Manager, Housing Resources Section

OWNER

Crestview Commons Limited Partnership
By: R.K. Holdings, LLC, its General Partner

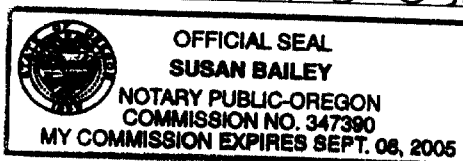
By: Wayne C. Rembold
Name: Wayne C. Rembold
Title: Acting Operating Manager

STATE OF OREGON)

County of Marion)

This instrument was acknowledged before me this 9th day of July, 2004, by Betty Markey
Housing Resources of OHCS
Section Manager

Susan Bailey
NOTARY PUBLIC FOR OREGON

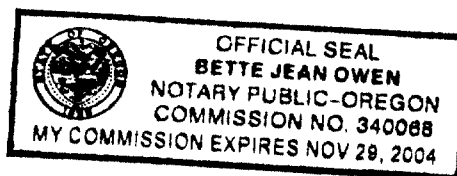
My Commission Expires: 9-8-05

STATE OF OREGON)

County of Multnomah)

This instrument was acknowledged before me this 13 day of July, 2004, by Wayne C. Rembold
R.K. Holdings LLC of Crestview Commons Limited Partnership
General Partner

Bette Jean Owen
NOTARY PUBLIC FOR OREGON

My Commission Expires: 11/29/04

Declaration of Land Use Restrictive Covenants

Project Number

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Legal Description

Parcel 1 of Land Partition 1-03, said Land Partition being Parcel 1 of Land Partition 14-97 and a portion of a tract of land situated in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 10, Township 39 South, Range 9 East, Willamette Meridian, Klamath County, Oregon.