



After Recording Return to:  
Housing and Community Services  
Attn: Multifamily Housing Section  
725 Summer Street, Suite B  
Salem, OR 97301-1266

01/28/2011 03:44:20 PM

Fee: \$72.00

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SPACE ABOVE FOR RECORDERS USE

**HOUSING AND COMMUNITY SERVICES DEPARTMENT  
STATE OF OREGON**

**OREGON AFFORDABLE HOUSING TAX CREDIT PROGRAM  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS, (this "Declaration"), dated as of the 28 day of January, 2011, by Iris Glen Townhomes, LLC, an Oregon For Profit Limited Liability Company 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 State of Oregon, acting by and through its Housing and Community Services Department, together with any successor to its rights, duties, and obligations (the "Department").

**WITNESSETH:**

WHEREAS, the Owner is or shall be the owner of a thirty seven unit rental housing development located 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 Iris Glen Townhomes (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 One Hundred Seventy Five Thousand dollars (\$1,175,000); and

WHEREAS, the Owner has represented to the Department in the Owner's OAHTC Application (the "Application") dated July 25, 2008, that the Owner shall lease/rent the Project's units to individuals or families whose income is less than 80% of the area median gross income as determined by the United States Department of Housing and Urban Development ("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 are hereby acknowledged, the Owner and the Department agree as follows:

**SECTION 1 - DEFINITIONS**

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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 Rules chapter 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 Liability Company 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 80 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 80% 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 \$34,560. This Rent Reduction is calculated from the Rents Charged at the Market Interest Rate indicated in the OAHTC application dated July 25, 2008. 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 application.
- (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 \$80.00 with the combination of all monthly Rent Pass Through to the tenants in the project on an annual basis totaling not less than \$34,560.
- (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, July 25, 2008.

#### SECTION 6 - TERM OF DECLARATION

Except as hereinafter provided, this Declaration shall commence immediately upon recordation and the Owner and its successors and assigns shall comply with all terms and conditions herein, including restrictive covenants and equitable servitudes created hereby, 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, including the restrictive covenants and equitable servitudes created hereby, shall terminate on February 1, 2031 or upon the expiration of the tax credit, whichever is later. Notwithstanding the foregoing, this Declaration shall terminate on the date the Project is acquired by foreclosure or instrument in lieu of

foreclosure, except that then current tenants shall be entitled to remain and be treated in a manner consistent with tenants covered 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.



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

DEPARTMENT:

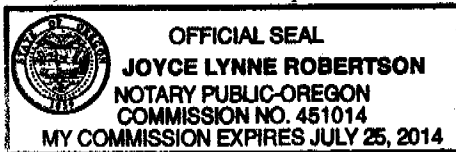
STATE OF OREGON, acting by and through its  
Housing and Community Services Department

By: \_\_\_\_\_

David W. Summers, Manager  
Multifamily Housing Section

STATE OF OREGON           )  
  : ss  
County of Marion           )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of January, 2011, by David W. Summers, who is the Manager of the Multifamily Housing Section, Housing and Community Services Department, on behalf of the Department.



\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: July 25, 2014

OWNER:                   IRIS GLEN TOWNHOMES, LLC  
                              an Oregon For Profit Limited Liability Company  
                              TIN No.: 26-3814653

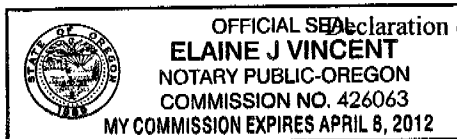
By:   LDA Klamath Development, LLC,  
      an Arizona limited Liability company, it Managing Member

By:   Luckenbill-Drayton & Associates, LLC,  
      an Arizona limited liability company, its Managing Member

By: Claudette M. Luckenbill  
      Claudette M. Luckenbill, Manager

STATE OF OREGON       )  
  : ss  
County of HOOD RIVER

The foregoing instrument was acknowledged before me this 25 day of JANUARY, 2011, by Claudette M. Luckenbill, Manager of Luckenbill-Drayton & Associates, LLC, who executed the foregoing instrument for on behalf of Iris Glen Townhomes, LLC.



Declaration of Land Use Restrictive Covenants – OAHTC  
Iris Glen, Project Number 2871  
Page 7 of 8

By: Elaine Vincent  
      NOTARY PUBLIC FOR OREGON  
      MY COMMISSION EXPIRES: 04-08-2012

**EXHIBIT A**  
**[Legal Description]**

Real property in the County of Klamath, State of Oregon, described as follows:

**PARCEL I**

A PORTION OF LOTS 4, 5, 6, BLOCK 11, DIXON ADDITION TO THE CITY OF KLAMATH FALLS, IN THE COUNTY OF KLAMATH, STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING ON THE EAST SIDE OF HILLSIDE AVENUE AT A POINT 36 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 6, BLOCK 11, DIXON ADDITION TO THE CITY OF KLAMATH FALLS, OREGON; RUNNING THENCE SOUTH ALONG THE EAST SIDE OF SAID HILLSIDE AVENUE A DISTANCE OF 37 FEET; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 6 TO THE NORTHWESTERLY LINE OF FORT KLAMATH ROAD TO A POINT WHERE SAID LINE INTERSECTS WITH A LINE DRAWN EAST FROM SAID POINT OF BEGINNING AND PARALLEL WITH THE NORTH LINE OF SAID LOT 6; THENCE WEST TO THE POINT OF BEGINNING, BEING A TRACT OF LAND FRONTING 37 FEET ON SAID HILLSIDE AVENUE AND EXTENDING ACROSS LOTS 6, 5 AND 4 OF SAID BLOCK 11 TO FORT KLAMATH ROAD, SITUATE IN SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, TOGETHER WITH AN EASEMENT FOR A DRIVEWAY ACROSS THE SOUTHERLY AND EASTERLY SIDE OF SAID LOT 4, BLOCK 11, CONVENIENTLY WIDE FOR A DRIVE FROM THE ALLEY IN THE REAR OF SAID LOT 4.

**PARCEL II**

LOT 3 BLOCK 11, DIXON ADDITION TO KLAMATH FALLS, OREGON, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

**PARCEL III**

LOTS 4, 6 AND 7 IN BLOCK 12 OF DIXON ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

**PARCEL IV**

LOTS 8 AND 9 IN BLOCK 12 OF DIXON ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON. EXCEPTING THEREFROM PORTIONS CONVEYED TO STATE OF OREGON BY AND THROUGH ITS STATE HIGHWAY COMMISSION; PORTION LOT 8 BY DEED RECORD SEPTEMBER 22, 1944 IN VOLUME 169, PAGE 194; AND PORTION OF LOT 9 BY DEED RECORDED OCTOBER 04, 1944 IN VOLUME 169, PAGE 458, DEED RECORDS OF KLAMATH COUNTY, OREGON.

**PARCEL V**

LOTS 10 AND 11 IN BLOCK 12 OF DIXON ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE RECORDS OF KLAMATH COUNTY, OREGON.

NOTE: This legal description was created prior to Januray 1, 2008.

APN: R375356 and R375338 and R375436 and R375463 and R375472 and R375481 and R375490 and R375506 and R375515