

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

**2017-011107**  
**Klamath County, Oregon**  
09/29/2017 04:07:01 PM  
Fee: \$117.00

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SPACE ABOVE FOR RECORDERS USE

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

**HOME INVESTMENT PARTNERSHIPS PROGRAM  
REGULATORY AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS  
AND EQUITABLE SERVITUDES**

THIS REGULATORY AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS AND EQUITABLE SERVITUDES, (this "Regulatory Agreement" or "Declaration") is made and entered into as of this 29 day of September, 2017, by and between **Sky Meadows, LLC**, an Oregon limited liability company together with its successors and assigns (the "Owner") and the State of Oregon, acting by and through its Housing and Community Services Department (together with any successor to its rights, duties, and obligations, collectively "OHCS").

**PREMISES**

A. Owner owns a parcel of land and a 19 unit apartment development being constructed thereon in City of John Day, County of Grant, Oregon, commonly known as **Sky Meadows – Homedale Road** (the "Project"). A legal description of the Project is set forth on Exhibit A, attached hereto and incorporated herein by reference.

B. Owner, **Sky Meadows, LLC**, an Oregon limited liability company, has applied for funding assistance for the Project through OHCS's HOME Investment Partnership Program ("HOME"). In return for HOME assistance provided by OHCS through a conditional loan to Owner, will agree that **Four (4) HOME assisted units (Two one bedroom, One two-bedroom, and One three-bedroom)** in the Project be designated as "HOME-Assisted Units."

C. Owner will or has executed a promissory note (the "Note"), Deed of Trust, Line of Credit Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (the "Trust Deed"), and Loan Agreement (the "Loan Agreement"), all of even date herewith, with respect to the above-described loan of HOME funds in the amount of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** (the "Loan"). The foregoing Note, Trust Deed, Loan Agreement, and this Declaration are hereinafter, collectively, referred to as the "Loan Documents." This Regulatory Agreement is the "Declaration" or "Regulatory Agreement" referenced in the other Loan Documents.

D. The U.S. Department of Housing and Urban Development ("HUD") requires as a condition precedent to the awarding of HOME funds for the Project that the Owner execute, deliver and record a declaration of land use restrictive covenants as contained in this Regulatory Agreement in the official 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 by regulating and restricting the use, occupancy and transfer of the Project as set forth herein. As a condition precedent to the Loan, OHCS also requires that the Owner execute, deliver and record a declaration of land use restrictive covenants as contained in this Regulatory Agreement for the purpose of enforcing the 24 CFR 92.252 requirements and such other obligations made by the Owner with respect to the Project as described herein or in other

Loan Documents.

E. The Owner has represented to OHCS that the Owner intends, and will declare covenant and agree, that the regulatory and restrictive covenants and equitable servitudes set forth herein governing, inter alia, the use, occupancy, and transfer of the Project shall be and are covenants running with the land of the Project for the term stated herein and binding upon all subsequent owners of the Project for such term stated herein and binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner.

## **AGREEMENT**

In consideration of the above premises and of the covenants, representations, warranties and undertakings set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows in order to ensure that the Project will be financed, constructed, furnished, equipped, used and operated in accordance with applicable law, HOME assistance requirements and this Regulatory Agreement, and that the following covenants, restrictions, charges, easements and equitable servitudes shall run with the land of the Project and shall be binding and a burden upon the Project, and all portions thereof, and upon any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein, for the length of time that this Regulatory Agreement shall be in effect.

### **SECTION 1. INCORPORATIONS; DEFINITIONS.**

a) The foregoing Recitals and Exhibit A are incorporated herein by reference. Notwithstanding this incorporation, the foregoing Recitals and Exhibit A do not modify the express terms of this Agreement..

b) All words and phrases used in this Agreement that are not defined herein have the meanings provided in the other Loan Documents as provided in 24 CFR 92, OHCS's administrative rules and applicable HUD regulations unless the context requires otherwise.

**"Act"** means Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended.

**"Affordability Period"** means a continuous period of time enduring Sixty (60) years from the date of Project completion or until **December 31, 2079**, whichever is later

**"Deed of Trust or Trust Deed"** mean that certain Deed of Trust, Line of Credit Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing of even date executed by the Owner, as Grantor, in favor of the OHCS, as Beneficiary, and recorded at its expense

**"Dwelling Units" or "Units"** mean the units of multifamily residential rental housing comprising the Project that are available for occupancy.

**"Event of Default"** means any event of default by the Owner under this Regulatory Agreement or under any other Loan Document.

**"HOME or Program"** means the HOME Investment Partnerships Program administered by OHCS.

**"HOME Requirements or Program Requirements"** mean the terms and conditions of this Agreement,

including (i) all incorporated Loan Documents, (ii) applicable federal laws and regulations including, but not limited to the Act and the Regulations (including as reflected on Attachment D) (all as amended from time to time), (iii) applicable state law, (iv) applicable OHCS administrative rules (including as amended from time to time), (v) applicable Program handbooks (including as amended from time to time), (vi) applicable OHCS orders and directives (including, but not limited to corrective action notices), (vi) funding and other requirements set forth in any Loan application or funding letter, and (vii) applicable local ordinances, rules, regulations, and orders (including as amended).

**"HOME-Assisted Units"** mean the residential rental units and common areas in the Project subsidized with the Loan and subject, inter alia, to the affordability requirements of this Declaration throughout the Affordability Period.

**"HUD"** means the U.S. Department of Housing and Urban Development, including its successors and assigns.

**"Median Income for the Area"** means the median income for the primary metropolitan statistical area in which the Project is located as calculated in a manner consistent with determinations of median income for such area under Section 8 of the United States Housing Act of 1937, as amended (or is such program is terminated, under such program as is in effect immediately before such termination), as modified from time to time pursuant to the requirements of Revenue Ruling 94-57 and any successor law, or as otherwise calculated or determined by OHCS consistent with HOME requirements.

**"Project"** means the Property and all improvements, fixtures, and appurtenances thereon or thereto, including as financed by the Loan and further described in Exhibit A.

**"Project Completion"** means that all necessary title transfer requirements and construction work have been performed, the Project complies with applicable Program Requirements, the final drawdown of Loan funds has been disbursed, the Certificate of Occupancy or Certificate of Substantial Completion for the Project has been issued by the locality in accordance with local practice, and Project completion reports have been submitted and processed in HUD's Cash Management Information System as prescribed in 24 CFR 92.502.

**"Property"** means the real property described in Attachment A.

**"Qualified Tenants"** means Tenants with an aggregate adjusted family income of not more than **Fifty (50%)** of the Median Income for the Area or as otherwise limited or allowed in this Regulatory Agreement.

**"Qualified Units"** means the **Four (4) HOME assisted units (Two one bedroom, One two-bedroom, and One three-bedroom)** in the Project as further described in this Regulatory Agreement to be continuously occupied by Qualified Tenants and whose rents, including the cost of utilities, are restricted to thirty percent (30%) of the gross income of a family with no more than fifty percent (50%) of the Median Income for the Area or as further limited in this Regulatory Agreement.

**"Related Persons"** means a person who is related to another person if:

(a) The relationship between such persons would result in a disallowance of losses under Section 267 of the Code (relating to disallowance of losses, etc., between related taxpayers) and Section 707(b) of the Code (relating to losses disallowed, etc., between partners and controlled partnerships) and the regulations thereunder, or

(b) Such persons are members of the same controlled group of corporations, as defined in Section 1563(a) of the Code, relating to definition of "controlled group of corporations" each place it appears in Section 1563(a) of the Code) and the regulations thereunder.

**"Tenant(s)"** means any occupant of a Dwelling Unit, other than visitors and short-term guests of Tenants staying in the Dwelling Unit for a period not to exceed 30 days.

**"Transferee"** means the person to whom the Owner sells, transfers to or disposes of the Project or any portion thereof (other than by leasing or renting for individual tenant use as contemplated in this Agreement), including a "Related Person."

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate.

This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory 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 or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

## **SECTION 2. GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

The Owner hereby represents, covenants and warrants as follows:

(a) The Owner (1) is an Oregon limited liability company validly existing under the laws of the State of Oregon and is authorized to transact business in Oregon, have the full legal right, power and authority to execute and deliver appropriate Loan Documents and, specifically, that Owner has the full legal right, power and authority to execute and perform under this Regulatory Agreement.

(b) The execution and performance of this Regulatory Agreement by the Owner (1) does not violate any law, rule or regulation, or any order of any court or other agency or governmental body, and (2) does not violate 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.

(c) The Owner will, at the time of execution and delivery of this Regulatory Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance other than the Trust Deed (as defined in the Loan Agreement) and Permitted Encumbrances (as defined in the Trust Deed) and any other liens or encumbrances approved by OHCS in writing.

(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 the GP, or any of their respective properties or assets, which if adversely determined, would materially impair their right to carry on business substantially as now conducted or would materially adversely affect their respective financial conditions.

(e) The Project, when completed, will qualify as "affordable housing" within the meaning of 24 CFR 92

and satisfy all applicable requirements for the Project under the Loan Documents. The Project will be constructed, and Loan funds utilized, in accordance with Program Requirements.

(f) During the term of this Regulatory Agreement, and upon completion of the Project, the Owner covenants and agrees that each Qualified Unit in the Project is and will remain habitable according to the Uniform Physical Conditions Standards (UPCS) and that all Units will remain habitable and be operated in a manner consistent with the Loan Documents.

(g) Subject to the terms of the Loan Documents, including the requirements of 24 CFR 92, the Owner, with prior written approval of the Department, may sell, transfer, or exchange the entire Project at any time, but the Owner also shall first (1) notify the Department in writing prior to any such sale, transfer, or exchange, and (2) obtain the agreement of any buyer or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Regulatory Agreement, including the requirements of 24 CFR 92 and other applicable Program Requirements. This provision shall not act to waive any other applicable restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project, including in the other Loan Documents nor shall it act to waive or restrict Department discretion. 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 Regulatory Agreement as well as the requirements of 24 CFR 92 and other Program Requirements, or if such transfer otherwise is inconsistent with this Regulatory Agreement or any other Loan Document.

(h) Subject to subsection (I) below, the Owner shall not demolish any part of the Project or permit the use of any Unit for any purpose other than rental housing during the term of this Regulatory Agreement, including throughout the Affordability Period, unless required by law or unless OHCS has given its prior written consent.

(I) If the Project, or any part thereof, shall be damaged, destroyed, condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee and the availability of insurance or condemnation proceeds, 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 Regulatory Agreement.

### **SECTION 3. INCOME RESTRICTIONS; RENTAL RESTRICTIONS.**

The Owner further represents, covenants and warrants as follows:

(a) Throughout the term of this Regulatory Agreement, including the Affordability Period, Owner will ensure that rents for each Qualified Unit will not exceed **Low-HOME** gross rents allowable under 24 CFR 92.252(a) as approved by OHCS. Specifically, the Owner will ensure that throughout the term of this Agreement, including the Affordability Period, Qualified Units in the Project will be operated in accordance with Program Requirements and, *inter alia*, satisfy the requirements of 24 CFR 92.252 (Qualification as affordable housing and income targeting: Rental housing) that the HOME-Assisted Units be:

(1) Occupied by Very Low-income Families whose rent does not exceed, or who pay as a contribution toward rent not more than, 30 percent of the family's monthly adjusted income as determined by HUD; or

(2) 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.

(b) During the term of this Regulatory Agreement, including the Affordability Period, Owner will ensure that Qualified Units are or will, after the Project is completed, be occupied by members of the general public who meet the requirements of Qualified Tenants such that:

- **Four (4) HOME Assisted Units ( 2 one-bedroom unit, 1 two-bedroom units, and 1 three-bedroom unit)** will provide housing for tenants with incomes below 50% of median income and rental charges including utilities shall not exceed the Low HOME Rents.

**\* In accordance with 24 CFR 92.252 (b)(2), the maximum rent in HOME-assisted rental units which also receive Federal project-based rent subsidy, are occupied by very-low income tenants, and the tenants do not pay more than 30% of their adjusted income toward rent and utilities, can be equal to the rent allowable under the Federal project-based subsidy program.**

(c) Owner shall determine whether or not all Qualified Units are occupied or held for occupancy by Qualified Tenants, i.e., Tenants who satisfy the foregoing income limitations, and that the Qualified Units are rented at rates equal to or less than the foregoing rental rates at least annually on the basis of the current income of the Tenants in the Qualified Units and certified to OHCS in the manner required by OHCS. OHCS may require additional determinations and certifications from time to time, at its discretion.

(d) **Initial Rents; Adjustments.** The Low HOME Rents (consistent with the rent limit table below) may be adjusted following HUD's annual or periodic publishing of HOME rent limits with OHCS' prior written approval. The effective Low HOME Rents as of **June 15, 2017** are:

Unit Size	Rent Limit
<b>1 Bedroom</b>	\$510
<b>2 Bedroom</b>	\$612
<b>3 Bedroom</b>	\$707

(e) **Low HOME Income Restrictions:** Only Very Low Income Persons may occupy the HOME-Assisted Units. Owner must keep the HOME-Assisted Units leased for leasing to qualified Very Low Income Persons throughout the Affordability Period. The income limits for qualified Very Low Income Persons with respect to the Project, adjusted for family size, in effect as of **June 15, 2017** are as follows:

Number in Household	Gross Annual Income
<b>1 person</b>	\$18,700
<b>2 persons</b>	\$21,350
<b>3 persons</b>	\$24,000

<b>4 persons</b>	\$26,650
<b>5 persons</b>	\$28,800
<b>6 persons</b>	\$30,950
<b>7 persons</b>	\$33,050
<b>8 persons</b>	\$35,200

Owner shall determine whether or not all Qualified Units are occupied or held for occupancy by Qualified Tenants, i.e., Tenants who satisfy the foregoing income limitations, and that the Qualified Units are rented at rates equal to or less than the foregoing rental rates at least annually on the basis of the current income of the Tenants in the Qualified Units and certified to the Department in the manner required by the Department. The Department may require additional information, determinations, and certifications from time to time, at its discretion.

#### **SECTION 4. NONDISCRIMINATION REPRESENTATIONS, COVENANTS AND WARRANTIES.**

Owner represents, covenants and warrants that Owner shall not discriminate against any Tenant or potential Tenant on the basis of race, religion, national origin or on any other basis proscribed by law.

#### **SECTION 5. MAINTENANCE REPRESENTATIONS, COVENANTS AND WARRANTIES.**

The Owner hereby represents, covenants and warrants as follows:

(a) Owner, at its expense, shall maintain the Project in good condition, repair, and working order, all satisfactory to OHCS, and shall make or cause to be made from time to time as required by OHCS, or otherwise, all necessary repairs, renewals and replacements, ordinary wear and tear and obsolescence excepted. However, this shall not require the Owner to operate any portion of the Project after it is no longer economical and feasible in the Owner's judgment so long as the terms of this Regulatory Agreement and applicable HOME requirements are nevertheless met.

(b) Owner, at its expense, shall provide for management of the Project in a manner satisfactory to OHCS. The Owner shall notify OHCS immediately of any termination of a management agent. OHCS, at its discretion, may disapprove any proposed management agent or, upon violation of this Regulatory Agreement or other laws, regulations or rules applicable to Owner or the management agent, require Owner to terminate any management agent without penalty to OHCS. Furthermore, any property management agreement for the Project shall provide that it is subject to such termination rights of OHCS

#### **SECTION 6. CONSIDERATION.**

OHCS has committed to provide HOME assistance to Owner for the purpose, among others, of inducing the Owner to acquire, develop and operate the Project as provided herein. In consideration of the Loan the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project may be put on the terms and conditions set forth herein.

## **SECTION 7. RELIANCE.**

The Owner hereby recognizes and agrees that the representations, covenants, and warranties set forth herein will be relied upon by OHCS in the administration of its HOME program. In performing its oversight of Owner's duties and obligations hereunder, OHCS may rely upon statements and certificates of the Tenants, and upon audits of the books and records of the Owner pertaining to the Project or compliance by the Owner with this Regulatory Agreement.

## **SECTION 8. COVENANTS TO RUN WITH THE LAND; EQUITABLE SERVITUDES.**

(a) The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that the covenants, reservations and restrictions set forth in this Regulatory Agreement regulating and restricting the use, occupancy and transfer of the Project (1) shall be and are, for the term stated herein, covenants running with the real property of the Project as well as constituting an equitable servitude with respect to the real property in favor of OHCS and any tenant of this Project, encumbering the Project for the term of this Regulatory Agreement, 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, (3) shall bind the Owner and its respective successors and assigns during the term of this Regulatory Agreement, and (4) shall inure to the benefit of OHCS and any tenant of the Project. The Owner hereby agrees that any and all Oregon state law requirements for the provisions of this Regulatory Agreement to constitute covenants running with the land or real property or to constitute an equitable servitude with respect to the real property in favor of OHCS and any tenant of this Project, shall be deemed satisfied in full. For the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or a portion thereof shall expressly provide that such conveyance is subject to this Regulatory Agreement, 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 Regulatory Agreement.

(b) The Owner covenants that the consent of any recorded prior lienholder on the Project is not required in connection with recording this Regulatory Agreement, or if required, such consent has been or will be obtained by the Owner.

## **SECTION 9. BURDEN AND BENEFIT.**

The Owner hereby declares its understanding and intent that the burdens of the covenants, reservations and restrictions set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The Owner hereby further declares its understanding and intent that the benefits of such covenants, reservations and restrictions touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Qualified Tenants and other Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which HOME assistance was provided to the Owner for the Project.

## **SECTION 10. RECORDING AND FILING.**

Upon execution of this Regulatory Agreement, the Owner shall cause this Regulatory Agreement to be recorded in the official public land deed records of **Grant** County, Oregon, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to OHCS an executed original or certified copy of the recorded Regulatory Agreement showing the date, deed book and page numbers of record.



## **SECTION 11. TERM OF REGULATORY AGREEMENT.**

(a) This Regulatory Agreement shall apply to the Project immediately upon recordation, and the owner shall comply with all restrictive covenants and equitable servitude herein with respect to each building in the Project not later than the first day on which such building is placed in service. This Agreement and the terms and restrictions herein shall terminate on the later of **December 31, 2079**, or sixty (60) years after the Project is completed whichever is later.

(b) Pursuant to 24 CFR Part 92.252, as amended, this Regulatory Agreement and the affordability restrictions contained herein shall remain in effect for not less than the period described in Section 11(a) without regard to the term of the mortgage or other underlying security and without regard to any transfer of ownership, except that this Regulatory Agreement and the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure by the lender providing the primary permanent financing for the Project unless the rights of the lender are held or exercised by or on behalf of a Related Person of the Owner or against a Related Person Transferee. Except as provided above, in the event the lender, its successors or assigns lawfully acquire title to the Project through foreclosure or deed in lieu of foreclosure, neither the lender nor any subsequent purchaser of the Project following such foreclosure or deed in lieu of foreclosure shall be deemed a "successor or assign" of the Owner, and neither the lender nor such subsequent purchaser shall have any obligation to repay the Loan to OHCS and this Regulatory Agreement and all conditions and restrictions contained herein shall terminate on the date, if any, that the Project is acquired by foreclosure or deed in lieu of foreclosure. However, if at any time following such a transfer by foreclosure or transfer in lieu of foreclosure, but still during the term of the affordability period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, including Related Persons, obtains an ownership interest in the Project or property, the affordability period shall be revived according to its original term.

## **SECTION 12. VERIFICATION OF OCCUPANCY RESTRICTIONS; INFORMATION.**

(a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of OHCS to inspect any books and records of the Owner regarding the Project with respect to the incomes of Tenants which pertain to compliance with the Department's occupancy restrictions specified in this Regulatory Agreement.

(b) The Owner shall within ten working days submit any other information, documents, or certifications requested by the Department to substantiate the Owner's continuing compliance with the provisions of this Regulatory Agreement.

## **SECTION 13. COMPLIANCE WITH 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 Regulatory Agreement. Moreover, Owner covenants to take any lawful action (including amendment of this Regulatory Agreement as may be necessary, in the opinion of the Department) to comply fully with all applicable rules, rulings, policies, procedures, regulations or 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 or otherwise required by the Agreement.

(b) This Regulatory Agreement may be enforced by the Department or its designee in the event the Owner fails to satisfy any of the requirements herein. The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Regulatory Agreement is to assure compliance of the Project and the Owner with 24 CFR Part 92, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING HOME FUNDS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE DEPARTMENT SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF THAT IS NOT CURED WITHIN ANY APPLICABLE CURE PERIOD, 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, the applicable regulations and this Agreement.

(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, in this Agreement, and other occupancy restrictions of the Department as now constituted or subsequently adopted.

(e) This Regulatory Agreement 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 Regulatory Agreement shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Regulatory Agreement. In the event the Owner fails to satisfy the requirements of this 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 14. BREACH; DEFAULT.**

Except for the performance of payment obligations arising under the Loan Documents, the Owner shall not be in breach or default of this Regulatory Agreement for failure to perform any covenant or agreement hereunder until the Owner has received written notice from the Department specifying the breach in reasonable detail, and has failed to cure such breach or default within thirty (30) days or such shorter period as the Department may provide in its notice, or, if such breach or default cannot with due diligence be cured within such period and the Owner continues to act with due diligence, within a reasonable period (not to exceed ninety (90) days) thereafter. Notwithstanding the foregoing, to the extent any shorter notice or cure period are provided in this Regulatory Agreement or the other Loan Documents, said specific provisions shall control. Any breach pursuant to said provisions shall constitute a breach or default hereunder.

#### **SECTION 15. DEFAULTS; ENFORCEMENT.**

If the Owner defaults in the performance or observance of any representation, covenant, warranty, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for the applicable cure period after notice thereof shall have been given by the Department to the Owner, or for a period of thirty (30) days from the date the Owner should, with due diligence, have discovered such default, or without cure period or notice in the event of a payment default, then the Department may declare an "Event of Default" to have occurred hereunder. Following the declaration of an Event of Default hereunder the Issuer may, at its options, take any one or more of the

following steps, in addition to all other remedies provided by law or equity:

(a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer hereunder;

(b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable by the Department to enforce the obligations, covenants, warranties and agreements of the Owner hereunder.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any person entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

All reasonable fees, costs and expenses of the Department, including legal expenses prior, during or after trial (including on appeal, in bankruptcy or arbitration) incurred in taking any action pursuant to this Section shall be the sole responsibility of the Owner.

No breach or default under this Regulatory Agreement shall defeat or render invalid any mortgage or like encumbrance upon the Project or any portion thereof given in good faith and for value.

#### **SECTION 16. NOTICE.**

All notices to be given pursuant to this Regulatory 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.

To the Department:      Oregon Housing and Community Services Department  
   ATTN: HOME Program Manager  
   725 Summer St NE Ste B  
   Salem, Oregon 97301-1266

To the Owner:              **Sky Meadows, LLC**  
   1007 NW Rimrock  
   Redmond, OR 97756

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.

#### **SECTION 17. GOVERNING LAW; VENUE.**

This Regulatory Agreement shall be governed by the laws of the State of Oregon without regard for principles concerning conflicts of laws and, where applicable, the laws of the United States of America. The parties hereby agree that the courts of the State of Oregon or, where necessary, the U.S. District Court for the District of Oregon, shall have exclusive jurisdiction over any claim, action, suit or proceeding (collectively, "Claim") brought or maintained by or

against the Issuer under this Regulatory Agreement or in any way relating to the transactions contemplated hereby. Each party hereby consents to such exclusive jurisdiction and waives any and all objections it might have thereto. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. OWNER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SUCH COURTS.

#### **SECTION 18. AMENDMENTS.**

This Regulatory Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, duly recorded in the real property records of the County. The Owner agrees that it will take all actions necessary to effect amendment of this Regulatory Agreement as may be necessary to comply with 24 CFR 92 or any 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 Regulatory Agreement and such amendment or modification shall be binding on third-parties granted rights under this Regulatory Agreement.

#### **SECTION 19. SEVERABILITY.**

If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

#### **SECTION 20. CONSTRUCTION.**

The parties to this Regulatory Agreement acknowledge that each party and its counsel have participated in the drafting and revision of this Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Regulatory Agreement or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Regulatory Agreement.

## **SECTION 21. NO LIMITATIONS ON ACTIONS OF DEPARTMENT IN EXERCISE OF ITS GOVERNMENTAL POWERS.**

Nothing in this Regulatory Agreement or the other Loan Documents is intended, nor shall it be construed, to in any way limit the actions of the Department in the exercise of its governmental powers. It is the express intention of the parties hereto that the Department shall retain the full right and ability to exercise its governmental powers with respect to the Owner, the Project, and the transactions contemplated by this Regulatory Agreement and the other Loan Documents to the same extent as if it were not a party to this Regulatory Agreement, or to any of the other Loan Documents, and in no event shall the Department have any liability in contract arising under this Regulatory Agreement or under the other Loan Documents by virtue of any exercise of its governmental powers.

## **SECTION 22. CROSS DEFAULT.**

An Event of Default hereunder may be deemed an Event of Default under the other Loan Documents. An Event of Default under the other Loan Documents shall constitute an Event of Default hereunder.

## **SECTION 23. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of the obligations of this Regulatory Agreement.

## **SECTION 24. Waiver.**

The failure of the Department to enforce any provision of this Regulatory Agreement or the waiver of any violation or nonperformance of this Regulatory Agreement in one instance shall not constitute a waiver by the Department of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Regulatory Agreement shall bind either party unless in writing and signed by both parties and all necessary State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

## **SECTION 25. MERGER.**

The obligations of the Owner, including the covenants, restrictions, equitable servitudes and warranties as set forth herein, in the other Loan Documents, and in the Application for HOME assistance, shall survive the reservation of HOME funds and shall not be deemed to terminate or merge with the awarding, making of the loan or payment of the HOME assistance Loan..

## **SECTION 26. JOINT AND SEVERAL OBLIGATIONS.**

The Obligations of the Owner, including the applicable covenants, restrictions, equitable servitudes and warranties as set forth herein, in the other Loan Documents, and in the Application for HOME Assistance by GP, are both joint and several.

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

OWNER:

Sky Meadows, LLC,  
an Oregon limited liability company  
TIN No.: 61-1798990

By: LDA-Sky Meadows Development LLC  
an Oregon limited liability company  
its manager

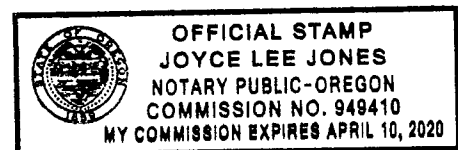
By: Luckenbill-Drayton & Associates, LLC  
an Oregon limited liability company  
its manager

By: Lisa M. Drayton  
Lisa M. Drayton, Manager

STATE OF OREGON     )  
                              : ss  
County of ~~Klamath~~ )  
                              Deschutes

The foregoing instrument was acknowledged before me this 26 day of Sept, 2017, by Lisa M. Drayton, member of Luckenbill-Drayton & Associates, LLC, Manager of LDA-Sky Meadows Development LLC an Oregon limited liability company, its manager of Sky Meadows, LLC an Oregon limited liability company, who executed the foregoing instrument for on behalf of the Borrower.

Joyce Jones



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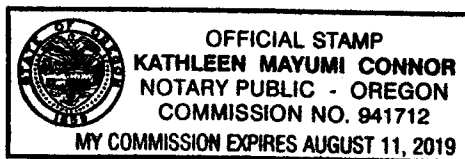
DEPARTMENT:

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

By:   
Caleb Yant, Chief Financial Officer

STATE OF OREGON                    )  
  : ss  
County of Marion                    )

The foregoing instrument was acknowledged before me this 28 day of September, <sup>2017</sup> by Caleb Yant, Chief Financial Officer of Housing and Community Services Department, on behalf of the Department.



Kathie Connor  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: August 11, 2019

*[The balance of this page is intentionally left blank.]*

## **Exhibit A**

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

Parcel 1 of Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00, situated in SE1/4 NE1/4 Section 14, Township 39 South, Range 09 East of the Willamette Meridian, Klamath County, Oregon and recorded May 8, 2017 as Instrument No. 2017-004773, Klamath County Records.