

2017-011129  
Klamath County, Oregon  
10/02/2017 11:45:01 AM  
Fee: \$237.00

WHEN RECORDED RETURN TO:

Oregon Housing and Community Services  
Multifamily Finance and Resources Section  
725 Summer St NE, Suite B  
Salem, Oregon 97301

*Ameritile 17 2980 Am*

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## SUBORDINATION AGREEMENT (Parcels 1 and 2)

THIS SUBORDINATION AGREEMENT (this "Agreement") is made and entered into as of September 29, 2017 by and among the State of Oregon, acting by and through its Housing and Community Services Department, (together with its successors and assigns, "OHCS", Klamath County, a political subdivision of the State of Oregon (the "County"), and Klamath Housing Authority, a political subdivision of the State of Oregon ("Owner"), and acknowledged and agreed to by Sky Meadows, LLC, an Oregon limited liability company ("Borrower").

### RECITALS

1. This Agreement is being executed to evidence and confirm certain terms for OHCS' willingness to provide financial assistance for the construction and operation of a **thirty-seven (37)** -unit scattered-site low-income multifamily residential housing leasehold development by the Borrower on real property hereinafter described on Exhibit A (the "**Property**") pursuant to the terms and conditions set forth in documentation delivered to OHCS (the improvements, the Leasehold (as described below), and Property, collectively, the "**Project**")
2. Owner is the fee simple owner of the Property, which is more fully described in Exhibit A, attached hereto.
3. The County retains reversionary interests in Parcels 1 and 2 of the Property pursuant to those certain Quitclaim Deeds recorded as Instrument Numbers 2016-006063 and 2016-006064 on Jun 9, 2016 in the official records of Klamath County, Oregon pursuant to which the County reserved a reversionary interest in the Property with the right to take back title to the Property upon the occurrence of certain events or conditions (the "**Reversionary Rights**"). **Reversionary Rights**
4. Borrower is the owner of the above-mentioned leasehold interest (the "**Leasehold**") in the Property, the several parcels of which are subject to respective Lease Agreements between Owner and Borrower, each dated Sept 29, 2017 (collectively, the "**Ground Lease**" or "**Lease**"), specifying Borrower's interest in the Project and recorded on September 29, 2017 in the official records of Klamath County, Oregon respectively as Instrument Nos. 2017-011094 (Parcel 1), 2017-011096 (Parcel 2).

5. OHCS has or will provide financial assistance to the Borrower for use with respect to the development, construction, and operation of the Project in the form of: (a) 9% Low-Income Housing Tax Credits (“**LIHTC**”) pursuant to a Reservation and Extended Use Agreement (“**REUA**”) executed between Borrower and OHCS on or about September 1, 2017 and a Declaration of Land Use Restrictive Covenants (the “**LIHTC Declaration**”) substantially in the form of Exhibit B, attached hereto, to be executed between Borrower and OHCS and recorded in the official records of Klamath County, State of Oregon, following Project completion; (b) Low Income Weatherization Program (“**LIWX**”) financial assistance pursuant to a Low Income Weatherization Program Grant Agreement and Declaration of Restrictive Covenants (the “**LIWX Grant Agreement**”) executed by and between Borrower and OHCS on or about September 1, 2017 and a Low Income Weatherization Program Assignment and Assumption Agreement and Declaration of Restrictive Covenants (the “**LIWX Assignment**”) in favor of OHCS executed among the Owner, Borrower, and OHCS on or about September 1, 2017 and recorded as Instrument Number 2017-011109, in the official records of Klamath County, Oregon on or about September 29, 2017; and (c) HOME Investment Partnerships Program (“**HOME**”) financial assistance pursuant to a Promissory Note (“**Note**”) executed by Borrower in favor of OHCS on or about September 1, 2017, a Deed of Trust, Line of Credit Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Trust Deed**”) executed by Borrower in favor of OHCS on or about September 1, 2017 and recorded as Instrument Number 2017-011106 in the official records of Klamath County, Oregon on or about September 29, 2017, a Loan Agreement (“**Loan Agreement**”) executed by and between Borrower and OHCS on or about September 1, 2017, and a Regulatory Agreement and Declaration of Restrictive Covenants (the “**HOME Regulatory Agreement**”) executed by and between Borrower and OHCS on or about September 1, 2017 and recorded as Instrument Number 2017-011107 in the official records of Klamath County, Oregon on or about September 29, 2017.

The foregoing documents described in this Recital 5 are hereinafter collectively referred to as the “**OHCS Documents**.”

6. Borrower has leased the Property from Owner pursuant to the Lease and will operate the Project pursuant to its terms in a manner consistent with the OHCS Documents.

7. One of the conditions of OHCS providing the above-described financial assistance to Borrower for the Project is the subordination of the Reversionary Rights to the OHCS Documents.

## **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants and agreements of the parties herein contained, the parties agree as follows:

### **1. Incorporation; Definitions.**

**1.1** The foregoing Recitals and the documents referenced therein are incorporated into this Agreement by reference to the same extent and with the same force and effect as if

fully set forth herein, provided, however, that the Recitals and incorporated documents shall not be deemed to modify the express provisions hereinafter set forth.

**1.2** For purposes of this Agreement, the following terms shall have the following meanings:

**1.2.1 "OHCS Documents"** means the documents so defined above and all obligations and covenants of any type or nature arising under one or more of the same, presently or hereafter due from Owner or Borrower, and their successors and assigns, to OHCS, its successors, assigns, or participants, including, without limitation, all restrictive covenants arising under the LIHTC Declaration, the LIWX Assignment, and the HOME Regulatory Agreement as well as the principal, interest, charges, and expenses under or incidental to the indebtedness secured by the Trust Deed.

**1.2.2 "Senior Liens"** means all liens, encumbrances, restrictive covenants, equitable servitudes, mortgages, security interests, and collateral assignments of any type or nature granted by Owner or Borrower to OHCS in the OHCS Documents, or in any other document or agreement establishing or securing performance or payment obligations arising under the OHCS Documents, and any amendments, modifications or supplements thereto.

**2.** Consent of the County. Notwithstanding any of the terms of the Reversionary Rights, the County does hereby consent to the creation, now or hereafter, of the OHCS Documents and the Senior Liens and to the execution and delivery by Owner and Borrower of any and all documents and instruments in connection therewith, including, without limitation, the Trust Deed, and to the performance by Owner and Borrower of any and all of their respective obligations under or in connection therewith. The County agrees that no such action shall constitute an event of default or event, which with the passage of time, will become an event of default under any document or instrument relating to the Reversionary Rights.

**3.** Subordination of Reversionary Rights. In consideration of OHCS executing the OHCS Documents and agreeing to provide the described financial assistance to Borrower, the Reversionary Rights are hereby subordinated to, made subject to and limited by, and shall not defeat, render invalid or limit in any way, the Senior Liens; the Senior Liens shall be prior, and superior to the Reversionary Rights.

**4.** Assignment. The County represents and warrants that no part of the Reversionary Rights have been assigned or transferred to or for the benefit of others. The terms of this Agreement shall bind the successors and assigns of the parties.

**5.** Miscellaneous.

**5.1** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any party substituted as a beneficiary under any of the OHCS Documents.

5.2 If any of the provisions or terms of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other of the terms hereof, and this Agreement shall be construed as if such unenforceable term had never been contained herein.

5.3 All notices and other communications hereunder shall be deemed to have been duly given, made, or served, if in writing and delivered personally or mailed by first class mail, postage prepaid, to the respective parties to this Agreement as follows:

(a) If to Owner:

Klamath Housing Authority  
1445 Avalon Street  
Klamath Falls, Oregon 97601  
Attention: Diana Otero

With a copy to:

Luckenbill-Drayton & Associates, LLC  
1007 NW Rimrock Dr.  
Redmond, OR 97756  
Attn: Lisa Drayton

(b) If to the County:

Klamath County  
[305 Main St. Rm. 121]  
[Klamath Falls, OR 97601]  
Attention: [Tax Collector/Prop. Mgr.]

(c) If to OHCS:

Oregon Housing and Community Services  
Attn: LIHTC Program Manager  
725 Summer Street NE, Suite B  
Salem, Oregon 97301-1266

The designation of the person to be so notified or the address of such person for the purposes of such notice may be changed from time to time by similar notice in writing, except that any communication with respect to a change of address shall be deemed to be given and made when received by the party to whom such communication was sent.

5.4 This Agreement represents the entire Agreement between the parties hereto on the subject matter hereof and, except as expressly provided herein, shall not be affected by reference to any other documents. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but such may be accomplished only

by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

5.5 In the event any action is filed to enforce or construe the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees. Attorney fees shall include services rendered at both the trial and appellate levels, as well as services rendered in any bankruptcy proceeding or arbitration proceeding. Reasonable attorney fees shall not exceed the rate charged to OHCS by its attorneys.

5.6 This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "**Claim**") among two or more of the parties related to this Agreement shall be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Project is located) or, if necessary, the United States District Court for the District of Oregon. In no event shall this provision be construed as a waiver by the State of Oregon or OHCS 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, COUNTY AND BORROWER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

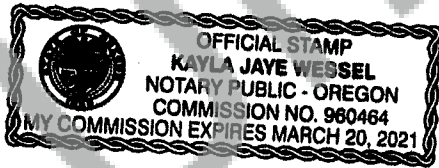
COUNTY: **Klamath County**

By: *[Signature]*  
Name: *Rick Vaughn*  
Title: *Tax Collector / Property Manager*

STATE OF OREGON )  
COUNTY OF *Klamath* ) SS

This instrument was acknowledged before me on *9/22*, 2017, by *Rick Vaughn*, who is *Tax Collector / Prop Mgr* of Klamath County, Oregon, a political subdivision of the State of Oregon, on behalf of said County.

*Kayla Jay Wesel*  
Notary Public for Oregon  
My commission expires: *03-20-2021*



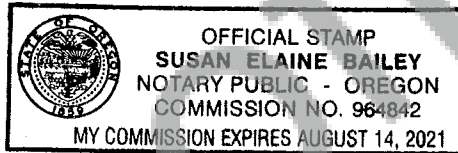
OHCS:

The State of Oregon, acting by and through its  
Housing and Community Services Department

By: Heather Pate  
Heather Pate, Manager  
Multifamily Finance and Resources Section

STATE OF OREGON            )  
  : ss  
County of Marion            )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of September, 2017 by Heather Pate, Manager of the Multifamily Finance and Resources Section of the Housing and Community Services Department, State of Oregon, on behalf of OHCS.



*Susan Elaine Bailey*  
*Commission Expires 8-14-21*

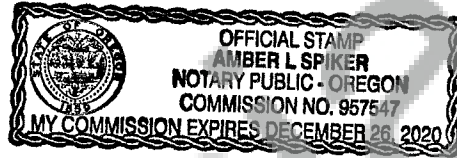
Unofficial Copy

**OWNER:**


**Klamath Housing Authority**

By:   
Diana Otero, Executive Director

STATE OF OREGON )  
COUNTY OF Klamath ) :SS



This instrument was acknowledged before me on September 25, 2017, by Diana Otero, who is Executive Director of Klamath Housing Authority, a political subdivision of the State of Oregon, on behalf of Owner.

  
Notary Public for Oregon  
My commission expires: December 26, 2020

Unofficial Copy

ACKNOWLEDGED AND AGREED as of the date first written above:

**BORROWER:** **SKY MEADOWS, LLC**, an Oregon limited liability company

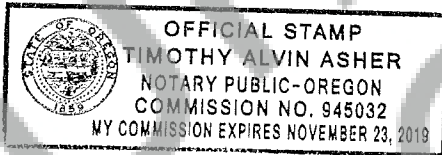
By: LDA-Sky Meadows Development, LLC,  
an Oregon limited liability company,  
its Managing Member

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

By: *Lisa Drayton*  
Lisa Drayton, Manager

STATE OF OREGON )  
 )  
 ) :ss  
COUNTY OF Deschutes )

This instrument was acknowledged before me on September 27<sup>th</sup>, 2017, by Lisa Drayton, who is Manager of Luckenbill-Drayton & Associates, LLC, an Oregon limited liability company, which is the Manager of LDA-Sky Meadows Development, LLC, an Oregon limited liability company, which is the Managing Member of Sky Meadows, LLC, an Oregon limited liability company, for and on behalf of Borrower.



*Timothy Asher*  
Notary Public for Oregon  
My commission expires: 11-23-2019

**EXHIBIT A**  
*(Property Description)*

Parcel 1

The North half of Lots 7 and 8, Block 59, Buena Vista 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.

Parcel 2

A portion of Lots 7 and 8 in Block 54, of Nichols 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, more particularly described as follows:

Beginning at the most Northerly corner of Lot 8, Block 54, Nichols addition to the City of Klamath Falls, Oregon, and running thence Southwesterly along Lincoln Street, a distance of 87 feet; thence Southeasterly parallel with 8th street a distance of 60 feet; thence Northeasterly parallel with Lincoln street a distance of 87 feet; thence Northwesterly along 8th street a distance of 60 feet to the place of beginning; being the Northwesterly 60 feet of the Northeasterly 22 feet of Lot 7, and the Northwesterly 60 feet of Lot 8 in Block 54, Nichols Addition to the City of Klamath Falls, Oregon.

Exhibit "B"

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

SPACE ABOVE FOR RECORDER'S USE

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

**9% LOW-INCOME HOUSING TAX CREDIT  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

This 9% Low-Income Housing Tax Credit Declaration of Land Use Restrictive Covenants (this "**Declaration**") is made and entered into this \_\_\_ day of **Month**, 20\_\_ by and between **legal name of ownership entity**, an Oregon **type of organization** (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, ("**OHCS**") as a condition precedent to the allocation of low-income housing tax credits by OHCS to Owner as described herein.

**RECITALS**

- A.** Owner is the owner of a **# of buildings longhand (#) building, total # of units (#) unit residential rental housing development** located on land in the City of **name of city**, County of **name of county**, State of Oregon, more particularly described in **Exhibit A** hereto, known as or to be known as **Project Name** (the "**Project**").
- B.** OHCS has been designated by the Governor of the State of Oregon as the housing credit agency for the State of Oregon for the allocation of low-income housing tax credit dollars (the "**Credit**").
- C.** Owner applied to OHCS and has entered into a Reservation and Extended Use Agreement with OHCS dated **Date of REUA** (the "**REUA**") for an allocation of **Credit Yr** Credit to the Project in an amount not to exceed **Amount of Credits** Dollars (\$#).
- D.** Owner represented to OHCS in Owner's Credit Application dated **Date of Application** (the "**Application**") that Owner, *inter alia*, will lease **percentage longhand** percent (**#%**) of the units in the

**Declaration of Restrictive Covenants – 9% LIHTC**

**Project – Project # \_\_\_\_\_**

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Project to individuals or families whose income is **percentage longhand** percent (#%) or less of the median family income ("**Qualified Tenants**") as determined in accordance with Section 42 of the United States Internal Revenue Code of 1986, as amended (the "**IRC**") and similarly lease an aggregate total of Project units equal to or greater than the "**Applicable Fraction**" of Project units as further described below.

E. Owner also has represented to OHCS that it will maintain Project rents and other charges to Qualified Tenants consistent with IRC Section 42 and "**Declaration Requirements**" further described below.

F. OHCS has ultimately determined that the Project, as operated consistent with the Application, will require a Credit allocation in the not-to-exceed amount of **Amount of Credits longhand** Dollars (\$#) in order to be financially feasible.

G. IRC Section 42 includes a requirement, as a condition precedent to the allocation of the Credit, that 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 land-use restrictive covenants running with the land of the Project for the purpose of enforcing the requirements of IRC Section 42.

H. OHCS requires, as a condition precedent to the allocation of the Credit, that 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 restrictive covenants pursuant to ORS 456.625 and equitable servitudes running with the land for the purposes of enforcing this Declaration, the REUA, applicable provisions of IRC Section 42, all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by the United States Department of the Treasury or its Internal Revenue Service, including as amended from time to time (the "**Regulations**"), applicable requirements of the U.S. Department of Housing and Urban Development ("**HUD**"), including as amended from time to time, , applicable OHCS administrative rules, orders, and directives, including as amended from time to time, and other applicable law, including but not limited to local ordinances and code requirements (the foregoing Declaration, REUA, IRC, Regulations, HUD requirements, OHCS administrative rules, orders, and directives, and other applicable law are collectively referred to hereinafter as the "**Declaration Requirements**").

I. Owner is willing, and intends, to execute and record this Declaration memorializing its representations, covenants, agreements and declarations with respect to the Project, the Credit, and the Declaration Requirements, including that the restrictive covenants and equitable servitudes 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, unless otherwise modified in a signed and notarized writing by OHCS, and are binding upon all subsequent owners of the Project property for such term, and are not merely personal covenants of the Owner.

J. OHCS will issue a Form 8609 to the Owner consistent with OHCS' determination in Recital F upon the execution and recording of this Declaration, which Declaration constitutes part of the REUA.

## DECLARATION

NOW, THEREFORE, in consideration of the Credit, the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree, covenant, and Owner declares as follows:

### SECTION 1 - INCORPORATIONS; DEFINITIONS.

- (a) **Incorporations.** The foregoing Recitals and the documents referenced therein are incorporated in this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the Recitals and incorporated documents shall not be deemed to modify the express provisions hereinafter set forth.
- (b) **Definitions.** All the words and phrases used in this Declaration shall have the meanings given herein or as used in the Regulations and other Declaration Requirements unless the context requires otherwise.

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

- (a) **Recording and Filing.** Upon execution of this Declaration, 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 an executed original or certified copy of the recorded Declaration to OHCS showing the date, deed book and page numbers of record. The Owner understands and agrees that OHCS will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until OHCS has received the recorded executed original of this Declaration.
- (b) **Covenants Running with the Land.** The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Project, that this Declaration and the covenants and restrictions set forth in this Declaration (including all Declaration Requirements) regulating and restricting, *inter alia*, the use, occupancy and transfer of the Project (I) shall be and are covenants and equitable servitudes running with the Project land and encumbering the Project for a minimum of sixty (60) years from the date the first building in the Project is placed in service or until **Date of estimated PIS + 60 yrs**, whichever is later, (the "**Affordability Period**") 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 OHCS (and, as herein limited, to any past, present or prospective Qualified Tenant of the Project) and its respective successors and assigns during the Affordability Period. 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 equitable servitudes have been created to insure that these restrictions and equitable servitudes run with the Project. Throughout the Affordability Period, 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 and equitable servitudes contained or created 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.

Declaration of Restrictive Covenants – 9% LIHTC

Project – Project # \_\_\_\_\_

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- (c) **Consent of Prior Lienholders.** The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.
- (d) **Compromise of Declaration.** Notwithstanding any interests hereunder or in the REUA inuring to the benefit of past, present or prospective tenants of the Project pursuant to Section 2(b) above or otherwise, OHCS may compromise, waive, amend or modify this Declaration with the written consent of Owner while the Project remains in OHCS' Low-Income Housing Tax Credit Program (the "**Program**") or at its sole discretion should the Project be removed from the Program, as it so determines to be to the benefit of OHCS, the Project, the Program, or OHCS efforts to provide or maintain safe and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHCS representative.
- (e) **No Third-Party Claims Against OHCS.** Third-party beneficiaries under this Declaration shall have no claim, cause of action or other right of recourse against OHCS with respect to any action or lack of action taken by OHCS with respect to this Declaration, the REUA, the Credit, the Project, or other Credit Requirements arising from their rights under this Declaration, the REUA, or the other Declaration Requirements.

### SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER.

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

- (a) **Status.** The Owner (i) is **Legal Name of Partnership**, an Oregon **type of organization**, and is duly organized under the laws of the State of Oregon and qualified to transact business related to the development and operation of the Project 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 or contemplated hereunder to be conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration.
- (b) **No Violations.** 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) **Marketable Title.** 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 and any duly subordinated Loan Documents relating to the Project or other permitted encumbrances).
- (d) **No Litigation.** 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) **Qualified Low-Income Project.** The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in IRC Section 42 and applicable regulations.
- (f) **Residential Unit Requirements.** Each unit in the Project contains complete facilities for living, sleeping, eating, cooking, sanitation and satisfies any other applicable criterion in IRC Section 42(i)(3)(B), including that such units are to be used on other than a transient basis (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless in a manner consistent with IRC Section 42(i)(3)(B)(iii)).
- (g) **Qualified Units.** During the Affordability Period, all units subject to the Credit consistent with the Applicable Fraction identified below shall be leased, rented or made available to members of the general public who qualify as Low Income Tenants, i.e., Qualified Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in IRC Section 42(g).
- (h) **Enforceability; Fair Housing Act.** The Owner agrees that OHCS, Qualified Tenants, and appropriate third parties will be eligible to enforce the IRC Regulations with respect to the Project for the Affordability Period, including as provided by the Fair Housing Act, as amended.
- (i) **Habitability.** During the Affordability Period, the Owner covenants, agrees and warrants that each Qualified Unit, i.e., each low-income unit as described herein, together with common areas, is and will remain habitable and that the Project is and will be maintained in a safe, sanitary, and appropriate condition, all satisfactory to OHCS.
- (j) **Qualified Contract.** The Owner will provide certified financial documentation acceptable to OHCS to satisfy the calculation of a qualified contract and to begin the one (1) year period for finding a buyer in accordance with IRC Section 42(h)(6), if desired. Notwithstanding any other provision of this Declaration or otherwise, absent the express written agreement of OHCS (which OHCS may give or withhold at its sole discretion) any one (1) year period applicable to OHCS for finding a buyer for the Project in accordance with IRC Section 42(h)(6) shall not commence until the first day of the last year of the Affordability Period.
- (k) **Permitted Use; No Waste.** 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 OHCS has given its prior written consent.
- (l) **Restoration.** If the Project, or any part thereof, shall be damaged, destroyed, condemned, or acquired for public use, the Owner will, subject to the rights of any mortgagee, repair and restore the Project to substantially the same condition as existed prior to the events causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.

- (m) **No Contrary Instruments.** The Owner has not and will not execute any other declaration, instrument, or other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, this Declaration and the other Declaration Requirements, including as amended, are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (n) **Applicable Fraction.** Notwithstanding anything to the contrary herein or in the REUA, the applicable fraction for each building of the Project during the term of this Declaration shall not be less than the applicable fraction specified in the REUA, which is **applicable fraction longhand percent (##%)** of the Project units (the “**Applicable Fraction**”). [See IRC Section 42(h)(6)(B)] Each such unit comprising the Applicable Fraction within the Project, i.e., the “Qualified Units,” and related common areas of the Project are subject to the terms, conditions, covenants, and equitable servitudes of this Declaration and the other Declaration Requirements, including as amended, throughout the Affordability Period and as additionally provided herein.
- (o) **Project Rents and Other Charges.** In addition to the enforcement of applicable IRC rent limits as potentially further limited by OHCS consistent with Declaration Requirements, OHCS may require the Owner to additionally reduce rents charged for Qualified Units if property taxes imposed upon the Project are reduced because of a change in Oregon law. Any such reduction in rent required by OHCS occasioned by property tax reductions will not exceed the reduction in property taxes, taking into account any replacement taxes or equivalent charges.
- (p) **Section 8 Vouchers.** The Owner will not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
- (q) **Form 8609.** The Owner shall, satisfactory to OHCS, complete and sign Part II of the Form 8609 for the first year of the Credit period and timely return a copy of same to OHCS.
- (r) **OHCS Charges.** OHCS may charge, and Owner shall pay to OHCS, periodic amounts for OHCS monitoring activities with respect to the Project as determined by OHCS in accordance with its applicable administrative rules and directives, including as amended.

**SECTION 4 – MINIMUM IRC INCOME RESTRICTIONS; RENTAL RESTRICTIONS.**

To verify minimum compliance with IRC requirements, the Owner represents, warrants, and covenants that from and after initial occupancy and throughout the remainder of the Affordability Period, in addition to its other obligations under this Declaration, that:

- (a) **Minimum Compliance.** Choose one (1) of the below:
  - (1)  At least twenty percent (20%) or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of family adjusted area median income.
  - (2)  At least forty percent (40%) or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is sixty percent (60%) or less of family adjusted area median income.

- (b) **Income Determinations.** OHCS may require that the determination of whether a tenant meets the low income requirements hereunder, including with respect to all units subject to the Applicable Fraction, be made by the Owner or his designated agent at least annually on the basis of the current income of such Low Income Tenant, i.e., Qualified Tenant.

**SECTION 5 - ADDITIONAL COMPLIANCE REQUIREMENTS, INCLUDING OCCUPANCY, RENT AND USE RESTRICTIONS.**

The Owner represents, warrants and covenants that throughout the Affordability Period:

- (a) **Application of Declaration.** The terms, conditions, and covenants of this Declaration apply to the Owner and all Qualified Units and related common areas of the Project for the full term of the Affordability Period and as additionally provided in this Declaration. All Qualified Units are subject to and shall be maintained in accordance with the income, rent, and other restrictions of Section 4 as well as all other provisions of this Declaration.
- (b) **Continuous Compliance.** The Owner shall continuously comply with all habitability, maintenance, disclosure and other Declaration Requirements with respect to the Project including, but not limited to, all income, rent, other charges, and use restrictions applicable to the Project arising under this Declaration, including as amended, for the full term of the Affordability Period and as additionally provided herein. These obligations are in addition to the minimum IRC restrictions specified in Section 4 and in excess of the required fifteen (15) year IRC Compliance Period.
- (c) **Rent and Other Charges Limitations.** In no event shall Qualified Unit rents exceed gross rents allowable under the Declaration Requirements, including as amended. OHCS may limit other charges to Qualified Tenants if it determines (in its sole discretion) that such other charges are inconsistent with Declaration Requirements or otherwise should be subsumed within the limitations on gross rents.
- (d) **Period of Compliance.** Regardless of any provision in this Declaration to the contrary, the Declaration Requirements, including Project occupancy, rent and use restrictions, and other terms and conditions, of this Declaration shall remain in effect throughout the Affordability Period, except in the event of a written, signed and notarized modification, waiver, or release of all or part of such restrictions, terms or conditions by OHCS or pursuant to Section 6(b), but subject to the three (3) -year safe harbor requirements of the IRC and Section 6(c) of this Declaration.
- (e) **Termination of Tenancy.** The Owner may terminate the tenancy of a Qualified Tenant only for: (i) material noncompliance of lease terms including, but not limited to substantial lease violations, fraud, repeated minor violations and nonpayment of rent; (ii) drug abuse or other criminal activity; (iii) material failure to carry out obligations under Oregon's landlord and tenant act, ORS chapter 90; or (iv) other good cause.
- (f) **Qualified Contract Request.** Consistent with Section 3(j), the earliest date upon which the Owner may request OHCS to assist it in procuring a qualified contract for the acquisition of the low-income portion of the Project is on the first day of the last year of the Affordability Period.

- (g) **Operating Reserves.** The Owner  does/ does not covenant and agree that operating reserves of the Project, when released from restricted use, shall be wholly used to subsidize tenant rents consistent with guidelines prescribed by OHCS.

#### SECTION 6 - TERM OF DECLARATION.

- (a) **Term.** Except as hereinafter provided, the income, affordability, and use restrictions of this Declaration shall commence upon the first day in the Project period on which any building which is part of the Project is placed in service and shall endure for the entire fifteen (15) year Compliance Period and for the remaining balance of the Affordability Period and as additionally provided herein subject to earlier termination under Sections 5(d) and 6(b). All other covenants, terms, and conditions herein shall commence upon execution of this Declaration by Owner and shall endure for the Affordability Period and as additionally provided herein subject to earlier termination under Sections 5(d) and 6(b). Termination of the Affordability Period or this Declaration shall not extinguish remedies available to OHCS arising under this Declaration or the REUA.
- (b) **Early Termination.** The Owner shall comply with the terms, conditions, and covenants of this Declaration and other Declaration Requirements, including as amended, for the entire Affordability Period and as additionally provided herein; provided, however, this Declaration and the Affordability Period for any building which is part of this Project shall terminate:
- (1) **Foreclosure.** On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or
  - (2) **End of Qualified Contract Procurement Year.** On the last day of the one (1) year period specified in IRC Section 42(h)(6)(I) commencing on the first day of the last year of the Affordability Period, if the Owner has properly requested in accordance with IRC Section 42 that OHCS assist it in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project, OHCS and the Owner have agreed upon the terms of sale as specified in Section 3 of this Declaration, and OHCS is unable to present a qualified contract within one (1) year of reaching written agreement regarding the terms of sale.
- (c) **Safe-Harbor Period.** Notwithstanding subsection (b) above, IRC and Declaration rent limitations shall continue for a period of three (3) years following the termination of the Affordability Period pursuant to the procedures specified in subsection (b) above for Qualified Tenants as of the date of termination. During such three (3) year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any of the Qualified Units other than for good cause and shall not increase gross rents above the maximum allowed under this Declaration and the other Declaration Requirements, including as amended, with respect to such Qualified Units.

#### SECTION 7 – PROJECT MANAGEMENT.

- (a) **Regulatory Agreement as to Project Management.** Owner will provide timely and suitably perform Project management responsibilities directly or through a management agent (“Management Agent”) approved in writing by OHCS consistent with a “Regulatory

**Agreement as to Project Management**” or similar agreement satisfactory to OHCS and executed by OHCS, Owner, and the Management Agent (if different than the Owner).

- (b) **Approval of Management Agent; Termination.** OHCS must pre-approve in writing the engagement of any Management Agent (including Owner as self-manager) and may require, for cause, the termination of any such Management Agent (including Owner).
- (c) **Review of Proposed Management Agents.** OHCS may condition its approval of any Management Agent (including Owner) upon the submission and its review of such information as it determines to be appropriate, including information demonstrating the proposed Management Agent’s competence and experience in relevant property management.
- (d) **Execution of Applicable Documents.** OHCS also may condition its approval of any Management Agent (including Owner) upon the execution of a Regulatory Agreement as to Project Management or similar agreement, as well as related ancillary documents, all satisfactory to OHCS.
- (e) **Amendment of Documents.** OHCS also may condition its continuing approval of any Management Agent (including Owner) upon amendment of the Regulatory Agreement as to Project Management or similar agreement, as well as related ancillary documents, all satisfactory to OHCS.

#### **SECTION 8 – RECORDS; CERTIFICATIONS; MONITORING; CORRECTIVE ACTION.**

- (a) **Financial and Performance Reports.** Owner will maintain all financial records relating to this Declaration in accordance with generally accepted accounting principles. In addition, Owner will maintain records satisfactory to OHCS documenting compliance with Program Requirements. Owner will retain and keep accessible all such records, books, documents, papers, plans, records of shipments and payments and writings throughout the Affordability Period and for a minimum of **Six (6) years**, or such longer period thereafter, as may be required by OHCS, which does include any period beyond the Affordability Period during which an audit, claim, or litigation with respect to the Project or Declaration remains outstanding, plus **two (2) years** thereafter.
- (b) **Annual Certification; Additional Information.** Owner will provide an annual certification, in a format and on a schedule approved by OHCS in its sole discretion, that the Owner is fulfilling its obligations under this Declaration. OHCS may, from time to time, require additional information or reporting from Owner.
- (c) **Monitoring.** Owner acknowledges and agrees that OHCS, the Oregon Secretary of State’s Office, and the federal government, and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Owner that are pertinent to this Declaration, whether in paper, electronic or other form, to perform examinations and audits, and make excerpts and transcripts, and take copies. Furthermore, the Owner acknowledges and agrees that OHCS may inspect the Project, and any part thereof, upon reasonable notice to the Owner and tenants. The Owner, its agents, employees, and subcontractors will cooperate fully with OHCS in any requested inspection of the Project, its records, or other compliance monitoring.

- (d) **Corrective Action.** As a consequence of its monitoring or otherwise, OHCS may identify deficiencies in Owner's compliance with Program Requirements. OHCS may require action by Owner (satisfactory to OHCS) to correct such deficiencies. Owner will correct such deficiencies within thirty (30) days of notice by OHCS of such deficiencies unless earlier correction is required by OHCS to address material health or safety needs of tenants. However, OHCS may, in its sole discretion, extend the thirty (30) day correction period for up to six (6) months, but only if OHCS determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project, the correction period for the successor for an existing event of noncompliance shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project.

## SECTION 9 - FUTURE TRANSFER OF OWNERSHIP; QUALIFIED CONTRACT

This Section

- Will apply to the Project described herein:
- Will not apply to the Project described herein:
- (a) For the purpose of ensuring the Project will continue to be used as affordable housing, Owner hereby agrees to transfer the Project to a "qualified nonprofit organization" [as defined in IRC 42(h)(5)(C)] acceptable to the Owner, OHCS and the mortgage lender after the end of the calendar year falling fifteen (15) years after the issuance of the Forms 8609 for the Project, or as soon thereafter as the transfer can be consummated, on the following terms:
- (1) The consideration for the transfer shall be in accordance with the formula in IRC Section 42(h)(6)(F) in an amount equal to the sum of (a) the principal amount of outstanding indebtedness secured by the Project, (b) the adjusted investor equity in the building, and (c) other capital contributions not reflected in the amounts described above, reduced by cash distributions from (or available for distribution from) the project.
  - (2) Owner shall be under no obligation to transfer the project to a qualified organization in the event that no acceptable qualified organization agrees in writing to accept title and assume Owner's obligations before the end of the calendar year falling fifteen (15) years after the issuance of the Forms 8609 for the project.
  - (3) In making the determination of the transferee qualified nonprofit organization, first right of refusal shall be given to **If this section will apply as chosen above, enter the name of the non-profit; if this section will not apply enter N/A.**
- (b) Owner further covenants to use its reasonable best efforts to assure, at the time of the transfer: (i) the Project is generating sufficient cash flow to service Project debt and pay Project operating expenses; and (ii) the Project is in reasonably good physical condition (for a multi-family apartment project of its age and quality).
- (c) No provision of this section shall prevent any lender loaning funds secured by the Project from foreclosing on the property or otherwise exercising its full rights as a lender, except that any such

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lender must provide OHCS with written notice of any default upon which it basis such action simultaneously with notice to Owner and equal cure rights to those of Owner. OHCS or its assigns shall have the right to cure any default, but shall have no liability for not exercising such right. In the event of a bona fide foreclosure or transfer of the Project to a lender by a deed in lieu of foreclosure, the foreclosing lender shall take the Project free and clear of any obligation to transfer the Project to a nonprofit organization or to operate the Project as affordable housing except as provided for in IRC Section 42 and Section 6(c) hereof.

#### **SECTION 10 - NO UNAPPROVED TRANSFERS.**

**(a) Sale, Transfer, or Other Disposition of an Interest in the Grant, Owner, or Project.**

**(1) Transfer of Any Interest in Project.** Except in relation to leases to tenants (“Tenants”) for the residential units in the Project, if the Owner transfers or attempts to sell, assign, bequeath, dispose or otherwise transfer (collectively, “Transfer”) any interest in the Project to any person, entity or other assignee (collectively, “Transferee”), without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Declaration and exercise the remedies provided for in this Declaration or otherwise available at law. OHCS will not consent to any transfer or disposition of any portion of a Building to any person unless all of the Building is transferred to such person, and any such attempted transfer or disposition is hereby prohibited. OHCS’ consent will not, however, be unreasonably withheld or delayed, but may be conditioned upon:

- (A)** reasonable evidence satisfactory to OHCS that the Owner is not then in default hereunder beyond any applicable grace period or cure period;
- (B)** the execution and recording of documents satisfactory to OHCS;
- (C)** the payment to OHCS of an appropriate transfer fee; and
- (D)** any other conditions that may be imposed by OHCS, in its complete discretion, to assure, *inter alia*, compliance with federal or state law or other Program Requirements, including OHCS orders and administrative rules, as amended, and also including but not limited to the Owner providing OHCS with current financial information with respect to the Transferee and a full management agent packet for any existing or proposed management agent (“Management Agent”).

**(2) Transfer of Any Interest in the Owner.** If the Owner sells, transfers or otherwise disposes of any interest in the Owner without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Declaration and exercise the remedies provided for in this Declaration or otherwise available at law. The parties agree, however, that, so long as the Owner is not then in default hereunder beyond any applicable cure period, a Transfer of an interest in the Owner made in full compliance with any of clause (A), (B), (C) or (D) below will constitute a permitted Transfer of an interest in the Owner.

**(A) Transfers Permitted Prior to Making All Capital Contributions.** Prior to making all of the capital contributions with respect to this Project required to be

made by the Investor under the ownership agreement in effect between the Investor and Owner as of the date of this Declaration (the "**Ownership Agreement**"), a one-time Transfer of the Investor's limited partnership or limited membership in the Owner may be made to an Affiliate of the Investor with advance written notice to OHCS of such Transfer ("**Permitted Affiliate Transfer of Owner Interest**"). No OHCS consent shall be required for a Permitted Affiliate Transfer of Owner Interest, but written notice shall be provided to OHCS as set forth in this Agreement in connection with such Permitted Affiliate Transfer of Owner Interest. Further, OHCS will not impose a transfer fee or charge on the Owner for a Permitted Affiliate Transfer of Owner Interest.

- (B) **Other Transfers Made Prior to Making All Capital Contributions.** Prior to making all capital contributions required to be made by the Investor under the Ownership Agreement, other than a Permitted Affiliate Transfer of Owner Interest pursuant to clause (A) above, no interest in the Owner may be Transferred without the written consent of OHCS, which it may give or withhold in its sole but reasonable discretion, taking into consideration those factors it determines to be relevant. OHCS shall communicate its determination to consent or withhold consent to a Transfer promptly to the Owner and may impose a transfer fee or charge on the Owner consistent with applicable administrative rules, as amended from time to time.
- (C) **Transfers of Owner Interest After Making All Capital Contributions.** After all of the capital contributions to be made by the Investor under the Ownership Agreement have been made, the Transfer of the limited partnership or membership interest in the Owner (a "**Post Conversion Transfer of Owner Interest**"), may be made subject to the following: OHCS must (A) be given advance written notice of the proposed Transfer; (B) give its written consent to the Transfer, which consent shall not be unreasonably withheld, conditioned or delayed; and (C) OHCS may impose a transfer fee or charge on the Owner consistent with applicable administrative rules, as amended from time to time. The parties agree that a Post Conversion Transfer of Owner Interest to an Affiliate shall be presumed reasonable and that OHCS will promptly provide its consent to such a transfer upon confirmation that such transfer involves a Transfer to an Affiliate of the Investor and satisfaction of the foregoing conditions.
- (D) **Transfers of Interests in General Partner of Owner.** To assure appropriate use of tax credit capital contributions by Owner, and that any party having an ownership interest in the general partner or managing member of the Owner is suitable for such purpose, appropriate for the operational integrity of the general partner or managing member, and sufficiently limited in its capacity to direct or control actions by the general partner or managing member, a party proposing to acquire an ownership interest in the general partner or managing member (a "**Member**") may not acquire an ownership interest in the general partner or managing member without the prior written consent of OHCS. Such consent shall be conditioned on (a) the ownership interest in the general partner or

managing member to be acquired by the Member being not greater than one-percent (1%) of the ownership interest in the Owner, (b) OHCS receiving evidence reasonably satisfactory to OHCS establishing the suitability of the Member, and (c) payment to OHCS of a transfer fee or charge consistent with applicable administrative rules, as amended from time to time. .

(3) **Transfer of Any Interest in Investor.** If the Investor Transfers any interest in the Investor without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Declaration and exercise the remedies provided for hereunder or otherwise available at law. The parties agree, however, that, so long as the Owner is not then in default hereunder beyond any applicable cure period, a Transfer of an interest in the Investor made in full compliance with any of clause (A), (B) or (C) below shall constitute a permitted transfer of an interest in the Investor.

(A) **Transfers Permitted Prior to Making All Capital Contributions.** Prior to making all of the capital contributions required under the Ownership Agreement: (1) Transfers of interests in the Investor (the “**Investor Membership Interests**”) may be made among the initial holders of the Investor Membership Interests (the “**Initial Investment Members**”), provided that the Owner provides written notice to OHCS of the transfer within thirty (30) days of the Owner learning of the Transfer; and (2) Transfers of Investor Membership Interests may be made to a person or entity that is not an Initial Investment Member if, after making such transfers not less than 75% of the holder(s) of the Investor Membership Interests are either (a) the Investor or an Affiliate of the Investor, or (b) Financial Institutions or Publicly Held Corporations with a credit rating at the time of such transfer of BBB- or better by Standard & Poor’s or Baa3 or better by Moody’s Investor Service, Inc., or wholly-owned subsidiaries of such entities or are otherwise holders that have been approved by OHCS, provided that the Owner shall provide written notice to OHCS of the transfer within thirty (30) days of the Owner learning of the transfer. Transfers of Investor Membership Interests described in sub-clauses (1) and (2) of this clause (i) are referred to herein as “**Permitted Investor Membership Interest Transfers**”). No OHCS consent shall be required for any Permitted Investor Membership Interest Transfer pursuant to sub-clauses (1) or (2) of this clause (i), but written notice shall be provided to OHCS as set forth above in connection with each such Transfer. Further, OHCS may impose a transfer fee or charge on the Owner for Permitted Investor Membership Interest Transfers consistent with applicable administration rules, as amended from time to time.

(B) **Other Transfers Made Prior to Making All Capital Contributions.** Prior to making all capital contributions required under the Ownership Agreement, other than Permitted Investor Membership Interest Transfers pursuant to clause (i) above, no interest in the Investor, including any Investor Membership Interest, may be Transferred without the written consent of OHCS, which consent may be given or withheld in its sole but reasonable discretion, taking into consideration those factors it determines to be relevant. OHCS will communicate its determination to consent or withhold consent to a Transfer promptly to the

Owner and may impose a transfer fee or charge on the Owner consistent with applicable administrative rules, as amended from time to time.

- (C) **Transfers of Investor Interest After Making All Capital Contributions.** After all of the capital contributions to be made by the Investor under the Ownership Agreement have been made, the Transfer of any limited partnership or membership interest in the Investor, including any Investor Membership Interest (a “**Post Conversion Transfer of Investor Interest**”) may be made without prior notice to or approval by OHCS, provided that Owner shall provide written notice to the OHCS of any Post Conversion Transfer of Investor Interest within thirty (30) days of reasonable discovery of such Transfer. OHCS will not impose a transfer fee or charge on the Owner for a qualifying Post Conversion Transfer of Investor Interest.
- (b) **Definition of Affiliate.** The term “Affiliate” means any corporation, partnership, limited liability company, or other entity directly or indirectly controlling, controlled by or under common control with such entity. For this purpose, “control”, or “controlled” or “controlling” means (i) ownership directly or indirectly of voting control of the corporation or other entity, (ii) control of the management through holding, directly or indirectly, a general partnership interest in a limited partnership or the managing member interest in a limited liability company, or (iii) if such entity has no stock or equity, control over a majority of the board of directors of such entity.
- (c) **Removal and Replacement of General Partner or Managing Member.** The Investor may seek to remove a General Partner or Managing Member of the Owner for cause pursuant to the terms of the Ownership Agreement in effect as of the date of this Declaration, or pursuant to any revisions adopted by the parties to the Ownership Agreement and approved in writing by OHCS, subject to the following: (i) the Investor must notify OHCS in writing of its desire to remove the General Partner or Managing Member for cause; (ii) the Investor must notify OHCS in writing of the successor General Partner or Managing Member, if any, and (iii) OHCS must give its written consent to the removal and replacement of the General Partner or Managing Member, which consent will not be unreasonably withheld, conditioned or delayed. If the Ownership Agreement provisions related to the removal of the General Partner or Managing Member are amended without OHCS’ written approval (a “**Removal Amendment**”), and the Investor seeks to remove a General Partner or Managing Member for cause pursuant to the Removal Amendment, the prior written consent of OHCS must be obtained and OHCS may give or withhold its consent in its sole discretion.
- (d) **Removal and Replacement of Management Agent.** OHCS may, for cause, require the removal and replacement of the Management Agent for the Project or, if the Owner directly manages the Project, OHCS may require the appointment of a Management Agent for the Project in lieu of the Owner. The Owner also may, with OHCS’ approval, remove and replace a Management Agent in accordance with this Declaration, the terms and conditions of the Ownership Agreement, or any agreement with respect to Project management required by OHCS (at its sole discretion). Any then current executed agreement with respect to Project management (including as amended) shall be deemed to be incorporated herein by this reference.
- (e) **Unapproved Transfers Are Void.** Any Transfer of the Project, Owner, or Investor in violation of this Subsection 10(a) will be ineffective to relieve the Owner, any Transferee or the Project of any continuing obligations under this Declaration.

**(f) Consents by OHCS to Admission of Investor and to Security Interest.**

(1) OHCS consents to the managing member/general partner of the Owner granting a security interest in its interest in the Owner as security for performance of obligations under the Ownership Agreement and under any document evidencing or securing the existing construction or permanent financing of the Project.

(2) OHCS consents to the Owner granting to the existing primary commercial lender a security interest in the Credits as security for performance of the Owner's obligations under any document evidencing or securing construction or permanent financing of the Project. In the event of a foreclosure of a deed of trust, mortgage, or other security document securing the Owner's obligation to repay a loan, from the referenced lender, OHCS further consents to a foreclosure by such lender of its security interest in the Credits; provided, however, OHCS makes no representation as to the effect of such a foreclosure on the ability of the foreclosing entity to claim, transfer, or otherwise utilize the Credits pursuant to IRC Section 42, applicable Oregon law, or otherwise.

**(g) Sale of Project to Managing Member or General Partner.** Absent (1) a change in the managing member or general partner in Owner, or in the composition thereof, or (2) an uncured Event of Default under this Agreement, OHCS consent to the sale of the Project to the current managing member or general partner of the Owner upon termination of the "compliance period" applicable to the last building of the Project to be placed in service as provided in IRC Section 42 provided (1) OHCS is given adequate notice prior to the transfer (2) the terms of such sale are reasonable as determined by OHCS, and (3) that Owner and the managing member or general partner shall have each complied with all other requirements of OHCS, including provision of requested information, execution of required documents satisfactory to OHCS, and payment of an appropriate Transfer fee as established by OHCS.

**SECTION 11 – REMEDIES.**

**(a) Remedies.** If the Owner defaults in the performance or observance of any covenant, agreement or obligation set forth in this Agreement (including correction of deficiencies), and if such default remains uncured by Owner for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHCS determines relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHCS, or if such default runs for a period of thirty (30) days from the date the Owner should, with due diligence, have discovered such default, then OHCS may declare an "Event of Default" to have occurred hereunder provided, however, If a default is not reasonably capable of being cured within thirty days or any lesser notice period provided by OHCS, OHCS may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHCS determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Land, the correction period for the successor for an existing default shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHCS, an Event of Default shall be deemed to occur and OHCS may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHCS may, at its option, take any one or more of the following steps (except that itemized remedies (2), (4), (8), and (9) always must be preceded by notice of default

to the Investor in accordance with this subsection while Investor is a member of Owner), in addition to all other remedies provided in this Agreement, by law, or in equity:

- (1) Report such noncompliance to the IRS;
  - (2) Effect removal of the Project from the LIHTC program, which removal may result in recapture of the Credit by the IRS;
  - (3) By mandamus or other suit, action or proceeding at law or in equity, require Owner specifically to perform its obligations under this Agreement, including the Declaration and other Credit Requirements, or enjoin any acts or things that may be unlawful, inconsistent with this Agreement, or in violation of Owner's obligations or OHCS' rights under this Agreement;
  - (4) Obtain the appointment of a receiver to operate the Project in compliance with this Agreement;
  - (5) Require a change in the General Partner or Managing Member of Owner to OHCS' satisfaction;
  - (6) Require termination of the Management Agent and its replacement to OHCS' satisfaction;
  - (7) Require Owner to cease management of the Project and to engage a Management Agent acceptable to OHCS;
  - (8) Withhold from Owner, suspend, terminate, or (upon 30-days written demand) require the repayment of all or any part of other funding assistance provided by OHCS to Owner with respect to the Project;
  - (9) Declare Owner, or any member thereof, ineligible to receive further Credit or other OHCS funding assistance, including with respect to other projects or requests for same, for such period as OHCS determines in its sole discretion;
  - (10) Have access to, and inspect, examine and make copies of, all of the books and records of Owner pertaining to the Project and to inspect the Project itself;
  - (11) Enter onto the Property and correct Events of Default with respect to the Project at Owner's expense, which expense Owner will repay to OHCS within ten (10) days of any presentment of charges for same; and
  - (12) Exercise of such other remedies as permitted or authorized under this Agreement, by law, or in equity.
- (b) **Remedies Nonexclusive.** The rights and remedies of OHCS provided for in this Declaration will not be exclusive and are in addition to any other rights and remedies available hereunder, at law, in equity or otherwise. No failure of or delay by OHCS to enforce any provision of this Declaration will constitute a waiver by OHCS of that or any other provision, nor will any single

or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**SECTION 12 – 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 OHCS: Oregon Housing and Community Services Department  
Attn: Asset Management & Compliance Department  
725 Summer Street NE, Suite B  
Salem, Oregon 97301-1266

To the Owner: **Name and Address of Owner**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address a party may indicate to the other pursuant to this Subsection. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice by personal delivery shall be deemed to be given when actually delivered.

If written notice of a default to the Owner is required under this Agreement, then OHCS will also deliver written notice of such default to the Investor at the Investor's address as referenced below (or such other single address as may be provided in writing) for as long as the Investor shall have an ownership interest in Owner.

Investor: **Name of Investor**  
**Street Address**  
**City State Zip**

In addition to any other cure provisions contained in this Agreement, the Investor (and any special member or special limited partner affiliated therewith) will have the right to cure all defaults for which delivery of written notice to the Owner is required under this Agreement within the same time periods allowed to Owner.

- (c) **Amendment.** The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as OHCS may deem necessary to comply with the IRC or other Declaration Requirements. OHCS, 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.

- (d) **Subordination of Declaration.**  
[Reserved]
- (e) **Governing Law.** This Declaration shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law 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 allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.
- (g) **Indemnity.** Owner assumes sole liability for breach of the conditions of the Credit (including all terms and conditions of this Declaration) by Owner or any of its officers, agents, employees, and assigns. Owner will save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, OHCS and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Credit, the Project, this Declaration, the REUA, or resulting from or arising out of the acts, omissions, neglect or misconduct of Owner or its subcontractors, agents, or employees under this Declaration, the REUA, or related to the Credit or Project.
- (h) **Time of the Essence.** Time is of the essence in the performance by Owner of the terms of this Declaration.
- (i) **No Discrimination; Marketing.** Owner will not discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance. Owner will use its reasonable efforts to advertise and market the Project dwelling units, particularly the Qualified Units, within the County and, if applicable, City in which the Project is located.
- (j) **Certifications.**
- (1) **Consideration of Relevant Information.** Owner hereby certifies that all information pertinent to IRC Section 42 has been considered by it in the determination of eligible basis for the Project. This consideration includes but is not limited to any rule changes, Private Letter Rulings, Technical Assistance Memoranda, considerations, IRS guidance, etc.
  - (2) **Consideration of Relevant Information by Professional Agents.** Owner further certifies that its Project accounting and legal professionals/representatives have also considered the above in their advice to and review of the Project.
- (k) **Attorney Fees.** In the event a lawsuit is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration shall, to the extent permitted by law, be entitled to recover from the other its reasonable attorney fees and all costs and disbursements incurred at trial and on appeal. Notwithstanding any other provision in this Declaration or incorporated documents, reasonable fees shall not exceed the rate charged OHCS by its attorneys. Qualified Tenants and other third-party beneficiaries hereunder may not recover

attorney fees from OHCS and OHCS may not recover attorney fees hereunder from Qualified Tenants or other third-party beneficiaries.

- (l) **Venue: Consent to Jurisdiction.** Any claim, action, suit or proceeding (collectively, "Claim") between OHCS and Owner related to this Declaration shall be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted in the circuit court where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event shall this provision or any other provision in this Declaration 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 DECLARATION, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

(m) **Owner Status.**

- (1) **Independent Contractor.** Owner will perform all obligations under this Agreement and will timely satisfy all Program Requirements as an independent contractor. Owner is not an officer, employee or agent of the State, as those terms are used in ORS 30.265, with respect to performance under this Agreement.
- (2) **Owner Responsible for Insurance Coverage.** Owner agrees that insurance coverage, whether purchased or by self-insurance, for Owner's agents, employees, officers and/or subcontractors is the sole responsibility of Owner.
- (3) **Non-federal Employment Certification.** Owner certifies that it is not employed by or contracting with the federal government for performance covered by this Agreement.
- (4) **Good Standing Certification.** Owner certifies to the best of its knowledge and belief that neither the Owner nor any of its principals, officers, directors or employees:
- (A) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;
- (B) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- (C) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(2); and
- (D) Has within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

- (n) **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.
- (o) **Merger Clause; Order of Precedence.** This Agreement, including incorporated documents and any exhibits, schedules, appendices and attachments hereto (which are by this reference incorporated herein), constitutes the entire agreement between the parties on the subject matter hereof. Owner hereby acknowledges that the Application, Reservation, and REUA survive the execution and delivery of this Declaration and the Allocation. In the event of any inconsistencies between the body of the Declaration, the Application, the Reservation, the REUA, the Allocation, and any of the attachments to the Declaration, the following is the descending order of precedence in which the various provisions are to be interpreted: the Allocation, the Declaration without any attachments or any incorporations, the REUA without any attachments or any incorporations, the Regulatory Agreement as to Project Management, the Reservation, the Application, the Property Description, any other attachments. No modification or amendment of this Declaration will bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.
- (p) **No Limitations on Actions of OHCS in Exercise of Its Governmental Powers.** Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of OHCS in the exercise of its governmental powers. It is the express intention of the parties hereto that OHCS will retain the full right and ability to exercise its governmental powers with respect to the Owner, the Credit, the Project, this Declaration, the REUA, any Regulatory Agreement as to Project Management, and the transactions contemplated by this Declaration and applicable Credit Requirements to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will OHCS have any liability in contract arising under this Declaration, the REUA, Application, the Reservation, the Allocation, the Credit Requirements, or otherwise by virtue of any exercise of its governmental powers.

**19. ADDITIONAL CERTIFICATIONS AND SIGNATURE OF OWNER'S AUTHORIZED REPRESENTATIVE.**

THIS DECLARATION MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF OWNER.

The undersigned certifies under penalty of perjury both individually and on behalf of Owner that:

- (a) The undersigned is a duly authorized representative of Owner, has been authorized by Owner to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Owner.
- (b) To the best of the undersigned's knowledge, Owner has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

(c) Owner and Owner's employees and agents are not included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

(d) Owner is bound by and will comply with all requirements, terms and conditions contained in this Agreement.

(e) Owner further certifies to having a formal statement of nondiscrimination in employment policy.

*[Signature Pages Follow]*

Unofficial Copy



**OHCS:**

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

By: \_\_\_\_\_  
Heather Pate, Manager  
Multifamily Housing Finance Section

STATE OF OREGON            )  
  : ss  
County of Marion            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of **month**, 20\_\_ by Heather Pate, who is the Manager of the Multifamily Housing Finance Section, for and on behalf of OHCS.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

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**EXHIBIT A  
Property Description**

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Copy