

**After Recording Return to:**

Oregon Housing and Community Services

Attn: Asset Management & Compliance Section

725 Summer Street NE, Suite B

Salem, Oregon 97301-1266

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATE OF OREGON  
HOUSING AND COMMUNITY SERVICES DEPARTMENT  
HOME INVESTMENT PARTNERSHIPS PROGRAM**

**FIRST AMENDMENT TO  
REGULATORY AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS  
AND EQUITABLE SERVITUDES**

THIS First Amendment to the Declaration of Land Use Restrictive Covenants (this "**Amendment**") is made and entered into this 24th day of September 2019 by and among **Sky Meadows LLC**, an Oregon limited liability company (the "**Owner**" or "**Borrower**"), and the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns ("**OHCS**")

**RECITALS**

A. The Borrower is or was the owner of a eight (8) building, plus two (2) common area buildings, thirty-four (34) unit, low-income multifamily rental housing development (collectively, the "**Improvements**"), located on certain real property in the City of Klamath Falls, County of Klamath, State of Oregon, as more particularly described in Exhibit A hereto (the "**Property**"). The Property, the Improvements, as well as other real and personal property on the Property are collectively referred to herein as the "**Project**" and is commonly known as Sky Meadows – Homedale Road.

B. On or about September 26, 2017 Borrower, did make, execute and deliver to OHCS its certain Promissory Note in the Principal sum of **Five Hundred Thousand Dollars (\$500,000)** with the final installment of the indebtedness if not sooner paid, due and payable on December 31, 2079 (the "**Note**").

C. On or about September 29, 2017 Borrower and OHCS, did also make, execute and deliver to OHCS its certain Deed of Trust, Line of Credit Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded on September 29, 2017 in the official records of Klamath County, Oregon as Instrument No. 2017-011106, as security for payment of the amounts due under the Note with respect to the Loan and for performances of Borrower's other obligations to OHCS due under the Note and other Loan Documents, conveying the Project, among other things, to the Trustee (the "**Trust Deed**"),

D. On or about **September 26, 2017**, Borrower and OHCS also executed a certain Loan Agreement, concerning the Loan from OHCS to the Borrower (the “**Loan Agreement**”).

E. Certain performance obligations with respect to the Project arising under the Loan were made in that certain Home Investment Partnerships Program Regulatory Agreement, Declaration of Restrictive Covenants and Equitable Servitudes executed by the Owner in favor of OHCS on September 29, 2017 and recorded September 29, 2017, in the official records of Klamath County, Oregon, as Instrument No. 2017-011107, (the “**Declaration**”). The obligations set forth in the Declaration, applicable Department of Housing and Urban Development (HUD) regulations, Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (the “Act”), 24 CFR Part 92 et seq., as amended (the “Regulations”), applicable OHCS administrative rules and directives, and other applicable laws are hereinafter collectively referred to as the “**Program Requirements**”.

F. The Note, The Trust Deed, The Loan Agreement, The Program Requirements, and this Amendment are collectively referred to herein as the “**HOME Documents**.”

G. The parties desire to amend the Declaration to more accurately describe the number of buildings and units concerning the Loan and the Project as intended by the parties.

H. The parties also desire that this First Amendment be recorded in the relevant county records at Owner’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring and operation of the Project.

## **AGREEMENT**

NOW, THEREFORE, for good and sufficient consideration, including the agreements and covenants herein contained, Owner hereby agrees with OHCS as follows:

1. Incorporation of Recitals and Documents. The foregoing Recitals, the HOME Documents and Exhibits are incorporated herein by reference. Notwithstanding this incorporation, the Recitals, and Exhibits do not modify the express terms of this Amendment.

2. Definitions. Capitalized terms used herein without definition have the meaning ascribed to such term in the HOME Documents unless the context clearly requires otherwise.

3. Modification of Declaration.

3.1 “Premises” A. on Page one of the Declaration is hereby deleted in its entirety and replaced with the following:

A. Owner owns a parcel of land and a 33 unit apartment development being constructed thereon in the City of Klamath Falls, County of Klamath, 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.

3.2 The HOME Documents are hereby amended, as necessary, to accommodate the foregoing modification of the Declaration and the terms and conditions of this First Amendment.

4. Owner hereby agrees to timely comply with all applicable Program Requirements, including but not limited to submitting financial reports and other documents in a format and detail satisfactory to OHCS on such schedules and other times as OHCS may require, including audits and financial statements, if requested, consistent with OMB guidance in 2 CFR Part 200, and related provisions, if any, adopted by HUD pursuant to 2 CFR Subtitle B.

5. Restrictive Covenants and Equitable Servitudes to Run with the Property.

6. Inducement. Owner represents and warrants that the original Loan and OHCS' consent to modify the HOME Documents is an inducement to the Owner to modify this Declaration and to operate the Project in accordance with and otherwise comply with Program Requirements as defined in this First Amendment. In consideration of such consent, the Owner has entered into this First Amendment and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth in the HOME Documents, including as amended herein. Therefore, the Owner covenants, agrees and acknowledges that OHCS has relied on this First Amendment in giving its consent as described above.

7. Covenants; Equitable Servitudes.

(a) The parties hereby declare their express intent that throughout a period of **Sixty (60)** years from the date that the Project was first placed in service or **December 31, 2079**, whichever is later, (the "Affordability Period") the covenants, restrictions, charges and easements set forth herein including, by incorporation, will be deemed covenants running with the Property of the Project and will create equitable servitudes running with the Property of the Project, and will pass to and be binding upon OHCS' and the Owner's successors in title including any purchaser, grantee or lessee of any portion of the Property 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 or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than a rental agreement or lease for a dwelling unit) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this First Amendment to constitute restrictive covenants running with the Property of the Project and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHCS, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Project, is not required in connection with recording this First Amendment, or if required, such consent has been or will be obtained by the Owner.

8. Burden and Benefit.

(a) The Owner hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the Property of the Project, and the Project as a whole, in that the Owner's legal interest in the Project is rendered less valuable thereby.

(b) The Owner hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property of the Project, and the Project as a whole, by enhancing and

increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHCS) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Loan was issued.

9. Right of Modification. OHCS may compromise, waive, amend or modify the terms of this First Amendment including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Owner or subsequent Project owners, as it so determines to be to the benefit of OHCS, the Project, the Program, or OHCS' efforts to provide or maintain safe, sanitary, and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this First Amendment (including the incorporated documents) must be in writing, signed by an authorized OHCS representative.

10. No Right of Action. Tenants and other third-party beneficiaries under this Amendment (including incorporated documents), if any, have no right of action to enforce the restrictive covenants or equitable servitudes created hereunder not expressly provided in the Act or Regulations. OHCS otherwise retains the exclusive right to enforce such covenants and servitudes. Tenants and other third-party beneficiaries under this First Amendment (including incorporated documents), if any, 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 First Amendment (including incorporated documents and the described restrictive covenants and equitable servitudes), the Loan, or the Project arising from their rights, if any, under this First Amendment or otherwise.

11. No Third-Party Attorney Fees. Tenants and other third-party beneficiaries under this First Amendment (including incorporated documents), if any, have no right to attorney fees under this First Amendment or otherwise for claims asserted as third-party beneficiaries hereunder (including incorporated documents) nor will parties hereto have a right to attorney fees against tenants and other third-party beneficiaries, if any, hereunder.

12. The parties hereby ratify and affirm the Declaration as herein amended.

13. Except as expressly modified herein, all other terms and conditions of the Declaration remain in full force and effect.

***[Signature Pages Follow]***

IN WITNESS WHEREOF, this instrument has been duly executed as of the date and year first above written.

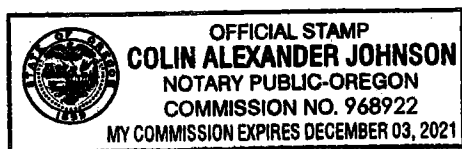
OHCS:


**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 1<sup>st</sup> day of October, 2019,  
by Caleb Yant, Chief Financial Officer, Housing and Community Services Department, for and on behalf of  
OHCS.



  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: December 03, 2021

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

OWNER:

SKY MEADOWS, LLC,  
an Oregon limited 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 Deschutes            )

The foregoing instrument was acknowledged before me this 24 day of September, 2019, by Lisa M. Drayton, member of Luckenbill-Drayton & Associates, LLC, Manager of LDA-Sky Meadows Development LLC who executed the foregoing instrument for and on behalf of the Borrower.



*Kristin Lea Goin*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: June 25, 2022

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## **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.