

Return to:

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

2020-004868

Klamath County, Oregon

04/16/2020 12:05:26 PM

Fee: \$267.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

TRIPARTITE AGREEMENT, SUBORDINATION, AND DECLARATION OF RESTRICTIVE COVENANTS

THIS TRIPARTITE AGREEMENT, SUBORDINATION, AND DECLARATION OF RESTRICTIVE COVENANTS (this "**Agreement**") is made and entered into this **1st** day of **April, 2020** among:

LESSOR: **Klamath Housing Authority,**
an Oregon public body corporate and politic,

LESSEE (also "OWNER"): **Sunrise Vista Apartments, LLC,**
an Oregon limited liability company,
and

OHCS: **The State of Oregon,** acting by and through its
Housing and Community Services Department,
together with its successors and assigns.

RECITALS

1. This Agreement is being executed to evidence and confirm the terms for OHCS' willingness to provide financial assistance for the **new construction** and related costs of a **eight (8)** -building, **fifty eight (58)** -unit low-income, multifamily housing, leasehold development by the Lessee on land held in fee title by the Lessor, pursuant to the terms set forth in documentation delivered to OHCS.
2. Lessor is the owner of the real property as described in Exhibit A, attached hereto (the "**Property**").
3. Lessee is the owner of a leasehold interest in the Property as described in Exhibit B (the "**Leased Property**") pursuant to a lease described below in Recital 6, and owner of all improvements as well as other real and personal property thereon (the "**Improvements**"). Exhibit B is attached hereto. The Property, the Leased Property, and the Improvements are collectively referred to hereinafter as the "**Project**".
4. OHCS has or will provide financial assistance to the Lessee for use with respect to financing and construction of the Project pursuant to this Agreement and, among other things, the following documents (collectively with this Agreement, the "**Financing Documents**"): (i) the 4% Low-Income Housing Tax Credit Reservation and Extended Use Agreement between Owner and OHCS, dated April 1, 2020 (the "**REUA**"); (ii) the 4% Low-Income Housing Declaration of Land Use Restrictive Covenants between Owner and OHCS, to follow (the "**LIHTC Declaration**"), substantially in the form attached hereto as Exhibit C, and governing the Project in a manner consistent with the allocation of Credits referenced in the REUA; (iii) the Indemnity and Hold Harmless Agreement between Owner (as the "**Indemnitor**") and

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OHCS, dated April 1, 2020 (the “**Indemnity**”); (iv) the Multifamily Energy Program Grant Agreement and Declaration of Restrictive Covenants, dated April 1, 2020, between OHCS and Lessor, as Recipient (the “**MEP Grant Agreement**”); (v) the Multifamily Energy Program Assignment and Assumption Agreement and Declaration of Restrictive Covenants, dated April 1, 2020 by and among OHCS, Owner, and Lessee (the “**MEP Assignment**”); (vi) a Local Innovation and Fast Track Program Promissory Note in the aggregate principal amount of **\$7,225,702**, dated April 1, 2020 entered into by and between OHCS and Owner (the “**LIFT Note**”); (vii) a Local Innovation and Fast Track Program Line of Credit Trust Deed, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated April 1, 2020 entered into by and between Owner and Lessor, jointly and severally, as the Grantor, in favor of OHCS, as beneficiary, (the “**LIFT Trust Deed**”); (viii) a Local Innovation and Fast Track Program Loan Agreement, dated April 1, 2020 (the “**LIFT Loan Agreement**”) entered into by and between Owner and OHCS; (ix) the Repayment and Completion Guaranty Agreement, dated April 1, 2020 (the “**Guaranty**”) entered into between OHCS, Luckenbill-Drayton & Associates, LLC, an Oregon limited liability company (“**Luckenbill**”), and the Lessor; (x) a Project Management Agreement, dated April 1, 2020 (the “**Project Management Agreement**”) executed by OHCS, Owner, and the Project Management Agent on or about April 1, 2020; (xi) the Operating Agreement and Declaration of Restrictive Covenants between OHCS and Owner, dated April 1, 2020 (the “**Operating Agreement**”); and (xii) related documents executed by one or more of the parties (including without limitation and as appropriate, OHCS, the Owner, and the Lessor) related to the financing, development, acquisition, construction, equipping, furnishing, or operation of the Project.

5. The Financing Documents include contractual covenants in favor of OHCS with respect to use of the financial assistance described therein and the use and operation of the Project. The recorded Financing Documents further create and constitute restrictive covenants (pursuant, among other things, to ORS 456.625) and equitable servitudes by Lessee in favor of OHCS encumbering the Project, running with the land of the Leased Property and governing, among other things, the operation and use of the Project.

6. Lessee has leased the Property and will operate the Project pursuant to a **sixty-five (65)** -year Ground Lease executed between Lessee and Lessor, on or about April 16, 2020 (the “**Lease**”), a memorandum of which has been recorded on April 16, 2020 in the official records of **Klamath** County, State of Oregon, as document number 2020-004857 (the “**Memorandum of Ground Lease**”).

7. This Agreement will be recorded at Lessee’s expense in the official records of **Klamath** County, State of Oregon, in order, among other things, to create and constitute certain restrictive covenants (pursuant, among other things, to ORS 456.625) and equitable servitudes by Lessor and Lessee in favor of OHCS encumbering the Project, running with the land of the Project, and governing, among other things, the operation and use of the Project.

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. Definitions; Incorporation.

(a) 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 referenced documents shall not be deemed to modify the express provisions hereinafter set forth.

(b) All the words and phrases used in this Agreement shall have the meanings given herein or as used in this Agreement, the incorporated documents, or in applicable statutes and administrative rules of OHCS unless the context requires otherwise.

2. Amendment of Lease. The Lease shall be, and is hereby, amended to incorporate by reference this Agreement. Except as provided in Section 14 below, this Agreement, including but not limited to the Financing Documents and any rights, obligations, restrictive covenants, equitable servitudes, or other encumbrances created by or arising under this Agreement or such Financing Documents, shall survive any foreclosure of the leasehold interest described in the Lease or other termination of the Lease itself.

3. Approval of Lease; Amendments. The Lease, as amended and subordinated in Section 2 hereof, is approved by OHCS. Any further amendments of the Lease require the written approval of OHCS, which approval will not unreasonably be withheld or delayed.
4. Non-Termination of Lease; Approval of Project Management. Neither Lessor nor Lessee may terminate the Lease or exercise any remedy thereunder without the prior written approval of OHCS. Except as provided in Section 14 below, any change in Lessee or change with respect to the management of the Project also shall require the prior written approval of OHCS. OHCS may condition its approval upon such terms or other requirements as it may determine in its sole discretion.
5. Timely Performance; Lease Default. Lessor and Lessee shall perform their obligations under the Lease in a timely and appropriate manner. Any default or material failure to perform under the Lease shall constitute a breach of this Agreement (including incorporated Financing Documents) for which OHCS, at its discretion, may exercise any or all remedies provided herein, in the other Financing documents, or otherwise available at law.
6. Assumption of Financing Documents Obligations. In the event that Lessor terminates the Lease or exercises its rights under the Lease so that Lessee or its successors are prevented from performing their obligations under the Financing Documents, Lessor will automatically (and without further action by the parties) assume, and be deemed to have assumed, all of Lessee's (the "Owner's") covenants, commitments and obligations to OHCS undertaken in the Financing Documents other than the obligation in such Financing Documents to repay assistance provided thereunder in the event of default. Additionally, in the event that Lessor shall have exercised its rights under the Lease to appoint a receiver for the Project, to manage the Project otherwise through an agent, or to appropriately change the Lessee, OHCS will look to such receiver, agent or changed Lessee for performance of Financing Documents obligations, which such receiver, agent or changed Lessee will be obligated (and will be deemed obligated) to perform.
7. Creation of Restrictive Covenants and Equitable Servitudes With Respect to the Project.

INDUCEMENT

Lessor and Lessee represent and warrant that OHCS' consent to the Lease and agreement to provide the assistance described in the Financing Documents is an inducement to Lessor to lease the Property to Lessee and to Lessee to construct and operate the Project in accordance with this Agreement. In consideration of such consent and assistance, Lessor and Lessee have entered into this Agreement and have agreed to restrict the uses to which the Project can be put, and the manner in which it must be operated, on the terms and conditions set forth herein, including but not limited to the Financing Documents. Accordingly, Lessor and Lessee covenant, agree, and acknowledge that OHCS has relied on this Agreement in determining to consent to the Lease and to the provision of assistance to Lessee for the Project.

RESTRICTIVE COVENANTS AND EQUITABLE SERVITUDES

(a) The Lessor intends, declares, and covenants, on behalf of itself and all future owners and operators of the Property and its contingent interest in the Improvements, and Lessee intends, declares, and covenants, on behalf of itself and all future owners and operators of the Leased Property and Improvements, that the covenants, reservations, restrictions and equitable servitudes set forth in the Financing Documents regulating and restricting, *inter alia*, the use, occupancy, maintenance, repair and transfer of the Project (1) shall be and are restrictive covenants governing the Project and running with the Property and Leased Property of the Project, and do further constitute equitable servitudes governing the Project and running with the Property and Leased Property of the Project, all in favor of OHCS, do encumber the Project subject to their respective provisions for an aggregate **thirty (30) years** from the date that the first building in the Project is placed in service or until **December 31, 2052**, whichever is later (the "Affordability Period"), are binding upon the Lessor's and Lessee's successors in title and all subsequent owners and operators of the Project, (2) are not merely personal covenants of the Lessor or Lessee, (3) shall bind the Lessor, the Lessee, and their successors and assigns, and (4) shall inure to the benefit of OHCS. Notwithstanding the foregoing, OHCS may, at its sole discretion, extend the Affordability Periods of the respective Financing Documents, as well as this Affordability Period, for periods of time matching corresponding

periods of time during which OHCS determines the Lessor or Lessee to be in material noncompliance with any of the terms of this Agreement (including the incorporated Financing Documents).

(b) The Lessor and Lessee hereby agree that any and all Oregon state law requirements for the provisions of this Agreement to constitute covenants running with the Property of the Project or to constitute equitable servitudes running with the Property of the Project in favor of OHCS, shall be deemed satisfied in full. Except for the lease of individual rental units of the Project in compliance with the terms of the Financing Documents or as provided in Section 14, no transfer of any interest in the Project, Owner, or Lessor shall be valid without the prior written consent of OHCS, except where the Financing Documents do not require consent to certain transfers described therein.

(c) For the duration of the restrictive covenants and equitable servitudes created hereunder (including throughout the Affordability Period or as any may be extended), each and every contract, deed or other instrument hereafter executed conveying the Project or any portion thereof shall expressly provide that such conveyance is subject to this Agreement and such restrictive covenants and equitable servitudes, 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 any portion thereof) provides that such conveyance is subject to this Agreement and the restrictive covenants and equitable servitudes contained or created herein.

(d) Lessor and Lessee covenant and agree that the consent of any recorded prior lien holder with respect to any interest in the Project is not required in connection with recording this Agreement, or if required, such consent has been or will be obtained by the Lessor or Lessee, as applicable.

BURDEN AND BENEFIT.

(a) Lessor and Lessee hereby respectively declare their understanding and intent that the burdens of the covenants, reservations, restrictions and equitable servitudes set forth herein touch and concern the Project and that their respective legal interest in the Project is rendered less valuable thereby.

(b) Lessor and Lessee hereby further respectively declare their understanding and intent that the benefits of such covenants, reservations, restrictions and equitable servitudes touch and concern the Project by facilitating the public policy and programs of OHCS and by enhancing and increasing the enjoyment and use of the Project by intended tenants.

8. Cooperation. Lessor and Lessee shall take all reasonable action to facilitate their individual and collective compliance with the Lease, the Financing Documents, and this Agreement, including but not limited to the execution and recording of such other instruments and documents as OHCS may require.

10. No Assignment or Encumbrance of Project. With the exception of security interests and encumbrances consented to by the OHCS in the Priority and Subordination Agreement of even date with respect to the Project and contemporaneous security interests and encumbrances granted by Lessor with respect to the Property and similar security interests and encumbrances granted by the Lessor in connection with re-financings of the Property, neither Lessee nor Lessor shall assign or encumber any interest in the Project except in conformance with transfer provisions set forth in the Financing Documents and this Agreement without the prior written consent of OHCS.

11. Indemnity. Subject to applicable limitations in the Oregon Constitution and the Oregon Tort Claims Act, Lessee and Lessor jointly and severally shall 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 Project, the Lease, the Financing Documents (including this Agreement), or resulting from or arising out of their acts, omissions, neglect or misconduct, or of any of their subcontractors, agents, or employees, whether under this Agreement (including, but not limited to the Financing Documents), the Lease, or otherwise related to the Project.

12. Remedies.

(a) Deficiencies. OHCS may, from time to time, identify and direct Owner (or Lessor, if applicable) to correct deficiencies in its compliance with this Agreement (including all Financing Documents), which Owner (or Lessor) shall correct as directed.

(b) Required Training. OHCS may require Owner (or Lessor, if applicable), its owners, principals, officers, employees, and agents to undertake training, at Owner's (or Lessor's, if applicable) expense, as directed by OHCS.

(c) Extension of Affordability Period. OHCS may by written notice extend the Affordability Period described in this Agreement (including in any Financing Document) for periods of time matching corresponding periods of time during which OHCS determines the Owner to be in material noncompliance with any of the terms of this Agreement (including any of the Financing Documents).

(d) Additional Remedies. If the Owner or Lessor 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 or Lessor 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 or Lessor 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, the Leased Property, or the Property, 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 or Property. 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), (5), and (8) 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 Low Income Housing Tax Credit ("LIHTC") program, which removal may result in recapture of the LIHTC by the IRS;
- (3) By mandamus or other suit, action or proceeding at law or in equity, require Owner or Lessor, as applicable, specifically to perform its obligations under this Agreement, including the Financing Documents, or enjoin any acts or things that may be unlawful, inconsistent with this Agreement, or in violation of Owner's or Lessor'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 and, for the duration (respectively) of Investor's involvement in Owner or the Primary Lender's Loan, reasonably satisfactory to Investor and Primary Lender;
- (6) Require termination of any 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, Lessor, or any member of either, ineligible to receive further LIHTC 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 and Lessor pertaining to the Project and to inspect the Project itself;

(11) Enter onto the Property/Leased Property and correct Events of Default with respect to the Project at Owner's (or as applicable, Lessor's) expense, which expense Owner or Lessor 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.

(e) Survival of Remedies; Remedies Not Exclusive. The rights and remedies of OHCS provided for in this Agreement, which by their nature are intended to survive termination of this Agreement, shall survive the termination of the Affordability Period and of this Agreement. Furthermore, such remedies shall not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHCS to enforce any provision of this Agreement shall constitute a waiver by OHCS of that or any other provision, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

13. Miscellaneous.

(a) Governing Law; Venue; Consent to Jurisdiction. 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 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. LESSEE AND LESSOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

(b) No Waiver. No waiver, amendment, modification, or termination of this Agreement or any provision hereof shall be effective unless all applicable requirements have been satisfied and the amendment, modification, or termination is in writing and signed by the parties hereto except as otherwise provided herein.

(c) Severability. In the event that any term, covenant or condition of this Agreement shall be finally determined by a court of competent jurisdiction to be invalid, the term, covenant or condition so determined to be invalid is hereby declared servable and shall not affect the validity of the remaining portions of this agreement.

(d) Time of the Essence. Time is of the essence in the performance of this Agreement.

(e) Ambiguities. The parties to this Agreement acknowledge that each party and its counsel have participated in the drafting and revision of this Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this

Agreement or any amendment, modification, supplementation, or restatement of the foregoing or of any exhibit to this Agreement.

(f) Governmental Powers. Nothing in this Agreement, the Lease or in the Financing Documents is intended, nor shall 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 shall retain the full right and ability to exercise its governmental powers with respect to the Lessor, the Lessee, the Lease, the Project, and the transactions contemplated by this Agreement, the Lease, or the Financing Documents to the same extent as if it were not a party to this Agreement or to the Financing Documents, or Assignee of Lessor's interests under the Lease, and in no event shall OHCS have any liability in contract arising under this Agreement, under the Lease, or under the Financing Documents by virtue of any exercise of its governmental powers.

(g) Remedies Not Exclusive. The rights and remedies of OHCS provided for in this Agreement shall not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHCS to enforce any provision of this Agreement shall constitute a waiver by OHCS of that or any other provision, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

(h) No Third Party Beneficiaries. OHCS, Lessor and Lessee are the only parties to this Agreement and are the only parties entitled to rely on and enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of the terms of this Agreement. OHCS expressly reserves the right and ability to waive, modify, toll, and release any and all restrictive covenants and equitable servitudes created hereunder or under any of the Financing Documents.

(i) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

OHCS: **Oregon Housing and Community Services Department**
Attn: Compliance Section
725 Summer Street N.E., Suite B
Salem, Oregon 97301-1266

Lessee: **Sunrise Vista Apartments, LLC**
c/o Luckenbill-Drayton & Associates, LLC
1007 NW Rimrock Drive
Redmond, Oregon 97756
Attn: Lisa Drayton Manager
Phone: 541-923-3896
Email: ldrayton@qwestoffice.net

Lessor: **Klamath Housing Authority**
1445 Avalon
Klamath Falls, OR 97601
Attn: Diana Otero, Executive Director
Phone: 541-884-0846
diana@klamathhousing.org

Investor: **Hunt Capital Partners Tax Credit Fund 31, LP**
c/o Hunt Capital Partners
15910 Ventura Blvd., Suite 1100
Encino, CA 91436
Attn: Jeffrey N. Weiss

The parties, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(j) Attorney Fees. In the event a lawsuit is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement 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 Agreement or incorporated documents, reasonable fees shall not exceed the rate charged OHCS by its attorneys. Third-party beneficiaries are neither entitled to recovery of attorney fees, costs, or disbursements under this provision nor are parties hereto entitled to recovery of attorney fees, costs, or disbursements from third-parties hereto under this provision.

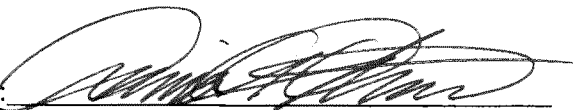
(k) Merger. This Agreement, including incorporations and exhibits, constitutes the entire agreement between the parties on the subject matter hereof. No modification or amendment of this Agreement shall bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent shall be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, shall 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 Agreement.

14. Judicial or Non-judicial Foreclosure; Subordination to Construction and Permanent Lender. Notwithstanding any other provision of this Agreement, in the event the Property or Leased Property's primary construction or primary permanent mortgage lenders, their successors and assigns or designees, lawfully acquires title, respectively, to the Property or Leased Property of the Project, including (as applicable) the Improvements through judicial or non-judicial foreclosure or deed in lieu of judicial or non-judicial foreclosure, then (i) neither such lender, its successors, assigns, or designees nor any subsequent purchaser of, respectively, the Property or Leased Property following such a judicial or non-judicial foreclosure or deed in lieu of judicial or non-judicial foreclosure shall be deemed a "**successor or assign**" of Lessee or Lessor, or a "**successor in title**" to Lessee or Lessor, or a "subsequent owner and operator of the Project" after Lessee or Lessor for purposes of this Agreement, and (ii) the consent of OHCS shall not be required with respect to any such change in ownership or operation of the Project occasioned by such judicial or non-judicial foreclosure, deed in lieu of judicial or non-judicial foreclosure, or subsequent sale, respectively, of the Property or Leased Property, including (as applicable) the Improvements, and (iii) all conditions and restrictions contained in this Agreement shall terminate with respect to such interest in the Project on the date, if any, that the Property or Leased Property, including (as applicable) the Improvements are so acquired by judicial or non-judicial foreclosure or deed in lieu of judicial or non-judicial foreclosure. Notwithstanding the foregoing, IRC and Financing Documents rent limitations shall continue with respect to the Project for a period of three (3) years following any termination of the Affordability Period pursuant to the procedures specified above. During such three (3) year period, the owner of the Property or Leased Property shall not evict or terminate the tenancy of an existing tenant of any of the Qualified Units under any of the Financing Documents (including this Agreement) other than for good cause and shall not increase gross rents above the maximum allowed under the Financing Documents, including as amended, with respect to such Qualified Units. Furthermore, and notwithstanding the foregoing, the restrictive covenants applicable to the Project under the Financing Documents (including this Agreement) shall be deemed reinstated with their priority in the title records of the applicable county if, during the Affordability Period described in this Agreement, title to the Project, or any part thereof, is subsequently acquired by a "**Related Person**" as that term is described in IRC Section 42.

[Signature pages to follow.]

LESSOR:

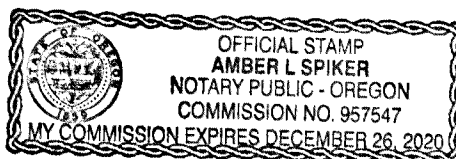
KLAMATH HOUSING AUTHORITY,
an Oregon public body corporate and politic

By: 
Diana Otero, Executive Director

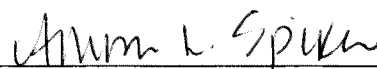
STATE OF OREGON)

) ss.

County of Klamath)



This instrument was acknowledged before me on this 8th day of April, 2020, by Diana Otero, Executive Director of the Klamath Housing Authority for and on behalf of the Lessor.


NOTARY PUBLIC FOR OREGON
My Commission Expires: December 26, 2020

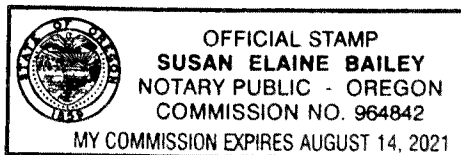
OHCS:

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

By: 
Julie V. Cody, Director
Affordable Rental Housing Division

STATE OF OREGON)
 : ss
County of Marion)

The foregoing instrument was acknowledged before me this 3rd day of April, 2020 by Julie V. Cody, Director of the Affordable Rental Housing Division of the Housing and Community Services Department, State of Oregon, who executed the foregoing instrument for and on behalf of OHCS.





NOTARY PUBLIC FOR OREGON
My Commission Expires: 8-14-21

EXHIBIT A
(Property Description)

A leasehold interest in the following described property pursuant to that certain Lease Agreement executed between Klamath Housing Authority, as Lessor, and Sunrise Vista Apartments, LLC, as Lessee, on or about April 8, 2020, a memorandum of which has been recorded on or about April 16, 2020 in the official records of Klamath County, State of Oregon, as document number 2020-004857, to wit:

Parcel 2 of Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00 situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded May 8, 2017 in 2017-004773, Records of Klamath County, Oregon.

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

EXHIBIT B

(Leased Property Description)

PARCEL 2 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.

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

EXHIBIT C
*(TEMPLATE 4% LOW-INCOME HOUSING TAX CREDIT
DECLARATION OF LAND USE RESTRICTIVE COVENANTS)*

[SEE ATTACHED]

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**

**4% LOW-INCOME HOUSING TAX CREDIT
DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

This 4% 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 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

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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 **Thirty (30)** years from the date the first building in the Project is placed in service or until **Date of estimated PIS + 30 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.
- (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:
 - ☐ 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.
 - ☐ 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 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’ 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]

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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