

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

**QUALIFIED PURCHASER
DESIGNATION AGREEMENT**

This Qualified Purchaser Designation Agreement (this “Agreement”) is made and entered into this _____ day of [Month~], 20____ by and between [Name of Designee], a/an [State/type of entity~], (the “Designee”), and the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“OHCS”). OHCS and the Designee may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

- A.** [Owner’s name] (the “Owner”) is the owner of a/an [NUMBER (#)] building, [NUMBER (#)] unit, publicly supported multifamily residential housing development (the “Improvements”) located on certain real property in the City of [CITY], County of [COUNTY], State of Oregon, as more particularly described in **Exhibit A** attached hereto (the “Property”). The Property and the Improvements are collectively referred to herein as the “Project”, which is commonly known as “Project Name.”
- B.** The Parties acknowledge and agree that the Project is a “participating property” as defined in ORS 456.250 (“Participating Property”) and, as such, is subject to the requirements, among other things, of ORS 456.250 through 456.265 and OAR Chapter 813, Division 115 (collectively, the “Act”).
- C.** In accordance with the Process Requirements (as hereinafter defined) for Publicly Supported Housing Preservation, including the Act (the “PuSH Process”), the Owner provided OHCS with notice required by ORS 456.262 of the opportunity to offer to purchase the Project as attached hereto as **Exhibit B**.
- D.** Under the PuSH Process, OHCS may appoint a Designee to act as a qualified purchaser as defined in ORS 456.250(7) (“Qualified Purchaser”) of a Participating Property after a Participating Property owner has given the required notice.
- E.** OHCS has designated Network for Affordable Housing (“NOAH”) as its Designee Process Contractor in connection with implementation of the PuSH Process.
- F.** The Designee submitted an application (the “Application”) to NOAH and was conditionally approved by OHCS as a designee as evidenced in **Exhibit C**.
- G.** The Parties have agreed to enter into this Agreement in order to preserve the Project in accordance with the PuSH Process and the terms hereof. Designee has agreed to act as OHCS’ Designee for the Project, serving as a qualified purchaser under the Act.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as the parties agree as follows:

1. INCORPORATIONS; DEFINITIONS.

1.1 Incorporation. The foregoing Recitals and referenced documents are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that nothing in the Recitals or in the incorporated documents shall be deemed to modify the express provisions hereinafter set forth.

1.2 Definitions. Capitalized terms used herein without definition or terms not otherwise defined in this Agreement have the meaning ascribed to such terms in the Process Requirements (as hereinafter defined), including the Act unless the context clearly requires otherwise.

1.2.1 “Affordability Period” means at least a term of ten (10) years from the expiration date of the Affordability Restrictions or until **December 31, [year]**, whichever is later.

1.2.2 “Area Median Income” or “AMI” means the median income for the primary metropolitan statistical area in which the Project is located as calculated in a manner consistent with determinations of median income for such area under Section 8 of the United States Housing Act of 1937, as amended (or if such program is terminated, under such program as is in effect immediately before such termination), as modified from time to time pursuant to the requirements of Revenue Ruling 94-57 and any successor law, provided that the Area Median Income for a calendar year shall not be less than the Median Income for the area for the preceding calendar year.

1.2.3. “Minimum Affordability” means at least [number] units affordable to low-income (60% of area median income) households, [number] units affordable to very low-income (50% of area median income) households, and [number] units affordable to extremely low-income (30% of area median income) households. [This definition could be replaced with a unit chart of the required affordability for ease.]

1.2.4 “Preservation Plan” means a plan to maintain Affordability Restrictions on the Project if the Designee acquires the Project. The Preservation Plan must include the following information:

1.2.4.1 Description of existing Affordability Restrictions presently held by the Owner on the Project that Designee will be assuming with their respective expiration dates.

1.2.4.2 Plans to enter into a Regulatory Agreement (“**Publicly Supported Housing Preservation Declaration of Restrictive Covenants**”) acceptable to OHCS that details proposed Affordability Restrictions going forward on the Project, including the Minimum Affordability and Affordability Period for the following:

1.2.4.2.1 Listing of Affordability Restrictions Designee plans to renew on the Project.

1.2.4.2.2 Listing of new Affordability Restrictions Designee plans to enter into on the Project through a Publicly Supported Housing Preservation Declaration of Restrictive Covenants with OHCS, noting any requirements that would make such increased Affordability Restrictions feasible.

1.2.4.3 Designee’s financial plans for the Project detailing the following:

1.2.4.3.1 Project budget and purchase financing sources, including but not limited to providing a list of Designee’s own funding resources and other resources both secured and intended to be secured; the sources list shall include all tax credits, grants and loans, noting both an amount for each and whether it is a private, federal, or state resource. Estimated amounts are accepted initially but Designee agrees to update the budget, resources, and amounts when requested and available.

1.2.4.3.2 Ongoing resources to operate and maintain the Project once purchased, including but not limited to Designee’s own funding resources and other resources both secured and intended to be secured; the sources list shall include all tax credits, grants and loans, noting both an amount for each and whether it is a private, federal, or state resource. Estimated amounts are accepted initially but Designee agrees to update resources and amounts when requested and available.

1.2.5 “Process Requirements” means all performance requirements, restrictive covenants, easements, encumbrances, warranties, liabilities, operational standards, and other obligations of the Owner and others arising under the [effective program documents entered into by Owner], the Act, applicable OHCS administrative rules, OHCS’ Designee Guidelines, applicable OHCS manuals, applicable OHCS orders and directives (including corrective notices), and other applicable federal, state, and local laws, ordinances, codes, rules, resolutions, orders, and regulations (all of the foregoing, including as amended from time to time).

2. DESIGNEE’S OBLIGATIONS.

2.1 The Designee shall:

2.1.1 Comply with the Process Requirements.

2.1.2 Carry out the due diligence process with respect to the Project;

2.1.3 Upon completion of due diligence, propose to OHCS a Preservation Plan and negotiate the Preservation Plan, making amendments as required by OHCS. The Preservation Plan must be approved by OHCS before [date /minimum 60 days/negotiated].

2.1.4 Present an offer for the Project to the Owner in the form of a purchase and sale agreement, an option agreement, or similar agreement (the “Purchase Contract”) acceptable to OHCS, and if the Designee no longer is able or has decided to no longer act as a purchaser of the Project, Designee agrees to notify OHCS or NOAH as soon as possible;

- 2.1.5 Thirty (30) days after the Designee has presented a Purchase Contract and no later than two (2) months prior to the withdrawal date provided in the ORS 456.262 notice, the Designee will record at its own expense in the real property records of the county of the Project, a notice of Right of First Refusal in accordance with the Process Requirements.
- 2.1.6 If the Owner accepts the Designee's offer, the Designee will complete the purchase in accordance with the terms and conditions of the Purchase Contract, the Preservation Plan approved by OHCS, and the Process Requirements. If the Designee becomes unable or decides to no longer act as a purchaser of the Project, Designee agrees to notify OHCS or OHCS' Designee Process Contractor as soon as possible;
- 2.1.7 If OHCS receives a notice under ORS 456.263, the Designee may be requested by OHCS to review the pending offer and determine whether it would like to exercise a Right of First Refusal by delivering a matching offer to purchase the Project. Before proceeding, Designee must make the request and receive approval from OHCS; the matching offer must contain a commitment from the Designee to provide Affordability Restrictions on the Project on terms approved by OHCS.
- 2.1.8 The Designee will respond promptly to any reasonable request by NOAH or any OHCS Designee Process Contractor regarding information on the status of the Purchase Contract, including reporting bi-weekly on the status of the purchase until the Designee has concluded the purchase of the Project. The Designee will also provide NOAH or any OHCS Designee Process Contractor with copies of any third-party reports, documentation and materials relating to the purchase, subject however to the terms and conditions of any confidentiality agreement that may apply to such materials.
- 2.1.9 The Designee will not assign or otherwise convey its designation to another party, except as expressly authorized by OHCS. The Designee may close in the name of an affiliated ownership entity subject to the approval of OHCS.
- 2.1.10 If the Designee acquires the Project, the Designee will enter into a Publicly Supported Housing Preservation Declaration of Restrictive Covenants acceptable to OHCS that requires Affordability Restrictions for the Project consistent with the Minimum Affordability and Affordability Period as provided in the Preservation Plan approved by OHCS. The Publicly Supported Housing Preservation Declaration of Restrictive Covenants will be executed and recorded at closing on the Project.

3. DESIGNEE'S REPRESENTATIONS AND WARRANTIES.

- 3.1 The Designee represents and warrants that:
 - 3.1.1 It has all necessary, rights, power and authority under its organizational documents and under Oregon law to execute and deliver this agreement and to incur and perform its obligations under this agreement.
 - 3.1.2 It possesses the resources and capabilities to successfully own and operate Publicly Supported Housing and is in compliance with the Process Requirements.

- 3.1.3 It made no false statement of fact, nor omitted information necessary to prevent any statements from being misleading in its Application.
- 3.1.4 The information contained in this Agreement is true and accurate in all respects.
- 3.1.5 It has the ability to proceed with the purchase of the Project in a timely manner.
- 3.1.6 It has disclosed in writing to OHCS, as of the date hereof, all parties who currently hold ownership and/or control interests in the Designee, and any reasonably anticipated future transfers of ownership or control.

3.2 The Designee shall notify OHCS in writing no later than five (5) business days of any change to the information set forth in section 3.1 above.

4. RIGHTS AND RESPONSIBILITIES OF OHCS.

- 4.1 OHCS shall use reasonable efforts to cooperate with the Designee during the time period between the designation and the completion of the purchase of the Project. However, it is expressly understood by the Parties that OHCS shall have no obligation:
 - 4.1.1 To review any of the due diligence materials, or to assume any responsibility toward the Designee with respect to the past, present, or future condition of the Project;
 - 4.1.2 To fund or defray in any way any of the purchase costs borne by the Designee, including the costs of the due diligence process and the earnest money deposit paid to the Owner for the Project; or
 - 4.1.3 To make any commitment whatsoever toward funding the Designee's purchase and/or future operation, maintenance, or improvement of the Project.
- 4.2 OHCS shall use reasonable efforts to timely review the following: the Preservation Plan for the Project proposed by Designee along with any amendments; matching offer requests; and Purchase Contracts.
- 4.3 If the sale of the Project pursuant to the Designee's Purchase Contract is unable to be completed, OHCS shall retain the Right of First Refusal.
- 4.4 OHCS may, at its own discretion, assign the right to make a matching offer to the Designee or an alternate proposed designee, to act on OHCS's behalf if or when the Owner intends to sell the Property to a third party as evidenced by notice under ORS 456.263.

5. MISCELLANEOUS PROVISIONS.

- 5.1 **Contingencies.** Nothing in this agreement will be deemed to compel the Designee to complete the purchase of the Project if all contingencies in the Purchase Contract, including any environmental, permitting or financing contingencies, have not been satisfied as determined by the Designee in its reasonable discretion.
- 5.2 **OHCS Project Disclaimer.** Neither the ownership, operation of the Project by or for Designee, nor any construction, renovation or repairs performed by or for Designee on or with respect to the Project, is or is intended to be operation or construction performed by or for OHCS. Nothing in this Designation Agreement is intended to give OHCS control or supervision of such ownership, operation or construction, or of any employment, labor, bidding or otherwise, nor is anything herein intended to constitute any such ownership operation or construction as being public, public works or a public works project, for any purpose.
- 5.3 **Confidentiality.** The Designee shall ensure the confidentiality of, protect the physical security of, protect disclosure of, and restrict access to any documents, materials, data or information developed or received by the Designee in the context of this Agreement or used by the Designee in the performance of this Agreement, which shall include, but is not limited to, OHCS's public records, documents, files, software, equipment, or systems, or any documents, materials, data, or information obtained in regard to the Project through the due diligence process pursuant to the Process Requirements. If the Designee ceases to be OHCS' designee, or if the Designee determines to discontinue the terms of this Agreement to purchase the Project, the Designee may not utilize or rely on any confidential documents, materials, data or information received by the Designee in regard to the Project during its service as Designee in order to negotiate the purchase of the Project, in its own right or acting as an agent, without the written authorization of OHCS.

Variable Paragraphs to add as applicable to Agreements:

- 5.4 **Successor Designee.** The Designee acknowledges that it is a Successor Designee to **[Previous DESIGNEE name]**, OHCS's original designee for the Project ("Original Designee"). Designee agrees to request from the Original Designee all due diligence materials that the Original Designee has received from the Owner or generated by itself or through its consultants and other agents. The Designee shall reimburse the **[Original Designee Name]** for its reasonable out-of-pocket third-party costs for any due diligence materials that the Designee receives, including but not limited to legal expenses, on or before the time for performance set forth in the Purchase Contract; such reimbursement is not to exceed \$50,000.
- 5.5 **Subsequent Designee Selection.** The Designee understands and acknowledges that, because of the unique circumstances of this purchase, OHCS has agreed to waive certain terms of the Guidelines regarding the order of selection of designees. In consideration thereof, the Designee agrees that, at the next occasion on which it would be considered as a potential designee pursuant to such Guidelines, it agrees that it will waive consideration as a potential designee at that time and until the Designee's next occasion for selection as a potential designee pursuant to such Guidelines.

6. TERMINATION AND REVOCATION.

- 6.1 The Parties may terminate this Agreement by mutual written consent or at such other time as the Parties may agree in the written consent.
- 6.2 OHCS may, at any time prior to the conveyance of the Project pursuant to a Purchase Contract, acting in its sole discretion, revoke the Designee's designation, upon three (3) business days' written notice, for any of the following causes:
- 6.2.1 If the Designee makes or attempts to make an assignment of the Designation, without the approval of OHCS;
 - 6.2.2 If, in OHCS' reasonable opinion, the Designee has been unable to demonstrate reasonable progress towards completing the purchase or otherwise fails to meet the obligations of Section 2;
 - 6.2.3 If any of the Designee's representations or warranties in Section 3 prove to be materially inaccurate;
 - 6.2.4 If OHCS deems in its reasonable judgement that any other action or inaction of the Designee is inconsistent with the goals of the Rules; or
 - 6.2.5 If the Designee gives notice to OHCS that it no longer will pursue acquisition of the Project.
- 6.3 With respect to the revocation causes listed in sections 6.2.2 through 6.2.5 above, OHCS' notice shall give a reasonably detailed explanation of the cause for the revocation. The Designee may, within three (3) business days following OHCS' notice, give notice to OHCS that it intends to cure the causes of OHCS' revocation. Upon delivery of notice to OHCS, the Designee shall have a thirty (30) day period to effect such cure to OHCS' reasonable satisfaction, provided that any such period allowed for cure shall not jeopardize the Designee's ability to take required actions within the timeframes of the Process Requirements, as determined by OHCS in its sole discretion.
- 6.4 If at the end of such thirty (30) day period provided in section 6.3, the Designee is, in OHCS' reasonable judgment, making progress toward cure but has not yet been able to effect a cure due to reasons outside of the Designee's control, OHCS may, within its sole discretion, grant the Designee thirty (30) additional days to effect a cure, provided that any such period allowed for cure shall not jeopardize OHCS' ability to take required actions within the timeframes of the Process Requirements.
- 6.5 If at the end of the thirty (30) day cure period provided in Section 6.3, the Designee has not completed a cure to OHCS' reasonable satisfaction, and the cure period was not extended by OHCS as provided in 6.4, the revocation shall be effective immediately.
- 6.6 Following a revocation or other termination of the Agreement, OHCS may select another party (a "**Successor Designee**"), and in such case the Designee shall cooperate fully with OHCS and the Successor Designee. The Designee shall, within three (3) business days of receiving notice that a Successor Designee has been appointed, make available to the Successor Designee and OHCS all

due diligence materials that it has received from the Owner or generated by itself or through its consultants and other agents, subject to the terms and conditions of any applicable confidentiality agreement. The Designee shall be entitled to be reimbursed by the Successor Designee for its reasonable out-of-pocket third-party costs for any due diligence materials that the Successor Designee chooses to receive.

- 6.7** Unless terminated earlier by mutual agreement or pursuant to Section 6.1 above, this Agreement shall terminate on the earlier of: (1) the date the Owner accepted an offer to purchase from Local Government, (2) the date of closing, under either the Designee's initial offer or under a matching offer made pursuant to the Right of First Refusal of the purchase of the Project by the Designee, including recording of the Publicly Supported Housing Preservation Declaration of Restrictive Covenants with OHCS in the applicable county of the Property, or (3) the occurrence of the latest of (a) the date the Owner rejected the Designee's offer to purchase and/or counter offer(s) in writing, or (b) the expiration of the statutory Right of First Refusal without a matching offer having been made, so that the effort to preserve the Project through new ownership of the Designee was unsuccessful.
- 6.8** Termination of this Agreement does not terminate or otherwise impair or invalidate any remedy available to the Parties, at law, or otherwise.

7. GENERAL PROVISIONS.

- 7.1 Indemnity.** The Designee assumes sole liability for breach of the Process Requirements (including all terms and conditions of this Agreement) due to the act or omission of Designee or any of its officers, agents, employees, and assigns. The Designee 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 Project, this Agreement or other Process Requirements, or resulting from or arising out of the acts, omissions, neglect or misconduct of the Designee or its subcontractors, agents, or employees under this Agreement, or the Process Requirements.
- 7.2 Limitation on Liability.** No Party shall be liable to any other Party or be liable for any indirect, special, or consequential damages.
- 7.3 Time of the Essence.** Time is of the essence in the performance by the Designee of the terms of this Agreement.
- 7.4 Notices.** Except as otherwise expressly provided in this Agreement or in the Process Requirements, any notices required or permitted to be given under this Agreement will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHCS or the Designee at the following addresses:

OHCS: Oregon Housing and Community Services Department
Attn: Portfolio Administration Section
725 Summer Street NE, Suite B
Salem, Oregon 97301-1266

With a copy to:

Network for Affordable Housing (NOAH)
Attn: PuSH Designee Contractor
1020 SW Taylor, Suite 585
Portland, OR 97205

The Designee:

[Designee name]
Attn:
Address
City, State Zip

With a copy to:

[Attorney name, if applicable]
Attn:
Address
City, State Zip

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

- 7.5 Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular term or provisions held to be invalid.
- 7.6 Survival of Obligations.** The obligations of the Designee and provisions of this Agreement which by their nature are intended to survive termination of this Agreement will survive.
- 7.7 Attorney Fees.** In the event a lawsuit or other proceeding is instituted regarding this Agreement, the prevailing Party in any dispute arising under this Agreement will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHCS by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.
- 7.8 Construction.** 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 will

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.

- 7.9 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.
- 7.10 Execution and Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.
- 7.11 Governing Law; Venue: Consent to Jurisdiction.** This Agreement will 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”) related to this Agreement will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHCS or 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. OHCS and the State of Oregon expressly reserve all sovereignty rights. THE DESIGNEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- 7.12 Merger Clause; Order of Precedence.** This Agreement and attachments hereto (which are by this reference incorporated herein), constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Agreement 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 Agreement.
- 7.13 No Limitations on Actions of OHCS in Exercise of Its Governmental Powers.** Nothing in this Agreement 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 Project, this Agreement, and the transactions contemplated by this Agreement and the Process Requirements to the same extent as if it were not a Party to this Agreement or the transactions contemplated hereby, and in no event will OHCS have any liability in contract arising under this Agreement, the Process Requirements, or otherwise by virtue of any exercise of its governmental powers.
- 7.14 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties, their parents, affiliates, subsidiaries, entities in common control with, in control of or controlled by the Parties, all personnel thereof and the Parties respective successors or assigns; provided, however, Designee may not assign any right or delegate any duty under this Agreement without the prior written consent of OHCS, or as expressly allowed by the Process Requirements.

[Signature Pages Follow]

IN WITNESS WHEREOF, OHCS and Designee have caused this Agreement to be signed by their duly authorized officers as of the first day written above.

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 ____ day of _____, 2020, by Julie V. Cody, Director, Affordable Rental Housing Division, Housing and Community Services Department, for and on behalf of OHCS.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

[Remainder of page intentionally left blank.]

DESIGNEE:

[Name of Designee~],
an Oregon [type of entity~]
Tax ID: [number~]

By: _____
[Name~], [Title~]

STATE OF OREGON)
 : ss
County of [County])

The foregoing instrument was acknowledged before me this _____ day of [Month~], 20__ by [Name~], the [Title~] of [Name of Entity~], an Oregon [type of entity~], who executed the foregoing instrument for and on behalf of the Designee.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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EXHIBIT A
Project Legal Description

EXHIBIT B

Owner's ORS 456.262 Notice of Withdrawal from Publicly Supported Housing

EXHIBIT C
Approval of Designee