

After Recording Return to:

Oregon Housing and Community Services
Attn: Portfolio Administration
725 Summer Street, Suite B
Salem, OR 97301-1266

SPACE ABOVE FOR RECORDER'S USE

**STATE OF OREGON
HOUSING AND COMMUNITY SERVICES DEPARTMENT
PUBLICLY SUPPORTED HOUSING PRESERVATION
DECLARATION OF RESTRICTIVE COVENANTS**

This Publicly Supported Housing Preservation Declaration of Restrictive Covenants (this "Agreement") is made and entered into this ___ day of _____, 20__ by and between **OWNER** ("Owner") and the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns ("OHCS").

RECITALS

- A.** Owner is the owner of a/an **NUMBER (#)** building, **NUMBER (#)** unit, publicly supported multifamily residential housing development (the "**Improvements**") located on certain real property located in the City of **CITY**, County of **COUNTY**, State of Oregon and more particularly described in **Exhibit A** hereto (the "Property"). The Property, together with the Improvements is commonly known as **PROPERTY NAME** and referred to herein as the "**Project**".
- B.** Certain performance obligations with respect to the Project were made in that certain **PROGRAM** Declaration of Restrictive Covenants between Owner [or **Owner's predecessor in interest**, **[original Borrower]** ("**Original Recipient**") and OHCS, including restrictive covenants relating to the use of the Project, dated **DATE** and recorded on **DATE**, in the official records of **COUNTY** County, Oregon, as **RECORDING** (the "**Declaration**").
- C.** On or about **DATE**, **Original Recipient** conveyed its interest in the Project to Owner by **TYPE** Deed dated **DATE**, and recorded on **DATE**, in the official records of **COUNTY** County, Oregon, as **RECORDING**.
- D.** The benefits and obligations under the Declaration's will expire as of **DATE**, after which the Project may be withdrawn from publicly supported housing.
- E.** Accordingly, Owner desires to enter into this Agreement in order to establish the Affordability Restrictions (as hereinafter defined) for the Affordability Period (as hereinafter defined).
- F.** In consideration of Owner's agreement to operate the Project in accordance with the terms and conditions of this Agreement for the Affordability Period, OHCS will continue to identify the Project as Publicly Supported

Housing (ORS 456.250 through 456.265) for the duration of the Affordability Period, so long as Owner is in compliance with this Agreement, including the Affordability Restrictions.

G. The parties also desire that this Agreement be recorded in the relevant county records at Owner’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes that run with the Property and govern the maintenance and operation of the Project.

AGREEMENT

NOW THEREFORE, for good and sufficient consideration, including the terms and conditions herein, OHCS and Owner mutually agree as follows:

PART I: INCORPORATION; DEFINITIONS.

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

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

PART II: REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER.

Owner represents, warrants and covenants that:

1. Validity. Owner is an **STATE/ENTITY TYPE**, duly organized, validly existing under the laws of **STATE**, is authorized to do business in Oregon, and it has the power and authority to transact the business in which it is engaged and to enter into and perform this Agreement;

2. Authority; No Impairment. The making and performance of this Agreement by Owner has been duly authorized by all necessary action of Owner; do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Owner’s organizing documents or authorizing statutes; and do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which Owner is a party or by which Owner or any of its properties is bound or affected and does not and will not result in the creation or imposition of any prohibited encumbrance of any nature;

3. Enforceability. This Agreement, when executed and delivered, is a valid and binding obligation of Owner enforceable in accordance with its terms;

4. Preservation. Owner acknowledges and agrees that the Project is a “participating property” as defined in ORS 456.250 and, as such, is subject to the requirements, among other things, of ORS 456.250 through 456.265 (the “Preservation Requirements”). Owner, its successors and assigns, and any owner of the Project (or any party thereof) are bound by and shall comply with the Preservation Requirements with respect to the Project.

5. Program Requirements. Owner shall timely satisfy all requirements of this Agreement, including the Preservation Requirements and all other applicable federal, state and local statutes, rules, regulations, ordinances and orders (all the foregoing, as amended from time to time, collectively, the “**Program Requirements**”), to the satisfaction of OHCS.

PART III: ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER.

Owner also represents, warrants, and covenants that:

1. Compliance.

(a) **Owner and Agent Compliance:** Owner shall comply with, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with, the terms and conditions of this Agreement, and the Program Requirements.

(b) **Tenant Certification; Verification.** Owner shall obtain and maintain on file for each person residing in the Project a certification of tenant eligibility and income verification in the form required by OHCS, updated periodically according to the requirements of OHCS, and submitted to OHCS at its request.

(c) **Annual Certification; Additional Information.** Owner shall provide an annual certification, in a format and on a schedule approved by OHCS in its sole discretion, that Owner is fulfilling its obligations under this Agreement. OHCS may, from time to time, require additional information or reporting from Owner.

2. Affordability.

(a) For a period of **NUMBER (#)** years from [**DATE existing Declaration restrictions expire**] until **December 31, 20__** (the “**Affordability Period**”), Owner shall continuously rent or hold vacant for rent **NUMBER (#)** income-restricted residential rental units (the “**Qualified Units**”) of the **NUMBER (#)** total units in the Project. Owner shall ensure that of the Qualified Units in the Project, will be rented to households whose incomes are at or below the following levels of the area median income, adjusted by family size, as determined by OHCS based upon information from the U.S. Department of Housing and Urban Development (“**HUD**”) (the “**Affordability Restrictions**”).

Until Turnover:

Unit Type	Number of Units	Maximum Percent of Median Family Income As Determined by HUD	Maximum Rent Standards As Determined by HUD
1 Bedroom	##	##%	## %
2 bdr	##	##%	##%
3 bdr	##	##%	##%
Manager (# bdr)	#	## %	## %

(b) As of the first day of the Affordability Period, the Affordability Restrictions will affect prospective new tenants going forward. Until turnover, existing tenants will continue their tenancies in accordance with affordability restrictions shown below. Further, Owner shall, in accordance with the Program Requirements, certify annually that for the preceding 12-month period no tenants in Qualified Units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to their Qualified Unit.

Upon Turnover:

Unit Type	Number of Units	Maximum Percent of Median Family Income As Determined by HUD	Maximum Rent Standards As Determined by HUD
1 Bedroom	##	##%	## %
2 bdr	##	##%	##%
3 bdr	##	##%	##%
Manager (# bdr)	#	## %	## %

3. Habitability; Other Compliance. Throughout the Affordability Period, Owner shall ensure that the Project is maintained in a safe, sanitary, and habitable condition satisfactory to OHCS.

4. Records; Certifications; Monitoring; Corrective Action.

(a) Financial and Performance Reports. Owner shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Owner shall maintain records satisfactory to OHCS documenting compliance with this Agreement. Owner shall 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 this Agreement remains outstanding, plus **two (2) years** thereafter.

(b) Monitoring. Owner acknowledges and agrees that OHCS shall 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 Agreement, whether in paper, electronic or other form, to perform examinations and audits. Furthermore, Owner acknowledges and agrees that OHCS may inspect the Project, and any part thereof, upon reasonable notice to Owner and tenants. Owner, its agents, employees, and subcontractors will cooperate fully with OHCS in any requested inspection of the Project, its records, or other compliance monitoring.

(c) Charges. OHCS may assess, at its sole discretion, an annual compliance monitoring charge (the “Charge”) to Owner. OHCS will from time to time determine that the complexity of monitoring Owner compliance with this Agreement may result in assessing the Charge. Upon notification to Owner that a Charge has been assessed, including the amount of the Charge, Owner shall timely submit payment to OHCS.

PART IV: FURTHER ASSURANCES.

1. Further Acts. Owner, at any time upon request of OHCS, shall do, make, execute and deliver all such additional and further acts, instruments or papers as OHCS may require in its sole discretion to protect OHCS’ rights under this Agreement.

2. Reliance. OHCS may rely upon statements, certificates, and other records of Owner and its agents and assigns, as well as of occupants of Qualified Unit(s), including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

3. Consultation with Counsel. OHCS may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection as to any action taken or suffered by OHCS in good faith and in conformity with the opinion of such counsel with respect to this Agreement or the Project.

4. Agent Compliance. Owner shall comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement, including the Program Requirements.

PART V: TRANSFER OF OWNERSHIP

1. Owner agrees to notify OHCS in writing at least 30 days prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.

2. Successor owner will enter in to a written assumption of this Agreement during the transfer of ownership process. The assumption document will be duly recorded in the county records at the expense of Owner to the transfer.

PART VI: FORECLOSURE.

Except with respect to government lenders, in the event the construction and/or permanent lender, its successors or assigns, lawfully acquire title to the Project through foreclosure or deed in lieu of foreclosure, neither the lender nor any subsequent purchaser of the Project following such a foreclosure or deed in lieu of foreclosure shall be deemed a successor or an assign of Owner, and neither will the lender nor such subsequent purchaser or successor owner have any obligation to comply with the conditions, restrictions and equitable servitudes contained herein which will terminate on the date, if any, that the Project is so acquired by foreclosure or deed in lieu of foreclosure.

PART VII: COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

1. Covenants; Equitable Servitudes.

(a) OHCS and Owner hereby declare their express intent that throughout the Affordability Period, the covenants, restrictions, charges and easements set forth herein, including the Affordability Restrictions, will be deemed covenants running with the Project and will create equitable servitudes running with the Project, and will pass to and be binding upon OHCS' and Owner's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

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

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

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

2. Burden and Benefit.

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

(b) Owner hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Project, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHCS) of such covenants, reservations and restrictions, and by furthering the public purposes for publicly supported housing preservation.

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

4. **No Third-Party Right of Action.** Tenants and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no right of action to enforce the restrictive covenants or equitable servitudes created hereunder. OHCS retains the exclusive right to enforce such covenants and servitudes. Tenants and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no claim, cause of action or other right of recourse against OHCS with respect to any action or lack of action taken by OHCS with respect to this Agreement (including the described covenants and servitudes) or the Project arising from their rights, if any, under this Agreement or otherwise.

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

PART VIII: GENERAL PROVISIONS.

1. **Indemnity.** Owner assumes sole liability for breach of applicable Program Requirements (including all terms and conditions of this Agreement) 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 Project, this Agreement or other Program Requirements, or resulting from or arising out of the acts, omissions, neglect or misconduct of Owner or its subcontractors, agents, or employees under this Agreement, or the Program Requirements.

2. **Time of the Essence.** Time is of the essence in the performance by Owner of the terms of this Agreement.

3. **No Discrimination; Marketing.** Owner shall 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 shall use its reasonable efforts to advertise and market the Project dwelling units, particularly the Qualified Unit(s), within the county and, if applicable, the city in which the Project is located.

4. **Notice.** Except as otherwise expressly provided in this Agreement or in the Program 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 Owner at the following addresses:

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

Owner:

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.

5. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Agreement, OHCS and Owner 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 will 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 expressly identified in this Agreement and only to the degree they are expressly described as intended beneficiaries of particular terms of this Agreement and only with such remedies as expressly given herein with respect to such interests.

6. Owner Status.

(a) 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 or otherwise, with respect to performance under this Agreement.

(b) Non-Federal Employment Certification. Owner certifies that it is not employed by or contracting with the Federal Government for performance covered by this Agreement.

(c) Good Standing Certification. Owner certifies to the best of its knowledge and belief that neither Owner nor any of its principals, officers, directors or employees:

(i) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

(ii) Has within a three (3) 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;

(iii) 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)(ii);

(iv) Has within a three (3) year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is 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>

7. Extension of Affordability Period: Noncompliance.

(a) Material Noncompliance. OHCS may, by written notice, extend the Affordability Period described in this Agreement for periods of time matching corresponding periods of time during which OHCS determines Owner to be in material noncompliance with any of the terms of this Agreement.

(b) Publicly Supported Housing Preservation Program Noncompliance. Owner shall extend the Affordability Period by the number of months Owner is in noncompliance with the notice requirement under OAR 813-115-0030(1).

8. 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.

9. Survival of Obligations. The obligations of Owner and provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including, but not limited to remedies and record-keeping) will survive.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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. OWNER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

15. 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.

16. 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 Owner, the Project, this Agreement, and the transactions contemplated by this Agreement and the Program 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 Program Requirements, or otherwise by virtue of any exercise of its governmental powers.

[Signature Pages Follow]

IN WITNESS WHEREOF, OHCS and Owner have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

OHCS:

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

By: _____
Julie V. Cody, Assistant Director

STATE OF OREGON)
 : ss
County of Marion)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by Julie V. Cody, who is the Assistant Director of the Housing and Community Services Department, for and on behalf of OHCS.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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

OWNER:

OWNER ENTITY

an _____

Tax ID: _____

By: _____
Authorized Signor/Title

STATE OF OREGON)

: ss

County of Marion)

The foregoing instrument was acknowledged before me this ____ day of DATE by Authorized Signor/Title, of ENTITY, who executed the foregoing instrument for on behalf of Owner.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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

EXHIBIT A
[Legal Description]

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