

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

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

**OREGON AFFORDABLE HOUSING TAX CREDIT PROGRAM
DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

THIS Oregon Affordable Housing Tax Credit Program (“**Program**”) 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 entity** (the “**Owner**”) and the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“**OHCS**”) as a condition precedent to the conditional award of Oregon Affordable Housing Tax Credits (“**OAHTC**”) by OHCS to Owner.

RECITALS

- A.** Owner is or will be the owner of a **number longhand (#) building, number longhand (#) unit** affordable multifamily rental housing development with common areas 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 (the “**Property**”), 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 administering agency for the State of Oregon for the Program.
- C.** Owner has applied to OHCS and received an OAHTC contingent award (the “**Award**”) on the loan for the Project from its senior mortgage lender in an amount not to exceed **dollar amount longhand Dollars (\$###)**.
- D.** Owner has represented to OHCS in the Owner's OAHTC Application (the “**Application**”), dated **Date of original application** that the Owner, at a minimum, will rent the Project's residential units to individuals or families whose income is less than eighty percent (80%) of the area median gross adjusted income as determined by the United States Department of Housing and Urban Development (“**HUD**”) and as otherwise provided in this Declaration.
- E.** OHCS is willing to allocate the OAHTC subject to the terms of its Award and this Declaration, including applicable provisions of Section 42 and other sections of The Internal Revenue Code of 1986, as amended (the “**IRC**” or “**Code**”), related regulations (“**Regulations**”) of the U.S. Department of the Treasury (“**Treasury**”), Internal Revenue Service (“**IRS**”), or the U.S. Department of Housing and Urban Development (“**HUD**”), ORS 317.097, Oregon Department of Revenue (“**DOR**”) administrative rules

Declaration of Land Use Restrictive Covenants – OAHTC

Name of Project - Project #####

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(particularly, chapter 150), OHCS administrative rules (including but not limited to chapter 813-division-110), OHCS handbooks, directives and other orders, and other applicable federal, state, and local laws and requirements including all of the foregoing as amended from time to time (all of the foregoing, collectively, the “**Program Requirements**”), being performed to its satisfaction.

- F. Owner, under this Declaration, intends, declares, and covenants that the regulatory and restrictive covenants set forth herein governing, *inter alia*, the use, occupancy, and transfer of the Project shall be covenants running with the land of the Project for the term stated herein and be binding upon all subsequent owners of the Project (or any part thereof) for such term, and are not simply personal covenants of the Owner.

DECLARATION

NOW, THEREFORE, for good and sufficient consideration, including the terms and conditions herein, the parties agree and the Owner declares in favor of OHCS as follows:

SECTION 1 – INCORPORATION; DEFINITIONS

- (a) The foregoing recitals, Exhibit A and referenced documents are incorporated herein by reference. Notwithstanding this incorporation, the foregoing recitals, Exhibit A and other incorporated documents do not modify the express terms of this Declaration.
- (b) Words and phrases used in this Declaration shall have the same meanings as defined herein or as used in other Program Requirements, unless the context requires otherwise.
- (1) "Rents Charged at the Market Interest Rate" means the rents that would be required, if the lender charged the market interest rate, in order to make the Project financially feasible.
- (2) "Rent Reduction" means the amount rents are reduced from the Rents Charged at the Market Interest Rate as a result of the OAHTC subsidy.
- (3) "Rent Pass-Through" means the amount of Rent Reduction made available to tenants of the Project because of the reduced interest rate attributable to the OAHTC subsidy.

SECTION 2 – REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER

Owner represents warrants and covenants that:

- (a) **Nature of Entity.** Owner is an **Oregon type of entity**, duly organized, validly existing, and authorized to do business under the laws of Oregon and it has the power and authority to transact the business in which it is engaged and to enter into and perform this Declaration.
- (b) **Authorization.** The making and performance of this Declaration 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.

- (c) **Valid and Binding Acts.** This Declaration, when executed and delivered, shall be a valid and binding obligation of Owner enforceable in accordance with its terms.
- (d) **Compliance.** Owner agrees to fulfill all terms and conditions of this Declaration, including all Program Requirements.
- (e) **Project Completion.** Owner shall complete the Project no later than **should be consistent with LIHTC or HOME documents** and in accordance with the plans and specifications that have been approved by OHCS or modifications to those plans and specifications, which modifications must be approved by OHCS and in accordance with the terms and conditions of this Declaration.
- (f) **Single-Asset Entity.** Owner is and at all times during the term of this Declaration, including but not limited to the Affordability Period defined below, will be a single-asset entity, i.e., owning and operating only the Project and no other asset.
- (g) **Limitation on Debt.** Except to the extent of debt to which OHCS expressly agrees to be subordinated to in writing, Owner will have no other debt that does or may result in a lien against the Project without prior written consent from OHCS.
- (h) **Further Acts.** Owner will 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 Declaration.
- (i) **Reliance.** OHCS may rely upon statements, certificates, and other records of Owner and its agents and assigns, as well as of occupants of Qualified Units defined below, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.
- (j) **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 Declaration or the Project.

SECTION 3 – PROJECT INCOME AND RENT RESTRICTIONS; AFFORDABILITY PERIOD

- (a) **Rent and Income Restrictions.** Owner will restrict Project rents and incomes as follows:
 - (1) **Income Limits.** Owner will, throughout the Affordability Period described below, rent or hold vacant and available for rent **number of restricted units longhand** (#) residential units (the “Qualified Units”) of the **number of total units** (#) total residential units in the Project, and related common areas, to persons with a combined maximum household median family income of eighty percent (80%) of area median income as determined by HUD (“Qualified Tenants”). Owner will further restrict incomes in the Project as described in the table below and in a manner consistent with the other applicable OHCS subsidy requirements, including federal low-income housing tax credit requirements.
 - (2) **Rent Limits.** Owner will, throughout the Affordability Period described below, restrict rents for such Qualified Units to limits established herein, including applicable Program Requirements. Owner will further restrict rents in the Project beyond what is described in the table below reflecting other applicable OHCS subsidy restrictions and in a manner consistent with other applicable OHCS subsidy requirements, including federal low-income housing tax credit

requirements. Further rent restrictions will be consistent with the Rent Pass-Through requirements found in section 3(d).

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 Bedroom	#	##%	##%
3 Bedroom	#	##%	##%
Manager (# bdr)	#	If restricted enter %; if not restricted enter N/A	If restricted enter %; if not restricted enter N/A

* The **maximum restricted-incomes** for the Qualified Units reflected in the above table are based upon the rent-restriction election made by Recipient in the Application as approved in the Reservation. Maximum restricted-incomes consistent with the foregoing standards are published by HUD, adjusted for family size and Project location.

** The **maximum restricted-rents** for the Qualified Units, as published by HUD, correspond to the elected income limits and Maximum Rent Standards payable by Qualified Tenants reflected in the table, but actual rents for the Project payable by Qualified Tenants may be lower depending on the terms of other applicable rent subsidies or OHCS rent-approval requirements. Under no circumstances will tenants be required to pay more rent than that allowed by applicable rent-subsidy programs or Program Requirements, the most conservative restrictions having precedence.

*** The table shows maximum income and rent standards rounded up to the nearest percentile. The Recipient has represented to OHCS in its Application that the rent payable by Qualified Tenants and income levels of Qualified Tenants will not exceed the maximums identified in the foregoing table and will otherwise comply with Program Requirements.

(b) **Annual Determination.** The determination of whether a tenant designated as a Qualified Tenant meets the OAHTC income restrictions shall be made by the Owner or his designated agent, and appropriately documented to the satisfaction of OHCS at least annually on the basis of the current income of said tenant.

(c) **Rent Reduction.** Qualified Unit rents in the Project will be reduced annually by a total of at least **dollar amount of total annual pass-through required longhand (\$##)**. This Rent Reduction is calculated from the Rents Charged at the Market Interest Rate for Qualified Units without Project-based vouchers (as indicated in the Owner’s OAHTC Application), with necessary adjustments for other direct subsidies to the Project. Such rents may be adjusted consistent with this Declaration and Program Requirements.

(d) **Rent Pass-Through.** The Rent Pass-Through per month per unit to Qualified Units without Project-based vouchers, in order to accomplish the identified Rent Reduction mandated above, will be an average amount of **dollar amount of average per unit pass-through required longhand (\$##)**, with the combination of all monthly Rent Pass Through to the Qualified Units in the Project will total on an annual basis an amount not less than **dollar amount of total annual pass-through required longhand (\$##)**.

- (e) **Rent Reduction Compliance.** The Owner shall comply with the Program Requirements, in part, by ensuring that the Rent Reduction shall equal or exceed the amount of projected interest savings from the reduced interest rate loan, including as represented by Owner in its OAHTC Application.
- (f) **Rent Increases.** Owner may request an increase in rents annually in writing together with supporting documentation, both satisfactory to OHCS, which request will be deemed approved if not in excess of Program limits or other OHCS subsidy limits, and not denied or modified by OHCS within ninety (90) days of its receipt by OHCS. Subject to Program and other OHCS subsidy limits, OHCS may approve, deny or modify such rent increase requests at its sole discretion. OHCS, at its sole discretion, may also approve, deny or modify other requests by Owner for rent increases subject to Program and other OHCS subsidy limits.
- (g) **Affordability Period.** Owner shall maintain the foregoing rent and income restrictions applicable to the Project consistent with this Agreement, including the Program Requirements, for the duration of the awarded OAHTC from the date the first building in the Project is placed in service for a maximum period of **Twenty (20) years** or until **estimated PIS + 20 years**, whichever is later (the “**Affordability Period**”), subject to any written modification of such restrictions agreed to in writing by OHCS.

SECTION 4 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- (a) **Recordation.** Upon execution of this Declaration by the Owner and OHCS, 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 to OHCS an executed original of the recorded Declaration showing the date, deed book, and page numbers of record.
- (b) **Inducement.** Owner represents covenants and warrants that the issuance to the Owner of the OAHTC described herein by OHCS is an inducement to the Owner to acquire, renovate and operate the Project in accordance with this Declaration. In consideration of the issuance of the OAHTC, Owner has made this Declaration and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein. Therefore, the Owner covenants, agrees and acknowledges that OHCS has relied on this Declaration in determining to issue the OAHTC.
- (c) **Covenants; Equitable Servitudes.** OHCS and the Owner hereby declare their express intent that throughout the Affordability Period (as herein defined) the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land described in Exhibit A and shall be deemed equitable servitudes running with the land, and shall pass to and be binding upon OHCS's and the 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. 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 rental space) shall 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 shall 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.

- (d) **Burden and Benefit.** The Owner hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The Owner hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the land by enhancing and increasing the enjoyment and use of the Project by residents, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the OAHTC was issued.
- (e) **Consent.** The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by the Owner.
- (f) **Right of Modification.** OHCS may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Owner or subsequent Project Owners, as it so determines to be to the benefit of OHCS, the Project, the Program, or OHCS efforts to provide or maintain safe, sanitary, and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHCS representative.
- (g) **No Right of Action.** Tenants and any third-party beneficiaries under this Declaration (including incorporated documents) 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 any third-party beneficiaries under this Declaration (including incorporated documents) 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 (including the described covenants and servitudes) or the Project arising from their rights, if any, under this Declaration or otherwise.
- (h) **No Attorney Fees.** Tenants and any third-party beneficiaries under this Declaration (including incorporated documents) have no right to attorney fees under this Declaration for claims asserted as third-party beneficiaries hereunder nor will parties hereto have a right to attorney fees against tenants or third-party beneficiaries, if any, hereunder.

SECTION 5 – ADDITIONAL TERMS AND CONDITIONS

- (a) **No Liability by OHCS.** OHCS accepts no responsibility or liability for any adverse consequences to the Owner or any other person or entity arising under this Declaration, other Program Requirements, or otherwise. Owner agrees that OHCS will bear no responsibility or liability for any such adverse consequence and irrevocably waives any claims against OHCS with respect to any and all such adverse consequences, including but not limited to loss of the OAHTC or removal of the Project from the Program.
- (b) **No Other Project or Use.** The reservation herein may not be used with respect to any other project or property.
- (c) **No Unapproved Transfers; Removal of General Partner/Managing Member or Management Agent.**
 - (1) **Sale, Transfer, or Other Disposition of an Interest in the Grant, Owner (Including Investor), or Project.**

A. 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:

- (i) reasonable evidence satisfactory to OHCS that the Owner is not then in default hereunder beyond any applicable grace period or cure period;
- (ii) the execution and recording of documents satisfactory to OHCS;
- (iii) the payment to OHCS of an appropriate transfer fee; and
- (iv) 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, 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**”).

B 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 clauses B.(i), B.(ii), B.(iii) or B.(iv) below will constitute a permitted Transfer of an interest in the Owner.

(i) **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 Declaration 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.

(ii) **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 (i) 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.

(iii) **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.

(iv) **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 program administrative rules, as amended from time to time.

C. **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 clauses C.(i), C.(ii) or C.(iii) below shall constitute a permitted transfer of an interest in the investor.

(i) **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 seventy-five percent (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.

(ii) **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.

(iii) **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.

(2) **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," "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.

(3) **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.

- (4) **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.
- (5) **Unapproved Transfers Are Void.** Any Transfer of the Project, Owner, or investor in violation of this subsection will be ineffective to relieve the Owner, the investor, any Transferee or the Project of any continuing obligations under this Declaration. OHCS' consent hereunder will not be deemed continuing and the Owner and each permitted Transferee will continue to be bound by this subsection unless OHCS has consented in writing to the Transfer of the Project, Owner, or investor.

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

- (1) **Admission of Investor Member and Special Member.** OHCS consents to the admission of the investor member or limited partner, as applicable, in the Owner and within one (1) year of this Declaration, as applicable, the admission of a special member or special limited partner in the Owner of an entity that is an Affiliate of the investor.
- (2) **Security in Managing Member Interest.** 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.

(e) **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 Declaration, 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.

(f) **Additional Compliance.** Owner shall:

- (1) **Project Maintenance.** Maintain the Project in a safe, sanitary, and habitable condition satisfactory to OHCS and in accordance with Program Requirements, including applicable zoning and local code requirements.
- (2) **Project Repair.** Keep the Project in good repair satisfactory to OHCS.

- (3) **Management Plan.** File with OHCS a Project management plan and/or execute a regulatory agreement as to Project management (the “**Management Plan**”), consistent with Program Requirements, satisfactory to OHCS. Any then current Management Plan, when approved by OHCS, will be incorporated into this Declaration by reference. OHCS may require periodic revisions to the Management Plan from the Owner. The Owner may propose revisions to the Management Plan for approval by OHCS. All Management Plan revisions are subject to OHCS’ sole discretion and must be approved in writing by OHCS prior to becoming effective.
- (4) **Management Agent.** Timely and suitably perform Project management responsibilities directly or through a management agent (“**Management Agent**”) approved in writing by OHCS consistent with the Management Plan, including as the Management Plan may be revised from time to time.
- (5) **Resident Services Plan.** File with OHCS a Project Resident Services Plan (the “**Plan**”), consistent with Program Requirements, satisfactory to OHCS. Any then current Plan, when approved by OHCS, will be incorporated into this Declaration by reference. OHCS may require periodic revisions to the Plan. The Owner may propose revisions to the Plan for approval by OHCS. All Plan revisions are subject to OHCS’ sole discretion and must be approved in writing by OHCS prior to becoming effective.
- (6) **Resident Services.** Provide timely resident services (“**Services**”) appropriate to the Project population and consistent with the Plan, including as the Plan may be revised from time to time.
- (7) **Applicable Fraction.** Maintain the Applicable Fraction income and rent restrictions for each building of the Project specified in the Application(s), consistent with this Declaration.
- (8) **Documentation for Qualified Contract.** 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.
- (9) **Annual Certification of Compliance.** 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 recipient.
- (10) **Records Maintenance.** 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, 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.
- (11) **Records Access.** Allow inspection and copying of Project and other records by OHCS, the Oregon Secretary of State’s Office (“**SOS**”), the Federal Government (“**U.S.**”), and their duly authorized representatives, as reasonably directed by OHCS, SOS, U.S., or their representatives.
- (12) **Project Access.** With appropriate notice, allow inspection of the Project (including residential

rental units) by OHCS, SOS, U.S., and their duly authorized representatives, as reasonably directed by OHCS, SOS, U.S., or their representatives.

- (13) **Charges.** Timely pay an annual compliance monitoring charge to OHCS as and when OHCS shall from time to time determine consistent with Program Requirements. OHCS may require or allow payment of the annual compliance monitoring charge in installments on a monthly or other interval basis. Owner shall pay other charges required by OHCS consistent with this Declaration or other Program Requirements.
 - (14) **Further Acts.** 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 Declaration.
 - (15) **Agent and Other Compliance.** Cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Declaration, including all applicable Program Requirements.
- (g) **Foreclosure.** Except with respect to government lenders, in the event the primary construction or primary 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 will be deemed a "successor or assign" of the Owner, and neither the lender nor such subsequent purchaser will have any obligation to repay the OAHTC and all conditions and restrictions contained herein will terminate on the date, if any, that the Project is so acquired by foreclosure or deed in lieu of foreclosure provided, however, that (i) the preceding provisions of this sentence will cease to apply and the restrictive covenants and equitable servitudes contained in this Declaration will be reinstated if, at any time during the Affordability Period subsequent to the early termination of this Declaration as the result of an event under this section, any person or entity that was an obligor under this Declaration prior to such early termination event, including the Owner, or any related person (within the meaning of IRC section 42) obtains an ownership interest in the Project, and (ii) for three (3) years after the acquisition of title to the Project by the construction or permanent lender any Qualified Tenants in the Project may not be evicted except for cause and rents charged to such Qualified Tenants may not exceed the rent limits established in this Declaration.

SECTION 6 – REMEDIES

- (a) **Deficiencies.** OHCS may, from time to time, identify and direct Owner to correct deficiencies in its compliance with this Declaration (including all Program Requirements), which Owner shall correct as directed.
- (b) **Additional Remedies.** If the Owner defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (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 (30) 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 (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 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 Declaration, including the Declaration and other Program Requirements, or enjoin any acts or things that may be unlawful, inconsistent with this Declaration, or in violation of Owner's obligations or OHCS' rights under this Declaration;
- (4) Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;
- (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 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 thirty (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; and
- (11) Exercise of such other remedies as permitted or authorized under this Declaration, by law, or in equity.

(c) **Survival of Remedies; Remedies Not Exclusive.** The rights and remedies of OHCS provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, shall survive the termination of the Affordability Period and of this Declaration. 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 Declaration 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 Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

SECTION 7 - MISCELLANEOUS

- (a) **Nonwaiver.** No failure of or delay by OHCS to enforce any provision of this Declaration 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 Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- (b) **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.
- (c) **Construction.** The parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration. 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 Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.
- (d) **Captions.** The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.
- (e) **Execution and Counterparts.** This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.
- (f) **Notice.** Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration shall be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHCS or Owner at the following addresses:

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

Owner: **Legal name of ownership entity**
 Street address
 City State Zip

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 Declaration, 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 Declaration, the investor (and any special member or special limited partner affiliated therewith) will have the right to cure all Events of Default for which delivery of written notice to the Owner is required under this Declaration within the same time periods allowed to Owner.

(g) Third Party Beneficiaries; Limitation.

(1) Modification of Declaration and Restrictive Covenants. Third party beneficiaries under this Declaration are limited to those persons qualified under the Program Requirements to be occupants of the Project. The rights of such third parties are restricted to enforcement of the terms of the Declaration as contemplated in this Declaration. Notwithstanding such third party beneficiary rights, OHCS may, with the written consent of the Owner, waive, modify or release any and all terms of this Declaration, including the Declaration and the restrictive covenants and equitable servitudes arising thereunder, at its sole discretion. Additionally, OHCS may waive, modify or release any and all terms of the Declaration and the restrictive covenants and equitable servitudes arising thereunder at its sole discretion without the consent of the Owner should the Project be removed from the LIHTC program. Third party beneficiary rights are limited to the terms of the Declaration as contemplated in this Declaration, as the Agreement or Declaration may from time to time be so waived, modified or released by OHCS.

(2) No Claim Against OHCS. Third party beneficiaries under this Declaration, including the 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 Declaration, the credit, the Program Requirements or the Project, arising from their rights under this Declaration, the Agreement, or the other Declaration Requirements.

(3) No Attorney Fees. Notwithstanding any other provision in this Declaration (including the Declaration), third party beneficiaries neither have any right to the award of attorney fees or costs hereunder nor are they subject hereunder to an award of attorney fees or costs in favor of any others.

(h) Assignment; Successors and Assigns. Except as expressly permitted herein, Owner shall not assign or otherwise Transfer any interest in this Declaration or in Owner (other than leases for the residential units in the Project) without the prior written consent of OHCS. Any attempted assignment or Transfer in violation of this provision shall be null and void. The provisions of this Declaration shall be binding upon and shall run to the benefit of the parties to this Declaration and their respective successors and permitted assigns.

(i) Severability. If any term or provision of this Declaration 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain the particular term or provisions held to be invalid.

(j) Indemnity. Owner shall indemnify, hold harmless, save, 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 or

resulting from or arising out of the acts, omissions, neglect or misconduct of recipient or its subcontractors, agents, or employees under this Declaration or related to the Project.

- (k) **Survival of Obligations.** The obligations of Owner as set forth in the Application and reservation shall survive the reservation or allocation of any credit and shall not be deemed to terminate or merge with the reservation or allocation of the credit. Provisions of this Declaration which by their nature are intended to survive termination of this Declaration shall survive.
- (l) **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. Reasonable attorney fees shall not exceed the rate charged the OHCS by its counsel.
- (m) **Governing Law; Venue: Consent to Jurisdiction.** This Declaration shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law and the laws of the United States of America, as applicable. Any claim, action, suit or proceeding (collectively, “**Claim**”) among OHCS and Owner or with any third-party beneficiary related to this Declaration or the Project shall 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 shall this provision be construed as a waiver by the State of Oregon or OHCS of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. OWNER, BY EXECUTION OF THIS DECLARATION, HEREBY EXPRESSLY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- (n) **Merger Clause; Order of Precedence.** This Declaration, including the Application, reservation, 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 and the reservation survive the execution and delivery of this Declaration. In the event of any inconsistencies between the body of the Declaration, the Application, the reservation, 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 Declaration, the Declaration without any attachments or any incorporated provisions, the Management Plan, the Services Plan, the reservation, the Application, the property description, any other attachments. No modification or amendment of this Declaration shall bind either party unless in writing and signed by both parties, and no waiver or consent shall be effective unless signed by the named 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 Declaration.
- (o) **Time is of the Essence.** Time is of the essence in the performance of this Declaration.
- (p) **Independent Contractor.** Owner will perform all obligations under this Declaration 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 Declaration.
- (q) **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.

- (r) **Non-Federal Employment Certification.** Owner certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.
- (s) **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:
 - (1) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;
 - (2) Has within a three (3) year period preceding this Declaration 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;
 - (3) 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 (s)(2); and
 - (4) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default.
- (t) **Blocked Persons.** 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>
- (u) **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 Project, the credits, this Declaration, and the transactions contemplated by this Declaration and applicable Program 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 Application, the Reservation, the Program Requirements, or otherwise by virtue of any exercise of its governmental powers.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Owner and Department have caused this Declaration to be signed by their duly authorized representatives, as of the day and year first written above.

DEPARTMENT:

STATE OF OREGON, acting by and through its
Housing and Community Services Department
Tax ID: 93-0952117-260100

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, Multifamily Housing Finance Section of Housing and Community Services Department, on behalf of OHCS.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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

OWNER:

Name of Ownership Entity
an Oregon **type of entity**
Tax ID #: **tax ID for ownership entity**

By: _____
Name of Signor, title

STATE OF OREGON)
 : ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of **Month**, 20___, by **see signature block**, who executed the foregoing instrument on behalf of the owner.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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

EXHIBIT A