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Skagit County Auditor

10/19/2004 Page 1 of 12 11:04AM

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Attention: Patrick L. Evatt

113531P
LAND TITLE OF SKAGIT COUNTY

REGULATORY AGREEMENT

Grantor: SKAGIT COUNCIL HOUSING
Additional names on pg. N/A.

Grantee: HOUSING AUTHORITY OF SKAGIT COUNTY
Additional names on pg. N/A.

Abbreviated Legal Description: ptn NW 1/4 NW 1/4, 16-34-4 E W.M.
Official Legal Description on Exhibit A attached

Assessor's Tax Account #s: P25028; P25034; P25019

Reference # (If applicable): N/A.

REGULATORY AGREEMENT

This Regulatory Agreement (this "Agreement") is made this 18th day of October, 2004, by SKAGIT COUNCIL HOUSING (the "Borrower"), and is part of the consideration for the financial assistance provided by the HOUSING AUTHORITY OF SKAGIT COUNTY (the "Authority") to the Borrower for the purpose of refinancing two apartment buildings known as Mount Vernon Manor and Mount Vernon Manor II, located, respectively, at 2405 and 2510 Austin Lane in Mount Vernon, Skagit County, Washington, to provide housing for low-income persons.

This Agreement will be filed and recorded in the official public land records of Skagit County, Washington, and shall constitute a restriction upon the use of the real property legally described in Exhibit A (the "Property"), subject to and in accordance with the terms of this Agreement for at least 20 years following the Occupancy Date (defined below).

The covenants contained herein are to be taken and construed as covenants running with the land and shall pass to and be binding upon the Borrower and its successors and assigns, heirs, grantees and lessees of the Property. Each and every contract, deed or other instrument covering or conveying the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed or other instruments.

NOW, THEREFORE, it is hereby covenanted, for the Regulatory Period (defined below), as follows:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms not defined herein shall have the meanings given them in the Loan Agreement.

Act means chapter 35.82 of the Revised Code of Washington, as amended.

Additionally Qualified Tenants means Qualified Tenants whose adjusted incomes (as calculated in the manner prescribed by applicable Treasury Regulations) does not exceed 60% of the median gross income for the area.



Bond means, the Authority's \$2,329,585 original principal amount Low-Income Housing Assistance Revenue Bond, 2004, Series 1 (Skagit Council Housing Program – Mount Vernon Manor I and II).

Code means the Internal Revenue Code of 1986, as amended, or any successor federal income tax statute or code. Any reference to a provision of the Code shall include the applicable regulations of the Department of the Treasury promulgated with respect to such provision.

Date of Issue means the date the Bond is issued and delivered to the initial purchaser thereof.

Dwelling Units means the dwelling units within the Project.

Functionally Related and Subordinate means and includes facilities for use by tenants; for example, laundry facilities, parking areas, hallways and recreational facilities, provided that the same are of a character and size commensurate with the character and size of the Property.

Loan Agreement means the Loan Agreement dated October 18, 2004, between the Authority and the Borrower providing for, evidencing and securing the obligation of the Borrower to repay the loan of proceeds of the Bond.

Occupancy Date means the latter of the Date of Issue or the first date on which at least 10% of the Dwelling Units in the Project are occupied.

Project means, depending on the context, (i) the refinancing of the existing apartment buildings known as Mount Vernon Manor and Mount Vernon Manor II located on land legally described in Exhibit A hereto, to provide housing for low-income persons, or (ii) Mount Vernon Manor and Mount Vernon Manor II.

Qualified Tenants means and includes individuals of low or moderate income determined in a manner consistent with determinations of lower-income individuals under Section 8 of the United States Housing Act of 1937, as amended, except that the percentage of area median gross income which qualifies as low or moderate income shall not exceed 80% and such calculation shall be adjusted for family size. Occupants of a unit are considered individuals of low or moderate income only if their adjusted income (computed in the manner prescribed by the Treasury Regulations) does not exceed 80% of the median gross income for the area. However, occupants of a unit shall not be considered Qualified Tenants if all the occupants are students (as defined in



Section 151(c)(4) of the Code), none of whom is entitled to file a joint federal income tax return. The method of determining low or moderate income in effect on the Date of Issue will be determinative, even if such method is subsequently changed.

Regulatory Period means the period commencing on the Occupancy Date and ending on the date which is 20 years after the Occupancy Date, except that with respect to the provisions of Section 2(o), "Regulatory Period" means the period described in that section.

Treasury Regulations means the regulations of the Department of the Treasury under the Code.

Section 2. Use of Facilities. The Borrower hereby agrees that the Project is to be acquired, owned, managed and operated as required under the Act at all times throughout the Regulatory Period. To that end, the Borrower hereby represents, covenants and agrees as follows:

(a) that the Project is being financed for the purpose of providing low-income housing under the Act, and the Borrower shall own and operate the Project as a housing project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units in compliance with the provisions of the Act, Section 145 of the Code and related Treasury Regulations;

(b) that, at all times during the Regulatory Period, Dwelling Units, together with facilities Functionally Related and Subordinate to those Dwelling Units, used by Qualified Tenants on a long-term basis shall occupy at least 50% of the interior space in the Project or shall constitute at least 50% of the Dwelling Units in the Project, whichever produces the larger number of Dwelling Units used by Qualified Tenants (this Section 2(b) shall by no means lessen the requirements of Section 2(o));

(c) that, throughout the Regulatory Period, not more than 20% of the interior space in any building constituting part of the Project that exceeds four stories in height shall be commercial space;

(d) that, if at any time during the Regulatory Period the Borrower is unable to rent or lease the minimum number of Dwelling Units designated in accordance with Sections 2(b) and 2(o) for use by Qualified Tenants or Additionally Qualified Tenants to such tenants, it will hold the unrented Dwelling Units so designated vacant until Qualified Tenants or Additionally Qualified Tenants, as applicable, are found to occupy those



Dwelling Units, and that it will offer the unrented Dwelling Units so designated for occupancy by Qualified Tenants or Additionally Qualified Tenants, as applicable;

(e) that it will use its best efforts in good faith to maintain at all times during the Regulatory Period the percentage of Dwelling Units in the Property required under this Agreement to be made available for occupancy by Qualified Tenants at rents affordable by Qualified Tenants or Additionally Qualified Tenants, as applicable. For purposes of this section (f), "rents" shall refer to that portion of the monthly charges to tenants relating to their occupancy of a Dwelling Unit exclusive of charges for meals and other supportive services, if any. The provisions of this paragraph are in addition to, and not in substitution for, the provisions of Section 2(b);

(f) that, throughout the Regulatory Period, it will obtain at the time each Dwelling Unit is rented to a Qualified Tenant, verified annually thereafter, and maintain on file certifications or verifications of income. Such certifications and verifications of income shall be in the form and manner required by the Treasury Regulations or in such other form and manner as may be required by applicable rules, regulations or policies now or hereafter promulgated by the Department of the Treasury or the Internal Revenue Service. Such forms shall contain information regarding the tenant's anticipated income for the taxable year immediately following the tenant's initial occupancy in the Property, which shall be subject to independent investigation and verification by the Authority. Copies of such documentation shall be submitted to the Authority upon request or as often as necessary to comply with the requirements of the Code. An annual rent roll and financial statement for the Project, together with copies of such documentation, shall be submitted to the Authority on or before March 15 of each year following the Occupancy Date;

(g) that, throughout the Regulatory Period, none of the Dwelling Units in the Project shall at any time be used on a transient basis (limited, occasional use of individual Dwelling Units by visiting family members shall not constitute use on a transient basis); none of the Dwelling Units in the Project shall be subject to a lease having a term of less than 30 days; and neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, or trailer park or court, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(h) that once available for occupancy, each Dwelling Unit in the Project shall be rented or available for rental on a continuous basis to members of the general public for the term of this Agreement and in compliance with applicable Treasury Regulations, the laws of the State and this Agreement;



(i) that it will obtain and maintain on file, with respect to each Qualified Tenant residing in the Project, the original documentation required in Section 2(f);

(j) that it will permit any duly authorized representative of the Authority to inspect, during regular business hours and upon reasonable notice, the books and records of the Borrower pertaining to the incomes of the Qualified Tenants who are residing or have resided in the Project;

(k) that it will prepare and submit to the Authority within 90 days after the end of each calendar year after the Occupancy Date a certificate of the Borrower certifying that it has complied in all respects with the requirements of this Section 2;

(l) that it will file with the Internal Revenue Service, for each year during the period described in Section 2(o), IRS Form 8703, which form shall be filed by March 31 of the following year (however, the failure to file Form 8703 shall not constitute an event of default hereunder, but may result in the imposition of a penalty by the Internal Revenue Service);

(m) that each Dwelling Unit in the Property shall contain complete and separate facilities for living, sleeping, eating, cooking and sanitation for a single person or family;

(n) that substantially all (i.e., not less than 95%) of the Project constituting the Property shall consist of proximate buildings or structures located on a single "tract" of land which have similarly constructed Dwelling Units financed pursuant to a "common plan" together with Functionally Related and Subordinate facilities which shall be owned by the same "person" (as such terms are used in the Treasury Regulations) for federal tax purposes; and

(o) that it will, at all times during the period beginning on the Date of Issue and ending on the latest of (1) the date that is 15 years after the later of the Date of Issue or the date on which 50% of the Dwelling Units in the Property are occupied, (2) the first day on which no tax-exempt private activity bond (including the Bond and any obligations of the Authority issued to redeem the Bonds) issued with respect to the Property is outstanding, or (3) the date on which any assistance provided with respect to the Property under Section 8 of the United States Housing Act of 1937 terminates.



(i) maintain at least 40% of the Dwelling Units (rounded up to the next unit) for occupancy by Additionally Qualified Tenants, and advise the Authority in writing as to which units are to be so maintained and of any revision thereof;

(ii) reserve Dwelling Units for Additionally Qualified Tenants that have substantially the same equipment and amenities (not including luxury amenities such as fireplaces) as the other Dwelling Units in the Project; and

(iii) reserve Dwelling Units for Additionally Qualified Tenants that are not geographically segregated and that are of substantially the same size as other units in the Project, unless otherwise required to comply with a local housing assistance program.

For the purposes of this Agreement, a Dwelling Unit occupied by an individual or family who at the commencement of that occupancy is a Qualified Tenant or Additionally Qualified Tenant shall be treated as occupied by a Qualified Tenant or Additionally Qualified Tenant, as applicable, during such individual's or family's tenancy in such unit regardless of the future income levels of such individual or family; moreover, a unit shall be treated as occupied by a Qualified Tenant or Additionally Qualified Tenant, as applicable, until occupied by another occupant, at which time the character of the unit shall be redetermined. Notwithstanding the foregoing, if during the period described in Section 2(o) an Additionally Qualified Tenant's income increases to an amount equal to or greater than 140% of the then current income limit for Additionally Qualified Tenants and such tenant is required to be a Qualified Tenant for the requirements of Section 2(o) to be met, the next available Dwelling Unit shall be rented to an Additionally Qualified Tenant.

Section 3. Compliance With Laws. The Borrower will provide safe and sanitary housing and will comply with all state and local housing codes, licensing requirements and other requirements regarding the condition of the structure and the operation of the Project in the jurisdiction in which the Project is located.

Section 4. Records and Reports. The Borrower will keep any records and make any reports relating to compliance with this Agreement that the Authority may reasonably require.

Section 5. Default. If a violation of any of the covenants herein occurs, the Authority may, after 30 days' notice to the Borrower, institute and prosecute any proceeding at law or equity to abate, prevent or enjoin any such violation or to compel specific performance by the Borrower of its obligations hereunder, provided that the



Borrower shall not be required by any provision herein to evict a tenant. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

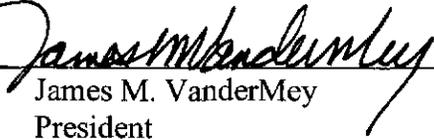
Section 6. Covenants Run With the Land. The Borrower hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land throughout the Regulatory Period, and, except as otherwise provided in Section 7, shall pass to and be binding upon the Borrower's successors in title including any purchaser, grantee or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee (other than a resident) of any portion of the Property and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument (other than residential resident leases) hereafter executed conveying the Property or any portion thereof or interest therein 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.

Section 7. Release or Termination. So long as at or following any foreclosure and expiration of any statutory redemption period, transfer of title by deed in lieu of foreclosure or similar event, neither the Borrower nor any related person (as defined in the Code) under Section 267 or 707(b) for the purposes described therein or under Section 1563(a) of the Code) obtains an ownership interest in the Project for federal tax purposes, this Agreement shall terminate if the Bonds or any obligations of the Authority issued to redeem the Bonds are retired as a result of foreclosure or transfer of title by deed in lieu of foreclosure or as a consequence of involuntary noncompliance caused by fire, seizure, requisition or condemnation, or if a change in federal law or an action of a federal agency after the date hereof prevents the Authority or its assigns from enforcing the requirements hereof.



IN WITNESS HEREOF, the Borrower has executed this Agreement as of the date set forth above.

SKAGIT COUNCIL HOUSING, a
Washington nonprofit corporation

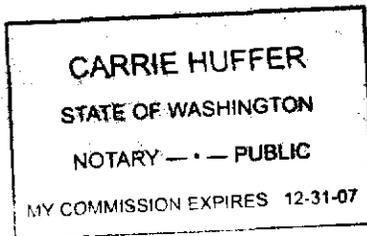
By: 
James M. VanderMey
President

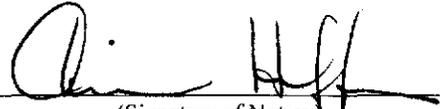


STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day personally appeared before me James M. VanderMey, to me known to be the President of Skagit Council Housing, a Washington nonprofit corporation, the entity that executed the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and on oath stated that he was authorized to execute the same.

Dated this 18th day of October, 2004.




(Signature of Notary)

Carrie Huffer

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of
Washington, residing at Burlington

My appointment expires 12/31/2007



EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL "A":

All that portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 16, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at the Northwest corner of Tract "B", Short Plat No. MV-3-81, approved January 15, 1981, recorded in the Auditor's Office of Skagit County, Washington;
thence North $89^{\circ}47'35''$ East and along the North line of said Tract "B", for a distance of 393.70 feet to the Northeast corner of said Tract "B";
thence South $00^{\circ}33'01''$ East and along the East line of said Tract "B" and its Southerly extension for a distance of 305.00 feet;
thence South $89^{\circ}47'35''$ West, for a distance of 393.13 feet to a point on the West line of said Tract "B" extended Southerly;
thence North $00^{\circ}39'29''$ West along said extension and the West line of Tract "B", a distance of 305.01 feet to the point of beginning.

EXCEPT that portion thereof lying within Austin Lane, as dedicated for street purposes by Short Plat No. MV-17-81, approved September 16, 1981.

TOGETHER WITH a non-exclusive 25 foot easement for ingress, egress, utilities and drainage, lying East of the East line of Austin Lane and West of the East line of the above described tract extended South, the North line of said easement being the South line of the above described tract.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

Tract 4, Short Plat No. MV-17-81, approved September 16, 1981, and recorded in Volume 5 of Short Plats, page 128, under Auditor's File No. 8109160089, being a portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 16, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

All that portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 16, Township 34 North, Range 4 East, W.M., lying North of the North line of Tract 4, Short Plat MV-17-81, as recorded in Volume 5 of Short Plats, page 128, lying East of the Easterly line of Austin Lane as shown on said Short Plat, and lying South of the following described line:

Beginning at the Northeast corner of Tract "B", Short Plat MV-3-81, as recorded in Volume 5 of Short Plats, page 24;
thence South $00^{\circ}33'01''$ East and along the East line of said Tract "B" and its Southerly extension for a



200410190038
Skagit County Auditor

distance of 305 feet to the true point of beginning of this line description;
thence South 89°47'35" West for a distance of 393.13 feet to the terminus of this line description.

Situate in the County of Skagit, State of Washington.

UNOFFICIAL DOCUMENT



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