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Skagit County Auditor

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LAND TITLE OF SKAGIT COUNTY  
/36866-3  
After Recording Mail To:

Arntson & Stewart, P.C.  
51 Broadway, Suite 603  
Fargo, ND 58102  
701-280-0195

#### GREEN RETROFIT PROGRAM USE AGREEMENT

FOR SECTION 515 AND NON FHA-INSURED PROJECTS WITH SECTION 8

#### Recording Information

GRANTOR: MERCY PROPERTIES WASHINGTON III LLC,  
a Washington limited liability company

GRANTEE: SECRETARY OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C.

#### LEGAL

DESCRIPTION: Lots 35, 36, 37, 38, 39, 40, 49, 50 and 51 SANDLEWOOD. Please see Exhibit A  
for the complete legal description.

#### ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBERS:

4361-000-051-0003, 4361-000-035-0004, 4361-000-036-0003,  
4361-000-037-0002, 4361-000-038-0001, 4361-000-039-0000,  
4361-000-040-0007, 4361-000-049-0008, 4361-000-050-0004

**Use Agreement**

**U.S. Department of Housing and  
Urban Development  
Office of Housing  
Federal Housing Commissioner**

**OMB Approval No. 2502-0182  
Expiration: 04/30/2012**

**Public reporting burden** for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is required by Title XII of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the "Recovery Act"). This information is used to ensure that units are maintained and used solely as affordable rental housing in accordance with the terms of the Use Agreement. This information is also monitored by HUD to ensure compliance with the executed and recorded Use Agreement. This information is required in order to obtain benefits. No assurance of confidentiality is provided.

**Green Retrofit Program Use Agreement  
for Section 515 and Non FHA-insured Projects with Section 8  
Property ID No. 8000-22734  
Project Name: Skagit Village**

**THIS USE AGREEMENT** (this "Agreement") is made, as of August 16, 2010, by and between **MERCY PROPERTIES WASHINGTON III LLC**, a Washington limited liability company (the "Owner"), and **SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Washington, D.C.** (the "Secretary" or "HUD").

**RECITALS:**

**A.** The Owner is the owner of all of that certain real property located in the City of **Mount Vernon** in the County of **Skagit**, in the State of **Washington**, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property"), on which is constructed that certain rental apartment project known as **Skagit Village**, known as Property ID No. **8000-22734** (the "Project") and, together with the Real Property, (the "Property").

**B.** The Property receives project-based Housing Assistance Payments through Section 8 Contract No. **WA19-0037-002** entered into by the Owner, or a predecessor in interest, dated **February 2, 2007**, under Section 8 of the United States Housing Act of 1937, 42 U.S.C. §1437f.

**C.** The Owner has submitted an application for participation in HUD's Green Retrofit Program authorized by Title XII of the American Recovery and Reinvestment Act of 2009, Pub. L. No 111-5 in the section titled "Assisted Housing Stability and Energy and Green Retrofit Investments," under "Housing Programs" and as a condition of the Secretary's approval of the application, the Owner has agreed that the Project shall be subject to certain rental restrictions and other requirements, as set forth herein.

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**NOW, THEREFORE,** in consideration of the foregoing and the mutual promises set forth herein, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

**1. Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

**2. Definitions.**

a. "Area Median Income" shall mean the median gross income for a person or a family, as applicable, as from time to time calculated and released by the Secretary, based on the median income for the non-metropolitan statistical area for **Skagit County, Washington**. If the Area Median Income for the non-metropolitan county, **Skagit County, WA** is no longer released at least annually by the Secretary, then the median income calculation which most closely approximates the aforesaid calculation, based on available data, as if it had been recalculated annually, shall be substituted as the Area Median Income for all purposes under this Use Agreement, and in such event, the parties hereto shall acknowledge in writing the utilization of such substitute median income calculation.

b. "Area Median Income Factor" is the number obtained by dividing the Area Median Income as then most recently released, by the Area Median Income in effect on the date of this Agreement.

c. "Lower Income Families" are persons or families whose annual incomes do not exceed 80% of Area Median Income.

d. "Very Low Income Families" are persons or families whose annual incomes do not exceed 50% of Area Median Income.

**3. Term.** This Agreement shall remain in effect until **September 30, 2059** (such period being hereinafter referred to as the ("Term")).

**4. Use Requirement.** Throughout the Term, the Project shall be used solely as rental housing for Lower Income Families, with no reduction in the number of residential units, and no Current Tenant shall be required to relocate on the basis of his or her income. The Owner may rent to Very Low Income Families. The Owner shall not rent any unit to any New Tenant whose annual income exceeds eighty percent (80%) of the Area Median Income. The Owner shall obtain from each prospective New Tenant, prior



to admission to the Project, a certification of income signed by such New Tenant. The Owner will make a reasonable effort to certify the accuracy of the income certification made by the New Tenant. The Owner shall maintain on file, for a period of not less than three (3) years, an executed original of each New Tenant's Income Certification. The Owner shall, following receipt of a written request, provide to the Secretary (or to such third party as the Secretary may, in his sole discretion, determine to give the monitoring function under this Use Agreement) copies of all New Tenant Income Certifications, and such other documents as may be reasonably required to evaluate the Owner's compliance with the terms of this Agreement. Any unit in the Project assisted by a project-based Housing Assistance Payments Contract under Section 8, 42 U.S.C. §1437f, shall be subject to the income eligibility criteria set out in 42 U.S.C. §1437n(c), (as amended).

**5. Displacement Prohibition.** No Current Tenant shall be displaced, except for good cause. For units not assisted by a Housing Assistance Payments Contract, the Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the holder of a Certificate or a Voucher under Section 8 of the United States Public Housing Act of 1937 (42 U.S.C. §1437f), or any successor legislation (hereinafter referred to as "Section 8").

**6. Tenant Selection.** Unless designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.

**7. Civil Rights Requirements.** The Owner will comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, creed, sex, national origin, handicap, or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 90-284, 82 Stat. 73), the Fair Housing Act of 1968, as amended (42 U.S.C. §3601 *et seq.*; 24 CFR 100 *et seq.*), Section 504 of the Rehabilitation Act of 1973 implemented at 24 CFR Part 8 and Section 109 of the HCDA of 1974 implemented at 24 CFR Part 6, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107 and 110, and Subparts I and M of Part 200.

**8. Housing Standards.** The Owner agrees that throughout the Term, it shall (a) maintain the Project in good repair and condition in accordance with applicable local codes, (b) maintain and operate the Units and related facilities to provide decent, safe and sanitary housing, including the provision of all services, maintenance and utilities; (c) comply with the lead-based paint regulations set forth in 24 CFR Part 35, as amended; and (d) operate and maintain the Project in accordance with the Green Retrofit Program



## Operations & Maintenance Plan for the Project.

### 9. Management and Maintenance of the Project.

a. The Owner shall provide for the management of the Project in a manner satisfactory to the Secretary. Any management contract entered into by the Owner involving the Project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Secretary addressed to the Owner. Upon receipt of such request the Owner shall immediately terminate the contract within a period of not more than thirty days and shall make arrangements satisfactory to the Secretary for continuing proper management of the Project.

b. The Owner shall not, without the prior written approval of the Secretary, demolish any part of the Project or subtract from, without replacing, any real or personal property of the Project. In the event all or any of the buildings constituting the Project are destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied to rebuild the Project unless otherwise directed by the Secretary.

c. The books and records, documents and other papers relating to the financial condition of the Project, shall at all times be maintained in accordance with Generally Accepted Accounting Principles which can be subjected to an audit performed in accordance with Generally Accepted Auditing Standards and shall be subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. The Owner shall keep copies of all written contracts or other instruments that affect the Project, all or any of which may be subject to inspection and examination by the Secretary or his agents.

**10. Violations and Secretary's Remedies.** If the Secretary determines that the Owner has violated any of the terms of this Agreement, the Secretary shall notify the Owner of its determination and the Owner shall have thirty (30) calendar days after receipt of such notification in which to cure the violation. Promptly following the expiration of the foregoing thirty (30) day period, the Secretary shall reinspect the Project and/or take other investigative steps as it deems necessary in order to ensure compliance. Failure to cure the violation shall deem the owner in default. The parties further agree that upon any default under this Agreement, the Secretary may apply to any court, state or federal, for specific performance of this Agreement, or for such other equitable relief as may be appropriate, since the injury to the Secretary arising from a violation under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.



**11. Reports.** The Owner will provide the Secretary with an annual certification that 1) family income meets the income restrictions as set out in this Agreement, 2) eligible families are paying rent for the units that is no more than 30% of 80% of area median income; and 3) the Owner is operating and maintaining the Project in accordance with the Green Retrofit Program Operations & Maintenance Plan dated **February 9, 2010**, as may be revised. A supplemental certification will be provided when a family moves or a new unit is substituted.

An event of default by the owner will include any of the following:

- a. Failure to provide an annual certification as required by the above paragraph.
- b. Failure to provide a supplemental certification as required by the above paragraph.
- c. Failure to submit the annual report as required by the above paragraph, or submission of an annual report that contains inaccurate information.
- d. Failure to charge income eligible residents occupying affordable housing units an amount that is within the monthly affordable rent limits.
- e. Failure to operate and maintain the Project in accordance with the Green Retrofit Program Operations & Maintenance Plan dated **February 9, 2010**, as may be revised.

Upon an event of default and the owner's failure to take corrective action to the Secretary's satisfaction, the Owner agrees to provide the Secretary with liquidated damages. The liquidated damages shall be in an amount no less than \$1,000 per violation per unit. Such liquidated damages shall be levied every three months commencing with the end of the corrective period until compliance is achieved. In the event of a default under part d, the liquidated damages will be calculated monthly and will be equal to the amount by which the rent actually charged in any month for any affordable housing unit exceeds the monthly affordable housing rent for that unit.

The Secretary may seek any other legal or equitable remedy, including but not limited to, specific performance, in addition to liquidated damages.

**12. Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. The Owner shall not convey or transfer any of the Property without the prior written approval of the



Secretary. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Secretary hereby agrees that, upon the request of the Owner made on or after the expiration of the Term, the Secretary shall execute a recordable instrument approved by the Secretary for purposes of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**13. Superiority.** The parties hereto understand and agree that, notwithstanding any provisions contained in this Agreement, or any other instrument or agreement affecting the Property, the restrictions and covenants hereunder are not intended by the parties hereto to either create a lien upon the Property, or grant any right of foreclosure, under the laws of the jurisdiction where the project is located, to any party hereto or third party beneficiary hereof upon a default of any provision herein, rather they are intended by the parties hereto to constitute a restrictive covenant that is filed of record.

**14. Other Agreements.** The Owner represents and warrants that it will not execute any other agreements with provisions contradictory or in opposition to the provisions of this Agreement and that, in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**15. Binding Effect.** Upon conveyance of the Property during the Term, the Owner shall require its successor or assignee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**16. Amendment.** This Agreement may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**17. Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.



**18. Recording.** The Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Agreement shall immediately be recorded by Owner, at no expense to HUD, in the appropriate land records office and returned to HUD as soon as possible following recordation and prior to prepayment.

**19. Headings.** The headings and titles to the sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**20. Governing Law.** This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Project is located.

**21. Counterparts.** This Agreement may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one agreement.

**22. Signatory Authority.** Any person signing this Agreement on behalf of a party (e.g., the General Partner signing for an owner) represents that he or she has the authority to bind the party for whom he or she is signing.

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IN WITNESS WHEREOF, the parties hereto have caused this Use Agreement to be executed and made effective as of the date first above written.

**MERCY PROPERTIES  
WASHINGTON III LLC,  
a Washington limited liability company**

By: **Mercy Housing, Inc.,  
a Nebraska nonprofit corporation,  
its Managing Member**

By: Bill Rumpf  
Name: **Bill Rumpf**  
Title: **Vice President**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

On August 17, 2010, before me personally appeared **Bill Rumpf**, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



Sara E. Snyder  
Notary Public  
My Commission Expires: 12-30-2013

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SECRETARY OF HOUSING  
AND URBAN DEVELOPMENT,  
WASHINGTON, D.C.

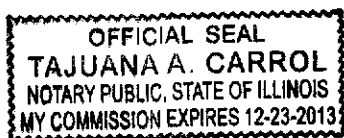
By: Harry W. West  
Authorized Agent  
Chicago Production Office

STATE OF ILLINOIS )  
COUNTY OF COOK ) ss.

On August 16, 2010, before me personally appeared Harry W. West, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



Tajuana A. Carrol  
Notary Public

My Commission Expires: 12/23/2013



**Exhibit A****Legal Description**

Lot 35, 36, 37, 38, 39, 40, 49, 50 and 51 PLAT OF SANDALWOOD according to the plat thereof, recorded in Volume 11 of Plats, Page 78 records of Skagit County, Washington.

Situated in Skagit County, Washington.



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