

After recording Return To:  
Washington State Housing Finance Commission  
Low-Income Housing Tax Credit Division  
1000 Second Avenue, Suite 2700  
Seattle, Washington 98104-1046  
Attn: Yasma Osses



201510080092

Skagit County Auditor

\$129.00

10/8/2015 Page

1 of

58 3:29PM

**CHICAGO TITLE**

**620019854**

Document Title: **Regulatory Agreement (Extended Use Agreement)**

Grantor(s): **BOH Portfolio Preservation Associates, LLLP**

Grantee: **Washington State Housing Finance Commission**

Legal Description (abbreviated form): **LOT 2 BURLINGTON SHORT PLAT NO.  
BURL-1-95, Skagit County**

Additional legal description in Exhibit "A" of document.

Assessor's Property Tax Parcel Account Number(s): **P62646/3867-000-050-2400**

**REGULATORY AGREEMENT  
(EXTENDED USE AGREEMENT)**

**Between**

**WASHINGTON STATE HOUSING FINANCE COMMISSION**

**And**

**BOH Portfolio Preservation Associates, LLLP**

**Dated as of October 8, 2015**

**WASHINGTON STATE HOUSING FINANCE COMMISSION  
LOW-INCOME HOUSING TAX CREDIT PROGRAM**

**(Ruby Preservation Portfolio Project – Norris Place)  
TC or OID NUMBER (As Applicable) 15-74A**

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS.....	3
SECTION 2. LIMITATION ON CREDIT ALLOCATION.....	3
SECTION 3. OWNER'S REPRESENTATIONS AND WARRANTIES .....	4
SECTION 4. OWNER'S COVENANTS .....	5
SECTION 5. COMPLIANCE MONITORING AND REPORTING REQUIREMENTS.....	13
SECTION 6. OWNER'S DUE DILIGENCE; DISCLAIMER BY COMMISSION.....	15
SECTION 7. RECORDATION; PRIORITY.....	17
SECTION 8. DEFAULT; REMEDIES.....	17
SECTION 9. INDEMNIFICATION .....	19
SECTION 10. TERM OF THIS AGREEMENT .....	21
SECTION 11. MISCELLANEOUS .....	23
SECTION 12. TIME OF THE ESSENCE.....	25
SECTION 13. CAPTIONS.....	25
SECTION 14. EXHIBITS AND SCHEDULES .....	25
SECTION 15. GOVERNING LAW; EFFECTIVE DATE.....	25
SECTION 16. VALID EXISTENCE; AUTHORIZATION; NO CONFLICT WITH OTHER DOCUMENTS .....	25

- EXHIBIT "A" - LEGAL DESCRIPTION**
- EXHIBIT "B" - PROJECT DESCRIPTION**
- EXHIBIT "C" - DEFINITIONS**
- EXHIBIT "D" - REQUIRED ANNUAL RECORDS**
- EXHIBIT "E" - REQUIRED ANNUAL CERTIFICATIONS**
- EXHIBIT "F" - LEASE RIDER TO BE ATTACHED TO  
RESIDENT LEASES AND RENTAL  
AGREEMENTS**

**REGULATORY AGREEMENT  
(EXTENDED USE AGREEMENT)**

**Washington State Housing Finance Commission**

**Ruby Preservation Portfolio Project – Norris Place  
TC or OID Number (As Applicable) 15-74A**

THIS REGULATORY AGREEMENT (EXTENDED USE AGREEMENT) ("Agreement"), dated as of **October 8, 2015** is between the **WASHINGTON STATE HOUSING FINANCE COMMISSION**, a public body corporate and politic (the "Commission"), and **BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP**, a Washington limited liability limited partnership (the "Owner").

**RECITALS**

- A. The Commission is the housing credit agency authorized to allocate the federal low-income housing tax credit (the "Credit") for residential rental property located in Washington, in accordance with Section 42 of the Code; and
- B. The Owner submitted an Application dated **4/10/2015**, requesting that the Commission issue a Credit Reservation and/or Allocation to the Project; and
- C. The Owner and the Commission entered into a Credit Reservation and Carryover Allocation Contract (RAC), whereby the Commission agreed to issue an Allocation to the Project (as described in Section 1 below, provided, that a Credit Reservation and Carryover Allocation Contract (RAC) may not have been entered into for a Qualified Tax-Exempt Bond-Financed Project);
- D. The Owner will acquire, and develop or rehabilitate a Residential Rental Property commonly known as **Ruby Preservation Portfolio – Norris Place** (the "Project") located on the property or properties legally described in Exhibit "A" (the "Land"); and
- E. As a condition of having an effective Allocation of Credit, the Owner must enter into this Agreement with the Commission.

**AGREEMENT**

Based on the foregoing recitals, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby agrees to the terms and

conditions of this Agreement, and agrees that the Owner, the Project and the Land shall be subject to the covenants, conditions, restrictions and terms set forth below in this Agreement, which and are expressly intended to touch and concern, run with and bind the Project and the Land, and which shall inure to the benefit of the Commission, its successors and assigns and be binding upon the Owner, and all other Bound Parties.

## SECTION 1. DEFINITIONS

1.1 Capitalized Terms. For purposes of this Agreement terms shall have the meanings set forth in Exhibit "C". If a capitalized term is not defined in Exhibit "C" it shall have the meaning set forth in the *Policies* in effect as of the effective date of the Credit Reservation and Carryover Allocation Contract (RAC) for the Project or, if the Project is a Qualified Tax-Exempt Bond-Financed Project with no Credit Reservation and Carryover Allocation Contract (RAC), the *Policies* in effect as of the date the Owner submitted the Application to the Commission.

1.2 Credit Reservation and Carryover Allocation Contract (RAC) and Bond Projects. This Agreement contains references to a Credit Reservation Contract and Carryover Allocation Contract. These agreements may not have been executed in connection with a Qualified Tax-Exempt Bond-Financed Project unless the Project receives an Allocation of Credit subject to Section 42(h)(1) of the Code (i.e., Credit allocated pursuant to the competitive allocation process). If the Project is a Qualified Tax-Exempt Bond-Financed Project that did not receive a competitive Allocation of Credit, references in this Agreement to the Credit Reservation and Carryover Allocation Contract (RAC) shall be inapplicable and the provisions in this Agreement referencing those contracts shall be read and interpreted in a manner consistent therewith.

## SECTION 2. LIMITATION ON CREDIT ALLOCATION

The actual amount of Credit finally allocated to any Qualified Building in the Project is reflected on an IRS Form 8609 issued with respect to such Building. Prior to issuing a Form 8609, the Commission has made or will make a determination as to the amount of Credit necessary for the financial feasibility and viability of the Project. Further, as part of the Commission's Credit determination for a Project, the Commission has reviewed or will review the reasonableness of the development and operating expenses associated with the Project as well as the market need and demand. The Commission may require that the Owner submit documentation to substantiate that any or all of a Project's costs are reasonable and appropriate. The Commission reserves the right, in its sole judgment and discretion, to limit or exclude any development or operating expense included in the Total Project Costs or proforma for a project as part of the Commission's financial feasibility review and Credit determination for the Project. Further, the determination of the amount of Credit finally allocated to a Building is also subject to the Program Limits in the *Policies*.

### SECTION 3. OWNER'S REPRESENTATIONS AND WARRANTIES

The Owner represents and warrants to the Commission as follows as of the date of this Agreement:

3.1 Noncompliance. There is no Noncompliance with respect to the Project, nor has any event occurred that, with the passage of time or giving of notice or both, would constitute a Noncompliance.

3.2 Feasibility and Viability. The amount of the Credit Reservation and/or Allocation is necessary for the financial feasibility and viability of the Project throughout the Credit Period as a Qualified Low-Income Housing Project.

3.3 Notification of First Lien Position. The Owner has notified in writing all lenders, financing sources and holders of Prior Liens that as a condition of obtaining Credit, this Agreement must be recorded in first position or each lender or holder must subordinate its liens and security interest(s) in the Project to the interests of the Commission under this Agreement in a form acceptable to the Commission.

3.4 No Project Changes. There have been no changes in the Project which would alter, amend or make untrue any of the representations or agreements made in the other Project Documents, except as set forth in amendments thereto executed by the Commission.

3.5 True and Complete Certification. Each Certification submitted with the Application and the Credit Reservation and Carryover Allocation Contract, and each representation and warranty made therein, is true, complete and accurate as of the date of this Agreement.

3.6 Fee Limitations. The Owner has and shall continue to comply with the limits established by the Commission pertaining to the amount of Developer Fee and Consultant Fees as set forth in the *Policies*. The Owner has made all disclosures required by the Commission with respect to the Owner, each Developer, each General Partner, each party to a Joint Venture, and/or, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as the case may be, being a Related Party, having an Identity of Interest, being Affiliated With, or Controlled By or In Control Of other members of the Development Team and Management Team as more fully described in the *Policies*.

3.7 Compliance with Policies. The Owner and/or the Project, as applicable, is in compliance with the Program Limits in the *Policies*.

3.8 Exhibit "B" Project Information. The Project information included in Exhibit "B" is true and accurate.

## SECTION 4. OWNER'S COVENANTS

4.1 Qualification for Credit. The Owner shall ensure that each Building in the Project qualifies for the Credit.

4.2 Compliance with Program Documents and Exhibit "B". The Owner and each Building in the Project shall comply with all representations and agreements made in the Program Documents with respect to each Building in the Project unless the Owner submits a written request to approve a modification or change and such request is approved in writing by the Commission. Specifically, but without limitation, the Owner and each Building in Project is subject to and shall comply with the Credit Set-Aside Category, Additional Low-Income Use Period, Project Compliance Period, Minimum Low-Income Housing Set-Aside, Additional Low-Income Housing Commitment (if any), Special-Needs Housing Commitment for Large Households (if any), Special-Needs Housing Commitment for Persons with Disabilities (if any), Special-Needs Housing Commitment for Persons who are Elderly (if any), Special-Needs Housing Commitment for Housing for Homeless (if any), the Farmworker Housing Commitment (if any), and the requirements for preservation of federally assisted low-income housing (if applicable), as set forth in Exhibit "B". Except as otherwise set forth in this Agreement, the terms and conditions of each of the commitments, restrictions and covenants set forth in Exhibit "B" shall be as set forth in the *Policies* as they exist on the date the Application was filed with the Commission.

4.3 Additional Low-Income Use Period. The Owner acknowledges that, except as expressly set forth herein, this Agreement shall remain in full force and effect during the Additional Low-Income Use Period. The Owner waives any right to terminate this Agreement with respect to any Building in the Project for the duration of the Additional Low-Income Housing Use Period as may otherwise be available pursuant to Section 42(h)(6)(E)(i)(II) of the Code.

4.4 Number of Housing Units. If this Agreement terminates with respect to any Building in accordance with the terms set forth herein, the minimum number of Housing Units in the Project shall be reduced by the number of Housing Units in such Building at the time of such termination. Notwithstanding the foregoing, all of the provisions of this Agreement shall remain in full force and effect throughout the term of this Agreement with respect to each Building in the Project unless terminated in conformance with this Agreement.

4.5 Credit Set-Aside Commitment. The Commitment to comply with the requirements of this Agreement and the *Policies* for the selected Credit Set-Aside Category identified in Exhibit "B" is binding upon the Owner and all successors in interest regardless of whether the Project received a Credit Reservation and/or Allocation under the selected Credit Set-



Aside Category or the balance of the Annual Authority remaining after the Credit Set-Asides.

4.6 Rental of Units to Maintain Low-Income Commitment(s). The Owner shall rent all Housing Units necessary to maintain the Applicable Fraction of Housing Units devoted to low-income housing only to Residents who are Income eligible for the Low-Income Housing Commitment(s) at the time of their initial occupancy of the Housing Unit. For the Additional Low-Income Housing Commitment, the Owner shall rent all Housing Units necessary to comply with the Additional Low-Income Housing Commitment only to Residents who are Income eligible for the applicable Additional Low-Income Housing Commitment at the time of their initial occupancy of the Housing Unit. This requirement(s) applies to all Housing Units necessary to comply with the Applicable Fraction and, if applicable, the Additional Low-Income Housing Commitment for the initial occupancy and each subsequent vacancy throughout the duration of the Project Compliance Period. The Owner must keep the applicable Housing Units within a building vacant until a Resident is selected who is Income eligible for the Low-Income Housing Set-Aside and/or the Additional Low-Income Housing Commitment, as appropriate.

4.7 Multiple Commitments. If the Project is subject to the Special-Needs Housing Commitment for Elderly persons and the Project is also subject to one or more additional Special-Needs Housing Commitments, the same Housing Units may be used for more than one Special-Needs Housing Commitment, so long as the actual Resident is eligible for more than one.

If one hundred percent (100%) of the Housing Units in the Project are subject to the Special-Needs Housing Commitments, the same Housing Units may be used for more than one Special-Needs Housing Commitment, so long as the actual Resident is eligible for more than one.

If less than seventy five percent (75%) of the Housing Units in the Project are set-aside for Housing for Homeless and the Project is subject to the Special-Needs Housing Commitment for persons with Disabilities and/or for Large Households, the same Housing Units shall not be used for more than one Special-Needs Housing Commitment, regardless of whether a Resident is eligible for more than one. A minimum of twenty percent (20%) of all Housing Units in the Project must be used for each additional Special-Needs Housing Commitment selected.

4.8 Marketing Units Subject to Certain Commitments. If the Project is subject to a Special-Needs Housing Commitment or the Farmworker Housing Commitment, when the Project is Placed-In-Service and ready for initial occupancy each Housing Unit subject to such commitment must first be rented to and occupied by a Resident who qualifies for the commitment (for example, in the case of the Farmworker Housing Commitment, by a Farmworker household). If the Housing Unit is subsequently vacated, the Owner shall

undertake good faith efforts to actively market any vacant Housing Units that are necessary to comply with the Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment to the appropriate group(s) for a minimum of thirty (30) days. The Owner shall not rent any of the Housing Units necessary to comply with the Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment to anyone who is not eligible for the appropriate Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment during this thirty (30) day period. In the event the Owner is unable to secure a Resident who is eligible for the appropriate Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment after thirty (30) days of active marketing, it may rent the Housing Unit to another prospective Resident. The Owner's right to rent a Housing Unit subject to a Special-Needs Housing Commitment or Farmworker Housing Commitment to a nonqualifying resident following the thirty (30) day recruitment period shall be applicable only to Housing Units that were initially occupied by qualifying Residents.

The recruitment provision applies to all Housing Units included in the Special-Needs Housing Commitment(s) and the Farmworker Housing Commitment, including both Low-Income Housing Units and Market Rate Housing Units, if applicable. The minimum thirty (30) day recruitment period begins on the first full day that (1) a Housing Unit is vacant and ready for occupancy, and (2) the Owner actively commences to market the Housing Unit.

If the Owner rents a Housing Unit included in the Special-Needs Housing Commitment(s) to a household who is not eligible for the appropriate Special-Needs Housing Commitment(s) after the thirty (30) day period, when a comparably sized or larger Housing Unit becomes vacant the Owner must again undertake the good faith efforts to actively market such Housing Unit(s) as described above in this Section 4.9 and shall not rent such Housing Unit(s) for a minimum of thirty (30) days to anyone who is not eligible for the appropriate Special-Needs Housing Commitment(s). If the Owner rents a Housing Unit included in the Farmworker Housing Commitment to an ineligible household after the thirty (30) day period, any and all Housing Units that subsequently become vacant, including the Housing Unit rented to the ineligible household, must be rented to a Resident who is eligible for the Farmworker Housing Commitment (subject to the thirty day marketing requirement set forth in the preceding Section).

The thirty (30) day marketing requirements for the Special-Needs Housing Commitment(s) and the Farmworker Housing Commitment set forth in this Section 4.9 apply to all Housing Units (following initial occupancy by a qualified Resident) which are necessary to comply with the Special-Needs Housing Commitment(s) and the Farmworker Housing Commitment throughout the Project Compliance Period.

Notwithstanding anything herein to the contrary, for the Special-Needs Housing Commitment for persons who are Elderly, no Housing Unit may be rented to any person if the result is that

the Project would no longer be an Elderly Housing Project. Also, notwithstanding anything herein to the contrary, for the Special-Needs Housing Commitment for Housing for Homeless, any vacancies in the Commitment must be filled by a Resident who meets the eligibility criteria for that Commitment.

4.9 Selection Criteria for Residents. When selecting Residents for occupancy in Low-Income Housing Units or Housing Units subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment, the Owner shall not apply selection criteria to a prospective Resident that are more burdensome than the selection criteria applied to any other Resident or prospective Resident; and the Owner shall take into consideration the rental history of such prospective Resident as evidence of the ability to pay the applicable rent, if: (i) the rental history is of a term of at least one year; and (ii) the history shows that the Resident has paid at least the same percentage of his income for rent during that period as he will be required to pay for the rent of the Housing Unit for which the Resident is applying.

4.10 No Geographic Segregation. The Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Commitment(s) shall not be geographically segregated from other Housing Units in the Project. In addition, the Low-Income Housing Units and Housing Units in a Special-Needs Housing Commitment(s) shall be substantially the same size as other Housing Units with the same number of bedrooms.

4.11 Unit Configuration. The configuration of Housing Units (e.g. studios, one-bedrooms, two-bedrooms, etc.) used for the Low-Income Housing Units and the Special-Needs Housing Commitments for Elderly persons, persons with Disabilities and Housing for Homeless shall be proportional to the configuration of the Total Housing Units in the Project unless the Owner obtains the prior written approval of the Commission to a different configuration.

4.12 Quality of Unit Construction. Subject to such exceptions as may be permitted by the *Policies* and the Tax Credit Laws, all Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Commitment(s) shall be of the same quality construction as all other Housing Units, and shall be equipped and maintained in the same manner as all other Housing Units, with the exception of any additional amenities provided to meet the needs of Resident(s) with Disabilities.

4.13 Notification and Advertising of Unit Availability. The Owner shall at least annually notify, (1) the relevant public housing authority, (2) at least two community agencies in the area of the Project, and (3) the general public of the availability of Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment. Where no public housing authority exists, notice shall be given to an agency authorized to act in lieu of a public housing authority, if any. Notification to the general public shall be by advertisement(s) of

general circulation in the area of the Project and the advertisement(s) shall conform to the Fair Housing Act, as amended, and state and local law.

4.14 Limitation on Up-Front Rental Charges. The Owner agrees to:

- (i) limit up-front charges and fees for Residents of all Low-Income Housing Units and all Housing Units subject to a Special-Needs Housing Commitment(s) to:
  - (a) the first month's Gross Rent;
  - (b) a reasonable damage or security deposit no greater than the maximum applicable monthly Gross Rent, plus any reasonable pet deposit and;
  - (c) a reasonable credit check fee; and
- (ii) not charge any other up-front charges or fees, for example, the last month's rent (except as noted below), application fees, and cleaning deposits or fees.

If the household is unable to pay the maximum applicable monthly Gross Rent, the property shall charge no more than 50% up-front and then provide a payment plan for the remaining amount over at least a five-month period.

In addition to the above charges and fees, the Owner may collect the last month's Gross Rent in advance only if the payment thereof is made on at least a six (6) month prorated basis beginning on the second month or later (e.g. one-sixth of the last month's Gross Rent due each month from the second month through the seventh month).

4.15 Compliance with Laws. The Owner shall at all times comply with all other federal, state and local laws, rules and regulations now or hereafter applicable to the Owner, the Project or any Building, including but not limited to: (i) Tax Credit Laws, (ii) federal housing policy governing nondiscrimination and accessibility, as determined under the Americans with Disabilities Act, the Fair Housing Act, as amended; Architectural Barriers Act of 1968; Housing and Community Development Act of 1974; Civil Rights Act of 1964; Civil Rights Act of 1968; Age Discrimination Act of 1975; (iii) to the extent applicable, the Housing and Urban Development Act of 1968; the Uniform Relocation and Real Property Acquisition Act of 1970; and the Stewart B. McKinney Homeless Assistance Act; and (iv) the State Environmental Policy Act; State Workers Compensation Industrial Insurance Act; Washington Fair Housing Laws; and the Washington State Landlord/Tenant Act; (v) if the Project includes "Federally Assisted Housing" as defined in RCW 59.28.020 (as it may be subsequently amended or renumbered), the written notice requirements specified in RCW 59.28.020 at least twelve (12) months prior to the expiration of the federal rental assistance contract or prepayment of the federal mortgage

or loan; and (vi) all state and local health, safety and building codes and standards. All Units shall at all times be suitable for occupancy and habitable.

4.16 Compliance with Environmental Laws. In the case of a Project which would be considered to be a Federal Action, Federally Subsidized, financed with Federal Funding or require federal approval or a permit, as those terms are defined and interpreted under federal environmental laws, including but not limited to: the National Environmental Policy Act of 1969; the Clean Water Act; the Clean Air Act; the National Historic Preservation Act; the Lead Based Paint Poisoning Prevention Act; and/or the Flood Disaster Protection Act of 1973, the Owner shall at all times comply with any and all applicable federal environmental laws.

4.17 Compliance with Labor Laws. In the case of a Project which receives Federal Funding, the Owner shall at all times comply with any and all applicable federal labor laws, including but not limited to: the Davis Bacon Act; Copeland Anti-Kickback Act; Contract Work Hours and Safety Standards; Hatch Act; and the Conflict of Interest Provisions set forth in 24 CFR 570.611.

4.18 Notification of Adverse Events. The Owner agrees to notify the Commission in writing within five (5) business days of first acquiring knowledge of any of the following:

(1) A default, that is not timely cured, in payment of any indebtedness incurred in connection with the development of any multifamily housing project or any other real estate development by a Covered Party or any declared default by a Covered Party of any loan incurred in connection with the development of any multifamily housing project, or a default or an alleged default by a Covered Party on any other financial obligation with an outstanding balance which exceeds \$100,000.00;

(2) A material default, or alleged material default, that is not timely cured, by a Covered Party of the Tax Credit Laws or any other applicable laws, rules or regulations regarding any low-income housing tax credit project in Washington or any other jurisdiction;

(3) The application for or consent to an appointment of a receiver or trustee, (a) for a Covered Party or, (b) over any portion of the property of a Covered Party; an assignment by a Covered Party for the benefit of creditors; the seizure of any part of the assets of a Covered Party by a judgment creditor; an admission in writing by a Covered Party of its inability to pay its debts as they become due; the insolvency of a Covered Party; or a petition being filed by any Covered Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended;

(4) A petition being filed against any Covered Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended, or an attachment or

sequestration of any property of any Covered Party where the same is not discharged or bonded within ninety (90) days (items (3) and (4) collectively being referred to as the "Bankruptcy" of a Covered Party);

(5) That a representation or disclosure made to the Commission or to any other low-income housing tax credit allocating agency by any Covered Party is materially false or misleading on the date when such representation or disclosure was made, whether or not that representation or disclosure appears in this Agreement, or that a Covered Party failed to provide any information that makes any such representation or disclosure materially false or misleading;

(6) The filing of an action, in which a Covered Party is a defendant, to foreclose upon a real estate lien (or retake possession under a ground lease) or the transfer by a Covered Party of an interest in real estate by a deed in lieu of foreclosure or similar instrument;

(7) A material adverse change in the condition (financial or otherwise), operations, business, or properties of any Covered Party or the Project;

(8) A pending or threatened lawsuit or claim against a Covered Party which could have a material adverse impact, financial or otherwise, on the operations, business or properties of a Covered Party or the Project; or

(9) The filing of legal action against, commencement of an examination by, or a formal investigation by any governmental authority for fraud, theft, misappropriation of funds, false certifications, financial improprieties, or similar wrongdoing, including but not limited to an action alleging securities fraud in connection with a low-income housing tax credit program or an action, examination or investigation in which the government authority is seeking or may seek criminal penalties.

**4.19 Government Approvals and Permits.** The Owner shall obtain and maintain all necessary state and local licenses, approvals and permits required for the Project or any Building and develop and operate the Project.

**4.20 Nondiscrimination.** The Owner shall not discriminate in making available Housing Units in the Project for occupancy on the basis of race, creed, color, sex, national origin, religion, familial status, age or disability; provided that the Owner may take such actions as may be necessary to qualify for or to maintain its qualification for the exemption that relates to housing for older persons under the Fair Housing Act, as amended, and 24 CFR Part 100, Subpart E. The Owner shall not discriminate against any Resident or prospective Resident based on his or her sources of income, including but not limited to Section 8 or other public assistance, provided such sources of income are not in contravention of any federal, state or local law; specifically, and without limitation, the Owner shall not refuse

to rent a Low-Income Unit to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 (because of the status of the prospective tenant as such a holder).

4.21 Tenant Lease Rider. The Owner shall include a rider (the "Lease Rider") in each Resident lease or rental agreement and provide a copy to such Resident in substantially the form set forth in Exhibit "F." Each Resident must receive a copy of the Lease Rider prior to his or her execution of a lease or rental agreement. The Lease Rider must be signed and dated by a Resident signifying receipt of such Lease Rider and a copy of the signed Lease Rider and the lease or rental agreement to which it is attached must be provided to the Resident promptly following execution thereof. The Owner shall provide the Commission with the master form of lease or rental agreement (together with amendments thereto), and shall maintain all executed leases and rental agreements, with the attached Lease Riders on file for inspection by the Commission.

4.22 Restrictions During Three-Year Period. Throughout the Three-Year Period applicable to a Building, the Owner shall comply with the terms, conditions, obligations, restrictions, prohibitions, covenants, representations and warranties set forth in this Agreement, the Credit Reservation and Carryover Allocation Contract (RAC), and the Tax Credit Laws, including but not limited to Section 42(h)(6)(E)(ii). The Owner acknowledges that the Commission's requirements with respect to the Three-Year Period are more stringent than those under Section 42 of the Code.

4.23 No Eviction/Nonrenewal Other than for "Good Cause"; Tenant's Right to Enforce Good Cause and Other Commitments. During the Compliance Period and Extended Use Period, (i) no tenant of a Low-Income Housing Unit may be evicted, and (ii) the owner may not refuse to renew a rental agreement, other than for Good Cause and each rental agreement shall so provide. Further, in addition to any other rights and remedies provided hereunder, any individual who meets the income limitation for a Low-Income Unit (whether a prospective, present or former occupant of the Building) shall have the right to enforce in any State court the requirements of this Section 4.24 and the commitments, restrictions and covenants set forth in Section 4.2 and Exhibit B hereof.

4.24 Eventual Tenant Ownership Commitment. If applicable, at the end of the initial 15-year Compliance Period, the Owner shall transfer ownership of 100 percent of the units in the Project to tenant ownership. The transfer shall be in accordance with Section 42(i)(7) of the Code and the Owner's transfer plan in the form accepted by the Commission (the "Transfer Plan"), which Transfer Plan is incorporated herein by reference. The purchase price for each unit at time of sale shall be affordable to households with incomes meeting tax credit eligibility requirements. To be eligible, the buyer must have had a low income housing tax credit qualifying income at the time of initial occupancy or time of purchase.

The Commission agrees to take all necessary actions, at Owner's expense, to provide for the partial or full release of this Agreement and the acquisition of unit(s) by eligible tenants.

The Owner shall provide the Commission not less frequently than once every five years, commencing on the fifth anniversary of the date of this Agreement, and upon written request from the Commission, a report describing its progress towards compliance with the Transfer Plan, including, but not limited to, an accounting of balances in any tenant homeownership reserve accounts, number of homeownership counseling sessions held with tenants and number of budget and financial training sessions held.

The Owner agrees that, if it is unable to sell the unit(s) to eligible tenant(s) for any reason at the end of the Project Compliance Period: (a) this Agreement shall remain in full force and effect during the Additional Low-Income Use Period and (b) it shall waive its rights under Section 42(h)(6)(E)(i)(II) and 42(h)(6)(F) to terminate this Agreement if the Commission does not present a Qualified Contract in accordance with Section 10.2 hereof.

**4.25 Data Collection.** To the extent required of the Commission by federal law, the Owner shall assist the Commission with meeting federal reporting requirements by collecting and submitting information to the Commission annually concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of all low-income households.

## **SECTION 5. COMPLIANCE MONITORING AND REPORTING REQUIREMENTS**

The Owner shall comply with the compliance monitoring, record keeping, certification, reporting and other requirements described in this Section 5, the Qualified Allocation Plan, WAC 262-01-130(16), the *Policies*, the *Low-Income Housing Tax Credit Compliance Manual*, and the Tax Credit Laws, as the same may be amended. Without limiting the generality of the foregoing, the Owner shall:

**5.1 Compliance Monitoring Fee.** Pay to the Commission a nonrefundable Annual Compliance Monitoring Fee described in the latest revision of the *Policies*. The Commission shall have the right to increase the Annual Compliance Monitoring Fee and the Owner agrees to pay the increased Annual Compliance Monitoring Fee throughout the remainder of the Project Compliance Period.

For Qualified Tax-Exempt Bond-Financed Projects in which the bonds are not issued by the Commission, the Owner shall pay the Annual Compliance Monitoring Fee annually throughout the Project Compliance Period in the amount described above.



Any amounts not paid to the Commission in accordance with this Agreement shall bear interest at the rate of 1.5% per month accruing from the due date until paid.

5.2 Provide Requested Information. Timely provide all information and documentation reasonably requested by the Commission, its representatives or designees throughout the Project Compliance Period, including, without limitation, all Certifications or other documentation as to the compliance of each Building in the Project with the terms of this Agreement, the Qualified Allocation Plan, WAC 262-01-130(16), the *Policies*, the *Low-Income Housing Tax Credit Compliance Manual*, Tax Credit Laws, and other requirements of the Commission, IRS, state, federal or local authorities.

5.3 Access to Project. Throughout the term of this Agreement, grant the Commission and its representatives access to the Project and to each Building and structure for on-site review and inspection, including but not limited to, such review and inspection as may be required by the Tax Credit Laws and the Qualified Allocation Plan. The rights of the Commission hereunder shall include, without limitation, the right to interview Residents of the Project, to inspect Housing Units, to review Resident applications and financial information in the possession of the Owner (or its agents), and to review information, including without limitation the Owner's books and records relating to the Project, upon a minimum of three (3) days advance notice.

5.4 Workshop Attendance. Attend, together with its property management representative, a tax credit compliance training workshop given by the Commission or its authorized designee prior to commencement of initial rent-up activities for the Project.

5.5 Copies of IRS Filings. Provide to the Commission, true, complete, and fully executed copies of: (i) IRS Form 8609 and attached Schedule A (together with any other attachments) for each Building for the first Year of the Credit Period and for each Year of the Credit Period thereafter; (ii) IRS Form 8586 (together with all attachments) for each Building for the first Year of the Credit Period and for each Year of the Credit Period thereafter; and (iii) each and every other form or document that is required, pursuant to Tax Credit Laws, to be filed by the Owner with the IRS in connection with the Project or any Building in the Project throughout the Project Compliance Period. The copies described above must be filed with the Commission no later than the earlier of the date they are actually filed with the IRS or the date they are legally due to be filed, including extensions, with the IRS.

5.6 Copies of IRS Notices. Throughout the Project Compliance Period, provide to the Commission true and complete copies of any and all notices, correspondence or other documents received by the Owner or its agent from the IRS with regard to the Project, including but not limited to notices, correspondence or other documents responding to or relating to IRS Form 8609, IRS Form 8586 and IRS Form 8823. The copies described in

the immediately preceding sentence must be filed with the Commission no later than fifteen (15) days after being received by the Owner.

5.7 Maintenance and Retention of Records; Health, Safety and Building Code Violations. Keep records for the Project (and, as noted, for each Building) that show for each Year throughout the term of this Agreement the information specified on Exhibit "D." The Owner shall retain the records described in Exhibit "D": (i) for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year; and, (ii) with respect to any year for which an income tax return is not filed or does not reflect the Credit for the Project, for at least six (6) years after the end of that year; provided, however, that the records for the first year of the Credit Period as defined under Section 42(f)(1) of the Code must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period as defined under Section 42(i)(1) of the Code with respect to a Building in the Project. In addition, the Owner shall retain, for the duration of this Agreement, the original health, safety, or building code violation reports or notices that are issued with respect to the Project by any state or local government unit.

5.8 Required Certification. Throughout the Compliance Period, submit at least annually to the Commission a Certification as to the matters described in Exhibit "E."

## **SECTION 6. OWNER'S DUE DILIGENCE; DISCLAIMER BY COMMISSION**

6.1 Owner's Due Diligence. The Owner acknowledges that it fully understands, and has conducted its own due diligence with respect to, the risks and issues of developing and operating a Project which will most likely constitute a tax shelter, and the terms, conditions and obligations of participating in the Tax Credit Program. The Owner further acknowledges that it has consulted with, and is relying solely upon, its own legal counsel, tax advisors and professionals with respect to this Agreement, the Owner's federal income tax situation, the Owner's participation in the Tax Credit Program, the qualification of the Project or any Building for Credit, the allocation, use and benefits of the Credit, and the commercial feasibility and viability of any Building in the Project. The Owner acknowledges that the Commission has made and makes no representations or warranties whatsoever with regard to any of such matters.

6.2 Responsibility for Credit Loss. The Owner acknowledges and agrees that it is solely responsible for all loss and recapture of Credit with respect to any Building, which loss and recapture shall be determined under Tax Credit Laws as they apply to any Building, the Owner, or any taxpayer, whether due to reduction in the amount of Credit allocated to any Building, noncomplying use of any Building, transfer of the Project or any Building, or termination of any Project Documents.

6.3 Monitoring for Noncompliance. The Commission has adopted procedures set forth in the Qualified Allocation Plan, the *Policies* and the Low-Income Housing Tax Credit Compliance Manual that it or its designee will follow in monitoring for Noncompliance with provisions of the Tax Credit Laws and the Tax Credit Program and in notifying the IRS of such Noncompliance. Such procedures and provisions of the Tax Credit Laws are expressly incorporated herein and shall be binding upon the Owner. The Commission may also make other determinations with respect to Credit, the Project, a Building or the Owner from time to time. Neither the above-described compliance monitoring procedures nor any such determination made by the Commission shall be construed as a representation or warranty by the Commission, nor shall the Commission have liability.

6.4 Conflicting Terms. The Owner acknowledges that it and the Project are subject not only to the Program Documents but also to the *Policies*, the Low-Income Housing Tax Credit Compliance Manual and the Tax Credit Laws. The Owner understands that any particular provision thereof may impose upon the Owner a more restrictive or otherwise more onerous definition, term or condition than is set forth in the other Program Documents, the *Policies*, the Low-Income Housing Tax Credit Compliance Manual or the Tax Credit Laws and the Owner agrees that it shall be bound by and shall comply with the more restrictive or more onerous definition, term or condition as determined by the Commission. The Owner further understands that the *Policies* and the Low-Income Housing Tax Credit Compliance Manual are subject to revision as a consequence of developments in Tax Credit Laws or other applicable laws, and that it is the Owner's obligation to stay informed of, and comply with, all such revisions to the *Policies*.

6.5 Release. The Owner agrees that the Commission and the other Indemnified Parties shall have no liability to the Owner or any other Indemnitor with respect to the Tax Credit Program, or any act, omission or determination by the Commission or any other Indemnified Parties in connection therewith, including without limitation, the Commission's Allocation of the Credit to the Project, the Commission's apportionment of Credit to any Building, the Commission's compliance monitoring, or any Credit loss or recapture.

6.6 No Duty to Tenant. This Agreement is not intended, and shall not be construed, to create a duty or obligation of the Commission to enforce any term or provision of this Agreement or any other Program Document on behalf of, at the request of, or for the benefit of any former, present or prospective Resident. The Commission shall have no direct or indirect obligation to any former, present or prospective Resident for violations by the Owner or any other party of the Agreement, the other Program Documents, Tax Credit Laws, or other applicable laws.

6.7 No Obligation. Except as set forth in Section 10.2, nothing in this Agreement shall impose any duty or obligation on the Commission to take any action, including without limitation any duty or obligation to find a purchaser for any Building, the Project or any

portion thereof or to bring any action enforcing this Agreement. The Commission may exercise its rights under this Agreement in its sole and absolute discretion.

## **SECTION 7. RECORDATION; PRIORITY**

7.1 Recording. This Agreement shall be recorded by the Owner in the office of the county auditor or recorder of each county in which a Building in the Project is located. The Owner shall deliver evidence of each such recording to the Commission within fourteen (14) days following the execution of this Agreement.

7.2 Subordination. If any lien (including any mortgage, deed of trust, construction lien or judgment lien) or other monetary encumbrance now or hereafter exists on the Project that, if foreclosed or enforced, would, in the Commission's opinion, terminate, eliminate, or impair this Agreement (collectively, "Prior Liens"), such Prior Liens must be subordinated to this Agreement pursuant to a recorded subordination agreement in form and substance satisfactory to the Commission, and no final Allocation will be made to any Project or Building unless all Prior Liens are so subordinated. If the Owner is leasing the Land, then for the purposes of this Agreement the owner/lessor of the Land shall be treated as a holder of a Prior Lien.

7.3 Notice of Agreement. Each and every contract, deed, lease (other than leases and rental agreements between the Owner and Residents) or other instrument hereafter executed that encumbers or conveys the Project or any portion thereof or interest therein shall contain an express provision making such encumbrance or conveyance subject to the terms, conditions and obligations of this Agreement; provided, however, that the failure to comply with this provision shall not impair or affect the priority of this Agreement.

## **SECTION 8. DEFAULT; REMEDIES**

8.1 Noncompliance, Notice and Correction Period. Except as otherwise provided in Section 8.3, the Owner shall notify the Commission within five (5) days after the Owner learns of any Noncompliance or has reason to believe any Noncompliance has occurred or is likely to occur. The Owner shall correct any Noncompliance, to the extent the Noncompliance is curable, within thirty (30) days after the date the Commission gives the Owner written notice of such Noncompliance (or, if earlier, within thirty (30) days after Owner learns of the Noncompliance); provided, however, the Commission may, in its sole discretion, extend the thirty (30) day correction period for up to six (6) months, but only if the Commission 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 event of Noncompliance 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 Noncompliance is not corrected within the above-described period including extensions, if any, granted by the Commission, an event of default shall be deemed to

occur and the Commission may exercise its rights and remedies under Section 8. Regardless of whether the Noncompliance is cured as set forth above, the Commission will report to the IRS events of Noncompliance as required by the Tax Credit Program and Tax Credit Laws, which shall be without prejudice to any of the Commission's rights and remedies under Section 8 and the Tax Credit Program. Further, for the purposes hereof, Noncompliance in the form of a representation, warranty or certification that was untrue in any material respect when made, shall, constitute an act of Noncompliance that is not curable.

8.2 Rights and Remedies. If the Owner fails to cure any Noncompliance within the period set forth under Section 8.1, or if the Noncompliance is of a type not subject to cure, then an event of default shall be deemed to have occurred hereunder and under the other Program Documents and the following provisions shall apply:

8.2.1 The Commission shall be entitled to compel specific performance by the Owner of its obligations under this Agreement and/or to exercise any other rights or remedies it may have, at law or in equity, under this Agreement, the other Program Documents, the *Policies*, the Tax Credit Program or Tax Credit Laws or other applicable law, including recover monetary damages.

8.2.2 Subject to the provisions of Section 6.6, any individual who meets the income limitation for a Low-Income Housing Unit or a Housing Unit in the Additional Low-Income Housing Commitment, or who meets the requirements for occupying a Housing Unit subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment (such individual may be a former, present or prospective Resident of the Project), may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin such Noncompliance or breach, or to recover monetary damages caused thereby.

8.2.3 With respect to any Noncompliance involving the occupation of Housing Units by persons who are determined not to meet the income limitations applicable to such Low-Income Housing Units or who, subject to the terms of Section 4.9, are determined not to meet the requirements for occupying a Housing Unit which is subject to the Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment ("Occupancy Noncompliance"), upon demand by the Commission, the Owner shall pay to the Commission an amount equal to all monies received by the Owner with respect to Low-Income Housing Units and, to the extent applicable, Housing Units subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment, from the time that the Owner or its agents knowingly or negligently permitted the Occupancy Noncompliance to occur with respect to such Housing Units until the Occupancy Noncompliance is cured. Notwithstanding the foregoing, the provisions of this Section 8.2.3 are not

intended, and shall not be construed, to grant to the Commission a current lien on or a security interest in, the rents, issues and profits from the Project.

8.2.4 Subject to the provisions of Section 6.6, any individual who meets the income limitation for a Low-Income Housing Unit or a Housing Unit in the Additional Low-Income Housing Commitment (such individual may be a former or present Resident of the Project) shall be entitled to cause the Owner to pay such individual an amount equal to the difference between the monies received by the Owner from such individual with respect to a Low-Income Housing Unit and the amount which should have been received by the Owner if the rent collected by the Owner for such Unit was in compliance with the provisions of this Agreement.

8.3 Breach of Section 4.18. The failure of the Owner to give timely notice to the Commission as required by Section 4.18 and the Bankruptcy of the Owner shall each constitute an event of default for the purpose of Section 8.2 and provisions of Section 8.1 above allowing the Owner a period to correct Noncompliance shall not apply in those instances. Further, the mere occurrence (even with timely notice) of any of the other events described in items (1) through (9) of Section 4.18 also may constitute an event of default for the purposes of Section 8.2. Specifically, upon the occurrence of an event described in Section 4.18, the Commission shall have the right to demand that the Owner provide to the Commission adequate assurance that (i) the development and operation of the Project will not be materially impaired or potentially harmed and (ii) the Owner is and will be able to fully perform without default all of its obligations under the Program Documents. If the Owner fails to provide such adequate assurance within ten (10) days from the date that the demand for written assurance is given by the Commission, the Commission may, without further notice or opportunity to cure, declare an event of default and exercise its rights and remedies under Section 8.2.

8.4 Debarment. The Owner understands and acknowledges that under certain circumstances the Owner (and other parties related to the Project) may be barred from participating in the Commission's Tax Credit Program, which shall be without prejudice to any of the Commission's rights and remedies under Section 8 and the Tax Credit Program. The debarment rules and procedures are currently set forth in WAC 262-03-040.

## SECTION 9. INDEMNIFICATION

9.1 Indemnity and Hold Harmless. The Owner, each General Partner, each party to a Joint Venture, and, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager (the "Indemnitors"), as applicable, shall jointly and severally at all times defend (with counsel reasonably acceptable to the Commission) indemnify and hold harmless and release the Commission, its successors and assigns, including their respective members, officers, employees, agents and attorneys (the "Indemnified Parties"), from and against any

and all claims, suits, losses, damages, costs, expenses and liabilities of whatsoever nature or kind (including but not limited to attorneys' fees, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgment(s), and any disallowance of tax benefits) directly or indirectly resulting from, arising out of, or related to: (i) the financing, acquisition, construction and/or rehabilitation, syndication, sale, management or operation of the Project; (ii) any Noncompliance or failure to perform any covenant under this Agreement or any other Program Document (whether or not cured); (iii) any breach of a representation, warranty or covenant in Sections 3 or 4 or in any other Program Document; (iv) any other act or omission (whether or not cured) constituting a default under Section 8; or (v) the enforcement by the Commission, its successors and assigns of the Commission's rights and remedies under this Agreement or any other Program Document.

9.2 Survival. The obligations of the Indemnitors under this Section 9 shall survive any transfer of the Project (whether voluntarily or involuntarily) or termination of this Agreement and any attempted transfer or assignment or termination of any Indemnitor's interest in Owner or the Project, provided, however, the indemnification obligations of an Indemnitor shall not apply with respect to matters first arising after such Indemnitor has disposed of Indemnitor's interest in the Project or the Owner, as applicable, in accordance with the provisions of this Agreement.

9.3 Limited Liability for Subsequent Owner. Except for accrued Annual Compliance Monitoring Fees, no successor in interest to the Owner ("Successor Indemnitor") shall be liable under this Section 9 for: (i) acts or omissions of persons or entities other than the Successor Indemnitor that occurred before the earlier of the date the Successor Indemnitor obtained control or became the owner of the Project, or (ii) events or conditions on or related to the Project or any Building, or defaults under this Agreement or any other Program Document, occurring or existing prior to the earlier of the date such Successor Indemnitor obtained control or became the owner of the Project. Notwithstanding the foregoing, if a Noncompliance or other default exists under this Agreement or any other Program Document that arose before and is continuing after such Successor Indemnitor either obtains control or becomes the owner of the Project (each a "Continuing Default"), then such Continuing Default shall exist under this Agreement and Owner shall be under default under Section 8 only to the extent that the Continuing Default relates to the period commencing on the date the successor Owner obtained control or became the owner of the Project, in which case, the successor shall have the cure rights, if any, set forth in Section 8. If and so long as the cure of a Continuing Default is prohibited by law (including restrictions on tenant evictions), the successor shall not be in default and shall not be required to cure the Continuing Defaults, but the Commission will nevertheless give the Successor Indemnitor written notice of a Continuing Default and/or report the same to the IRS as provided in Section 8.1.

## SECTION 10. TERM OF THIS AGREEMENT

10.1 Term. This Agreement shall be effective with respect to the Project and the Land upon execution of this Agreement and continue in full force and effect throughout the Project Compliance Period, unless sooner terminated with respect to a Building under Sections 10.2 and 10.3 below; provided, however, that the Indemnitor's obligations under Section 9 shall survive expiration or termination of this Agreement.

10.2 Purchase Request. This Agreement may be terminated with respect to a Building in the Project under the following conditions:

10.2.1 Purchase Request. At any time after the close of the latest to end of: (i) the fourteenth (14th) year of the Compliance Period with respect to a Building; or (ii) one Year prior to the end of the Additional Low-Income Housing Use Period with respect to such Building, if any, the Owner may submit to the Commission a written request ("Purchase Request") that the Commission find a person to purchase the Owner's interest in such Building.

10.2.2 Time Period. The Commission shall have one year from its receipt of a Purchase Request to present a proposed Qualified Contract by a person who agrees to purchase such Building and continue to operate the low-income housing portion of such Building as a qualified low-income building (within the meaning of Section 42 of the Code).

10.2.3 Qualified Contract. If the Commission presents a timely proposed Qualified Contract under Section 10.2.2, the Purchase Request shall become irrevocable and the purchase and sale of the Building shall be carried out pursuant to the terms of the Qualified Contract. If, during the one year period and before the Commission presents a Qualified Contract, the Owner withdraws the Purchase Request: (i) the Owner shall fully reimburse the Commission for its costs incurred in attempting to locate a purchaser, including but not limited to the Commission's advertising costs, broker fees and attorneys' fees; and (ii) this Agreement shall not terminate with respect to such Building. However, the Owner shall not be precluded from having Section 10.2 apply to a subsequent request made thereunder with respect to such Building.

10.2.4 Failure to Present Qualified Contract. If the Commission does not present a proposed Qualified Contract for a Building under Section 10.2.2 by the close of the one year period, then the provisions of this Agreement in effect for such Building, excluding Section 9 above, shall terminate at the end of Three-Year Period in effect with respect to such Building and this Agreement, excluding Section 9 above, shall thereafter be applied by excluding such Building from the Project; provided this



Agreement shall continue in full force and effect and shall continue to apply to each Building, the Land, and Project not subject to the Owner's Purchase Request.

**10.2.5 Multiple Buildings.** If the Project consists of more than one Building, then the terms and requirements for the sale of one or more but not every Building in the Project shall be governed by the Tax Credit Laws and other applicable law. Nothing in this Agreement shall be deemed to permit sale of any Building or any interest in a Building, the Land, the Project or any portion thereof in violation of the Tax Credit Laws or other applicable law, including without limitation state and local subdivision and zoning laws, ordinances and regulations.

### **10.3 Termination Upon Foreclosure.**

**10.3.1 Foreclosure.** In the event title to a Building is transferred during the term of this Agreement by reason of foreclosure or forfeiture under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process, then this Agreement, excluding Section 9 above, shall automatically terminate with respect to such Building and any portion of Land upon which such Building is located (the Building together with any portion of the Land upon which such Building is located (whether owned or leased) are referred to in this Section 10.3.1 as the "transferred property") at the end of the Three-Year Period applicable to such Building. This Agreement shall thereafter be effective as to the Project but excluding the transferred property. In the event a successor in title by reason of the foreclosure, forfeiture or deed in lieu of foreclosure desires to qualify for Credit for such Building, if any, such successor in interest shall execute a revised regulatory agreement (extended use agreement) with the Commission and shall perform such acts and execute such other and further contracts or agreements required by the Commission; provided, if for any reason a revised regulatory agreement (extended use agreement) is not executed, such successor shall remain subject to, and liable as Owner under, the terms of this Agreement for the Three-Year Period.

**10.3.2 Scheme to Terminate.** Notwithstanding the foregoing, Section 10.3.1 shall not apply and all provisions of this Agreement shall remain in full force and effect with respect to a transferred property if after an acquisition described in such Section, the Owner or a related party (as defined in Sections 42(d)(2)(D)(iii), 267, 707(b) or 1563(a) of the Code) acquires an ownership interest (for federal income tax purposes) in such transferred property if the Internal Revenue Service or the Commission determines that such acquisition is part of an arrangement with the Owner, a purpose of which is to terminate this Agreement in whole or in part.

**10.3.3 Condemnation.** In the event of involuntary transfer with respect to a Building arising as a consequence of seizure, requisition or condemnation by a

governmental authority, this Agreement, excluding Section 9 above, shall automatically terminate with respect to such Building and any portion of Land seized, requisitioned or condemned by such governmental authority; and this Agreement shall thereafter be applied by excluding such Building and portion of Land from the Project.

## **SECTION 11. MISCELLANEOUS**

**11.1 Notices: Counting Days.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given three (3) calendar days after the date sent by certified or registered mail, return receipt requested, to the parties at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

**Owner:** **BOH Portfolio Preservation Associates, LLLP**

**Contact for Legal Notices:** **Len Brannen**  
**Shelter Resources, Inc.**  
**2223 112<sup>th</sup> Ave NE, Suite 102**  
**Bellevue, WA 98004**

**With a copy to:** **Wincopin Circle LLLP**  
**c/o Enterprise Community Asset Management, Inc.**  
**11000 Broken Land Parkway, Suite 700**  
**Columbia, MD 21044**  
**Attention: General Counsel**

**With a copy to:** **Gallagher Evelius & Jones LLP**  
**218 North Charles Street, Suite 400**  
**Baltimore, MD 21201**  
**Attention: Kenneth Gross, Esq.**

**Commission:** **Washington State Housing Finance Commission**  
**1000 Second Avenue Suite 2700**  
**Seattle, Washington 98104-1046**  
**Attn: Executive Director**

Except as otherwise set forth herein, "days" as used in this Agreement and all Exhibits hereto shall mean calendar days; provided if the last day of a deadline or other period described herein would otherwise fall on a Saturday, Sunday or Washington State holiday, the last day of such deadline or other period shall extend to the next calendar day that is not a Saturday, Sunday or Washington State holiday; provided, further, if the last day of a deadline or other period is December 31 or any other date that cannot be extended under

the law, the deadline or other period shall be the last day prior to the original deadline or other period that is not a Saturday, Sunday or Washington State holiday.

11.2 Amendment. This Agreement may only be amended by a written instrument in recordable form signed by the Commission and the Owner; provided, however, the Owner, all Bound Parties and all Indemnitors acknowledge and agree that certain provisions of the Tax Credit Laws may change or be amended from time to time, and the Commission shall have the right to amend this Agreement, in its sole discretion, to the extent necessary to comply with or be consistent with such changes or amendments. The Owner and all Indemnitors agree that they shall be subject to and bound by such changes and amendments on a prospective basis, and agree to execute an amendment to this Agreement within ten (10) days of the Commission's request to reflect the same, but their signatures shall not be required for such amendment to be effective.

11.3 Cumulative Rights: Waiver. All rights and remedies of the Commission under this Agreement, the other Program Documents, the *Policies*, the Tax Credit Program, the Tax Credit Laws or other applicable laws are cumulative and may be exercised singularly or concurrently, and the exercise of any one or more of such rights or remedies shall not affect or preclude the exercise of any other rights, powers, or remedies which the Commission may have. Any forbearance, failure, or delay by the Commission in exercising any right, power, or remedy shall not be deemed to be a waiver thereof and any single or partial exercise of any right, power, or remedy shall not preclude the further exercise thereof or the exercise of any other right, power, or remedy.

11.4 Partial Invalidity. Each and every term of this Agreement shall be valid and enforceable to the fullest extent possible. If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons, entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

11.5 Further Assurances. The Owner agrees to execute, acknowledge, and deliver any and all documents, instruments, and writings, and to perform other acts as are reasonably necessary to carry out the purposes of this Agreement and the other Program Documents.

11.6 Project Transfer or Assignment. Subject only to the specific exceptions set forth in the *Policies*, each and every Project Transfer or Assignment shall require the prior written consent of the Commission. Specifically, but without limitation, pursuant to Section 42(h)(6)(B)(iii), the Commission shall not consent to any transfer or disposition of any portion of a Building to any person unless all of the Building is transferred to such person, and any such attempted transfer or disposition is hereby prohibited. Notwithstanding the foregoing, the Commission's consent shall not be required, although advance notice and documentation shall be required, for the removal of the general partner of Owner in

accordance with the Partnership Agreement and the replacement thereof with limited partner, or any of its affiliates.

## **SECTION 12. TIME OF THE ESSENCE**

Time is of the essence of each of Owner's obligations under this Agreement.

## **SECTION 13. CAPTIONS**

Captions used in this Agreement are used for convenience of the Parties only and shall not be deemed to limit, modify or alter any of the substantive provisions of this Agreement.

## **SECTION 14. EXHIBITS AND SCHEDULES**

All exhibits and schedules to this Agreement are incorporated herein by this reference.

## **SECTION 15. GOVERNING LAW; EFFECTIVE DATE**

This Agreement shall be governed by the laws of the state of Washington. Notwithstanding the date of the Agreement set forth on page one, this Agreement is entered into and shall be effective on the last signature date of the parties hereto.

## **SECTION 16. VALID EXISTENCE; AUTHORIZATION; NO CONFLICT WITH OTHER DOCUMENTS**

The Owner warrants that it is validly organized and currently authorized to do business in the state of Washington. The Owner, and each party or person executing this Agreement on behalf of the Owner, represents and warrants as follows: (i) that the execution, delivery and performance of this Agreement have been duly authorized and approved by the appropriate governing body of the Owner; (ii) that this Agreement, upon execution by each signatory of the Owner as set forth below, constitutes a valid and binding agreement of the Owner; (iii) if the Owner is a Partnership, that the Partners executing this Agreement on behalf of the Owner constitute all of the General Partners of the Partnership as of the date of the execution of this Agreement; (iv) if the Owner is a Joint Venture, that the parties executing this Agreement on behalf of the Owner constitute all of the parties of the Joint Venture; and (v) if the Owner is a Limited Liability Company, that the parties executing this Agreement on behalf of the Owner constitute, (a) if the Limited Liability Company has one or more Managing Members, all Company Managers (including all Managing Members) or (b) if the Limited Liability Company has no Managing Members, all Company Members and all Company Managers, if any, as of the date of the execution of this Agreement. The Owner further warrants that the Owner has not executed and shall not execute any other agreement with provisions contradictory to, or in opposition to, the

provisions hereof, and that in any event this Agreement is controlling as to the rights and obligations in this Agreement and supersedes any other conflicting requirements.

Revised November 19, 2012

REGULATORY AGREEMENT (Extended Use Agreement)  
Ruby Preservation Portfolio – Norris Place (TC or OID # 15-74A)

[Be sure to keep all signatures inside the box to be able to record the document.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective, duly authorized representatives on the date(s) set forth opposite their signatures below.


**Note: If the Owner is a Partnership, each General Partner must sign. If the Owner is a Limited Liability Company that has one or more Managing Members, each Company Manager (including each Managing Member) must sign. If the Owner is a Limited Liability Company that has no Managing Members, each Company Member and any Company Manager must sign. If the Owner is a Joint Venture, each party to the Joint Venture must sign. If the Owner is one or more individuals, each individual must sign.**

OWNER:

**BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP**, a Washington limited liability limited partnership

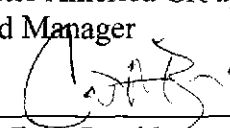
By: BOH Portfolio Preservation JV Associates, LLC, a Washington limited liability company, its Administrative General Partner

By: Shelter Resources, Inc., a Washington corporation, its Manager

By:   
Len Brannen, President

By: Shelter America Group-Ruby LLC, a Washington limited liability company, its Managing General Partner

By: Shelter America Group, a Washington nonprofit corporation, its Sole Member and Manager

By:   
Christopher Bric, President

Owner's Federal Taxpayer Identification Number: **47-3702181**

**WASHINGTON STATE HOUSING FINANCE COMMISSION**

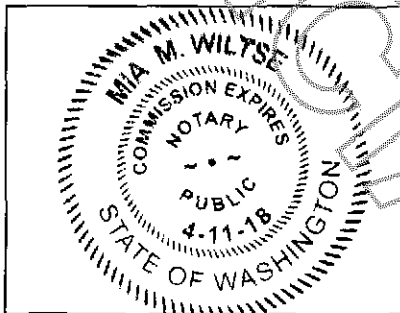
By:   
Kim Herman, Executive Director

Date: Oct 8, 2015

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that **LEN BRANNEN** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Shelter Resources, Inc., the manager of BOH Portfolio Preservation JV Associates, LLC, the Administrative General Partner of **BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 1, 2015.



(Use this space for notarial stamp/seal)

*Mia M. Wiltse*

Notary Public

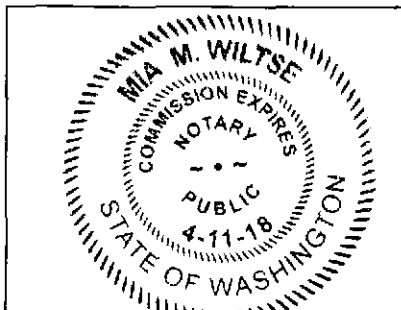
Print Name Mia M. Wiltse

My commission expires 4-11-18

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that **CHRISTOPHER BRIC** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Shelter America Group, the sole member and manager of Shelter America Group-Ruby LLC, the Managing General Partner of **BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 1, 2015.



(Use this space for notarial stamp/seal)

*Mia M. Wiltse*

Notary Public

Print Name Mia M. Wiltse

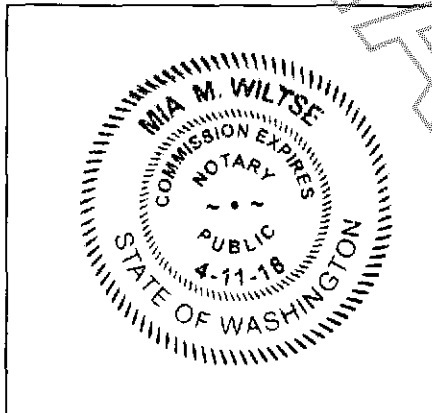
My commission expires 4-11-18

STATE OF WASHINGTON )  
 ) ss.

COUNTY OF KING )

I certify that I know or have satisfactory evidence that Kim Herman is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument as the Executive Director of the Washington State Housing Finance Commission, a body corporate and politic, and acknowledged it to be the his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: October 1, 2015



(Use this space for notarial stamp/seal.)

Mia M. Wiltse  
Notary Public

Name (print): Mia M. Wiltse

Residing at: Rentm

Commission expires: 4-11-18



**EXHIBIT "A"**

**TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)**

**LEGAL DESCRIPTION**

**PARCEL A - NORRIS PLACE:**

LOT 2 OF BURLINGTON SHORT PLAT NO. BURL-1-95, AS APPROVED MARCH 28, 1995, AND RECORDED APRIL 20, 1995, IN VOLUME 11 OF SHORT PLATS, PAGES 194 AND 195, UNDER AUDITOR'S FILE NO. 9504200032, RECORDS OF SKAGIT COUNTY, WASHINGTON; BEING A PORTION OF THE NORTH HALF OF THE WEST HALF OF TRACT 50, PLAT OF THE BURLINGTON ACREAGE PROPERTY, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 PLATS, PAGE 49, RECORDS OF SKAGIT COUNTY, WASHINGTON.

**FURTHER DESCRIBED AS:**

COMMENCING AT AN ENCASED MONUMENT AT THE INTERSECTION OF W. FAIRHAVEN AVE AND HULBUSH LN; THENCE N88°25'56" W 965.42 FEET TO A ENCASED MONUMENT AT THE INTERSECTION OF W. FAIRHAVEN AVE AND S. NORRIS ST.; THENCE ALONG THE CENTERLINE OF S. NORRIS ST. S 2°08'45" W 647.76 FEET TO THE EXTENSION OF THE NORTH LINE OF TRACT 50, PLAT OF BURLINGTON ACREAGE PROPERTY, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 49, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE S 88°13'06" E 30.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT 50 AND THE POINT OF BEGINNING; THENCE ALONG THE WEST LINE OF SAID TRACT 50, S 2°08'45" W 30.00 FEET; THENCE PARALLEL TO THE NORTH LINE OF SAID TRACT 50, S 88°13'06" E 222.77 FEET; THENCE S2°08'45" W 279.35 FEET TO THE SOUTH LINE OF THE NORTH HALF OF SAID TRACT 50; THENCE S 88°06'41" E 400.00 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF SAID NORTH HALF OF SAID TRACT 50; THENCE N 2°11'36" E 310.10 FEET TO THE NORTHEAST CORNER OF SAID WEST HALF OF SAID NORTH HALF OF SAID TRACT 50; THENCE ALONG THE NORTH LINE OF SAID TRACT 50, N88°13'06" W. 623.04 FEET TO THE POINT OF BEGINNING.

SITUATED IN SKAGIT COUNTY, STATE OF WASHINGTON.

**PARCEL A-1:**

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS CREATED BY AND PURSUANT TO THE BURLINGTON SHORT PLAT NO. BURL-1-95, RECORDED UNDER AUDITOR'S FILE NO. 9504200032, OVER THE SOUTH 30 FEET OF LOT 1 OF SAID SHORT PLAT.

**PARCEL A-2:**

**A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS CREATED BY AND PURSUANT TO THE BURLINGTON SHORT PLAT NO. BURL-1-95, RECORDED UNDER AUDITOR'S FILE NO. 9504200032, AND AS AMENDED BY AMENDMENTS TO DECLARATION OF EASEMENTS RECORDED UNDER AUDITOR'S FILE NOS. 9903020075 AND 200608160154, OVER THAT PORTION OF THE 55 FOOT EASEMENT DESIGNATED THEREIN WHICH LIES WITHIN THE NORTH 25 FEET OF LOT 1 OF SAID SHORT PLAT.**

**ALL SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.**

## EXHIBIT "B"

### TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)

#### PROJECT DESCRIPTION:

1. NAME OF PROJECT: Ruby Preservation Portfolio – Norris Place

TC OR OID NUMBER: 15-74A

OWNER: BOH Portfolio Preservation Associates, LLLP

OWNER'S ADDRESS: 2223 112<sup>th</sup> Ave NE, Suite 102  
Bellevue, WA 98004

CONTACT FOR LEGAL NOTICES: Len Brannen  
Shelter Resources, Inc.  
2223 112<sup>th</sup> Ave NE, Suite 102  
Bellevue, WA 98004

2. PROJECT AND OWNER COMMITMENTS, RESTRICTIONS, COVENANTS:

CREDIT SET-ASIDE CATEGORY: Tax-Exempt Bond

ADDITIONAL LOW-INCOME HOUSING  
USE PERIOD:

**15 years**

PROJECT COMPLIANCE PERIOD:

**33 years**

TOTAL UNITS:

**50**

TOTAL COMMON AREA UNITS:

**1**

TOTAL MARKET RATE UNITS:

**0**

†TOTAL HOUSING UNITS:

**49**

\*†PROJECT APPLICABLE FRACTION:

**100%**

MINIMUM LOW-INCOME HOUSING SET-  
ASIDE:

**40% at 60% AMI**

PERCENT OF AMGI FOR QUALIFIED

**60%**

**LOW-INCOME HOUSING UNITS:**

† TOTAL HOUSING UNITS IN LOW-INCOME HOUSING COMMITMENT: **49**

	<u>#* OF HOUSING UNITS</u>	<u>%* OF ALL LIH HOUSING UNITS</u>	<u>% of AMGI</u>
THE FOLLOWING ADDITIONAL LOW-INCOME HOUSING ELECTIONS WILL APPLY:	<b>49</b>	<b>100%</b>	<b>60%</b>

**THE FOLLOWING SPECIAL-NEEDS HOUSING COMMITMENTS WILL APPLY:**

<b>For Large Households</b>	<b>10</b>	<b>20%</b>
-----------------------------	-----------	------------

**ADDITIONAL SET-ASIDES**

In addition to the above covenants, the Owner has previously agreed to the following additional set-asides (the "Additional Set-Asides"):

10% of the housing units set aside for household at 30% of AMGI (5 units)

20% of the housing units set-aside for Disabled (10 units)

20% of the housing units set-aside for Large Households (10 units)

Until December 21, 2035, (1) no tenant occupying a unit subject to an Additional Set-Aside may be evicted, other than for Good Cause, and (2) all Additional Set-Aside units shall maintain their current rent restricted status, provided that upon the vacancy by a tenant residing in an Additional Set-Aside unit, such unit shall be released from the Additional Set-Aside. On January 1, 2036 all such Additional Set-Asides shall expire.

The following buildings are of the Tax Credit Type: **Rehabilitation with Federal Subsidies**

<u>BJN for each Building</u>	<u>Known Street Address as of date of Extended Use Regulatory Agreement</u>	<u>City</u>	<u># of Housing Units by Building†</u>	<u>% of Qualified Low-Income Housing Units by Building†</u>	<u># of Common Area Units</u>
WA-94-00219	450 Norris Place, Building 1	Burlington	8	8	0
WA-94-00220	458 Norris Place, Building 2	Burlington	8	8	0
WA-94-00221	466 Norris Place, Building 3	Burlington	8	8	0
WA-94-00222	498 Norris Place, Building 4	Burlington	8	8	0
WA-94-00223	490 Norris Place, Building 5	Burlington	3	3	1
WA-94-00224	474 Norris Place, Building 6	Burlington	6	6	0
WA-94-00225	482 Norris Place, Building 7	Burlington	8	8	0

\* Based on the lesser of the Unit Fraction or Floor Space Fraction.

† Excludes any Common Area Units

## EXHIBIT "C"

### TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)

#### DEFINITIONS

1.1 "Additional Low-Income Housing Commitment" means the low income housing commitment or commitments elected by the Owner in addition to the Minimum Low-Income Housing Set Aside as set forth in Exhibit B.

1.2 "Additional Low-Income Housing Use Period" means with respect to a Building, the period set forth in Exhibit B which begins immediately following the end of the Compliance Period and before the Three-year Period.

1.3 "Agreement" means this Regulatory Agreement (Extended Use Agreement).

1.4 "Allocation" means, for purposes of this Agreement, the maximum amount of Credit available to the Project as a result of an allocation of Credit by the Commission, which will be apportioned to each Qualified Building at the time such Building is Placed-In-Service. Allocation includes (a) Credit allocated (as that term is used in Section 42 of the Code) by the Commission and subject to Section 42(h)(1) of the Code (i.e., Credit allocated pursuant to the competitive allocation process), and (b) Credit attributable to that portion of Eligible Basis financed with tax-exempt bonds (i.e., Credit which, by virtue of Section 42(h)(4) of the Code, is not allocated pursuant to the competitive allocation process).

1.5 "Annual Compliance Monitoring Fee" means the annual fee imposed by the Commission on the Owner of a Project for monitoring of its compliance with the Code, the Tax Credit Program, the Credit Reservation and Carryover Allocation Contract (RAC) and this Agreement.

1.6 "Applicable Fraction" means the lesser of the Unit Fraction or Floor Space Fraction for a Building or the Project, as the context so requires.

1.7 "Application" means the Tax Credit Program Application and amendments thereto, if any, submitted by the Owner with respect to the Project.

1.8 "Bankruptcy" has the meaning set forth in Section 4.18 of this Agreement.

1.9 "BIN" means the Building Identification Number (i.e., the identifying number assigned to a Building in the Project by the Commission).

1.10 "Bound Party" means any and all current and future owners, developers, lessees (other than Residents), easement holders or licensees of all or any portion of or interest in the Property; and their respective heirs, executors, administrators, legal representatives, devisees, successors and assigns.

1.11 "Building" means Residential Rental Property containing residential Housing Units located on the Land and included in the Application.

1.12 "Carryover Allocation" means an Allocation pursuant to a Carryover Allocation Contract which is made with respect to a Building or Project pursuant to Section 42(h)(1)(E) and/or Section 42(h)(1)(F) of the Code, as the case may be, and in conformance with Treasury Regulation Section 1.42-6.

1.13 "Carryover Allocation Contract" means an agreement entered into between the Owner and the Commission, and amendments thereto, if any, wherein subject to the satisfaction by the Owner of the terms, conditions, obligations and restrictions set forth therein and satisfaction of the requirements under Section 42(h)(1)(E) and/or Section 42(h)(1)(F) of the Code, IRS Treasury Regulation Section 1.42-6 and any other applicable law, the Commission makes a Carryover Allocation to the Project.

1.14 "Certifications" means the representations made under penalties of perjury by (i) the Owner, (ii) each Developer, (iii) each General Partner, (iv) each party to a Joint Venture, (v) in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, and/or (vi) each Resident, as applicable, including but not limited to those representations set forth in the Application and the *Certification Regarding Financial Solvency and Litigation Status; Certification on Behalf of Nonprofit Organization; Certification on Behalf of Profit-Motivated Individual, Business, Corporation or Partnership; and Certification of Ability to Contribute Equity to the Project* to the extent such Certifications apply to the Owner and/or the Project. Certifications also mean any and all representations made under penalties of perjury with respect to the Project at any time from the date of submission of the Application and throughout the Project Compliance Period.

1.15 "Code" means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed, and final Treasury Regulations, and Revenue Rulings and pronouncements issued or amended regarding it by the U.S. Department of the Treasury or IRS or as interpreted by any court of competent jurisdiction, to the extent applicable to the Project.

1.16 "Commission" means the Washington State Housing Finance Commission and any successor or assignee.

1.17 "Commitment" means a representation or agreement of the Owner contained in the Application which is binding upon the Owner and its successor(s) in interest throughout the Project Compliance Period unless otherwise noted in this Agreement, the *Policies*, the Application or agreements entered into with the Commission in connection with the Tax Credit Program.

1.18 "Common Area Unit" means a Unit in the Project, as identified in this Agreement, that is occupied by resident managers or maintenance personnel, or used for the Project's business offices or security personnel, to the extent such use is reasonably required for the Project. A Common Area Unit is not a Housing Unit and is not included in the Total Housing Units for the Project. A Common Area Unit shall not be includible in either the numerator or the denominator of the Unit Fraction, Floor Space Fraction, or Applicable Fraction. At any time during the Project Compliance Period that a Common Area Unit becomes available as a residential rental Unit, such Unit shall fall within the definition of "Housing Unit" hereunder, and such Unit shall be treated as a Qualified Low-Income Housing Unit to the extent such treatment is necessary to maintain the Applicable Fraction for the Building in which said Unit is located at the percentage required to maintain the Applicable Fraction for the Building. In addition, such Unit shall be treated as a Unit subject to the Additional Low-Income Housing Commitment and any Special-Needs Housing Commitment(s) to the extent such treatment is necessary to maintain the designated percentage of Housing Units subject to such commitments as set forth herein.

1.19 "Company Manager" means a person or entity legally designated as a manager of a Limited Liability Company. A Company Manager may be a Managing Member or a person or entity that is not a member of the Limited Liability Company.

1.20 "Company Member" means a person or entity legally admitted to a Limited Liability Company as a member. A Company Member may be, but is not necessarily, a Managing Member.

1.21 "Compliance Period" for a Building means a period of fifteen (15) Years beginning with the first Year in which such Building is Placed-In-Service or, if the Owner makes an election under Section 42(f)(1)(B) of the Code, the succeeding Year. In the case of an Existing Building receiving acquisition Credit, the Compliance Period for such Building shall not begin before the Compliance Period for the rehabilitation expenditures for such Building (which are treated as a separate Building), pursuant to Section 42(f)(5) of the Code.

1.22 "Continuing Default" has the meaning set forth in Section 9.3 of this Agreement.

1.23 "Covered Party" and "Covered Parties" means:

- (i) the Owner;
- (ii) if the Owner is a Partnership, each General Partner of the Owner;
- (iii) if the Owner is a Joint Venture, each party to the Joint Venture;
- (iv) if the Owner is a corporation, any party Affiliated With such corporation;
- (v) if a corporation is (a) a General Partner of the Owner/Partnership, (b) a Managing Member of the Owner/Limited Liability Company or, if there is no Managing Member, a Company Member of the Owner/Limited Liability Company, or (c) a party to a Joint Venture/Owner, any party Affiliated With such corporation;
- (vi) if the Owner is a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager;
- (vii) any other Partnership or Limited Liability Company organized or doing business within or without the state of Washington in which the Owner or any of the foregoing parties, or any party Affiliated With any of the foregoing parties, is a General Partner or, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager; and
- (viii) the Developer for the Project.

The parties identified above are referred to herein collectively as the "Covered Parties" and individually as a "Covered Party."

1.24 "Credit" means the low-income housing tax credit available for federal income tax purposes under Section 42 of the Code for a Qualified Building.

1.25 "Credit Period" for a Building means the period of ten (10) Years beginning with the Year in which the Building is Placed-In-Service for Credit purposes or, if the Owner makes an election under Section 42(f)(1)(B) of the Code, the succeeding Year; but only if the Building is a "qualified low-income building" (within the meaning of Section 42(c)(2) of the Code) as of the close of the first Year of such period. In the case of an Existing Building receiving acquisition Credit, the Credit Period shall not begin before the Credit Period for the rehabilitation expenditures for such Building (which is treated as a separate Building), pursuant to Section 42(f)(5) of the Code.

1.26 "Credit Reservation" means, to the extent applicable, the reservation of a maximum amount of Credit out of the Credit Ceiling to the Project which will be available for Allocation to such Project and apportioned to each Qualified Building upon meeting the requirements of the Tax Credit Program and Section 42 of the Code. A Credit Reservation is generally not granted if the Project is a Qualified Tax-Exempt Bond-Financed Project.



1.27 "Credit Reservation and Carryover Allocation Contract (RAC)" means the agreement entered into between the Owner and the Commission, and amendments thereto, if any, wherein the Commission granted a Credit Reservation to the Project.

1.28 "Disabilities" means a physical or mental impairment which substantially limits one or more of the major life activities of an individual such as preventing the caring of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning.

1.29 "Elderly" means persons who are Residents of an Elderly Housing Project.

1.30 "Elderly Housing Project" means a Project that conforms with the Fair Housing Act, as amended, and is operated in compliance with one of the following criteria (as elected by the Owner in the Application) throughout the Project Compliance Period:

- (i) A Project in which all Housing Units are intended for and solely occupied by Residents who are sixty two (62) or older;
- (ii) A Project in which all Housing Units are intended and operated for occupancy by at least one Resident who is fifty-five (55) or older, and where at least eighty percent (80%) of the Housing Units are in fact occupied by at least one Resident who is fifty five (55) or older; OR
- (iii) A Project which is financed, constructed and operated under the RD Section 515 program for the elderly (i.e. where each such Resident is either 62 or older or is a person with a handicap or disability, regardless of age, as such terms are defined in the RD program).

1.31 "Eventual Tenant Ownership" means at the end of the initial 15-year Compliance Period, the Owner shall transfer ownership of 100 percent of the tax credit units in the Project to tenant ownership.

1.32 "Extended Low-Income Housing Use Period" for a Building means the period beginning with the first day in the Compliance Period in which such Building is part of a "qualified low-income housing project" (within the meaning of Section 42 of the Code), and ending on the date thirty (30) years thereafter, unless terminated earlier under the provisions of this Agreement.

1.33 "Farmworker" means a household whose Income is derived from farmwork in an amount not less than \$3,000 per year and which, at the time of initial occupancy of the Housing Unit at the Project, has an Income at or below fifty percent (50%) of the Area Median Gross Income.

1.34 "Farmworker Housing Commitment" means seventy-five percent (75%) of the Housing Units in the Project are set aside for occupancy by Residents who are Farmworkers.

1.35 "Floor Space Fraction" means the fraction of a Project devoted to low-income housing, the numerator of which is the total square footage of floor space in all Low-Income Housing Units in the Project, and the denominator of which is the total square footage of floor space in all Housing Units in the Project, whether or not occupied. Where the context requires, the Floor Space Fraction is determined Building by Building.

For Projects which provide Housing Units for a Special-Needs Housing Commitment(s), Floor Space Fraction with respect to a Special-Needs Housing Commitment is the fraction of a Project devoted to the Special-Needs Housing Commitment, the numerator of which is the total square footage of floor space in all Housing Units in the Special-Needs Housing Commitment in the Project, and the denominator of which is the total square footage of floor space in all Housing Units in the Project, whether or not occupied.

1.36 "Good Cause" means (1) serious or repeated violation of material terms of the lease as that phrase is applied with respect to federal public housing at 24 C.F.R. Section 966.4(l)(2) or (2) the failure or refusal to vacate the premises when there is a defective condition or damage that is so substantial that it is economically infeasible to remedy the defect with the tenant in possession.

1.37 "Gross Rent" means the rent received for a Low-Income Housing Unit. The Utility Allowance for a Housing Unit must be included in Gross Rent, but Gross Rent excludes:

- (i) any payments under Section 8 or any comparable rental assistance program;
- (ii) any fees for supportive services (within the meaning of Section 42(g)(2)(B)(iii) of the Code) paid to the Owner (on the basis of the low-income status of the Resident of the Housing Unit) by a governmental assistance program or an organization exempt from federal income tax under Section 501(c)(3) of the Code, if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and
- (iii) rental assistance payments to the Owner under RD Section 515 of the Housing Act of 1949.

Gross Rent includes de minimis amounts paid toward purchase of a Housing Unit as described in Section 42(g)(6) of the Code. Gross Rent also includes the amounts imposed on Residents for Required Services even if federal or state law requires that the Services must be offered to Residents by an Owner. The amount of maximum Gross Rent allowed

for a Low-Income Housing Unit is determined annually based upon the Area Median Gross Income determined by HUD. The maximum Gross Rent for any year must be decreased if the Area Median Gross Income for the locality in which the Project is located decreases but such amount will not be reduced below the amount of Gross Rent established pursuant to Revenue Procedure 94-57.

1.38 "Housing Unit" means a Low-Income Housing Unit and/or Market Rate Housing Unit located in a Building which is available for rent or rented by Residents. A Common Area Unit is not a Housing Unit. "Housing Units" refers to all the Housing Units in the Project, unless the context clearly means all the Housing Units in a Building.

1.39 "Imputed Household Size" means the number of people deemed living in a Housing Unit, determined by the number of bedrooms in the Housing Unit, as follows:

<u>Type of Housing Unit</u>	<u>Imputed Household Size</u>	
Efficiency/Studio (No Separate Bedroom)	1	Person
One Bedroom	1.5	Persons
Two Bedrooms	3	Persons
Three Bedrooms	4.5	Persons
Four Bedrooms	6	Persons
Five Bedrooms	7.5	Persons
Each Additional Bedroom	Add 1.5	Persons

1.40 "Indemnitors" has the meaning set forth in Section 9.1.

1.41 "Indemnified Parties or Party" has the meaning set forth in Section 9.1 of this Agreement.

1.42 "IRS Form 8609" means the Internal Revenue Service form entitled "*Low-Income Housing Credit Certification*" issued by the Commission with respect to a Qualified Building no later than the end of the calendar year that such Building is Placed-In-Service.

1.43 "Land" means the Land legally described in Exhibit "A".

1.44 "Large Household" means a group of four (4) or more income qualified Residents who are not necessarily related and who live together in a Low-Income Housing Unit containing three (3) or more bedrooms.

1.45 "Large Household Unit" means a Low-Income Housing Unit containing three (3) or more bedrooms which is occupied by four (4) or more income qualified Residents who are not necessarily related.

1.46 "Lease Rider" means the disclosure statement attached as Exhibit "F".

1.47 "Limited Liability Company" means a limited liability company validly formed under any state.

1.48 "Low-Income Housing Commitment" means the specified percentage of Housing Units that are both Rent Restricted and occupied by Residents whose Income is at or below the Minimum Low-Income Housing Set-Aside subject to exception for initially qualifying Residents whose Income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code.

1.49 "Low-Income Housing Unit" means a Housing Unit which meets the definition of a Qualified Low-Income Housing Unit. In addition, all Housing Units in the Additional Low-Income Housing Commitment are Low-Income Housing Units. Common Area Units are not included.

1.50 "Managing Member" means a Company Manager who is also a Company Member.

1.51 "Minimum Low-Income Housing Set-Aside" means the minimum percent required under Section 42(g) of the Code of Total Housing Units in the Project to be both Rent-Restricted and occupied by Residents whose Income is at or below a certain percentage of Area Median Gross Income (subject to exception for initially qualifying Residents whose Income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code).

1.52 "Noncompliance" means a failure to observe or perform any covenant, condition, or term of this Agreement or the Credit Reservation and Carryover Allocation Contracts (RAC), or a failure to meet the requirements of the Tax Credit Laws, the *Policies*, or the Tax Credit Program.

1.53 "Owner" means the entity described in Exhibit B and its successor(s) in interest of the project and also includes any purchaser, grantee, transferee, owner or lessee of all or any portion of the Project, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, transferee, owner or lessee of all or any portion of the Project, and any other person or entity having any right, title, or interest in the Project. Owner does not include an individual who is merely a Resident of the Project. "Owner" also includes any predecessor in interest in the Project which submitted the Application to the Commission or entered into the Credit Reservation and Carryover Allocation Contracts (RAC).

1.54 "Placed-In-Service" means:

- (i) for a New Building or Existing Building used as Residential Rental Property, the date on which such Building is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or,
- (ii) for rehabilitation expenditures that are treated as a separate New Building, the [date selected by the owner during the] twenty four (24) month period over which such rehabilitation expenditures are aggregated.

1.55 "Policies" means the written interpretive and policy statements issued by the Commission pursuant to RCW 34.05.230(1) and relating to the *Qualified Allocation Plan*, WAC 262-01-130, and the Tax Credit Program in effect as of the date the Owner entered into Credit Reservation and Carryover Allocation Contracts (RAC) for the Project or, if the Project is a Qualified Tax-Exempt Bond-Financed Project with no Credit Reservation and Carryover Allocation Contract (RAC), the *Policies* in effect as of the date the Owner submitted the Project's Tax Credit Program Application to the Commission.

1.56 "Prior Lien" has the meaning set forth in Section 7.2 of this Agreement.

1.57 "Program" means the Commission's Tax Credit Program.

1.58 "Program Documents" means this Agreement, the Application, the Credit Reservation Agreement, and all other related documents and agreements entered into or delivered by Owner with respect to the Project, as amended or restated from time to time.

1.59 "Project" means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Project, each Building must be financed under a common plan and identified in the manner required under Section 42(g) of the Code.

1.60 "Project Compliance Period" means the period beginning with the year that the first Building of the Project is Placed-In-Service and continuing thereafter until the last to end of the following periods for each Building in the Project: (i) the Compliance Period; (ii) the Extended Low-Income Housing Use Period; (iii) the Additional Low-Income Housing Use Period; or iv) the Three-Year Period.

1.61 "Project Transfer or Assignment" means any direct or indirect sale, contribution, assignment, assumption, lease, exchange, or transfer of, or other change in,

- (i) an interest in the Land, the Project, or any Building;
- (ii) an ownership interest in the entity that is the Owner; or
- (iii) the right, title or interest of the Owner in the Application, the Credit Reservation Contract and Carryover Allocation Contract (RAC), this

Agreement, or any other agreement in which the Commission and the Owner are parties.

By way of example, a Project Transfer or Assignment includes (but is not limited to):

- (i) If a Limited Partnership is an Owner, any direct or indirect sale or transfer of, or change in, the interest of a Partner (including the addition, removal, or withdrawal of a Partner);
- (ii) If a Limited Liability Company is an Owner, any direct or indirect sale or transfer of, or change in, the interest of a Company Manager, Managing Member, or Company Member (including the addition, removal or withdrawal of a Company Manager, Managing Member or Company Member);
- (iii) If a Joint Venture or General Partnership is an Owner, any direct or indirect sale or transfer of, or change in, the interest of a party to the Joint Venture or Partner of the General Partnership (including the addition, removal or withdrawal of a party or Partner); and
- (iv) If a corporation is an Owner, any direct or indirect change in the ownership of the corporation, including the issuance, redemption or transfer of stock or shares.

1.62 "Purchase Request" has the meaning set forth in Section 10.2.1 of this Agreement.

1.63 "Qualified Building" means a Building which meets the terms, conditions, obligations and restrictions of the Tax Credit Program, the Credit Reservation and Carryover Contract (RAC) this Agreement and Section 42 of the Code for an Allocation and the issuance by the Commission of IRS Form 8609.

1.64 "Qualified Contract" means a bona fide contract, determined pursuant to Section 42(h)(6)(F) of the Code, to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building of the sum of:

- (i) the portion of outstanding indebtedness secured by, or with respect to, the Building which is allocable to such Building;
- (ii) the Adjusted Investor Equity in the Building; and
- (iii) other capital contributions invested in the Building but not reflected in the amounts described immediately above; *reduced by*
- (iv) cash distributed from the Project or available for distribution from the Project, provided that in all cases the purchase price for the Building shall be determined consistent with the requirements of Section 42(h)(6)(F) of the Code.

For purposes of this definition, "Adjusted Investor Equity," as defined in Section 42(h)(6)(G) of the Code, means, for any calendar year,

- (i) the total amount of cash taxpayers have invested in a Project ("Invested Cash") *increased by*
- (ii) the amount equal to the Invested Cash multiplied by the cost of living adjustment for that calendar year,

as determined under Section 1(f)(3) of the Code by substituting the calendar year with or within which the first Year of the Credit Period ends for "calendar year 1987". An amount shall be taken into account as Invested Cash only as far as there was an obligation to invest that amount at the beginning of the Credit Period and as far as that amount is shown in the adjusted basis of the Project.

1.65 "Qualified Low-Income Housing Project" means a Project of Residential Rental Property containing the Minimum Low-Income Housing Set-Aside subject to the exception for initially qualifying Residents whose income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and (4) of the Code.

1.66 "Qualified Low-Income Housing Unit" means a Housing Unit that is both Rent-Restricted and occupied by Residents whose Income is at or below the percentage of Area Median Gross Income set forth in Exhibit B, subject to the exception for initially qualifying Residents whose Incomes increase, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code; provided that:

1.66.1 A Housing Unit shall constitute a Qualified Low-Income Housing Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of Transitional Housing, all as determined under Section 42(i)(3) of the Code);

1.66.2 A Housing Unit in any Building which has four (4) or fewer Units shall not constitute a Qualified Low-Income Housing Unit if any Unit in the Building is occupied by an Owner or a related person (within the meaning of Section 42(i)(3)(C) of the Code) unless such Building is described in Section 42(i)(3)(E) of the Code; and

1.66.3 A Housing Unit shall not be considered to be a Qualified Low-Income Housing Unit if all Residents in the Housing Unit are students (as defined in Section 151(c)(4) of the Code), none of whom file a joint income tax return unless such residents satisfy an exception for students set forth in Section 42(i)(3)(D) of the Code.

1.67 "Qualified Tax-Exempt Bond-Financed Project" means a Project in which a portion of the Eligible Basis of a Building is financed with certain tax-exempt bonds, as described in Section 42(h)(4)(A) and (B) of the Code.

1.68 "Regulatory Agreement (Extended Use Agreement)" means this Agreement as amended or restated from time to time, which Agreement is intended to meet the definition of a "long-term commitment to low-income housing" as required by Section 42(h)(6) of the Code and the requirements of the Tax Credit Program.

1.69 "Rent-Restricted" means that the Gross Rent with respect to a Low-Income Housing Unit does not exceed thirty percent (30%) of the applicable income limitation adjusted by the Imputed Household Size. This income limitation is determined either by (i) the Minimum Low-Income Housing Set-Aside; or (ii) the Additional Low-Income Housing Commitment, as the case may be, for such Low-Income Housing Unit, subject to the exception set forth in Section 42(g)(2)(E) of the Code (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

1.70 "Resident" means an individual or group of individuals (other than an Owner) residing in a Low-Income Housing Unit or Market Rate Housing Unit.

1.71 "Rules" means the rules adopted by the Commission governing the Tax Credit Program as codified at Washington Administrative Code 262-01-130.

1.72 "Special-Needs Housing Commitment" means the specified percentage of Housing Units that meets the definition of a Large Household Unit or which are set aside for occupancy by Residents who meet the criteria under the Tax Credit Program for persons with special-needs, as follows: the Elderly, persons with Disabilities and Housing for Homeless..

1.73 "Successor Indemnitor" has the meaning set forth in Section 9.3.

1.74 "Tax Credit Laws" means Section 42 of the Code and the regulations promulgated thereunder, as the same may be amended from time to time.

1.75 "Tax Credit Program" means the Commission's program for allocating Credit and taking other action related to Projects for which any Owner claims or plans to claim Credit. The Tax Credit Program includes, without limitation, adopting the *Qualified Allocation Plan, Policies* and Allocation Criteria, making Credit Reservations and Allocations, assigning BINs, determining the amount of Credit necessary for the financial feasibility of a Project and its viability as a Qualified Low-Income Housing Project throughout the Credit Period (including such determinations made on behalf of another governmental unit), entering into Regulatory Agreements (Extended Use Agreements) for Projects,



monitoring Projects, and notifying the IRS of an Owner's, a Building's, or a Project's Noncompliance.

1.76 "Three-Year Period" for a Building means:

- (i) the three years following the date of acquisition of that Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or
- (ii) in those circumstances where the Owner has properly and timely submitted to the Commission a Purchase Request, the three-year period commencing upon expiration of the one-year period following the Commission's receipt of the Purchase Request.

Generally, the Commission has one year after receipt of a Purchase Request to present to the Owner a Qualified Contract for the purchase of the Owner's interest in a Building. If the Commission fails to do so, the Regulatory Agreement and all of its restrictions and limitations on the use of the Building will terminate at the end of the three-year period following the one-year period.

1.77 "Total Housing Units" means all Housing Units in the Project, including both Market Rate Housing Units and Low-Income Housing Units. Common Area Units are not included. All percentages of Total Housing Units in the Project are based on the lesser of the Project's Floor Space Fraction (square footage of the Total Housing Units) or Unit Fraction (number of Total Housing Units) unless otherwise specifically noted.

1.78 "Transferee" means the person, organization or entity that is the transferee in connection with a Project Transfer or Assignment.

1.79 "Transferor" means the person, organization or entity that is the transferor in connection with a Project Transfer or Assignment.

1.80 "Unit" means a residential rental Housing Unit located in a Building and also includes a Common Area Unit.

1.81 "Unit Fraction" means the fraction of a Project devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Project, and the denominator of which is the number of all Housing Units in the Project, whether or not occupied. Where the context requires, the Unit Fraction is determined Building by Building.

For Projects which provide Housing Units for a Special-Needs Housing Commitment(s), Unit Fraction with respect to each Special-Needs Housing Commitment is the fraction of the Project devoted to the Special-Needs Housing Commitment, the numerator of which is

the number of Special-Needs Housing Commitment Housing Units in the Project, and the denominator of which is the number of all Housing Units in the Project, whether or not occupied.

1.82 "Utility Allowance" means the utility allowance as computed pursuant to a methodology set forth in the Commission's Tax Credit Compliance Procedures Manual.

1.83 "Year" means the taxable year of the Owner.

## **EXHIBIT "D"**

### **RECORDS REQUIRED TO BE MAINTAINED PURSUANT TO SECTION 5.7**

- (i) The total number of Housing Units in each Building (including the number of bedrooms and the size in square feet of each Housing Unit).
- (ii) The percentage and number of Housing Units in each Building that are Low-Income Housing Units.
- (iii) The percentage and number of Housing Units in the Project that are subject to the Additional Low-Income Housing Commitment requirements.
- (iv) The percentage and number of Housing Units in the Project that are subject to each of the Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment requirements.
- (v) The Gross Rent charged for each Low-Income Housing Unit in the Project (including any Utility Allowances).
- (vi) The number of Residents in each Low-Income Housing Unit.
- (vii) The number of Residents in each Housing Unit subject to a Special-Needs Housing Commitment related to household size.
- (viii) The Low-Income Housing Unit vacancies in each Building and information that shows when, and to whom, the next available Housing Units were rented.
- (ix) The vacancies of any Additional Low-Income Housing Commitment in the Project and information that shows when, and to whom, the next available Housing Units were rented.
- (x) The vacancies of any Housing Units subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment in the Project and information that shows when, and to whom, the next available Housing Units were rented.
- (xi) The annual Income Certification of each low-income Resident;
- (xii) Documentation to support each low-income Resident's Income Certification.
- (xiii) Documentation to support that each Resident who resides in a Housing Unit that is subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment meets the Commission's eligibility criteria for such Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment.
- (xiv) The Eligible Basis and Qualified Basis of each Building at the end of the first year of the Credit Period.
- (xv) The character and use of the nonresidential portion of each Building included in the Building's Eligible Basis under Section 42(d) of the Code.

- (xvi) The date that a Resident initially occupies a Housing Unit and the date that a Resident moves-out of a Housing Unit.
- (xvii) Documentation that demonstrates compliance with the marketing requirements for the Special-Needs Housing Commitment(s) and the Farmworker Housing Commitment as set forth in Sections 4.8 and 4.9 of the Regulatory Agreement.
- (xviii) Documentation that demonstrates compliance with the requirements with regard to the limitation or up-front rental charges set forth in Section 4.15 of the Regulatory Agreement.
- (xix) Documentation that demonstrates compliance with the annual notification and advertising requirements set forth in Section 4.14 of the Regulatory Agreement.
- (xx) Documentation that demonstrates compliance with the Lease Rider requirements as set forth in Section 4.21 of the Regulatory Agreement.
- (xxi) If the Owner received Allocation Criteria Points for preservation of federally assisted low-income housing, documentation that demonstrates compliance with that commitment.
- (xxii) Compliance with each and every other covenant and obligation of the Owner under this Agreement, the Credit Reservation and Carryover Allocation Contract (RAC) and/or the Tax Credit Program.

\*In addition, for the duration of the term of the Regulatory Agreement, the Owner must retain the original health, safety, and building code violation reports or notices that are issued by any state or local government unit.

## EXHIBIT "E"

### ANNUAL CERTIFICATION REQUIRED PURSUANT TO SECTION 5.8

The annual certification shall be in a form acceptable to the Commission and shall provide that at all times during the preceding twelve (12) month Certification Period the following was true:

1. The Project met the requirements of:
  - (i) the 20-50 test under Section 42(g)(1)(A) of the Code, or the 40-60 test under Section 42(g)(1)(B) of the Code, whichever Minimum Low-Income Housing Commitment test is applicable to the Project; or if applicable to the Project, the 15-40 test under Section 42(g)(4) and Section 142(d)(4)(B) of the Code for "deep rent skewed" projects;
  - (ii) If applicable to the Project, any Additional Low-Income Housing Commitment;
  - (iii) If applicable to the Project, any Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment; and
  - (iv) If applicable to the Project, requirements for preservation of federally assisted low-income housing.
2. There was no change in the Applicable Fraction of any Building in the Project, or that there was a change, and a description of the change.
3. The Owner has received an initial annual Income Certification for each new low-income household and documentation to support that the Certifications met applicable income set-aside requirements; and any annual re-certifications of income that may be required by the Commission.
4. Each Low-Income Housing Unit in the Project was Rent-Restricted.
5. All Housing Units in the Project were for use by the general public, and no finding of discrimination under the Fair Housing Act occurred with respect to the Project.
6. All Low-Income Housing Units in the Project were used on a nontransient basis (except as otherwise permitted by Section 42 of the Code).
7. Each Building in the Project was suitable for occupancy, taking into account local health, safety, and building codes and Uniform Physical Condition Standards

(UPCS) as defined by HUD and the state or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any Building or Low-Income Housing Unit in the Project. If a violation report or notice was issued by the governmental unit, the Owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the Certification submitted to the Commission and must state whether the violation has been corrected.

8. There was no change in the Eligible Basis (as defined in Section 42(d) of the Code) of any Building in the Project, or if there was a change, a written explanation of the change.

9. All functionally related and subordinate facilities included in the Eligible Basis under Section 42(d) of the Code of any Building in the Project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without a separate fee to all Residents in the Building.

10. If the income of a low-income household increased above the limit allowed in Section 42 (g)(2)(D)(ii), the next available Housing Unit of comparable size or smaller in the building was rented to an income qualified household.

11. If a Housing Unit subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment in the Project was vacated, that the Owner complied with the requirements specified in Section 4.9 of the Regulatory Agreement (describing good faith efforts to actively market vacated Housing Units and holding the Housing Units open).

12. The Owner complied with the up-front rental charge limitations described in Section 4.14 of the Regulatory Agreement.

13. The Regulatory Agreement was in effect as an extended low-income housing commitment as described in Section 42(h)(6) of the Code.

14. As required under Section 42(h)(6)(B)(iv) of the Code, the Owner has not refused to lease a Housing Unit in the project to an applicant who holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437.

15. Pursuant to IRS Revenue Ruling 2004-82, the Owner has not evicted any residents, or refused to renew any leases, except for good cause.

16. The Project is in compliance with the Fair Housing Accessibility Guidelines as issued in the Federal Register Vol. 56, No. 44, issued March 6, 1991.

17. The Project was a Residential Rental Property in compliance with all applicable federal, state and local housing laws, regulations and policies governing nondiscrimination and accessibility, including but not limited to: the Americans with Disabilities Act; Fair Housing Act, as amended; Architectural Barriers Act of 1968; Housing and Community Development Act of 1974; Civil Rights Act of 1964; Civil Rights Act of 1968; and Age Discrimination Act of 1975 and no Resident or prospective Resident was discriminated against on the basis of race, creed, color, sex, national origin, familial status, religion, marital status, age or disability; provided that the Owner may take such actions as may be necessary to qualify for or to maintain its qualification for the exemption that relates to housing for older persons under the Fair Housing Act, as amended, and 24 CFR Part 100, Subpart E. Furthermore, no Resident or prospective Resident was discriminated against on the basis of that Resident's or prospective Resident's: (i) sources of income, including but not limited to public assistance, provided such sources of income were not in contravention of any federal, state or local law; or (ii) receipt of Section 8 or any comparable rental assistance.

18. There were no changes in the Project that would alter or amend the representations or agreements made in the Program Documents, except as the documents and agreements have been previously amended by the Owner or its predecessor in interest with the written approval of the Commission.

19. The Owner has no actual or constructive knowledge of the occurrence of any event that would require the Owner to notify the Commission pursuant to Section 4.18 of the Regulatory Agreement.

20. When selecting Residents for occupancy in Low-Income Housing Units or Housing Units subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment, the Owner did not apply selection criteria to a prospective Resident that was more burdensome than selection criteria applied to any other Resident or prospective Resident.

21. The Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Commitment(s) were not at any time geographically segregated from other Housing Units in the Project.

22. Except for the Special-Needs Housing Commitment for Large Households, the configuration of any Housing Units used for the Low-Income Housing Units and any Special-Needs Housing Commitment(s) were proportional to the configuration of the Total Housing Units in the Project (unless a different configuration was approved by the Commission in writing) and the Housing Units used for the Low-Income Housing Units and any Special-Needs Housing

Commitment(s) were substantially the same size as other Housing Units with the same number of bedrooms.

23. All Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Commitment(s) were of the same quality and construction as all other Housing Units and were equipped and maintained in the same manner as all other Housing Units, with the exception of any additional amenities provided to meet the needs of Resident(s) with Disabilities and subject to the exceptions permitted by the *Policies* and the Tax Credit Laws.

24. The Owner notified the relevant public housing authority and at least two (2) community agencies in the area of the Project of the availability of Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment or, if no public housing authority existed, notice was given to an agency authorized to act in lieu of a public housing authority.

25. The Owner notified the general public, via advertisements in newspapers of general circulation in the area of the Project, of the availability of Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Commitment(s) or the Farmworker Housing Commitment, and such advertisement(s) conformed with the Fair Housing Act, as amended, and state and local law.

26. The Owner provided a copy of the Lease Rider (in substantially the form set forth in Exhibit "F") to each Resident prior to the execution of each lease or rental agreement for the Project and a Lease Rider has been signed and dated by each Resident and is on file with the Owner for inspection by the Commission.

27. The Project has not and does not contain a commercial facility except to the extent previously approved in writing by the Commission.

28. As may be requested by the Commission in the future, any other factual matters that reflect compliance by the Owner and/or the Project with each and every other covenant and obligation under this Agreement, the Credit Reservation and Carryover Allocation Contract (RAC) and/or the Tax Credit Program.



## EXHIBIT "F"

### Lease Rider for Tax Credit Property (to be attached to resident leases)

Property Name Norris Place OAR/OID # 15-74A

Household Name \_\_\_\_\_ Unit # \_\_\_\_\_

Dear Applicant or Existing Resident:

#### Summary

The owner(s) of this property rents residential units under the federal Low-Income Housing Tax Credit Program (the "program") as administered by the Washington State Housing Finance Commission (the "Commission"). Under the program, the owner(s) can qualify for federal IRS tax credits by renting some or all of the units in the property to low-income households and restricting the rents for those units. In addition the owner *may* have agreed to reserve some of the units in the property for households or persons with special needs. (See the special-needs section below.) This rider was prepared to help residents understand the program.

#### Income and Rent Limits

The Commission gives the owner(s) new income and rent limit tables each year. This property has agreed to reserve some or all of the units for households at or below the 30, 35, 40, 45, 50 or 60% income limits found on these tables. The rent tables show the maximum rent a property can charge for a unit based on a household's income, number of bedrooms in the unit or the number of people in the household. Some properties have more than one income limit. Ask the property representative for specific information.

#### Annual Recertification

To be eligible for a rent- and income-restricted unit, all income and assets of any household members 18 years and older must be documented and verified. The owner(s) or manager of this property will give you the required forms to declare and verify income and assets from all sources. They *may* also ask you for supporting documentation. The program requires each existing household to **recertify** or complete a new set of the required forms at least once every 12 months.

Since this program involves IRS tax credits, the Commission and everyone involved with this program is under growing pressure to prevent fraud. Your forms must be prepared carefully, with every question answered. Annually, you will be signing a document under penalty of perjury, saying that the information and verifications submitted are correct. Households who do not properly complete their paperwork *may not* qualify for residency or *may* be required to vacate their income- and rent-restricted unit.

A property that has more than one income/rent limit *can* switch a household to a higher or lower income/rent limit, based on the household's income at recertification. Ask the property representative for specific information.

### Special Needs

The owner(s) of this property *may* have chosen to reserve some of the program units for households that have special needs. Units *could* be reserved for households that meet the program definition for large household, disabled, elderly, homeless housing or farmworker. Households or individuals applying for one of these special needs units will be required to verify their eligibility. Ask your property representative for specific information.

### Full-time Student Households

A household where each member is a full-time student *may not* qualify for an income- and rent-restricted unit. A household where everyone becomes a full-time student after move-in *may no longer* qualify for an income- and rent-restricted unit. Ask your property representative for specific information.

### Property Standards

The property must comply with federal housing policy governing nondiscrimination and accessibility. In making an apartment available, the owner(s) *cannot* discriminate against you because of your race, creed, color, sex, national origin, marital status, age, disability or familial status. Furthermore, the owner(s) *cannot* discriminate against you based on the sources of your income (including Section 8 subsidy), provided the sources of income do not violate any federal, state or local law. Additional state, local laws or ordinances may also apply. When selecting residents, the owner(s) *cannot* apply standards to a potential resident that are more burdensome than standards applied to any other potential or existing resident.

### Good Cause Evictions/Nonrenewals

The owner is prohibited from evicting you, and is prohibited from refusing to renew your lease or rental agreement, other than for "good cause". Generally, good cause shall mean the serious or repeated violation of material terms of the lease or a condition that makes your unit uninhabitable. Any termination or non-renewal notice must state the specific factual violations. Under federal law, you have the right to enforce this requirement in state court as a defense to any eviction action brought against you.

By signing below, I indicated I have read and discussed information included in this lease rider. I have been given a copy of this lease rider along with my lease.

\_\_\_\_\_  
Property Representative Name (*print*)

\_\_\_\_\_  
(*signature*)

\_\_\_\_\_  
Date

Further questions should be addressed to: \_\_\_\_\_ Telephone #: \_\_\_\_\_

\_\_\_\_\_  
Resident or Applicant Name (*print*)

\_\_\_\_\_  
(*signature*)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident or Applicant Name (*print*)

\_\_\_\_\_  
(*signature*)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident or Applicant Name (*print*)

\_\_\_\_\_  
(*signature*)

\_\_\_\_\_  
Date