

Name & Return Address:

Housing Authority of Skagit County

_____**Washington State Recorder's Cover Sheet** (RCW 65.04) Please print legibly or type information.

Document Title(s) Amended Covenant Agreement	
Grantor(s) Housing Authority of Skagit County	GNW M 10321
____ Additional Names on Page ____ of Document	
Grantee(s) Department of Commerce	
____ Additional Names on Page ____ of Document	
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section) Ptn NW-SE & NE-SW 33-35-4 Complete Legal Description on Page ____ of Document	
Auditor's Reference Number(s) 201605310074	
Assessor's Property Tax Parcel/Account Number(s)	
Non Standard Fee \$50.00 By signing below, you agree to pay the \$50.00 non standard fee. I am requesting an emergency non standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.  Signature of Party Requesting Non Standard Recording NOTE: Do not sign above or pay additional \$50.00 fee if document meets margin/formatting requirements. The Auditor/Recorder will rely on the information provided on this cover sheet. Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

When Recorded Return To:

Washington State Department of Commerce
Housing Trust Fund
1011 Plum Street SE
Post Office Box 42525
Olympia, Washington 98504-2525

Attention: HFU Contracts/Fiscal Group

GNW M 10321

**FIRST AMENDED AND RESTATED
LOW INCOME HOUSING COVENANT AGREEMENT**

Reference Number of Document 201605310074

Amended:

Grantor (Borrower): Housing Authority of Skagit County

Beneficiary (Lender): Department of Commerce

Legal Description (abbreviated): See Legal Description Below

Assessor's Tax Parcel ID#: P62437

Contract Number: 13-94110-012

This First Amended and Restated Low Income Housing Covenant Agreement (the "First Amended Covenant") is made by Housing Authority of Skagit County, a Washington public body corporate and politic ("Grantor") and amends the Low Income Housing Covenant Agreement (the "Covenant"), dated May 31, 2016 recorded under Skagit County Auditor's file number **201605310074** was part of the consideration for the financial assistance provided by the Department of Commerce, a department of the state of Washington ("Department"), to Housing Authority of Skagit County pursuant to a Housing Trust Fund Agreement, Contract Number 13-94110-012 (the "Contract"), for the new construction of real property legally described as follows:

LOT A OF SKAGIT COUNTY SHORT PLAT NO. PL17-0217 APPROVED APRIL 29, 2019 AND RECORDED APRIL 29, 2019 AS AUDITOR'S FILE NO 201904290105; SUBJECT TO A NON-EXCLUSIVE TEMPORARY ACCESS EASEMENT IN FAVOR OF LOT B OF SAID SHORT PLAT AS DELINEATED AND DESCRIBED THEREON

SAID SHORT PLAT BEING PORTIONS OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ AND THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 33, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M. AND PORTIONS OF TRACTS 25 AND 36 "PLAT OF THE BURLINGTON ACREAGE PROPERTY" AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 49, RECORDS OF SKAGIT COUNTY, WASHINGTON

(the "Property").

This First Amended Covenant will be filed and recorded in the official public land records of Skagit County, Washington and shall constitute a restriction upon the use of the property described herein, subject to and in accordance with the terms of this First Amended Covenant, for forty (40) years beginning May 1, 2020 and ending April 30, 2060.

The covenants contained herein are to be taken and construed as covenants running with the land and shall pass to and be binding upon the Grantor, its successors and assigns, heirs, grantees, or lessees of the Property, beginning May 1, 2020 and ending April 30, 2060. Each and every contract, deed or other instrument covering or conveying the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, or other instruments.

NOW, THEREFORE, it is hereby covenanted, for the forty (40) years commencing May 1, 2020 and terminating April 30, 2060, as follows:

1. The fourteen (14) residential units in the Property will be rented to households who at the time of initial occupancy have gross annual household incomes at or below fifty percent (50%) of the local area median income for Mount Vernon-Anacortes, WA MSA, Washington, adjusted for family size, as estimated from time to time by the United States Department of Housing and Urban Development ("HUD"). If HUD ceases to provide such estimates of median income, then median income shall mean such comparable figure for Skagit County, Washington published or reported by a federal, state, or local agency as the Department shall select. Rents shall be adjusted for household size and are less the monthly allowance for customary utilities and services (excluding telephone, cable television and other telecommunications), to be paid by tenant.
2. The Grantor will provide safe and sanitary housing, and will comply with all state and local housing codes, licensing requirements, and other requirements regarding the condition of the structure and the operation of the project in the jurisdiction in which the housing is located.
3. The Grantor will keep any records and make any reports relating to compliance with this First Amended Covenant that the Department may reasonably require.
4. **DEFAULT:** If a violation of this First Amended Covenant occurs, the Department, or its successor agency, may, after thirty (30) days' notice to the Grantor, institute and prosecute any proceeding at law or equity to abate, default the loan, prevent, or enjoin any such violation or to compel specific performance by the Grantor of its obligations hereunder; provided that, the Grantor shall not be required by any provision herein to evict a residential tenant. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

[SIGNATURE AND NOTARY BLOCKS FOLLOW]

IN WITNESS WHEREOF, Housing Authority of Skagit County has executed this First Amended and Restated Covenant _____ day of _____, 2020.

HOUSING AUTHORITY OF SKAGIT COUNTY

a Washington public body corporate and politic,

By: _____

Printed Name: MELANIE COREY

Title: EXECUTIVE DIRECTOR

STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT)

On this 20th day of March, 2020, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Melanie Corey to me personally known (or proved on the basis of satisfactory evidence) to be the Executive Director of **Housing Authority of Skagit County**, a Washington public body corporate and politic, and acknowledged said instrument to be the free and voluntary act and deed of such public body corporate and politic, for the uses and purposes mentioned, and on oath stated that he/she was authorized to execute the said instrument.

(Seal or Stamp)

Renee C Sinclair
(Signature of Notary)

RENEE C SINCLAIR
(Legibly Print or Stamp Name of Notary)

Notary Public
State of Washington
Renee C Sinclair
Commission No. 207424
My Commission Expires 5/1/2023

NOTARY PUBLIC in and for the state of Washington

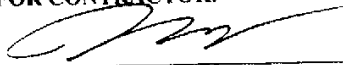

My Commission Expires: 5/1/2023

AMENDMENT FACE SHEET

Contract Number: 13-94110-012

Amendment Number: 1

Project Name: Skagit County Seasonal Farmworker Housing
Washington State Department of Commerce
Community Services and Housing Division, Housing Finance Unit
Housing Trust Fund Program

1. Contractor Housing Authority of Skagit County 1650 Port Drive Burlington WA 98233		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative (only if updated) Melanie Corey 1650 Port Drive Burlington WA 98233 Mcorey@skagitcountyha.org		4. Commerce Representative (only if updated) Sarah Alway (360) 725-2978 Sarah.Alway@commerce.wa.gov	
5. Original Contract Amount (including any previous amendments) \$3,000,000.00		6. Amendment Amount \$0.00	
		7. New Contract Amount \$3,000,000.00	
8. Amendment Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/>		9. Amendment Start Date Date of Last Signature Below	
		10. Amendment End Date April 30, 2060	
11. Federal Funds Included in Contract Amount above (as applicable): N/A		Federal Agency N/A	
		CFDA Number: N/A	
12. Amendment Purpose: The purpose of this Contract Amendment is to amend over-income tenant's requirements, shared appreciation, insurance, nondiscrimination, correct the property address drafted in error and to amend the commitment period due to delays in completion of construction. All other terms and conditions of this Contract and prior amendments (if any) remain in full force and effect. In the event of any conflict between this Amendment and the Contract or any prior amendment(s), this Amendment shall control and govern. This Amendment may not be modified except for in writing and signed by the parties. The DEPARTMENT, defined as the Washington State Department of Commerce, including its successor agency, and the CONTRACTOR, as defined above, acknowledge and accept the terms of this Contract Amendment and its attachments (if any), and have executed this Contract Amendment on the date below to start as of the date and year referenced above. The persons signing below warrant that they have the authority to execute this Contract Amendment. A copy of this Contract Amendment shall be attached to and made a part of the Original Contract between the DEPARTMENT and the CONTRACTOR. Any reference in the Original Contract to the "Contract" shall mean the "Contract as amended."			
FOR CONTRACTOR:  Signature <u>MELANIE COREY</u> Name <u>EXECUTIVE DIRECTOR</u> Title <u>03/19/2020</u> Date		FOR DEPARTMENT:  Signature <u>Diane Klontz, Assistant Director, Community Services and Housing Division</u> Date <u>3/31/2020</u> APPROVED AS TO FORM ONLY: <u>This 7th Day of June, 2011</u> <u>Sandra Adix, Assistant Attorney General</u>	

**Amendment Number: 1
TO
Contract Number: 13-94110-012**

This Contract is amended as follows.

1. OVER-INCOME TENANTS

Any section(s) or paragraph(s) in the original Contract or prior amendments (if any) regarding over-income tenants and tenant rent shall be amended and replaced by the following section. If over-income tenants and tenant rent are not addressed in the original Contract or prior amendments (if any), the following section shall be added to the Contract.

Unless prohibited by law or requirements of any other public funding source for the Project, the CONTRACTOR may incorporate provisions in tenant lease agreements which will allow:

- A. Adjusting rents to be paid by any household whose income, after initial occupancy, exceeds the highest Area Median Income ("AMI") level for the target population identified in this Contract (defined as "over-income tenants") to the next AMI level under which the household qualifies, and/or
- B. Adjusting rents to be paid by any household whose income, after initial occupancy, exceeds 80% of the AMI to the lesser of the Fair Market Rent ("FMR") for the unit size or 30% of the actual income of the household, and/or
- C. Terminating lease agreements of households whose income exceed 80% of the AMI.

If an over-income tenant's income later decreases, the rent paid by that household should be reduced to the appropriate AMI level under which the household qualifies, but the maximum rent should be no lower than the lowest AMI identified within this Contract.

When determining the next or the appropriate AMI level under which a household qualifies, the following are the HTF standard AMI levels: 30%, 35%, 40%, 45%, 50%, 60%, 65%, and 80%.

The CONTRACTOR shall be aware that the following exceptions apply to Projects that are funded in part or in whole with federal program funds:

- a. For the over-income tenants residing in HOME Program Assisted units, the CONTRACTOR shall follow the 24 CFR § 92.252 2013.
- b. For the over-income tenants residing in National Housing Trust Fund Program Assisted units, the CONTRACTOR shall follow 24 CFR § 93.302.

2. SHARED APPRECIATION

Any section(s) or paragraph(s) in the original Contract or prior amendments (if any) regarding shared appreciation shall be amended and replaced by the following section. If shared appreciation is not addressed in the original Contract or prior amendments (if any), the following section shall be added to the Contract.

If the use of the Property changes to something other than that stated in Attachment B – Scope of Work of this Contract prior to completion of the Commitment Period, either by the CONTRACTOR, its successors or assigns, or as a result of a sale or refinance of the Property, the DEPARTMENT will share in the appreciated value of the Property as described below. The DEPARTMENT reserves the right in some circumstances to waive Shared Appreciation where the funds generated by a sale or refinance of the Property are to be reinvested in affordable housing for Low-income Households to serve the same population targeted in this Contract, pursuant to a plan agreed to by the CONTRACTOR and the DEPARTMENT.

The DEPARTMENT's Shared Appreciation will be due and payable, by the then current owner of the Property, if any or all of the following occurs:

- a. Sale or refinance of the Property for a use other than that stated in Scope of Work, section 2.06, of the original Contract.
- b. Change in use.

Shared Appreciation is the DEPARTMENT's proportionate share of the appreciated value of the Property, together with the appreciated value of the improvements constructed thereon regardless of whether such improvements are developed by the CONTRACTOR, its assigns, or by any lessee of the Property. Shared Appreciation (SA) is the product of the Net Proceeds (NP) less Total Original Development Costs (TODC) multiplied by the fraction whose numerator is the Original Principal (OP) amount of the Contract Amount and whose denominator is the sum of TODC: $SA = (NP - TODC) \times (OP / TODC)$.

Total Original Development Costs (TODC) include:

1. The cost of acquisition, including purchase price, the costs of surveys and inspections, appraisal, title insurance, pro-ration of real estate taxes and property insurance at closing, recording and escrow fees, attorney fees, repairs prior to occupancy, PLUS
2. The cost of the initial development, including the cost of construction, hazardous materials abatement, architectural and engineering fees, construction management fees, construction period interest and taxes, loan fees, environmental reports, soils reports, traffic studies, permit fees, impact fees, and accounting costs.

Net Proceeds (NP) shall be calculated as follows:

The value as determined by an appraisal satisfactory to the DEPARTMENT in the event the Property is not sold to a bona fide third party or the sales price if sold to a bona fide third party, any balance remaining in the escrow account for replacement and operating reserves established pursuant to this Contract, and any insurance or condemnation proceeds received. For this purpose, bona fide third party is defined as an Eligible Organization that is eligible to receive Housing Trust Fund funds, has experience managing Housing Trust Fund properties, and intends to continue the purpose and use stated in Attachment B – Scope of Work of this Contract.

Less the sum of the following:

1. The actual reasonable approved costs of sale (if the Property is sold), including appraisal, real estate commissions, real property excise tax, escrow fees, recording fees, title, and insurance premiums, LESS
2. Cost of depreciable improvements made to the Property subsequent to completion of the work funded or financed by this Contract.

Therefore, the DEPARTMENT's Shared Appreciation percentage is the Original Principal divided by Total Original Development Costs, multiplied by an amount equal to Net Proceeds less Total Original Development Costs: $SA = (NP - TODC) \times (OP / TODC)$.

Example:

Contract Amount =	\$1,000,000.00
Total Project Development Costs =	\$3,000,000.00

Calculation to Determine the Shared Appreciation Percentage:

Contract Amount Divided by Total Project Development Cost Amount = Shared Appreciation %.

Using the Example above $\$1,000,000.00 / \$3,000,000.00 = 33.33\%$.

In this example, 33.33% is the Shared Appreciation percentage the DEPARTMENT will utilize to calculate its shared appreciation value of the Property.

3. INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington – Department of Commerce should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the CONTRACTOR or Subcontractor, or agents of either, while performing under the terms of this Contract.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington – Department of Commerce, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall instruct the insurers to give DEPARTMENT thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The CONTRACTOR shall submit to DEPARTMENT, prior to execution of this Contract, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, the CONTRACTOR shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000.00 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the CONTRACTOR or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000.00 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. In the event CONTRACTOR provides professional services, CONTRACTOR shall maintain Professional Liability Insurance in such limits as are appropriate in light of the type and extent of services provided. The CONTRACTOR shall maintain Errors and Omissions Insurance, minimum limits of no less than \$1,000,000.00 per occurrence to cover all activities by the CONTRACTOR and licensed staff employed or under contract to the CONTRACTOR. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the CONTRACTOR for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000.00 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name DEPARTMENT as beneficiary.
- B. Subcontractors that receive \$10,000.00 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the CONTRACTOR as beneficiary.
- C. The CONTRACTOR shall provide, at DEPARTMENT's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered, the amounts, the period of coverage, and that the DEPARTMENT will be provided thirty (30) days advance written notice of cancellation.

Property Insurance

The CONTRACTOR shall keep the Property insured in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. Throughout the term of this Contract such insurance shall cover the following hazards:

- Loss or damage by fire and such other risks;
- Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises;
- Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in a building or building on the premises.

The state of Washington – Department of Commerce, its agents, officers, and employees shall be specifically named as loss payee or additional insureds on all policies and all policies shall be primary to any other valid and collectable insurance.

4. NONDISCRIMINATION

CONTRACTOR shall make the Project facilities available in a manner that assures fair, equal, and non-discriminatory treatment to all persons. During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, including but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination; 42 U.S.C. 12101 et seq., the American with Disabilities Act ("ADA"); and Title VII of the Civil Rights Act of 1964, Public Law 88-352. The funds provided under this Contract shall not be used to fund religious worship, exercise, or instruction.

5. SCOPE OF WORK – Section 2.01 Project Description and Property Location - of the original contract is amended and replaced with the following:

The purpose of this project is to provide funding for new construction of fourteen (14) units for low-income housing (the "Project"). This Project is located at 20280 Lafayette Road, Burlington, WA 98233. The real property located at this address and any improvements now existing or hereafter constructed thereon are hereinafter referred to as the "Property".

The CONTRACTOR will obtain an operating license for temporary worker housing from the Washington State Department of Health ("DOH") prior to occupancy of the Project and will ensure that the Project continues to meet at least the minimum standards set by DOH for temporary worker housing.

Certain eligible activities completed before execution of this contract (the "Contract") may be reimbursed when approved by the DEPARTMENT.

Section 2.05 Period of Performance and Length of Commitment - of the original contract is amended and replaced with the following:

- A. The effective date of this Contract shall be the date of the last signature.
- B. The length of commitment to serve the target population will be forty (40) years, and shall commence on May 1, 2020 and end on April 30, 2060. This shall be considered the "Commitment Period".
- C. The CONTRACTOR shall complete the activities in Section 2.01 of this Contract in accordance with the Schedule that has been approved in writing by the DEPARTMENT.
- D. The CONTRACTOR shall notify and consult with the DEPARTMENT whenever any event affects the timely completion of the Project.
- E. The termination date of this Contract shall be April 30, 2060.

ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT.