

When Recorded Return to:
Portland Housing Bureau
421 SW 6th Avenue, Suite 500
Portland, OR 97204
Attn: PHB Housing - Asset Management - SDC
Interoffice Address: 157/500

REGULATORY AGREEMENT (SDC Rental)

THIS REGULATORY AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2010, (the "Effective Date") between the City of Portland, Oregon acting by and through the Portland Housing Bureau (the "PHB") and _____, an Oregon _____ (the "Owner").

Recitals

- A. The PHB implements the City of Portland's housing policies by administering various programs including the System Development Charge (SDC) Exemption Program. The PHB administers the SDC Exemption Program for the Bureaus of Transportation, Water, Environmental Services and Parks to exempt the Owner of development charges on newly constructed affordable residential units.
- B. Owners is the owner of certain real property located in the City of Portland ("City"), legally described in Exhibit A (the "Property"). The Owner intends to construct __ dwelling units of which __ will be affordable dwelling units ("such affordable units, the "Dwelling Units") on the Property.
- C. To be eligible for the System Development Charge Exemption Program, the City's policy requires compliance with the following for a period of 60 years: (i) the Owner must have site control of the Property in a form acceptable to PHB; and (ii) the Owner will rent the Dwelling Units to households whose incomes are at or below 60% of the Median Family Income; and (iii) the rent burden must be no more than 30% of MFI. Stability of the inventory of affordable rental and homeownership dwelling units and the ability of first-time buyers to purchase housing are important elements in the effective implementation of the City's policy.
- D. The Owner has applied for and been granted exemptions in the approximate amount of \$_____ in System Development Charges (such amount, the "SDC Exemption Amount"). The Owner and the PHB desire to restrict the use of the Project as provided herein to assure that the goals to which they have agreed are fully implemented.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency for which are hereby acknowledged, and in consideration of the promises and covenants contained herein, the Owner does hereby impose upon the Project the following covenants, restrictions, agreements, and obligations which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, Owner or lessee of the Project and any other person or entity having any right, title or interest therein and upon their respective

heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of the Project and any other person or entity having any right, title or interest therein, for the length of time that this Agreement shall be in full force and effect.

Section 1. Definitions

In addition to other defined terms in this Agreement, the following terms shall have the meanings set forth below.

Median Family Income or **MFI** means the median gross household income, adjusted for household size, for the Portland, Oregon metropolitan statistical area as established each year by the U.S. Department of Housing and Urban Development.

Owner refers to the Owners jointly and severally in their capacity as tenants in common. The covenants, restrictions, agreements, and obligations under this Agreement are joint and several as to the Owners.

Project means the Property, Dwelling Unit, and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the Property.

System Development Charges mean, for the purpose of this Agreement, the system development charges imposed by the City's Bureau of Water Works, the Office of Transportation, the Bureau of Environmental Services and the Bureau of Parks and Recreation.

Section 2. Project Requirements

2.1 During the Term of this Agreement, the Owner agrees to comply with each of the following requirements: (i) The Owner must have site control of the Property in a form acceptable to PHB; (ii) The Owner will rent the Dwelling Units to households whose income is at or below 60% of Median Family Income; and (iii) the maximum rent burden must be no more than 30% of MFI.

2.2 The Owner shall not give or allow to be given any preference to any particular group or class in renting the Dwelling Units. The Owner shall not discriminate, nor allow discrimination, in the provision of housing on the basis of race, creed, gender, national origin, religion, marital status, sexual orientation, family status, age, disability, or the receipt of public assistance, nor against any tenant who is a parent or legal guardian with whom a child resides or is expected to reside except in the event that the Project is designated exclusively for households, the heads of which are over 62 years of age.

Section 3. Term. This Agreement shall be effective for a period of sixty (60) years from the Effective Date ("Term").

Section 4. Reporting. The Owner agrees to submit to the PHB or its designee such information and reports as the PHB may reasonably require to demonstrate compliance with the terms of this Agreement, including but not limited to (i) a verification of the renter's income, and (ii) verification of the rental price of the Dwelling Units on an annual basis via the collection and use of the tenant survey as defined in the PHB Asset Management Guidelines. Reports are due March 1st of each year.

Section 5. Covenants Run With the Property

5.1 The Owner represents and warrants that the SDC Exemption Amount provided by the PHB are an inducement to the Owner to comply with this Agreement, and that the Owner has induced the PHB to grant the SDC Exemption Amount by promising to comply with this Agreement for the full, stated Term of the Agreement. Therefore, the Owner covenants, agrees, and acknowledges that the PHB is the beneficiary of this Agreement, and that the PHB has relied upon the enforceability of this Agreement in determining to provide financial accommodations to the Owner in relation to the Project.

5.2 The Owner hereby declares its express intent that, during the Term of this Agreement, the covenants, restrictions, agreement, and obligations set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title, including any purchaser, grantee or lessee of any portion of the Project, any other person or entity having any right, title, or interest therein and upon their respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, or lessee of any portion of the Project. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 6. Sale or Disposition of the Project. During the Term, any sale or transfer (or any attempted sale or transfer) of all or any part of, or any interest in, the Property, the Dwelling Units, or the Project, or any beneficial interest in Owner, without the prior written consent of PHB (which PHB may grant, condition, or withhold in its sole and absolute discretion) is prohibited and is void ab initio. As used herein, the term "sale or transfer" is used in its broadest sense, and includes, with respect to the Property or Project, a ground lease, master lease or other lease not in the ordinary course of business, land sale contract, foreclosure, deed in lieu of foreclosure, or transfer (by operation of law or otherwise) pursuant to any dissolution, liquidation, merger, reorganization or consolidation, and with respect to a beneficial interest in Owner, a sale, gift or other transfer of any partnership, stock, membership or other ownership interest in Owner other than a transfer upon death of the owner of such interest. However, the term "sale or transfer" does not include:

- (i) if Owner is a partnership or limited liability company, a transfer to a general partner (or sole member of such general partner) or managing member who is as of the date of this Agreement a general partner of the partnership or managing member of the limited liability company,
- (ii) a transfer to a qualified nonprofit organization or government agency pursuant to a right-of-first refusal under IRC Section 42(i) (7), or
- (iii) a transfer pursuant to a qualified contract under IRC section 42(h) (6) (F).
- (iv) a transfer of the interest of the general partner of Owner resulting from the limited partner's exercise of its removal rights pursuant to Owner's limited partnership agreement.
- (v) a transfer of the interest of the limited partner of Owner pursuant to Owner's limited partnership agreement.

Section 7. Events of Default. Any of the following shall be an event of default ("Event of Default") under this Agreement:

7.1. Failure to Comply with Covenants, Conditions, Agreements, or Obligations. Owner fails to perform or abide by any covenant, condition, agreement, or obligation in this Agreement, including, but not limited to, the requirements in Section 2.1, and such failure, to the extent curable, is not cured within thirty (30) days after delivery of written notice from PHB specifying the default.

7.2. Failure to Obtain PHB's Consent to Transaction. Owner engages in a sale, transfer or assignment in violation of the terms of this Agreement, or changes the use of the Property without PHB's prior written consent.

7.3 Default Under Other Loans. Owner defaults under any other loan (including any construction, permanent, or bond financing) secured in whole or in part by the Property, and fails to cure such default within any applicable cure period set forth in the loan documents relating to such loan. If Owner cures a default under any other loan, that cure shall constitute a cure under this Agreement, provided Owner is not in default of any other provision of this Agreement.

Section 8. Rights and Remedies on Default. Upon the occurrence of an Event of Default and at any time thereafter, PHB may, at its option, exercise any one or more of the following rights and remedies:

8.1 Repayment of System Development Charges. PHB may require the Owner to repay to the City or PHB the SDC Exemption Amount. Notwithstanding the foregoing, Owner acknowledges that in providing the SDC Exemption Amount, the City has foregone other opportunities to fund projects that would have resulted in the long-term availability of affordable dwelling units. Accordingly, Owner acknowledges that the enforceability of this Agreement is not specifically linked to the SDC Exemption Amount, and that repaying the SDC Exemption Amount is not a sufficient remedy for a breach, and does not relieve the Owner, of its duties under this Agreement.

8.2 Performance of Obligations. PHB may, by mandamus or other suit, action or proceeding at law or in equity, require the Owner to perform its covenants, conditions, agreements, and obligations in this Agreement, or to abate, prevent, or enjoin any acts or things which may be unlawful or in violation of the rights of the PHB in this Agreement.

8.3. Access to Records. PHB shall have the right to access to and inspect, examine, and make copies of all of the books and records of the Owner pertaining to the Project.

8.4 Money Damages. PHB may take such other action available at law, in equity, or otherwise as may appear necessary to enforce the covenants, conditions, agreements, and/or obligations of the Owner in this Agreement, in such order and manner as it may select, to recover monetary damages caused by such violation or attempted violation of any covenant, condition, agreement, and/or obligation. Such damages to include but are not limited to all costs, fees, and expenses, including but not limited to staff and administrative expense, fees including but not limited to all reasonable attorneys' fees which may be incurred by the PHB or any other party in enforcing or attempting to enforce this Agreement following any Event of Default on the part of the Owner or their successors, whether the same shall be enforced by suit or otherwise; together with all such costs, fees and expenses which may be incurred in connection with any amendment to this Agreement or otherwise at the request of the Owner.

Section 9. Other.

9.1 Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

9.2 Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

Owner: _____
Attention: _____

PHB: Portland Housing Bureau
Attention: PHB, Asset Management, SDC Rental
421 SW 6th Avenue, Suite 500
Portland, OR 97204

9.3 Governing Law, Venue. This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court of Multnomah County, Oregon.

9.4 Assignment. The Owner may only assign its rights and obligations hereunder with the written consent of PHB, which consent shall not be unreasonably withheld or delayed.

9.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

9.6 Time of Essence. Time is of the essence of each of the Owner's obligation under this Agreement.

9.7 Modification; Headings. This Agreement may not be modified or amended except by an instrument in writing signed by the Owner and PHB. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

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

City of Portland, Oregon, acting by and through _____, an Oregon _____
the Portland Housing Bureau

By: _____

By: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 2010, by
_____, as _____ of _____.

Notary Public of Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 2010, by
_____, _____ of the Portland Housing Bureau.

Notary Public of Oregon
My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

XXX

SAMPLE