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After recording return to:

City of Sisters
520 East Cascade
Sisters, Oregon 97759

Deschutes County Official Records		[REDACTED]
D-CCR		01/21/2021 11:17 AM
Stn=1 BN		
\$40.00 \$11.00 \$10.00 \$61.00 \$6.00		\$148.00
\$20.00		
I, Nancy Blankenship, County Clerk for Deschutes County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.		
Nancy Blankenship - County Clerk		

Return To:



DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (this "Declaration") is made by HAYDEN HOMES, LLC, an Oregon Limited Liability Company ("Declarant") for the benefit of the City of Sisters, Oregon ("City") dated effective as of August 19, 2020.

Recitals

- A. Declarant is the owner of the real property legally described in Exhibit A with an address of [REDACTED] Sisters, OR 97759 ("the Property").
- B. As a condition of certain land use approvals, specifically the Development Agreement to Support Urban Development in the City of Sisters recorded on 07/02/2019 in the official records of Deschutes County as file number [REDACTED] the Property must be subject to a restrictive covenant ensuring that the Property will be developed and conveyed/occupied as affordable housing.
- C. The Property has been developed with a single-family dwelling intended for affordable housing.
- D. This Declaration is made in accordance with applicable conditions of approval.

Declaration

Declarant hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following:

1. Affordable Housing. Except as otherwise provided in this Declaration, the Property must be sold to or leased by an individual or individuals (a "Qualifying Party") whose annual household income is at or below 80% of Area Median Income (AMI) or lower as designated on a yearly basis for Deschutes County by the federal department of Housing and Urban Development (HUD) for a Qualifying Amount (as defined below) measured at the time the Qualifying Party take title to or possession of the Property. Housing is affordable when no more than 30% of annual household income of the Qualifying Party is spent on housing (the "Maximum Amount"). For homebuyers, housing-related expenses include mortgage principal and interest, taxes, property insurance mortgage insurance, and essential utilities. For renters, housing-related expenses just includes rent, which must include essential utilities (water, sewer, electricity). For purposes of this Declaration, a "sale" is any conveyance or commitment to a future conveyance for consideration and "lease" or "rent" means any arrangement where a person other than the owner of the Property occupies any portion of the Property for consideration.
2. Sale and Lease of the Property.

- a. Initial Sale. Except for a sale to a party identified in Section 2(c) below, the initial sale of the Property (i.e. the sale immediately subsequent to the date this Declaration is recorded), must be to a Qualifying Party for an amount not to exceed the Maximum Amount.
 - b. Voluntary Subsequent Sales. Following the initial sale of the Property, an owner may sell the Property at any time to (i) a party identified in Section (2)(c) below or (ii) a Qualifying Party provided that the actual sales price of the Property (after adjusting for any seller concessions) must not be more than the Maximum Amount.
 - c. Voluntary Sale to Affordable Housing Organization. Notwithstanding the foregoing, the owner may donate or sell (for any reasonable amounts determined by the parties) the Property to: (i) any non-profit organization whose mission and operations support affordable housing, or (ii) any governmental agency whose mission and operations support affordable housing; provided, however, that any subsequent sale or conveyance by such non-profit organization or governmental agency would be subject to Section 2(a), i.e., to a Qualifying Party where the actual sales price of the Property is not more than the Maximum Amount.
 - d. Rental. The owner may rent the Property, or a portion thereof, at any time to a Qualifying Party for an amount not to exceed the Maximum Amount.
 - e. Permitted Transfers. The following are considered permitted transfers, not subject to the restrictions on price provided in Section 2(b): (i) transfer of title by gift, devise, or inheritance to the owner's spouse or natural or adopted children; (ii) transfer of title due to the owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; (iii) transfer to a spouse as part of divorce or dissolution proceedings; (iv) transfer of title by the owner into an inter-vivos trust in which the owner is the beneficiary; or (v) transfer of title or an interest in the Property to the spouse in conjunction with marriage.
3. Verification of Compliance. The owner of the Property must ensure that the Property is occupied and remains affordable in accordance with this Declaration. The owner of the Property must provide City prior notice of any proposed transfer, sale, lease, or other conveyance of the Property or any portion thereof. Such notice must include the proposed terms of the transfer, sale, lease, or conveyance. Upon request by City, the owner of the Property must also provide documentation supporting compliance with the requirements of this Declaration (i.e. buyer's or tenant's income information, sale documents, lease agreement or lease terms, rental payment amount, etc.).
 4. Other Restrictions. The Property may be subject to additional restrictions on, including the prohibition of, transfer, sale or rental under other instruments recorded in the official records of Deschutes County, Oregon, so long as they are in addition to, and not in lieu of or in contravention to, the conditions and restrictions contained in this Declaration.
 5. Remedies. The owner of the Property will forfeit, and City will be entitled to, any and all payments or other consideration received by the owner the Property, or any other party, above and beyond the maximum sale price or rental payments charged to tenants of the Property permitted under this Declaration, plus interest at the rate of 9% per annum from the date such amounts were received. City may, after no less than thirty (30) days written notice to the owner of the Property, seek an injunction to any violation of this Declaration without obligation to post

bond or prove monetary damages. The remedies in this Section 5 are in addition to, and will not preclude, any other remedy available to City under applicable law or at equity. City may pursue any or all of its remedies consecutively or concurrently.

6. Expiration. This Declaration will remain effective for a period of twenty years commencing from the date on which a final certificate of occupancy is issued (or, if a certificate of occupancy is not issued by the jurisdiction, the final inspection of original construction is completed) for the single-family dwelling on the Property (the "Expiration Date"). The terms, conditions and obligations of this Declaration shall automatically terminate on the Expiration Date and City shall have no further rights with respect to the Property except for those accruing prior to the Expiration Date. Notwithstanding and without diminishing the automatic and self-executing nature of the termination provision set forth herein, City shall, promptly upon the request of the owner of the Property after the Expiration Date, execute an instrument reasonably acceptable to City that releases and quit claims its rights under this Declaration. The owner of the Property will be solely responsible for recording such instruments and for any associated costs.
7. Declarant Representations. Declarant, and the party executing this Declaration on behalf of Declarant, represents, warrants, and certifies that:
 - a. Declarant possesses all necessary power and authority to execute this Declaration, to subject the Property to the terms and conditions of this Declaration, and to maintain the Property as affordable housing;
 - b. The person executing this Declaration on behalf of Declarant has been duly authorized to act in such capacity and to take such other action as may be necessary to accomplish the purposes of this Declaration;
 - c. Execution and delivery of this Declaration will not conflict with any provision of Declarant's governing documents; breach any agreement to which Declarant is a party; or violate any law, rule, regulation, covenants, conditions, restrictions, easements, or order to which Declarant or the Property is subject in a manner that affects the enforceability of this Declaration; and
 - d. This Declaration is the legal, valid, and binding obligation of Declarant, enforceable against Declarant in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application, or by general principles of equity.
8. Governmental Powers. Nothing in this Declaration is intended, nor shall it be construed, to in any way limit the actions of City in the exercise of its governmental powers. It is the express intention of the parties that City shall retain the full right and ability to exercise its governmental powers with respect to any owner or occupant of the Property, the Property, or the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration, and in no event shall City have any liability in contract, tort, or any other legal or equitable theory arising under this Declaration by virtue of any exercise of its governmental powers.
9. Binding Effect. This Declaration shall run with the land and be binding upon and inure to all current and future interest holders in the Property until the Expiration Date.
10. No Partnership. Declarant acknowledges and agrees that it is acting in its own independent capacity under this Declaration, and not as an agent, employee, or subcontractor for City. City is

not, by virtue of this Declaration, a partner or joint venturer with Declarant in connection with this Declaration, and shall have no obligation with respect to Declarant's debts or other liabilities of any nature.

11. No Merger. The interests, rights, covenants, and obligations established by this Declaration shall not merge with the fee ownership of the Property.
12. Governing Law & Venue. This Declaration is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Declaration. Any action, suit, or proceeding arising out of the subject matter of this Declaration will be litigated in courts located in Deschutes County, Oregon.
13. Attorney Fees. In the event of any suit, arbitration, or action arising from or related to this Declaration, the prevailing party in such suit, arbitration, or action shall be entitled to all costs and expenses incurred in connection with such suit, arbitration, or action, including title reports, expert witness fees, and such amount as the court may determine to be reasonable as attorney's fees and costs, including those incurred by the prevailing party in any appeal.
14. Severability. If any term or provision of this Declaration shall, to any extent, be held invalid or unenforceable in any respect, such invalidity or unenforceable shall not affect such term or provision in any other respect nor affect the remaining terms and provisions. It is in the intention that this Declaration be held valid and enforced to the fullest extent permitted by law.
15. Waiver. No waiver of any breach of any of the provisions herein shall be construed as, or constitute, a waiver of any other breach or a waiver, acquiescence in, or consent to any further or succeeding breach of the same or any other easement, covenant, or agreement.
16. Amendment. Any amendment or repeal of a provision of this Declaration or the adoption of any additional provision shall become effective only upon the recording in the official records of Deschutes County, Oregon, of an amendment that contains the signature of an authorized representative of the City.

SIGNATURE PAGES FOLLOW

**EXHIBIT A
LEGAL DESCRIPTION**

[REDACTED] RECORDED JANUARY 30, 2020, IN
[REDACTED] DESCHUTES COUNTY, OREGON.