

**AFTER RECORDING RETURN TO:**

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**DECLARATION OF RESTRICTIVE COVENANT FOR WORKFORCE HOUSING**

This DECLARATION OF RESTRICTIVE COVENANT FOR WORKFORCE HOUSING (this “Declaration”) is made by \_\_\_\_\_ (“Owner”), the owner of the property located at \_\_\_\_\_ as more specifically described on Exhibit A (“Property”).

**RECITALS**

NeighborImpact or its successor or assign (“NI”) administers the Deschutes County Home Ownership for Middle-Income Employees (HOME) Fund to provide a \$30,000 incentive (“Incentive”) per Workforce Home. Workforce Home is defined as a home built in Deschutes County and sold within a price range determined to be affordable to a buyer who makes above 80% and no higher than 120% AMI in Deschutes County, as determined on an annual basis by the United States Department of Housing and Urban Development (“HUD”) on a per bedroom basis.

NI will determine the buyer’s eligibility at initial sale and subsequent resales and send yearly verifications on eligibility compliance of the Owner of the Workforce Home.

Incentives are granted to developers to encourage the construction of Workforce Homes in Deschutes County. As a condition of receiving the Incentive, the Property must be subject to a restrictive covenant ensuring the Property will be developed, conveyed, sold and occupied as a Workforce Home for twenty (20) years. Further, the buyer of the Workforce Home must meet certain employment, occupancy and income requirements at the initial and subsequent resale the Workforce Home. The sales price shall be restricted as provided in this Declaration.

Owner has applied for and been granted the Incentive and desires to restrict the Property as provided herein.

The Funding Partner for this Declaration is the Deschutes County, a political subdivision of the State of Oregon.

**DECLARATION**

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

1. Qualifying Buyer. The Property shall be sold to an individual or individuals (a “Qualifying Buyer”) as their primary residence who is currently employed by or has an accepted offer of employment from a Deschutes County Employer with incomes, at the time of initial and any subsequent closing dates until the Expiration Date (as defined below), **above eighty percent (80%) and no higher than one hundred and twenty percent (120%) of area median income (“AMI”) for Deschutes County** as determined on an annual basis by the United States Department of Housing and Urban

Development (“HUD”). If HUD ceases to provide such estimates of AMI, then the AMI shall mean such comparable figure for Deschutes County, Oregon published or reported by a federal, state, or local agency as the County shall select. NI shall determine if an individual or individuals are a Qualifying Buyer at the initial sale and any subsequent resale.

2. Deschutes County Employer. For purposes of this Declaration, “Deschutes County Employer” is defined as a business or other enterprise (private or public) that has been in business in Deschutes County, Oregon for at least 6 months from the date of eligibility determination, and is registered by the Oregon Secretary of State with a principal place of business located in Deschutes County, or other official documentation that can verify the business location in Deschutes County.
3. Sales Price. For purposes of this Declaration, the sales price of the Workforce Home must be within a price range determined to be affordable to a buyer who makes above 80% and no higher than 120% AMI in Deschutes County, Oregon as determined by HUD (“Maximum Amount”) measured at the time the Qualifying Buyer takes title to or possession of the Property. Housing expense include mortgage principal and interest, taxes, property insurance, mortgage insurance, and any required association dues or assessments, if applicable.
4. Sale of the Property.
  - a. Initial Sale. The initial sale of the Property (i.e. the sale immediately subsequent to the date this Declaration is recorded), must be to a Qualifying Buyer for an amount not to exceed the Maximum Amount. For purposes of this Declaration, a “sale” is any conveyance or commitment to a future conveyance for consideration.
  - b. Voluntary Subsequent Sales. Following the initial sale of the Property, Owner may sell the Property at any time to (i) a party identified in Section 4.c. below, or (ii) a Qualifying Buyer provided that the actual sales price of the Property (after adjusting for any seller concessions) must not be more than the Maximum Amount. Seller is required to contact the regional housing authority in order to determine the Maximum Amount for the year of sale, and to receive a reference to nonprofit housing providers who are capable of purchasing or assisting in the sale of the Workforce Home to a Qualified Buyer. NI shall determine if an individual or individuals are a Qualifying Buyer for any subsequent sales.
  - c. Voluntary Sale to Affordable Housing Organization. Notwithstanding the foregoing, 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 sale to a Qualifying Buyer who is employed by a Deschutes County Employer where the actual sales price of the Property is not more than the Maximum Amount and the Workforce Home is owner-occupied.
  - d. Permitted Transfers. The following are considered permitted transfers, not subject to the restrictions on price provided in Section 4.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. Provided, however, that any subsequent sale or conveyance by such person would be subject to sale to a Qualifying Buyer who is employed by a Deschutes County Employer where the actual sales price of the Property is not more than the Maximum Amount and the Workforce Home is owner-occupied.

5. Owner Occupancy Requirement. The Property must be owner-occupied for the duration of this Declaration until the Expiration Date.
6. No Discrimination. The Owner shall not give or allow to be given any preference to any particular group or class in selling the Workforce Home. 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, or disability, or the receipt of public assistance.
7. Reporting; Verification of Compliance. The Owner of the Property must ensure that the Property is occupied and remains in compliance with this Declaration. NI shall send Owner yearly verification letters that Owner is required to be returned to NI. Follow up on verification, if needed, will be performed by NI. The Owner of the Property agrees to submit to the Funding Partner, NI or its designee such information and reports as the Funding Partner may reasonably require to demonstrate compliance with the terms of this Declaration, including, but not limited to: (i) verification that the Workforce Home is owner-occupied, (ii) verification that the Owner's employment is with a Deschutes County Employer and (ii) proof of the Owner's income in the form of tax forms or pay stubs.
8. Other Restrictions. The Qualifying Buyer may not obtain a home-equity line of credit or second mortgage or refinance the Property to take cash out of the Property prior to the Expiration Date. 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.
9. Expiration. This Declaration will remain effective for a period of twenty (20) years commencing from the date on which the initial closing date of the Property (the "Expiration Date"). The terms, conditions and obligations of this Declaration shall automatically terminate on the Expiration Date. All subsequent sales are subject to the conditions of this Declaration until the Expiration Date. Notwithstanding and without diminishing the automatic and self-executing nature of the termination provision, the Funding Partner shall, promptly upon the request of the Owner of the Property after the Expiration Date, execute an instrument reasonable acceptable to the Funding Partner that releases and quit claims its rights under this Declaration. The Owner of the property will solely be responsible for recording such instrument and for any associated costs.
10. Covenants Run with the Property. The Owner hereby declares its express intent that, during the term of this Declaration, 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 of any portion of the Property and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein. Each and every contract deed or other instrument hereafter executed covering or conveying the Property 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.

11. Owner Representations.

- a. Owner represents and warrants that the Incentive paid to it is an inducement to the Owner to comply with the terms of this Declaration and its application for the Incentive. Owner covenants, agrees and acknowledges that the Funding Partner providing the Incentive is a beneficiary of this Declaration and it relied upon the enforceability of this Declaration in providing the Incentive.
- b. Owner possesses all necessary power and authority to execute this Declaration, to subject the Property to the terms and conditions of this Declaration.
- c. The person executing this Declaration on behalf of the Owner 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.
- d. Execution and delivery of this Declaration will not conflict with any provisions of the Owner's governing documents; breach any agreement to which Owner is a party; or violate any law, rule, regulation, covenant, conditions, restrictions, easements, or order to which Owner or the Property is subject in a manner that affects the enforceability of this Declaration; and
- e. This Declaration is the legal, valid and binding obligation of Owner, enforceable against Owner 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.

12. Default and Remedies. Funding Partner or its designee may enforce the provisions of this Declaration.

- a. Events of Default. Any of the following shall be an event of default under this Declaration:
  - i. Failure to perform or abide by any covenant, condition, or obligation of this Declaration.
  - ii. Engaging in the sale, transfer, change of use or assignment of the Property in violation of the terms of this Declaration.

- b. Remedies. The following remedies are applicable to this Declaration in the event of a default hereunder:
- i. Funding Partner or its designee may, by mandamus or other suit, injunction, action or proceeding at law or equity, require Owner to perform its covenants, conditions, agreements and obligations in this Declaration or to abate, prevent, or enjoin any acts or things which may be unlawful or in violation of this Declaration.
  - ii. Funding Partner or its designee 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 Declaration, 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 not be limited to all costs, expenses including, but not limited to, staff and administrative expenses, fees including but not limited to all reasonable attorneys' fees and costs which may be incurred by the Funding Partner or any other party in enforcing or attempting to enforce this Declaration following any event of default on the part of the Owner or its 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 Declaration or otherwise at the request of the Owner.
  - iii. The remedies in this Section 12 are in addition to, and will not preclude any other remedy available under applicable law or equity. Remedies may be pursued consecutively or concurrently.
  - iv. Funding Partner has no obligation to enforce this Declaration or seek any remedy hereunder.
13. Binding Effect. This Declaration shall run with the land and be binding upon and to take effect to all current and future interest holders in the Property until the Expiration Date.
14. Successors and Assigns. This Declaration shall be binding upon and shall inure to Owner's successors and assigns.
15. No Merger. The interests, rights, covenants, and obligation established by this Declaration shall not merge with the fee ownership of the Property.
16. Governing Law and 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 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.
17. 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 arising from or related to this Declaration, 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.

- 18. 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.
- 19. 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.
- 20. Time of Essence. Time is of the essence of each of the Owner's obligations under this Declaration.

[FY 2023 Income Limits Documentation System -- Summary for Deschutes County, Oregon \(huduser.gov\)](http://huduser.gov)

OWNER:

Dated: \_\_\_\_\_  
 \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Print Name

Dated: \_\_\_\_\_  
 \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Print Name

STATE OF OREGON            )  
   ) ss.  
 County of \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public for State of Oregon

STATE OF OREGON            )  
   ) ss.  
 County of \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public for State of Oregon