

**FILED**

SEP 02 1997

BOOK 159 PAGE 1139  
IN THE BOARD OF COMMISSIONERS

HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY (HACSA)

COUNTY CLERK

BY M. Bullock

**RESOLUTION AND ORDER**

97-8-27-2H

**In the Matter of Authorizing the Executive Director to Accept Federal Low-income Housing Tax Credits, Oregon Affordable Housing Tax Credits, and Housing Development Funds from the Oregon Housing and Community Services Department on behalf of the Jacob's Lane Limited Partnership.**

WHEREAS, HACSA recognizes the need to address the community issues of homelessness and increasing the supply of permanent, affordable housing for lower income households and has initiated the development of the Jacob's Lane Affordable Housing Development to address such community needs;

WHEREAS, the Intergovernmental Housing Policy Board has requested that HACSA obtain subsidies to provide for rents affordable to very low-income households and families;

WHEREAS, the State of Oregon Housing and Community Services Department has agreed to award HACSA \$497,983 in annual federal low-income housing tax credits; \$500,000 in Oregon Affordable Housing Tax Credits; and \$100,000 in Housing Development Grant funds;

WHEREAS, HACSA wishes to accept these project subsidies from the Oregon Housing and Community Services Department as the general partner of the Jacob's Lane Limited Partnership, a partnership created for the purpose of utilizing these project subsidies;

WHEREAS, ORS 456.120 authorizes housing authorities to enter in a partnership agreement with an individual, partnership, corporation, or other association to finance, plan, undertake, construct, acquire or operate a housing project;

NOW, THEREFORE, it is hereby resolved and ordered:

It is Ordered That the Executive Director or Deputy Director Is Authorized to Accept from the Oregon Housing and Community Services Department the Following Award(s): (1) Federal Low-income Housing Tax Credits (\$497,983); (2) Oregon Affordable Housing Tax Credits (\$500,000); and (3) Housing Development Grant (\$100,000) as the General Partner of the Jacob's Lane Limited partnership.

It is Further Ordered That the Executive Director or Deputy Director Is Authorized to Execute the Program Documents for the Jacob's Lane Limited Partnership (In a Form Substantially Similar to Attachment "A" and Incorporated by this Reference) That Are Associated with These Awards.

DATED this 27 day of AUGUST, 1997

APPROVED AS TO FORM

Date 8/20/97 In \_\_\_\_\_ county

Jessie J. Smith  
OFFICE OF LEGAL COUNSEL

Cindy Weeldreyer  
Chair, HACSA Board of Commissioners

In the Matter of Authorizing the Executive Director to Accept Federal Low-income Housing Tax Credits, Oregon Affordable Housing Tax Credits, and Housing Development Funds from the Oregon Housing and Community Services Department on Behalf of the Jacob's Lane Limited Partnership

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ATTACHMENT 1

Draft Program Documents  
Jacobs Lane Housing Development

**OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
LOW-INCOME HOUSING TAX CREDIT  
RESERVATION AND EXTENDED USE AGREEMENT (AGREEMENT)**

- COPY**
1. The Oregon Housing and Community Services Department ("Department") hereby grants a Reservation for a Low-Income Housing Tax Credit Allocation of \$497,983 to Jacobs Lane Limited Partnership ("Owner"), for the Jacobs Lane Housing Development consisting of 21 buildings of qualified low-income residential buildings, 63 units, new construction to be located at between Royal Avenue and Barger Drive on Hwy. 99, Eugene, Oregon ("Project").
  2. To qualify for an Allocation issued by the Department on Form 8609, the Owner does hereby agree that Owner shall restrict Project rents to 100 percent of the gross rent allowable under Internal Revenue Code ("IRC") Section 42(g)(2) less a utility allowance for tenants whose incomes are at or below 50 percent of family adjusted median income, more specifically: 63 units at 50% and shall postpone the earliest right to propose a change of use as provided under IRC Section 42 (h)(6) from after year 14 to year 50 of the Project. Subject to the rent restrictions of IRC Section 42, Owner may request an increase in the percentages set forth above annually in writing, together with supporting documentation, which shall be deemed approved if not denied or modified by the Department within 90 days of its receipt at the Owner's request. The Department also may approve other requests by Owner for rent increases subject to the limits in IRC Section 42. The Owner does further agree that to qualify for an Allocation, the Owner must:
    - a) Construct, purchase, or rehabilitate the Project in accordance with local building codes and all applicable federal or State regulations;
    - b) Certify to the Department by December 15, 1997, that more than ten percent (10%) of the reasonably expected project cost has been incurred by the Owner and by June 30, 1998, that construction financing is closed;
    - c) Certify to the Department in a timely manner that the building is placed in service as part of a qualified low-income housing project;
    - d) Provide a final cost certification and financial update of the original application; and
    - e) Record a Declaration of Land Use Restrictive Covenants ("Declaration") in a form satisfactory to the Department, which shall, among other things, restrict Project rents to the gross rent allowable under IRC Section 42(g)(2) for tenants whose incomes are at or below 50% percent of family adjusted median income and set the earliest right to propose a change of use as provided under IRC Section 42(h)(6) from after year 14 to year 50. Said Declaration is hereby incorporated into this Agreement by reference, is precedent to any delivery of final allocation of tax credit by the Department, and shall contain such other restrictions, covenants, and provisions as are required for the Declaration to comply with IRC Section 42 and Department program requirements.
  3. This Reservation Agreement dated July 7, 1997 shall expire on December 30, 1997, unless extended in writing by the Department. A Carryover Allocation made pursuant to OAR 813-90-036 (2) shall be a valid extension of the Agreement.
  4. Allocations are made for each building separately, based on individual applications when placed in service. A Carryover Allocation may be made when over ten percent (10%) of the estimated cost, including land, is expended and the project will not be placed in service in the tax credit year.
  5. The Department accepts no responsibility for any adverse consequences to the Owner or any other person or entity under IRC Section 42.

6. This Reservation is non-transferable for use on another property or at a different location.
7. The Owner represents he/she is the Owner of the Project who has applied for the receipt of Low-Income Housing Tax Credits ("Crédit") for the same Project. This Agreement may be not assigned without written approval of the Department, which permission the Department may give or withhold at its sole discretion.

Notwithstanding the foregoing paragraph, an interim or construction lender, or other qualified commercial lender may take an assignment of said Credit for security purposes only without the prior consent of the Department. However, any such security assignment shall be subject to subsequent approval by the Department prior to any enforcement of the security interest by the lender.

For purposes of this section, an assignment shall include, but not limited to, any transfer of an ownership interest in the project or any withdrawal, change or addition of a general partner in a limited or general partnership or of a party in a joint venture.

8. The Owner acknowledges receipt of the draft Declaration enclosed with the Award Letter.
9. The Owner understands that prior to the Project receiving the final allocation of Credit as evidenced by the issuance of Form 8609, the Owner will be required to execute and record said Declaration with such insertions as approved or required by the Department for this particular Project and provide the Department with an executed original or certified copy of the Declaration showing due recordation.
10. The Owner hereby agrees to execute and record said Declaration with such insertions as approved by the Department for the Project and agrees to provide the Department with an executed original or certified copy of said Declaration showing due recordation.
11. The Owner hereby agrees, understands, accepts, and acknowledges the Department is under no obligation to issue and deliver a Form 8609 unless the Owner timely presents to the Department an executed original or certified copy of the Declaration with such insertions as approved by the Department for the Project showing due recordation.
12. The Owner agrees to fill out and sign Part II of the Form 8609 required to be completed by the building owner for the first year of the credit period and return a copy (without Schedules and other supporting documents) to the Department for the purposes of compliance monitoring.
13. The Owner agrees to:
- a) Set the estimated low-income housing commitment period to be 20 years beyond the compliance period or until January 1, 2049, assuming project is placed in service in 1999.
  - b) Serve tenants whose household incomes are less than 50 percent of family adjusted median income;
  - c) Postponet the earliest date upon which the Owner may request the Department to procure a qualified contract for acquisition of the Project from after year 14 to year 50
  - d) Provide certified financial documentation acceptable to the Department to satisfy the calculation of a qualified contract and to begin the one-year period for finding a buyer in accordance with IRC Section 42(h)(6) if desired; and
  - e) Maintain the Applicable Fraction for each building of the Project specified in the Low-Income Housing Tax Credit Application as 100 percent, consistent with this Agreement.

- f) SERVICES: Owner will use best efforts to provide the services as stated in response to Question #5, initial Application, dated February 14, 1997. Any significant change in Services as submitted, must be prior approved by the Department.

14. FUTURE TRANSFER OF OWNERSHIP, (OPTIONAL SECTION):    YES    NO

- a) For the purpose of ensuring the Project will continue to be used as affordable housing, Owner hereby agrees to transfer the Project to a "qualified nonprofit organization" [as defined in IRC 42(h)(5)(C)] acceptable to the Owner, the Department and the mortgage lender after the end of the calendar year falling \_\_\_\_\_ years after the issuance of the Forms 8609 for the Project, or as soon thereafter as the transfer can be consummated, on the following terms:
- 1) The consideration for the transfer shall be in accordance with the formula in IRC Section 42(h)(6)(F) in an amount equal to the sum of (a) the principal amount of outstanding indebtedness secured by the Project, (b) the adjusted investor equity in the building, and (c) other capital contributions not reflected in the amounts described above, reduced by cash distributions from (or available for distribution from) the project.
  - 2) Owner shall be under no obligation to transfer the project to a qualified organization in the event that no acceptable qualified organization agrees in writing to accept title and assume Owner's obligations before the end of the calendar year falling \_\_\_ years after the issuance of the Forms 8609 for the project.
  - 3) In making the determination of the transferee qualified nonprofit organization, first right of refusal shall be given to \_\_\_\_\_.
  - 4) Any controversy related to the selection of the transferee qualified organization shall be settled by arbitration pursuant to the rules of the American Arbitration Association.
- b) Owner further covenants to use its reasonable best efforts to assure, at the time of the transfer: (i) the Project is generating sufficient cash flow to service Project debt and pay Project operating expenses; and (ii) the Project is in reasonably good physical condition (for a multi-family apartment project of its age and quality).
- c) No provision of this section shall prevent any lender loaning funds secured by the Project from foreclosing on the property or otherwise exercising its full rights as a lender. In the event of a bonafide foreclosure or transfer of the Project to a lender by a deed in lieu of foreclosure, the foreclosing lender shall take the project free and clear of any obligation to transfer the Project to a nonprofit organization or to operate the project as affordable housing except as provided for in IRC Section 42. The Department or its assigns shall have the right to cure any default to avoid foreclosure and assure transfer as stated above.

15. By accepting this Reservation and Extended Use Agreement, the Owner understands and accepts the risk that: 1) The final tax credit amount or maximum rents agreed to be charged will be reduced in accordance with IRC Section 42(m)(2) if the Department determines, at its discretion and in keeping with sound underwriting guidelines, that a lesser amount will meet the Department's financial feasibility test for the development of the Project; 2) The U.S. Internal Revenue Service may change the requirements for the Tax Credit by subsequent regulation; and 3) The tax credit will not exceed the amount shown above, but may be reduced in accordance with IRC Section 42(b)(2) unless the applicable credit percentage is fixed in accordance with IRC Section 42(b)(2)(A)(i)(1).

16. [ ] If this box is checked, the Owner hereby irrevocably elects, pursuant to IRC Section 42(b)(2)(A)(ii)(I), to fix the applicable credit percentage(s) for the Project as the Percentage(s) prescribed by the Secretary of the Treasury for the month of July, 1997, which was the month of the Reservation is signed and for a IRC Section 42(h)(4) tax-exempt bond financed project the month in which obligations are issued. For the purpose of this election, the rate(s) would be 8.60 percent. For this election to be valid the Owner shall be responsible to sign this Agreement in the same month as the applicable credit election, and have it notarized by the fifth day of the following month. The owner shall also be responsible to send the original to the Department by the end of the month this Agreement is notarized.

[ ] If this box is checked, owner has made NO ELECTION pursuant to IRC Section 42(b)(2)(A)(ii)(I) at the date of the signing of the Reservation and Extended Use Agreement.

17. The Department and the Owner acknowledge this Reservation and Extended Use Agreement constitutes an agreement binding upon the Department, the Owner, and all successors in interest to the Owner as Owners of the Project, as to the allocation of 1996 tax credit authority to the buildings in the Project, subject to compliance by the Owner with the requirements of IRC Section 42, the Declaration, and the requirements of the Department.

ALLOCATING AGENCY:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Robert Gillespie, Manager, Housing Resources Section  
Oregon Housing and Community Services Department  
1600 State Street, Salem, Oregon 97310-0161

Taxpayer ID Number 93-0952117-260100

STATE OF OREGON )  
County of Marion )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, by Robert Gillespie who is the Housing Resources Section Manager of Oregon Housing & Community Services Department.

NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

Acknowledged, agreed, and accepted by owner:

Owner: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, by \_\_\_\_\_ who is a \_\_\_\_\_ of Jacobs Lane Limited Partnership.

NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL  
TO:  
Oregon Housing and Community  
Services Department  
500 State Street  
Salem, Oregon 97310  
Attn: KEYBOARD(Housing Resouce Officer)

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SPACE ABOVE FOR RECORDER'S USE

**OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
LOW-INCOME HOUSING TAX CREDIT  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS, (this "Declaration"), dated as of \_\_\_\_\_, 1997, by KEYBOARD(LEGAL PROJECT OWNER), and its successors and assigns (the "Owner") is given as a condition precedent to the allocation of low-income housing credits by the Oregon Housing and Community Services Department, a governmental agency of the State of Oregon, together with any successor to its rights, duties, and obligations, (the "Department").

**WITNESSETH:**

WHEREAS, the Owner is or shall be the owner of a(n) KEYBOARD(NUMBER OF BLDGS & NBR OF UNITS) unit rental housing development located on lands in the City of KEYBOARD(CITY), County of KEYBOARD(COUNTY), State of Oregon, more particularly described in Exhibit A hereto, known as or to be known as KEYBOARD(PROJECT NAME) (the "Project"); and

WHEREAS, the Department has been designated by the Governor of the State of Oregon as the housing credit agency for the State of Oregon for the allocation of low-income housing tax credit dollars (the "Credit"); and

WHEREAS, the Owner has applied to the Department and entered into a Reservation and Extended Use Agreement for an allocation of Credit to the Project in an amount not to exceed KEYBOARD(RESERVATION CREDIT AMOUNT (IN WORDS)) dollars (\$KEYBOARD(RESERVATION DOLLARS IN NUMBERS)) of KEYBOARD(ALLOCATION YEAR(S) (eg. 1996)) low-income housing credit allocation; and

WHEREAS, the Department has agreed to issue a Form 8609 to the Owner upon the execution and recording of this Declaration which constitutes part of the Reservation and Extended Use Agreement; and

WHEREAS, the Owner has represented to the Department in Owner's Low-Income Housing Tax Credit Application (the "Application") dated KEYBOARD(FINAL APP DATE), that Owner shall lease/rent KEYBOARD(% UNITS LOW-INCOME (ie. Applicable Fraction)) percent of the units in the Project to individuals or families whose income is KEYBOARD(50% OR 60%) percent or less of the area family adjusted median gross income ("Low-Income Tenants") as determined in accordance with Section 42 of the Internal Revenue Code (the "IRC"); and

WHEREAS, the Department has determined the Project would require a Credit allocation in the amount of \$ KEYBOARD(FINAL/PIS DOLLARS) of KEYBOARD(ALLOCATION YEAR(s) (eg. 1996)) tax credit allocation

to be financially feasible; and

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WHEREAS, the Owner has represented to the Department rent restrictions it will maintain for the period of time as specified in the Reservation and Extended Use Agreement; and

WHEREAS, the IRC requires as a condition precedent to the allocation of the Credit that the Owner execute, deliver and record this Declaration in the official land deed records of the county in which the Project is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of IRC Section 42 and the Department's Occupancy Restrictions found in Section 5 hereof by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, under this Declaration, intends, declares, and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy, and transfer of the Project shall be and are covenants running with the Project land for the term stated herein and binding upon all subsequent owners of the Project land for such term, and are not merely personal covenants of the Owner,

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Department agree as follows:

#### **SECTION 1 - DEFINITIONS**

All the words and phrases used in this Declaration shall have the same meaning as when used in IRC Section 42, Treasury Regulations or Notices promulgated pursuant to IRC Section 42, Department Administrative Rules, and the Department of Housing and Urban Development ("HUD") Regulations unless the context requires otherwise.

#### **SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

- (a) Upon execution of this Declaration by the Owner and the Department, the Owner shall cause this Declaration and all amendments hereto to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Department an executed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record. The Owner understands and agrees that the Department will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until the Department has received the recorded executed original of this Declaration.
- (b) The Owner intends, declares, and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project (I) shall be and are covenants running with the Project land, encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project (II) are not merely personal covenants of the Owner, and (III) shall bind the Owner (and the benefits shall inure to the Department and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner hereby agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
LIHTC PROJECT NUMBER ORKEYBOARD( (PROJECT NUMBER, eg 96-001))**

restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the longer of the period this Credit is claimed or the term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

- (c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

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### SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants, and warrants as follows:

- (a) The Owner (I) is a KEYBOARD(OWNER INFO (eg. non-profit or ltd partnership)) duly organized under the laws of the State of KEYBOARD(STATE (eg. Oregon, Idaho, Washington, etc)), and is qualified to transact business under the laws of the State of Oregon, (II) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (III) has the full legal right, power and authority to execute and deliver this Declaration.
- (b) The execution and performance of this Declaration by the Owner (I) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (II) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (III) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration, any Loan Documents relating to the Project or other permitted encumbrances).
- (d) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in IRC Section 42 and applicable regulations.
- (f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.

(g) During the Term of this Declaration, all units subject to the Credit shall be leased, rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the IRC.

The Owner agrees that tenant and third parties will be eligible to enforce IRC Section 42 entitlements as provided by the Fair Housing Act, as amended.

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- (i) During the term of this Declaration, the Owner covenants, agrees and warrants that each low-income unit is and will remain habitable.
- (j) Subject to the requirements of IRC Section 42 and this Declaration, the Owner may sell, transfer, or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of IRC Section 42 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the project or any low-income portion of the Project. The Owner agrees that the Department may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of IRC Section 42. Notwithstanding the foregoing, the owner shall not dispose of any portion of a building which constitutes a portion of the Project and to which this Declaration applies unless the entire building is disposed of to such person.
- (k) The Owner agrees to notify the Department in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (l) The Owner will provide certified financial documentation acceptable to the Department to satisfy the calculation of a qualified contract and to begin the one year period for finding a buyer in accordance with IRC Section 42(h)(6) if desired.
- (m) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the Department has given its prior written consent.
- (n) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (o) The Owner warrants that it has not and will not execute any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (p) The applicable fraction for each building of the Project during the term of this Agreement shall not be less than the applicable fraction specified in the Low-Income Housing Tax Credit Reservation and Extended Use Agreement (the "Agreement") executed by the Owner as KEYBOARD(% of LIHTC UNITS IN PROJECT)

percent. [See IRC Section 42(h)(6)(B)]

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- (q) The Department may require the Owner to reduce rents charged for low-income units if property taxes imposed upon the Project are reduced because of a change in Oregon law. Any reduction in rent required by the Department shall not exceed the reduction in property taxes, taking into account any replacement taxes or equivalent charges.
- (r) If the Section 8 Income Limits used to determine rent limits are reduced to account for a reduction in property taxes imposed on the Project because of a change in Oregon law or if rents are otherwise reduced by federally subsidized housing assistance programs or comparable program to account for a reduction in property taxes imposed on the Project because of a change in Oregon law and the Department determines that the reduced rent charged for low-income units in the Project appropriately reflects the reduction in property taxes, then Section 3(q) of this Declaration shall not apply.
- (s) The owner will not refuse to lease 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.
- (t) The owner agrees to fill out and sign Part II of the Form 8609 required to be completed by the building owner for the first year of the credit period and return a copy (without Schedules and other supporting documents) to the Department for the purposes of compliance monitoring.
- (u) The Department may charge a reasonable fee comparable to fees charged by the Department for monitoring activities in accordance with Section 8(d) of this Declaration for rent reviews and determinations made pursuant to Sections 3(q) and 3(r) of this Declaration.

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#### SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS

The Owner represents, warrants, and covenants that from and after initial occupancy and throughout the remaining term of this Declaration and in order to satisfy the requirements of IRC Section 42 ("Section 42 Occupancy Restrictions") that;

**(Check applicable percentage election)**

- (a) (1)  At least 20 percent or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is 50 percent or less of family adjusted area median income.
- (2)  At least 40 percent or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is 60 percent or less of family adjusted area median income.
- (b) The Department may require that the determination of whether a tenant meets the low-income requirement be made by the Owner or his designated agent at least annually on the basis of the current income of such Low-Income Tenant.

#### SECTION 5 - DEPARTMENT'S OCCUPANCY RESTRICTIONS

The Owner represents, warrants and covenants throughout the term of this Declaration that:

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
LIHTC PROJECT NUMBER ORKEYBOARD( (PROJECT NUMBER, eg 96-001))

(a) Project rents will not exceed the gross rent allowable under IRC Section 42.

(Check b through e, if applicable)

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(b) — The Owner will extend the income and rental restrictions of IRC Section 42 for KEYBOARD(YEARS BEYOND INITIAL 15-YEAR COMPLIANCE PERIOD) years after the close of the compliance period.

(c) — Regardless of any provision in this Declaration to the contrary, the Department's Occupancy Restrictions provided by this Section shall remain in place for a period of KEYBOARD(TOTAL NBR OF YEARS PROJECT WILL REMAIN AFFORDABLE) years or until January 1, 20KEYBOARD( PIS YEAR + TOTAL YEARS TO REMAIN AFFORDABLE) except in the case of foreclosure or deed in lieu of foreclosure of a prior recorded lien to this Declaration as provided in Section 6(b)(1) but subject to Section 6(c) of this Declaration.

(Check applicable election)

(d) (1) — The Owner will SET the earliest date upon which the Owner may request the Department to assist in procuring a qualified contract for the acquisition of the low-income portion which is a part of the Project to after year 14, from the year the project was placed in service.

(2) — The Owner will POSTPONE the earliest date upon which the Owner may request the Department to assist in procuring a qualified contract for the acquisition of the low-income portion which is a part of the Project from after year 14 to year KEYBOARD(YEAR), from the year the project was placed in service.

(e) — Operating reserves when released from restricted use shall be wholly used to subsidize tenant rents consistent with guidelines prescribed by the Department.

## SECTION 6 - TERM OF DECLARATION

(a) Except as hereinafter provided, this Declaration and the IRC Section 42 Occupancy Restrictions specified herein shall commence with the first day in the Project period on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the close of the compliance period.

(b) The Owner shall comply with the requirements of IRC Section 42 relating to the extended use period, provided, however, this Declaration and the extended use period for any building which is part of this Project shall terminate:

(1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or

(2) On the last day of the one-year period specified in IRC Section 42(h)(6)(I), if the Owner has properly requested in accordance with IRC Section 42 that the Department assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project, the Department and the Owner have agreed upon the terms of sale as specified in Section 3(l) of this Declaration, and the Department is unable to present a qualified contract within one year of reaching written agreement regarding the terms of sale.

- (c) Notwithstanding subsection (b) above, IRC Section 42 rent requirements shall continue for a period of three years following the termination of the extended use requirement pursuant to the procedures specified in subsection (b) above for those tenants existing as of the date of termination. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the IRC with respect to such low-income unit.

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- (d) If the Owner has agreed to optional Department's Occupancy Restrictions as reflected in Section 5 of this Declaration, neither this Declaration nor the extended use period shall terminate until the time period for compliance with such Department's Occupancy Restrictions has expired subject to earlier termination under Section 6(b)(1) above.

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#### **SECTION 7 - ENFORCEMENT OF DEPARTMENT'S OCCUPANCY RESTRICTIONS**

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Department, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the Department's Occupancy Restrictions specified in this Declaration.
- (b) The Owner shall submit any other information, documents, or certifications requested by the Department which the Department shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Department's Occupancy Restrictions specified in this Declaration.

#### **SECTION 8 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS**

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of IRC Section 42 and applicable regulations of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the Department) to comply fully with the IRC and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by the United States Department of the Treasury, the Internal Revenue Service, or HUD from time to time pertaining to Owner's obligations under IRC Section 42 and affecting the Project.
- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with IRC Section 42 and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

- (c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Project compliance under IRC Section 42 and the applicable regulations.

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- ( ) The Owner agrees to take any and all actions reasonably required by the Department to substantiate the Owner's compliance with occupancy restrictions of IRC Section 42 as now constituted or subsequently amended and other occupancy restrictions of the Department as now constituted or subsequently adopted and will pay a reasonable fee to the Department for the Department's monitoring of the Owners compliance based upon the Department's monitoring costs.
- (e) This Declaration and the Reservation and Extended Use Agreement of which it is a part may be enforced by the Department or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Reservation and Extended Use Agreement. In the event the Owner fails to satisfy the requirements of this Declaration or the Reservation and Extended Use Agreement and legal costs are incurred by the Department or one or more of the tenants or beneficiaries, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Owner.

#### SECTION 9 - EXTENDED LOW-INCOME HOUSING COMMITMENT

- (a) For the purpose of ensuring that the Project will continue to be used as affordable housing indefinitely, Owner hereby agrees to transfer the Project to a "qualified nonprofit organization" [as defined in IRC 42(h)(5)(C)] acceptable to the Owner, the Department and the mortgage lender after the end of the calendar year falling KEYBOARD(YEAR TRANSFER TO NON-PROFIT) years after the issuance of the Forms 8609 for the Project, or as soon thereafter as the transfer can be consummated, on the following terms:
- (1) The consideration for the transfer shall be in accordance with the formula in IRC Section 42(h)(6)(F) in an amount equal to the sum of (a) the principal amount of outstanding indebtedness secured by the Project, (b) the adjusted investor equity in the Project, and (c) other capital contributions not reflected in the amounts described above, reduced by cash distributions from (or available for distribution from) the Project.
  - (2) Owner shall be under no obligation to transfer the Project to a qualified organization in the event that no acceptable qualified organization accepts title and assumes Owner's obligations before the end of the calendar year falling KEYBOARD(ATLEAST 15 YEARS OR MORE) years after the issuance of the Forms 8609 for the Project.
  - (3) In making the determination of the transferee qualified nonprofit organization, first right of refusal shall be given to KEYBOARD(NON-PROFIT'S NAME PROJECT WILL BE TRANSFERRED TO)
  - (4) Any controversy related to the selection of the transferee qualified organization shall be settled by arbitration pursuant to the rules of the American Arbitration Association.
- (b) Owner further covenants to use its reasonable best efforts to assure that, at the time of the transfer: (i) the Project is generating sufficient cash flow to service Project debt and pay Project operating expenses; and (ii)

the Project is in reasonably good physical condition (for a multi-family apartment project of its age and quality).

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- (c) No provision of this section shall prevent any lender loaning funds secured by the Project from foreclosing on the property or otherwise exercising its full right as a lender. In the event of a bonafide foreclosure or transfer of the Project to a lender by a deed in lieu of foreclosure, the foreclosing lender shall take the Project free and clear of any obligation to transfer the Project to a nonprofit organization or to operate the Project as affordable housing except as provided for in IRC Section 42. The Department or its assigns shall have the right to cure any default to avoid foreclosure and assure transfer as stated above.

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**SECTION 10 - MISCELLANEOUS**

- (a) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (b) Notices. All notices to be given pursuant to this Declaration 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.

To the Department: Oregon Housing and Community Services Department  
 ATTN: LIHTC PROGRAM  
 1600 State Street  
 Salem, Oregon 97310-0161

To the Owner: KEYBOARD(PROJECT OWNER'S NAME)  
ATTN: KEYBOARD(CONTACT PERSON'S NAME)  
KEYBOARD(OWNER'S ADDRESS)  
KEYBOARD(OWNER'S CITY, STATE & ZIP)

The Department, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (c) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with the IRC, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the Credit. The Department, together with Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
- (d) Subordination of Declaration. This Declaration and the restrictions hereunder are subordinate to the permanent loan and loan documents on the Project in an original principal amount not to exceed \$ KEYBOARD(FINAL LOAN AMOUNT), except insofar as IRC Section 42 (h)(6)(E) otherwise requires. The Department may subordinate this Declaration to other Financing, in its sole discretion and such subordination shall be binding on all third-parties granted rights under this Declaration.
- (e) Governing Law. This Declaration shall be governed by the laws of the State of Oregon and, where applicable, the laws of the United States of America.

(f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

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IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

OWNER

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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STATE OF OREGON )

)

County of \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, by \_\_\_\_\_

NOTARY PUBLIC FOR OREGON

My Commission Expires: \_\_\_\_\_

This document prepared this July 3, 1997, by: \_\_\_\_\_

Print Name: Komi P. Kalevor

Title: Tax Credit Program Representative

h:\hfs\lihtc\letters\KEYBOARD(DOCUMENT NAME)  
Revised 3/97

SPRING 1997 CFC APPLICATION  
JACOBS LANE

Resident Service Plan

5.(A) *Discuss the various social needs of the target population for this project and include in your discussion the method used to identify these basic needs.*

Because this CFC Application seeks financial assistance for that portion of the Jacobs Lane development that will serve families, single individuals/smaller households, and seniors<sup>1</sup>, each of these three populations is discussed below. In general, however, HACSA's longstanding commitment to tenant services has evolved the incorporation of a two-tiered service program into its housing developments. This approach would be applied to Jacobs Lane as follows:

- a "generic" program of services available to all residents of Jacobs Lane. These are primarily available from the service providers participating in HACSA's "Family Self-Sufficiency Program" and are intended to address resident needs for budgeting and money management, access to employment services and training, and child care. A recent and innovative addition to these "core" services is the permanent provision of low-cost access to computers, the internet, and other electronic resources in the community facility on the site.
- a more intensive program of services provided by a smaller group of participating service providers attached to specific resident families and individuals referred to Jacobs Lane from emergency and transitional facilities in Eugene and Springfield. In these situations, the resident or family works with a case manager to design and participate in an individualized plan which incorporates the specific mix of services most appropriate to the household.

Families

Affordable rents, low-cost transportation, child-care, budget/money management, substance abuse treatment and counseling, employment training and placement are identified social needs of many low-income families.

HACSA has identified these needs during its longstanding operation of the Family Self-Sufficiency Program Coordinating Committee<sup>2</sup>, and more specifically, its longstanding collaboration with Lane Shelter Care, Catholic Community Services, and the Lane Relief Nursery, the three non-profit agencies

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<sup>1</sup> A 20-units HUD Section 811 apartment complex for persons with disabilities is proposed for an adjacent parcel. Although designed and integrated into the overall site plan, no funds are sought in this CFC Application for this development. The overall Jacobs Lane development also includes a Head Start Day Care Center and small coffee house/deli, also to be constructed and financed separately.

<sup>2</sup> A list of participating service agencies in the Family Self-Sufficiency Program (FSS) is provided as Attachment 5(A). The Program Coordinating Committee is the steering committee for the FSS Program.

that refer and serve low-income families to HACSA housing projects. In addition, HACSA carries out frequent needs assessments of its public housing tenants. Perhaps the most important source of information is the residents themselves: HACSA has two Resident Services Coordinators who meet monthly with the resident councils of each housing project. Our residents tell us what their needs are.

#### Single Individuals

The social needs of single individuals vary widely, often depending on age, but can be generally characterized as affordable rents, low-cost transportation, budget/money management, substance abuse treatment and counseling, employment training and placement.

Previous HACSA collaboration with Sponsors, Inc., Lane ShelterCare and Looking Glass Youth Services in placing single individuals from their respective transitional programs has resulted in a "core curriculum" of social services for this group. HACSA also owns and operates the Firwood Apartments, which has 70 one-bedroom units, primarily occupied by this tenant group.

#### Seniors

The social needs of low-income seniors vary according to their age and physical vitality, but in broad terms can be identified as affordable rents, opportunities for conviviality, adequate nutrition, low-cost and convenient transportation, and security.

HACSA's owns and manages over 372 elderly housing units of public housing in Lane County. Each HACSA elderly project contains a resident council which meets monthly with HACSA staff.

5.(B) *Describe the services that will be provided and how these services will benefit the residents in terms of promoting self-sufficiency, maintaining and fostering independence, and supporting efforts in making positive life choices.*

Services that will be available to all Jacobs Lane residents can be identified as follows:

- *Community Building.* Jacobs Lane will include a community building with a community meeting area, small library and computer room, and small meeting room. HACSA's past experience is that for on-site services to work well, there must be a location for work sessions and meetings outside of the tenant home, but away from institutional settings and offices. The community building will also be designed to serve as a comfortable environment for Senior "Meals on Wheels" gatherings.

- *Neighborhood Networks Program.* HACSA will place and maintain a computer in the Community Building with internet and World Wide Web connections.<sup>3</sup> This computer will be available to residents and will provide a electronic connection to the employment resources of the Southern Willamette Private Industry Council and Lane Community College.
- *Credit and money management counseling* from OUR Low-income Credit Union and Consumer Counselor Credit Services Agency.
- *Access to HACSA's Family Self Sufficiency (FSS) Program.* Every resident will have access to HACSA's Family Self-Sufficiency Program. Although Section 8 and public housing residents who join the FSS program are eligible for financial incentives unavailable to Jacobs Lane residents, there is nevertheless an extensive range of support services available to a participant. In addition, HACSA's commitment to work with the household to develop an FSS "Action Plan" can be invaluable. The FSS program is described more fully in Attachment 5(A).
- *Public Transportation.* Jacobs Lane has excellent access to the Lane Transit District public transportation system.
- *Community Gardens.* Jacobs Lane includes space and facilities for community gardens. Garden plots will be available to all residents on a first-come, first serve basis for a small annual fee (est. \$10 - \$15) to cover the cost of irrigation.
- *Community open space.* The site plan for Jacobs Lane includes two outdoor common areas. One is located within the family housing area; the second and larger open area is centrally located.

HACSA also operates within each its housing projects a smaller, more focused service-enriched housing program in which social service agencies refer families from their emergency shelter and transitional programs. The families are provided permanent housing in return for their undertaking an intensive "Self-sufficiency Program" provided by the sponsoring agency. Based on this existing model, HACSA proposes the following for Jacobs Lane:

- Every year, Lane Shelter Care, Catholic Community Services, and Lane County Relief Nursery will refer and provide "self-sufficiency services" for a total of three homeless families. Specific

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<sup>3</sup> A 1995 RAND study reported significant barriers limiting low-income Americans from accessing computers and computer networks. It concluded that without access to computer resources and the information, commerce, and civic participation increasingly available on the internet, the gap between low-income and other Americans will continue to widen. Neighborhood Networks is HACSA's effort to ensure that access to its low-income residents, *and especially the children.*

services provided to these families are based on goals established by the participating family and vary widely. (More information is provided on this program in Appendix 3 "Resident Services Commitment Letters.")

- Lane Shelter Care will annually refer and serve one homeless adult with chronic mental illness who are participating in the ShelterPlusCare program. Supportive services will include living skills training, advocacy, one-to-one counseling, problem-solving support, rehabilitation and socialization, transportation, medication management, mediation, and vocational training. For participants who have a dual diagnosis, alcohol and drug treatment is also provided.

As the ShelterPlus Care sponsor, Lane ShelterCare coordinates a wide and intensive array of services, including

- outreach and emergency services to assist the participant in becoming psychiatrically stable and help meet his or her basic needs;
- working with a case manager to design and participate in an individualized plan which provides the specific mix of services most appropriate to the individual, including living skills training, advocacy, one-to-one counseling, problem-solving support, rehabilitation and socialization, transportation, medication management, mediation, and vocational training. For participants who have a dual diagnosis, alcohol and drug treatment would also be provided.

5.(C) State the anticipated result of each and every service you plan to offer. Results must be measurable and stated in quantified terms.

Service Provided	Anticipated Results	Evaluation Criteria	Service Provider
Community Building	Social interaction & sense of community	Min. of 6 community events and meetings monthly. (Data Source: Comm. Building Log)	HACSA
Neighborhood Networks	Increased competence with computers/electronic media	Computer room used min. of 20 hrs. monthly (Data Source: Computer)	HACSA
Credit/Money Management Couns.	Decreased rental late fees	No resident household paying more than 2 late fees annually (Data Source: Rent Roll)	OUR/Consumer Credit Counseling
"Homelessness to Self-sufficiency" Services	Stable occupancy of referred homeless families	2/3 of formerly homeless families: (a) remain in housing for at least one year; (b) 25% increase in income after 2 years of residency. (Data Source: Rent Roll)	Lane Shelter Care, Lane County Relief Nursery, Catholic Community Services
Support services to formerly homeless individual with mental illness	Stable occupancy	Referred S+C residents - stable occupancy for min. of 1 year. (Data Source: Rent Roll)	Lane Shelter Care
"Family Self-Sufficiency Program	Increased income, self-sufficiency	One household annually voluntarily enrolled. After two years, income increase min. of 25%. (Data Source: Rent Roll)	HACSA

5.(D) *List the source and amount of any additional resources that will be used to implement the Resident Service Plan.*

As described above, HACSA has entered into collaborative agreements with service agencies in the community. Funding for these services is widely varied and derives from both public and private sources. The Family Self-Sufficiency Program is funded by HACSA as part of its overall operations.

<u>Provider</u>	<u>Funding Source</u>
HACSA	Federal Funds, Project Cash Flow(s)
Lane Shelter Care	Private and public funding
Catholic Services	Private and public funding
Lane County Relief Nursery	Private and public funding
OUR Credit Union	Private credit union
Head Start	Federal, state and local funding
FSS Program Participants	Federal, state and local funding